



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms
Washington, D.C. 20226

Number: 79-18

Date: December 27, 1979

PUBLIC LAW 95-423

(REFUND OF FEDERAL EXCISE TAX AND
CUSTOMS DUTY PAID ON ALCOHOLIC BEVERAGES
LOST DUE TO CASUALTY, DISASTER,
VANDALISM AND MALICIOUS MISCHIEF)

To proprietors of distilled spirits plants,
breweries, taxpaid wine bottling houses, and
bonded wine cellars; liquor dealers; and
others concerned:

PURPOSE. This circular transmits a reprint of
Treasury decision ATF-56, which amended Title 27,
Code of Federal Regulations, Part 170; and answers
some questions regarding the interpretation of
these regulations and Public Law 95-423.

BACKGROUND. Public Law 95-423, effective
February 1, 1979, amended 26 U.S.C. 5064 to permit
refund of Federal excise tax and Customs duty paid
on alcoholic beverages lost, rendered unmarketable,
or condemned due to casualty, disaster, vandalism,
and malicious mischief (excluding theft).
Previously, 26 U.S.C. 5064 allowed refund of these
taxes and duties only if the loss was the result of
a Presidentially declared major disaster. Congress
felt that certain other circumstances, although not
considered "major disasters," could result in sub-
stantial losses of alcoholic products and concluded
that these losses should be treated in the same
manner as losses caused by Presidentially declared
major disasters. Thus, Pub. L. 95-423 extends the
law to allow refund of taxes and duties on alcoholic
products that are lost as the result of other types
of disasters and casualties or as the result of
damage or destruction (except theft) from vandalism
or malicious mischief. Treasury decision ATF-56
prescribed regulations to implement the changes made
by this public law. For more background information
on Pub. L. 95-423 and Treasury decision ATF-56, see
the introduction to the Treasury decision attached
with this circular.

QUESTIONS REGARDING THE INTERPRETATION OF PUBLIC
LAW 95-423 (26 U.S.C. 5064), AND REGULATIONS
THEREUNDER.

1. What is the definition of a casualty? For example, if a shelf turns over or a forklift drops a load of cases, has a casualty occurred within the intent of Public Law 95-423?
Answer: A casualty may be defined as a "serious accident." The "serious" aspect of this definition is recognized in the law by the \$250 minimum amount for claims. The "accident" aspect must be decided on the facts of each individual case. However, it is clear that if a shelf turns over accidentally, there has been an accident and a claim may be filed if the \$250 minimum amount is satisfied. The same analysis applies to forklifts dropping loads of cases, trucks overturning on the highway, train derailments, and the like. Each of these events may constitute a casualty. The burden of proving that the loss was accidental lies with the claimant.

2. Does the exclusion for theft losses include situations where theft losses occurred or were made possible because of a natural event or a casualty? Answer: The exclusion for theft covers all theft regardless of the cause. For example, suppose a windstorm damages a warehouse wall, allowing thieves to gain entry. In this case, although there would be coverage for any loss of alcoholic products caused directly by the windstorm, there would not be any coverage for theft.

3. Can an insurance company or common carrier which reimburses a wholesaler or retailer for loss of alcoholic beverages collect from the government under 26 U.S.C. 5064, as amended by Public Law 95-423? Answer: No, these entities cannot collect anything from the government, because they were not the owners of the alcoholic beverages at the time of the loss. The claim under section 5064 may only be filed by the person who was holding the alcoholic beverages for sale when the loss occurred.

4. What is the meaning of the phrase "held for sale" as used in Public Law 95-423? Answer: "Held for sale" means held--i.e. owned--by any person who intends to sell the alcoholic beverages. The purpose of the phrase is to exclude consumers. It does not exclude the producer. "Held for sale" may apply to goods lost in transit as well as goods lost while stored in a warehouse or sitting on a retailer's shelves.

