

supported (whenever possible) by affidavits of persons having personal knowledge of the loss. The appropriate TTB officer may require such further evidence as he deems necessary.

(68A Stat. 749, 72 Stat. 1381, 1382; 26 U.S.C. 6065, 5370, 5371)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

#### § 28.318 Action on claim.

Action on claims filed under § 28.317 shall be, insofar as applicable, in accordance with the procedure prescribed in § 28.304.

(72 Stat. 1381; 26 U.S.C. 5370)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

#### BEER AND BEER CONCENTRATE

#### § 28.320 Loss of beer and beer concentrate in transit.

(a) *Losses not requiring inspection.* When, on receipt by the appropriate TTB officer of Form 1689 (5130.12) from the officer required to certify it under the provisions of subpart N of this part, it is disclosed that there has been a loss of beer or beer concentrate after removal from the brewery without payment of tax while in transit to the port of export, the vessel or aircraft, or the foreign-trade zone, and the report of the certifying officer shows that the loss was a normal one caused by casualty, leakage, or spillage, the appropriate TTB officer will allow the loss.

(b) *Losses requiring inspection.* When it is disclosed that the loss of beer or beer concentrate is large or unusual, the appropriate TTB officer will conduct an investigation of the loss. When it is disclosed that the loss in transit has occurred by reason of casualty, leakage or spillage, credit for the loss will be allowed. When the investigation discloses evidence indicating that the loss resulted from theft or from fraud, the appropriate TTB officer will afford the brewer opportunity to submit a written

explanation with respect to the causes of the loss before taking further action.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended, 1335, as amended (26 U.S.C. 5051, 5053, 5056))

[T.D. ATF-224, 51 FR 7700, Mar. 5, 1986, as amended by T.D. TTB-8, 69 FR 3835, Jan. 27, 2004]

#### § 28.321 Tax assessed on loss not accounted for.

The appropriate TTB officer shall make demand on the brewer for an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on; (a) The quantity of beer not satisfactorily accounted for, or (b) the quantity of beer used to produce the quantity of beer concentrate which is not satisfactorily accounted for.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

[T.D. ATF-224, 51 FR 7700, Mar. 5, 1986, as amended by T.D. TTB-8, 69 FR 3835, Jan. 27, 2004]

### Subpart P—Action on Claims

#### § 28.331 Claims supported by bond, Form 2738 (5110.68).

On receipt of a claim for drawback of tax on distilled spirits or wines on which the tax has been determined, and of the evidence of exportation required by § 28.40, or of lading for use on vessels or aircraft required by § 28.41, or of deposit in a foreign-trade zone or of deposit of distilled spirits in a customs bonded warehouse, as required by § 28.42, as the case may be, the appropriate TTB officer shall, if a good and sufficient bond has been filed as provided in § 28.65, and the notice of removal has been properly completed, allow the claim in accordance with the rate of drawback established in respect of the particular spirits or wines on which claim is based and charge the amount allowed against the bond. On receipt of the original of the claim properly executed by the appropriate customs official or armed services officer, as required by this part, and, in the case of claims on Form 1582-A