

on the manifest, the penalties prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed with respect to such narcotic drug or marihuana.

(b) *Unmanifested narcotic drugs or marihuana.* When an unmanifested narcotic drug or marihuana is found on board of, or after having been unladen from, a vessel, vehicle, or aircraft, the penalties prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed. The penalty shall be applied without exception and without regard to any question of negligence or responsibility.

(c) *Notice and demand for payment of penalty.* A written notice and demand for payment of the penalty for failure to manifest incurred under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be sent to the master of the vessel, or commander of the aircraft, or the person in charge of the vehicle, and to the owner of the vessel, aircraft, or vehicle or any person directly or indirectly responsible. In the case of a vessel, if bond has been given, the notice also shall be sent to each surety. When a petition for relief from such penalty has been filed in accordance with part 171 of this chapter, and a decision has been made thereon, the Fines, Penalties, and Forfeitures Officer shall send notice of such decision to the interested persons together with a demand for any payment required under the terms of such decision.

(d) *Referral to the U.S. attorney.* If the penalty incurred under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), is not paid, or a petition is not filed as provided in part 171 of this chapter, or if payment is not made in accordance with the decision on a petition or a supplemental petition, the Fines, Penalties, and Forfeitures Officer, after required collection action, shall refer the case to the U.S. attorney.

(e) *Withholding clearance of vessel.* Where a penalty has been incurred under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), for failure to manifest narcotic drugs or marihuana, clearance of the vessel involved shall be withheld until the penalty is paid or a bond satisfactory to the Fines, Pen-

alties, and Forfeitures Officer is given for the payment thereof unless

(1) The narcotics or marihuana were discovered in a passenger's baggage and the Fines, Penalties, and Forfeitures Officer is satisfied that neither the master nor any of the officers nor the owner of the vessel knew or had any reason to know or suspect that the narcotics or marihuana had been on board the vessel, or

(2) Prior authority for the clearance without payment of the penalty or the furnishing of the bond is obtained from Customs.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 79-160, 44 FR 31958, June 4, 1979; T.D. 86-59, 51 FR 8489, Mar. 12, 1986; T.D. 99-27, 64 FR 13676, Mar. 22, 1999; T.D. 99-64, 64 FR 43267, Aug. 10, 1999]

§ 162.66 Penalties for unloading narcotic drugs or marihuana without a permit.

In every case where a narcotic drug or marihuana is unladen without a permit, the penalties prescribed in section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), shall be assessed. Penalties shall be assessed under this section when a package of regular cargo or a passenger's baggage otherwise covered by a permit to unlade is found to contain any narcotic drug or marihuana imported for sale or other commercial purpose and not specifically covered by a permit to unlade.

Subpart G—Special Procedures for Certain Violations

SOURCE: T.D. 79-160, 44 FR 31958, June 4, 1979, unless otherwise noted.

§ 162.70 Applicability.

(a) The provisions of this subpart apply only to fines, penalties, or forfeitures incurred for the following violations of the customs laws:

(1) Violations of sections 466 and 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), that occur after October 3, 1978, and

(2) Except as provided in paragraph (b) of this section, violations of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), with respect to which proceedings have commenced after December 31, 1978. For purposes of this

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subparagraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

(b) The provisions of this subpart do not apply to alleged intentional violations of 19 U.S.C. 1592 if the alleged violation:

(1) Involves television receivers that are the products of Japan and were or are the subject to antidumping proceedings,

(2) Occurred before October 3, 1978, and

(3) Was the subject of a Customs investigation begun before October 3, 1978.

(c) The provisions of subparts A through F of this part shall apply to the violations referred to in paragraph (a) of this section unless this subpart specifically provides otherwise.

[T.D. 79-160, 44 FR 31958, June 4, 1979; 44 FR 35208, June 19, 1979, as amended by T.D. 90-34, 55 FR 17597, Apr. 26, 1990]

§ 162.71 Definitions.

When used in this subpart, the following terms shall have the meanings indicated:

(a) *Loss of duties under section 592.* “Loss of duties” means the duties of which the Government is or may be deprived by reason of the violation and includes both actual and potential loss of duties.

(1) *Actual loss of duties.* “Actual loss of duties” means the duties of which the Government has been deprived by reason of the violation in respect of entries on which liquidation had become final.

(2) *Potential loss of duties.* “Potential loss of duties” means the duties of which the Government tentatively was deprived by reason of the violation in respect of entries on which liquidation had not become final.

(b) *Loss of revenue under section 593A.* When used in §162.73a, the term “loss of revenue” means the amount of drawback (see §191.2(i) of this chapter) that is claimed and to which the claimant is not entitled and includes both actual and potential loss of revenue.

(1) *Actual loss of revenue.* When used in §§162.73a, 162.74, 162.77a and 162.79b, the term “actual loss of revenue”

means the amount of drawback (see §191.2(i) of this chapter) that is claimed and has been paid to the claimant and to which the claimant is not entitled.

(2) *Potential loss of revenue.* When used in §162.77a, the term “potential loss of revenue” means the amount of drawback (see §191.2(i) of this chapter) that is claimed and has not been paid to the claimant and to which the claimant is not entitled.

(c) *Repetitive violation.* When used in §162.73a to describe a violation, “repetitive” has reference to a violation by a person that involves the same issue as a prior violation by that person.

(d) *Noncommercial importation.* “Noncommercial importation” means merchandise imported by a traveler for an individual’s personal or household use, or as a gift, but not imported for sale or other commercial purposes.

(e) *Clerical error.* “Clerical error” means an error in the preparation, assembly, or submission of a document which results when a person intends to do one thing but does something else. It includes, for example, errors in transcribing numbers, errors in arithmetic, and the failure to assemble all the documents in a record.

(f) *Mistake of fact.* “Mistake of fact” means an action based upon a belief by a person that the material facts are other than they really are; it can be that a fact exists but is unknown to the person, or that he believes something is a fact when in reality it is not. An action is not a mistake of fact if the erroneous belief is caused by the neglect of a legal duty.

[T.D. 79-160, 44 FR 31958, June 4, 1979, as amended by T.D. 84-18, 49 FR 1678, Jan. 13, 1984; 49 FR 3986, Feb. 1, 1984; T.D. 98-49, 63 FR 29131, May 28, 1998; T.D. 00-5, 65 FR 3808, Jan. 25, 2000]

§ 162.72 Penalties and forfeitures under sections 466 and 584(a)(1), Tariff Act of 1930, as amended.

(a) *Foreign repairs and equipment purchases; election to proceed.* If the Fines, Penalties, and Forfeitures Officer has reasonable cause to believe that a violation of section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), has occurred, he may elect to proceed against the vessel or aircraft, or against the violator for forfeiture of a monetary