5. May producers of alcoholic products claim refund under the amendments made by Public Law 95-423? Answer: They may do so only if there is no other provision of law under which refund may be claimed. Losses of distilled spirits at the site of production which are covered by 26 U.S.C. 5008, losses of beer covered by 26 U.S.C. 5056(b), and losses of wine in bond covered by 26 U.S.C. 5370 may not be made the subject of a claim under 26 U.S.C. 5064. On the other hand, it is possible for producers to file claims under section 5064 relating to duty paid on imported products, since neither 26 U.S.C. 5008, 5056, nor 5370 cover refund of Customs duty. If there is a loss of imported products coming within the scope of one of these three statutes, and this loss is due to casualty, disaster, vandalism, or malicious mischief (excluding theft), there would then have to be two claims: one for excise tax under the appropriate section of law, and another for refund of duty under section 5064. Under these circumstances the claim under section 5064 must meet the \$250 minimum amount with respect to duty alone. (No claim under section 5064 may be paid in an amount less than \$250 for any single loss-causing event, except for Presidentially declared major disasters. Normally, tax and duty can be combined to reach \$250.) Producers may also file claim under section 5064 for excise tax, but only if this excise tax may not be claimed under any other law. A claim may be filed, for example, if loss occurs after removal from controlled stock when the producer still holds title to the goods.

6. How does Public Law 95-423 affect claims for losses caused by Presidentially declared major disasters? Answer: There is no change in the claim procedure for losses caused by Presidentially declared major disasters. The time limit for filing claims relating to such major disasters is six months after the date on which the President declared the major disaster (rather than six months after the loss occurred, as is the case with other losses under section 5064). Also, the \$250 minimum amount does not apply to claims filed under Presidentially declared major disasters.
7. What is the meaning of the phrase, "indemnified by a valid claim of insurance or otherwise"? Answer: The meaning of this phrase is that if there is another way by which the claimant can be compensated for the tax and duty paid on the lost products, then he cannot collect a refund for this tax and duty under 26 U.S.C. 5064. The reason for this is that the law is designed to recompense only those who have no other way of getting relief. For example, if a valid insurance policy for the excise tax and duty is in force, then the person who experienced loss has some other way of relief. The term "indemnified" means "secured against loss." An insurance policy provides security against loss; consequently the existence of insurance coverage for a loss of tax and duty operates to remove the coverage of section 5064 with respect to the same tax and duty. Also excluded from coverage under section 5064 are transit losses that may be indemnified by a common carrier.
8. What will be the length of time that can be anticipated before a claim is paid? Answer: On the basis of previous experience under the law dealing with Presidentially declared major disasters, it is estimated that, on the average, it should take two months from the time a properly documented claim is submitted until the time when a refund is received.

9. Will the full tax paid on imported spirits bottled abroad at less than 100 proof be refunded, or will the refund be limited to \$10.50 per proof gallon? Answer: The language of Public Law 95-423 indicates that an amount equal to the entire Federal excise tax paid or determined on a lost product will be refunded. Consequently, if underproof products have been taxpaid at the rate of \$10.50 per wine gallon, the person who held the products for sale at the time of loss may claim the full value of the tax (plus duty) that was actually paid.
10. Does the regulation in section 170.305a, requiring the supporting information to include case serial numbers of full cases of distilled spirits, apply to cases of imported spirits which are not required to bear serial numbers? Answer: In this situation the regulatory requirement for case serial numbers is not applicable. The supporting information should, however, contain a brief explanation of why the case serial numbers are unavailable.
11. Is it possible for a claim to be approved if the casualty, disaster, vandalism or malicious mischief destroys some of the information required by the regulations in sections 170.305, 170.305a, and 170.308? Answer: If this happens, the claimant should submit as much of the required information as possible, and indicate the reason for the absence of any information that was destroyed. The claim may still be approved if the claimant is able to sustain the burden, placed on him by Public Law 95-423, of proving to the government's satisfaction that he is entitled to the refund.

IMPORTANT ADDRESSES.

1. To obtain Internal Revenue Service Form 843, which is the form required to be used for making claims under 26 U.S.C. 5064, contact the ATF Distribution Center. The address is 3800 South Four Mile Run Drive, Arlington, Virginia 22206. The telephone number is 703-557-7851. Form 843 may also be obtained

from Internal Revenue Service district offices and service centers, as well as from the ATF regional offices listed below.

