

(2) A penalty of \$1,000 against the master of a vessel, the commander of an aircraft, the person in charge of a vehicle, or the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy, if any merchandise described in the manifest is not found on board (a “shortage”).

(3)(i) A penalty equal to the lesser of \$10,000 or the domestic value of merchandise found on board of or after having been unladen from a vessel or vehicle, or

(ii) A penalty of \$1,000 (see §122.161 of this chapter) if merchandise (other than narcotics or marihuana—see §162.65 of this chapter) is found on board of or after having been unladen from an aircraft—if the merchandise is not included or described in the manifest or does not agree with the manifest (an “overage”).

(iii) Unmanifested merchandise belonging to or consigned to the master or crew of the vessel, the commander or crew of the aircraft, or to the owner or person in charge of the vehicle, also shall be subject to forfeiture.

The appropriate of these penalties may be assessed against the master or crew of the vessel, the commander or crew of the aircraft, the person in charge of the vehicle, the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy.

(c) *Exception.* There is no violation, and consequently no penalty incurred under paragraph (b), in the circumstances described in §§4.12(a)(5) and 122.162 of this chapter.

[T.D. 79-160, 44 FR 31958, June 4, 1979, as amended by T.D. 86-59, 51 FR 8490, Mar. 12, 1986; T.D. 88-12, 53 FR 9315, Mar. 22, 1988; T.D. 99-27, 64 FR 13676, Mar. 22, 1999; T.D. 99-64, 64 FR 43267, Aug. 10, 1999]

§ 162.73 Penalties under section 592, Tariff Act of 1930, as amended.

(a) *Maximum penalty without prior disclosure.* If the person concerned has not made a prior disclosure as provided in §162.74, the monetary penalty under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), shall not exceed:

(1) For fraudulent violations, the domestic value of the merchandise;

(2) For grossly negligent violations,

(i) The lesser of the domestic value of the merchandise or four times the loss of duties, taxes and fees or

(ii) If there is no loss of duties, taxes and fees 40 percent of the dutiable value of the merchandise; and

(3) For negligent violations,

(i) The lesser of the domestic value of the merchandise or two times the loss of duties, taxes and fees or

(ii) If there is no loss of duties, taxes and fees 20 percent of the dutiable value of the merchandise.

(b) *Maximum penalty with prior disclosure.* If the person concerned has made a prior disclosure, the monetary penalty shall not exceed:

(1) For fraudulent violations,

(i) One times the loss of duties, taxes and fees or

(ii) If there is no loss of duties, taxes and fees 10 percent of the dutiable value of the merchandise; and

(2) For grossly negligent and negligent violations, the interest on any loss of duties, taxes and fees. The interest shall be computed from the date of liquidation at the prevailing rate of interest applied under section 6621, Internal Revenue Code of 1954, as amended (26 U.S.C. 6621).

(c) *Exception; clerical error or mistake of fact.* There is no violation and, consequently, no penalty incurred, if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of the pattern of negligent conduct.

[T.D. 79-160, 44 FR 31958, June 4, 1979, as amended by T.D. 99-64, 64 FR 43267, Aug. 10, 1999]

§ 162.73a Penalties under section 593A, Tariff Act of 1930, as amended.

(a) *Maximum penalty without prior disclosure for a drawback compliance program nonparticipant.* If the person concerned has not made a prior disclosure as provided in §162.74 and has not been certified as a participant in the drawback compliance program under part 191 of this chapter, the monetary penalty under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), cannot exceed:

(1) For fraudulent violations, three times the loss of revenue; and

(2) For negligent violations,

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(i) 20 percent of the loss of revenue for the first violation,

(ii) 50 percent of the loss of revenue for the first repetitive violation, or

(iii) One times the loss of revenue for the second and each subsequent repetitive violation.

(b) *Maximum penalty without prior disclosure for a drawback compliance program participant*—(1) *General*. If the person concerned has not made a prior disclosure as provided in §162.74 and has been certified as a participant in, and is generally in compliance with the procedures and requirements of, the drawback compliance program provided for in part 191 of this chapter, the monetary penalty or other sanction under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), cannot exceed:

(i) For fraudulent violations, three times the loss of revenue; and

(ii) For negligent violations,

(A) Issuance of a written notice of a violation (warning letter) for the first violation and for any other violation that is not repetitive or that is repetitive but does not occur within three years from the date of the violation of which it is repetitive,

(B) 20 percent of the loss of revenue for the first repetitive violation that occurs within three years from the date of the violation of which it is repetitive,

(C) 50 percent of the loss of revenue for the second repetitive violation that occurs within three years from the date of the first of two violations of which it is repetitive, or

(D) One times the loss of revenue for the third and each subsequent repetitive violation that occurs within three years from the date of the first of three or more violations of which it is repetitive.

(2) *Notice of violation and required response to notice*(i) The notice issued by Customs under paragraph (b)(1)(ii)(A) of this section will:

(A) State that the person concerned has violated section 593A;

(B) Explain the nature of the violation; and

(C) Warn the person concerned that future violations of section 593A may result in the imposition of monetary penalties. The notice will also warn the

person concerned that repetitive violations may result in removal of certification under the drawback compliance program provided for in part 191 of this chapter until the person takes corrective action that is satisfactory to Customs.

(ii) Within 30 days from the date of mailing of the notice issued under paragraph (b)(1)(ii)(A) of this section:

(A) The person concerned must notify Customs in writing of the steps that have been taken to prevent a recurrence of the violation; or

(B) If the person concerned believes that no violation took place, he may advise Customs in writing of the basis for that position. If Customs agrees on further review that no violation in fact took place, Customs will in writing advise the person concerned and rescind the notice of violation. If on further review Customs remains of the opinion that the violation took place as alleged in the notice of violation, Customs will issue a written affirmation of the notice of violation advising the person concerned that the notice requirement of paragraph (b)(2)(ii)(A) of this section remains applicable and must be complied with either within the remainder of the prescribed 30-day period or within 15 days after issuance of the written affirmation, whichever period is longer.

(c) *Maximum penalty with prior disclosure*. If the person concerned has made a prior disclosure as provided in §162.74, whether or not such person has been certified as a participant in the drawback compliance program under part 191 of this chapter, the monetary penalty under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), cannot exceed:

(1) For fraudulent violations, one times the loss of revenue; and

(2) For negligent violations, an amount equal to the interest accruing on the actual loss of revenue during the period from the date of overpayment of the claim to the date on which the person concerned tenders the amount of the overpayment based on the prevailing rate of interest under 26 U.S.C. 6621.

[T.D. 00-5, 65 FR 3808, Jan. 25, 2000]