2. Claims on Form 843 must be filed with the ATF regional regulatory administrator for the region where the loss occurred. The addresses and telephone numbers of the ATF regional offices are as follows:

North-Atlantic Region:

6 World Trade Center, 6th Floor
New York, New York 10048

phone: 212-264-2106

toll free phone: 800-442-8275 in New York
800-223-2162, 2163 in
Connecticut, Maine, Massachusetts, New
Hampshire, Puerto Rico, Rhode Island, Vermont,
and the Virgin Islands

Mid-Atlantic Region:

2 Penn Center Plaza
Philadelphia, Pennsylvania 19102

phone: 215-597-2248

toll free phone: 800-462-1650 in Pennsylvania
800-523-0677, 0678 in
Delaware, Maryland, New Jersey, Virginia, and
the District of Columbia

Southeast Region:

3835 Northeast Expressway
Atlanta, Georgia 30340

phone: 404-455-2670

toll free phone: 800-262-8878 in Georgia
800-241-3701 in Alabama,
Florida, Mississippi, North Carolina, South
Carolina, and Tennessee

Mid-West Region:

230 South Dearborn Street
Chicago, Illinois 60604

phone: 312-353-3883

toll free phone: 800-572-3178 in Illinois
800-621-3211 in Iowa,
Minnesota, Missouri, Nebraska, North Dakota,
South Dakota, Kansas, and Wisconsin

Central Region:

550 Main Street
Cincinnati, Ohio 45202

phone: 513-684-3334

toll free phone: 800-582-1880 in Ohio
800-543-1932 in Indiana,
Kentucky, Michigan, and West Virginia

Southwest Region:

Main Tower Building
1200 Main Street
Dallas, Texas 75202

phone: 214-767-2284

toll free phone: 800-442-7251 in Texas
800-527-9380 in Arkansas,
Colorado, Louisiana, New Mexico, Oklahoma, and
Wyoming

Western Region:

525 Market Street
34th Floor
San Francisco, California 94105

phone: 415-556-2610

toll free phone: 800-792-9811 in California
800-227-4176, 4179 in Alaska,
Arizona, Guam, Hawaii, Idaho, Montana, Nevada,
Oregon, Utah, and Washington

INQUIRIES CONCERNING THIS CIRCULAR. Inquiries
concerning this circular should refer to it by

number and be addressed to the Assistant Director,
(Regulatory Enforcement), Bureau of Alcohol,
Tobacco and Firearms, 1200 Pennsylvania Avenue NW,
Washington, DC 20226. Telephone inquiries may be
made to the Research and Regulations Branch at
(202) 566-7626.

A. R. Quorum

Director



DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Treasury Decision ATF - 56

To proprietors of distilled spirits plants, breweries, taxpaid wine bottling houses, and bonded wine cellars; liquor dealers; and others concerned:

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DE- PARTMENT OF THE TREASURY

SUBCHAPTER M—ALCOHOL, TOBACCO AND OTHER EXCISE TAXES

[T.D. ATF-56]

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

Disaster Claims

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This rule amends Subpart O of 27 CFR Part 170 (Miscellaneous Regulations Relating to Liquor) to implement Public Law 95-423, signed October 6, 1978. Pub. L. 95-423 extends the provisions in 26 U.S.C. 5064 for refund of internal revenue tax and customs duties on distilled spirits, wines, rectified products, and beer to include losses due to (1) fire, flood, casualty, or other disaster, or (2) damage (excluding theft) from vandalism or malicious mischief. Previously, claims for refund were limited to products damaged only as the result of a Presidentially declared major disaster.

EFFECTIVE DATE: February 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Dorene F. Erhard, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION: Public Law 95-423, dated October 6, 1978 and effective February 1, 1979, amends 26 U.S.C. 5064 to provide for refund of internal revenue taxes earlier paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer which are lost, made unmarketable, or condemned due to—

(1) Fire, flood, casualty, or other disaster; or

(2) Breakage, destruction, or other damage (but not theft) resulting from vandalism or malicious mischief.

BACKGROUND

The excise taxes and customs duties on distilled spirits, wines, rectified products, and beer are paid or determined before these products enter marketing channels. Prepaid excise taxes constitute a high proportion of the cost of alcoholic beverages as compared with excise taxes on other products. Thus, if alcoholic products held for sale are destroyed after taxes and duties have been paid, a large portion of the loss will be attributable to prepaid taxes which cannot be passed on to consumers.

Previously, 26 U.S.C. 5064 allowed refund of these taxes and duties earlier paid only if the loss was the result of a Presidentially declared major disaster. Congress felt that certain other circumstances, although not considered "major disasters", could result in substantial losses of alcoholic products and concluded that these losses should be treated in the same manner as losses caused by Presidentially declared major disasters. Thus, Public Law 95-423 extends the law to also allow refund of taxes and duties on alcoholic products that are lost or ruined as the result of other types of disasters or as the result of damage or destruction (except theft) from vandalism or malicious mischief.

\$250 MINIMUM CLAIM

Before the change in the law, no minimum amount was prescribed for a claim for refund of taxes, or taxes and duties, allowable under the Presidentially declared major disaster provision. Public Law 95-423 makes no change on this point and claims arising

from "major disasters" are not affected.

However, the new law does impose a minimum amount of \$250 on a claim resulting from a disaster or damage other than a major disaster declared by the President. The \$250 minimum applies to each single disaster or damage event. In other words, the taxes or duties lost from a series of events cannot be totaled or averaged. Furthermore, any loss other than the amount for taxes and duties cannot be attributed to the \$250 minimum, even if that loss is the result of the same event.

ADDITIONAL PROVISIONS OF LAW

In order for a claim to be allowable under 26 U.S.C. 5064, the disaster or damage must have occurred in the United States and the distilled spirits, wines, rectified products, or beer must have been damaged while being held for sale at the wholesale or retail level. Refund is not available for losses of taxes or duties which were indemnified by insurance or otherwise. The law also disallows refund on Puerto Rican products brought into the United States.

Claims for refund under this law must be filed within 6 months after the date of the loss, except that in the case of claims filed under the Presidentially declared major disaster provision, the claim period is not to expire before the day which is 6 months after the date on which the President determined the disaster occurred. Thus, in some cases, a longer claim period is provided than was available under the previous law.

OTHER CHANGES TO THE REGULATIONS

In addition to implementing the new law, several miscellaneous amendments are being made to Subpart O of Part 170.

(1) Three public use forms (a) Form 2606, Inventory of Spirits Lost by Disaster, (b) Form 2606A, Inventory of Wine Lost by Disaster, and (c) Form 2606B, Inventory of Beer Lost by Disaster, are being eliminated. The purpose of these forms is to support disaster claims for taxes and duties on alcoholic products that were lost, became unmerchantable, or were condemned by an authorized official.

In most cases, claimants are required to submit the same documentation to state and local governments for refund of excise taxes. This documentation is prepared in the form of commercial records and may not be kept in the same format as the inventory forms required by ATF. Since commercial records are sufficient for Bureau auditing purposes, as long as certain minimum information is recorded, we are eliminating the burden of duplicate reporting on ATF forms, and

simply allowing commercial records to be submitted in support of disaster claims.

(2) A number of title and definition changes are made to reflect reorganization changes that have affected the Bureau over the past several years and to update statutory citations and references to other agencies.

(3) This Treasury decision also clarifies and simplifies the regulatory language in Subpart O, in keeping with our aim of writing improved regulations for easy public understanding.

DRAFTING INFORMATION

The principal author of this regulation is Dorene F. Erhard, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel from other offices in the Bureau and from the Treasury Department participated in developing the regulation in matters of substance and style.

AUTHORITY AND ISSUANCE

Since this Treasury decision is liberalizing in nature and implements Public Law 95-423, effective February 1, 1979, it is found unnecessary and contrary to public interest to issue this regulation according to public rule-making and effective date requirements in 5 U.S.C. 553(b) and (d).

This Treasury decision is issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917).

SPECIFIC CHANGES TO THE REGULATIONS

In consideration of the foregoing, we are amending Subpart O of 27 CFR Part 170 to read as follows:

Subpart O—Losses Resulting from Disaster, Vandalism, or Malicious Mischief

GENERAL

- Sec.
170.301 Scope of subpart.
170.302 Forms prescribed.

DEFINITIONS

- 170.303 Meaning of terms.

PAYMENTS

- 170.304 Circumstances under which payment may be made.

CLAIMS PROCEDURES

- 170.305 Execution and filing of claim.
170.305a Record of inventory to support claims.
170.306 Claims relating to imported, domestic and Virgin Islands liquors.
170.307 Claimant to furnish proof.
170.308 Supporting evidence.
170.309 Action on claims.

DESTRUCTION OF LIQUORS

- 170.310 Supervision.

PENALTIES

- 170.311 Penalties.

AUTHORITY: The provisions of this Subpart O contained in Sec. 201, Pub. L. 85-859, 72 Stat. 1337, as amended by Pub. L. 95-423, 92 Stat. 935; 26 U.S.C. 5064, unless otherwise noted.

Subpart O—Losses Resulting from Disaster, Vandalism, or Malicious Mischief

GENERAL

- § 170.301 Scope of subpart.

(a) This subpart implements 26 U.S.C. 5064, which permits payments to be made by the United States for amounts equal to the internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer, previously withdrawn, that were lost, made unmarketable, or condemned by a duly authorized official as the result of disaster, vandalism, or malicious mischief.

(b) This subpart applies to disasters or other specified causes of loss, occurring on or after February 1, 1979.

(c) This subpart does not apply to distilled spirits, wines, rectified products, and beer manufactured in Puerto Rico and brought into the United States.

- § 170.302 Forms prescribed.

The Director is authorized to prescribe all forms required by this part, including applications, claims, records, and reports. Information called for shall be furnished in accordance with the instructions on the forms.

DEFINITIONS

- § 170.303 Meaning of terms.

When used in this subpart, terms are defined as follows in this section. Words in the plural shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude other things not named which are in the same general class or are otherwise within the scope of the term defined.

Alcoholic liquors, or liquors. Distilled spirits, wines, rectified products, and beer, lost, made unmarketable, or

condemned, as provided in this subpart.

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake or other similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume on which the internal revenue tax has been paid or determined, and, if imported, on which duties have been paid.

Claimant. The person who held the liquors for sale at the time of the disaster or other specified cause of loss and who files a claim under this subpart.

Commissioner of Customs. The Commissioner of Customs, U.S. Customs Service, the Department of the Treasury, Washington, D.C.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, D.C.

Distilled spirits, or spirits. Ethyl alcohol and other distillates, such as whisky, brandy, rum, gin, and vodka, on which the internal revenue tax has been paid or determined, and, if imported, on which duties have been paid.

Duly authorized official. Any Federal, State, or local government official who is authorized to condemn liquors on which a claim is filed under this subpart.

Duty or duties. Any duty or duties paid under the customs laws of the United States.

Major disaster. A flood, fire, hurricane, earthquake, storm, or other catastrophe defined as a "major disaster" under the Disaster Relief Act (42 U.S.C. 5122(2)), which occurs in any part of the United States and which the President has determined causes sufficient damage to warrant "major disaster" assistance under that Act.

Rectified products. Liquors manufactured by rectifying, purifying, refining, mixing, or blending distilled spirits or wines and on which tax has been paid or determined, and, if imported, on which duty has been paid.

Region. A Bureau of Alcohol, Tobacco and Firearms region.

Regional regulatory administrator. The principal ATF regional official responsible for administering regulations in this part.

Tax. (a) With respect to unrectified distilled spirits, "tax" means the internal revenue distilled spirits tax that is paid or determined on the spirits.

(b) With respect to wines, "tax" means the internal revenue wine tax that is paid or determined on the wine.

(c) With respect to rectified products, "tax" means the internal revenue distilled spirits tax, the rectified tax (if any), the cordial tax (if any), and the wine tax (if any), that is paid or determined on the products.

(d) With respect to beer, "tax"

means the internal revenue beer tax that is paid or determined on the beer.

United States. When used in a geographical sense includes only the States and the District of Columbia.

Wines. All still wines, effervescent wines, and flavored wines, on which internal revenue wine tax has been paid or determined, and, if imported, on which duty has been paid.

PAYMENTS

§ 170.304 Circumstances under which payment may be made.

(a) **Major disasters.** Regional regulatory administrators shall allow payment (without interest) of an amount equal to the tax paid or determined, and the Commissioner of Customs shall allow payment (without interest) of an amount equal to the duty paid, on distilled spirits, wines, rectified products, and beer previously withdrawn, if the liquors are lost, made unmarketable, or condemned by a duly authorized official as the result of a major disaster (as defined in § 170.303).

(b) **Other causes of loss.** (1) **Payment.** Regional regulatory administrators shall allow payment (without interest) of an amount equal to the tax paid or determined, and the Commissioner of Customs shall allow payment (without interest) of an amount equal to the duty paid, on distilled spirits, wines, rectified products, and beer previously withdrawn, if the liquors are lost, made unmarketable, or condemned by a duly authorized official as the result of (i) fire, flood, casualty, or other disaster, or (ii) breakage, destruction, or other damage (excluding theft) resulting from vandalism or malicious mischief.

(2) **Minimum claim.** No claim of less than \$250 will be allowed for losses resulting from any disaster or damage described in paragraph (b)(1) of this section.

(c) **General.** Payment under this section may be made only if—

(1) The disaster or other specified cause of loss occurred in the United States;

(2) At the time of the disaster or other specified cause of loss, the liquors were being held for sale by the claimant;

(3) Refund or credit of the amount claimed, or any part of the amount claimed, has not or will not be claimed for the same liquors under any other law or regulations; and

(4) The claimant was not indemnified by any valid claim of insurance or otherwise for the tax, or tax and duty, on the liquors covered by the claim.

CLAIMS PROCEDURES

§ 170.305

Execution and filing of claim.

(a) **General.** (1) Claims under this subpart shall be filed on IRS Form 843, in original only, with the regional regulatory administrator of the region in which the liquors were lost, became unmarketable, or were condemned.

(2) The claim shall include all the facts on which the claim is based, and be accompanied by a record of inventory of the liquors lost, made unmarketable, or condemned. (See § 170.305a.)

(3) The claim shall contain a statement that no other claim for refund or credit of the amount claimed, or for any part of the amount claimed, has been or will be filed under any other law or regulations.

(b) **Major disasters.** Claims for refund of tax, or tax and duty, on liquors which were lost, became unmarketable, or were condemned as the result of a major disaster must be filed not later than 6 months from the day on which the President determines that a major disaster has occurred.

(c) **Other causes of loss.** Claims for amounts of \$250 or more for refund of tax, or tax and duty, on liquors which were lost, became unmarketable, or were condemned as the result of (1) fire, flood, casualty, or other disaster, or (2) damage (excluding theft) resulting from vandalism or malicious mischief, must be filed within 6 months after the date on which the disaster or damage occurred. Claims for amounts less than \$250 will not be allowed.

§ 170.305a Record of inventory to support claims.

(a) **Claims relating to distilled spirits.** The record of inventory of distilled spirits lost, made unmarketable, or condemned, which is required to support claims filed under § 170.305, shall show the following information:

(1) Name and business address of claimant (as shown on claim, IRS Form 843).

(2) Address where the spirits were lost, became unmarketable, or were condemned, if different from the business address.

(3) Kind of spirits.

(4) Brand name.

(5) **For full cases, show—**(i) Number of cases; (ii) Serial numbers; (iii) Bottles per case; (iv) Size of bottles; (v) Wine gallons per case; (vi) Proof; and (vii) Proof gallons.

(6) **For bottles not in cases, show—**(i) Total number; (ii) Size of bottles; (iii) Wine gallons; (iv) Proof; and (v) Total proof gallons.

(7) Total proof gallons for all items.

(b) **Claims relating to wines.** The record of inventory of wines lost, made unmarketable, or condemned, which is required to support claims filed under § 170.305, shall show the following information:

(1) Name and business address of

claimant (as shown on claim, IRS Form 843).

(2) Address where the wines were lost, became unmarketable, or were condemned, if different from the business address.

(3) Kind of wine.

(4) Percent of alcohol by volume.

(5) Number of barrels or kegs.

(6) Kind and number of other bulk containers.

(7) Number of full cases and bottles per case.

(8) Size of bottles.

(9) Number of bottles not in cases and wine gallons.

(10) Total wine gallons.

(c) **Claims relating to beer.** The record of inventory of beer lost, made unmarketable, or condemned, which is required to support claims filed under § 170.305, shall show the following information:

(1) Name and business address of claimant (as shown on claim, IRS Form 843).

(2) Address where the beer was lost, became unmarketable, or was condemned, if different from the business address.

(3) Number and size of barrels.

(4) **For full cases, show—**(i) Number of cases; (ii) Bottles or cans per case; and (iii) Size (in ounces) of bottles or cans.

(5) Number and size of bottles and cans not in cases.

(6) Quantity in terms of 31-gallon barrels.

(7) Total quantity.

(d) **Special instructions.** (1) Inventories of domestic liquors, imported liquors, and liquors manufactured in the Virgin Islands shall be reported separately.

(2) Liquors manufactured in Puerto Rico may not be included in claims filed under this subpart. Claims for losses of Puerto Rican liquors shall be filed with the Secretary of the Treasury of Puerto Rico under the laws of Puerto Rico.

§ 170.306 Claims relating to imported, domestic, and Virgin Islands liquors.

(a) Claims involving taxes on domestic liquors, imported liquors, and liquors manufactured in the Virgin Islands must show the quantities of each separately in the claim.

(b) A separate claim on IRS Form 843 must be filed for customs duties.

§ 170.307 Claimant to furnish proof.

The claimant shall furnish proof to the satisfaction of the regional regulatory administrator regarding the following:

(a) That the tax on the liquors, or the tax and duty if imported, was fully paid; or the tax, if not paid, was fully determined.

(b) That the liquors were lost, made

unmarketable, or condemned by a duly authorized official, by reason of damage sustained as a result of a disaster or other cause of loss specified in this subpart.

(c) The type and date of occurrence of the disaster or other specified cause of loss, and the location of the liquors at the time.

(d) That the claimant was not indemnified by a valid claim of insurance or otherwise for the tax, or tax and duty, on the liquors covered by the claim.

(e) That the claimant is entitled to payment under this subpart.

§ 170.308 Supporting evidence.

(a) The claimant shall support his claim with any evidence (such as inventories, statements, invoices, bills, records, labels, formulas, stamps) that he is able to submit, relating to the quantities and identities of the liquors, on which duty has been paid or tax has been paid or determined, that were on-hand at the time of the disaster or other specified cause of loss and alleged to have been lost, made unmarketable, or condemned as a result of it.

(b) If the claim is for refund of duty, the claimant shall furnish, if possible—(1) The customs number; (2) The date of entry; and (3) The name of the port of entry.

§ 170.309 Action on claims.

The regional regulatory administrator shall date stamp and examine each claim filed under this subpart and will determine the validity of the claim. Claims and supporting data involving customs duties will be forwarded to the Commissioner of Customs with a summary statement by the regional regulatory administrator regarding his findings.

DESTRUCTION OF LIQUORS

§ 170.310 Supervision.

When allowance has been made under this subpart for the tax, or tax and duty, on liquors condemned by a duly authorized official or made unmarketable, the liquors shall be destroyed by suitable means under supervision satisfactory to the regional regulatory administrator, unless the liquors were previously destroyed under supervision satisfactory to the regional regulatory administrator. The Commissioner of Customs will notify the regional regulatory administrator

as to allowance under this subpart of claims for duty on unmarketable or condemned liquors.

PENALTIES

§ 170.311 Penalties.

(a) Penalties are provided in 26 U.S.C. 7206 for making any false or fraudulent statement under the penalties of perjury in support of any claim.

(b) Penalties are provided in 26 U.S.C. 7207 for filing any false or fraudulent document under this subpart.

(c) All laws and regulations, including penalties, which apply to internal revenue taxes on liquors shall, when appropriate, apply to payments made under this subpart the same as if the payments were actual refunds of internal taxes on liquors.

(Pub. L. 83-591, 68A Stat. 852, 853; 26 U.S.C. 7206, 7207)

Signed: February 23, 1979.

G. R. DICKERSON,
Director.

Approved: March 2, 1979.

RICHARD J. DAVIS,
Assistant Secretary
(Enforcement and Operations).

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(Reprint from the Federal Register
of March 15, 1979 [44 FR 15697])

GPO 864 021

Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms
Washington, D.C. 20226

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