

**§ 162.77 Prepenalty notice for violations of section 592, Tariff Act of 1930, as amended.**

(a) *When required.* If the Fines, Penalties, and Forfeitures Officer has reasonable cause to believe that a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), has occurred, and determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to issue a claim for a monetary penalty. The prepenalty notice shall be issued whether or not a seizure has been made.

(b) *Contents—(1) Facts of violation.* The prepenalty notice shall:

- (i) Describe the merchandise,
- (ii) Set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or abetting of the entry, introduction, or attempt,
- (iii) Specify all laws and regulations allegedly violated,
- (iv) Disclose all material facts which establish the alleged violation,
- (v) State whether the alleged violation occurred as the result of fraud, gross negligence, or negligence, and
- (vi) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make an oral and a written presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a claim for a monetary penalty should not be issued or, if issued, why it should be in a lesser amount than proposed.

(c) *Exceptions.* A prepenalty notice shall not be issued if:

- (1) The claim is for \$1,000 or less, or
- (2) The violation occurred with respect to a noncommercial importation.

[T.D. 79-160, 44 FR 31958, June 4, 1979, as amended by T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

**§ 162.77a Prepenalty notice for violation of section 593A, Tariff Act of 1930, as amended.**

(a) *When required.* If the appropriate Customs field officer has reasonable cause to believe that a violation of sec-

tion 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a) has occurred, and determines that further proceedings are warranted, the officer will issue to the person concerned a notice of intent to issue a claim for a monetary penalty.

(b) *Contents—(1) Facts of violation.* The prepenalty notice will:

- (i) Identify the drawback claim;
- (ii) Set forth the details relating to the seeking, inducing, or affecting, or the attempted seeking, inducing, or affecting, or the aiding or procuring of, the drawback claim;
- (iii) Specify all laws and regulations allegedly violated;
- (iv) Disclose all the material facts which establish the alleged violation;
- (v) State whether the alleged violation occurred as a result of fraud or negligence; and
- (vi) State the estimated actual or potential loss of revenue due to the drawback claim and, taking into account all circumstances, the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also will inform the person of his right to make an oral and a written presentation within 30 days of mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a claim for a monetary penalty should not be issued or, if issued, why it should be in a lesser amount than proposed.

(c) *Exceptions.* A prepenalty notice will not be issued for a violation of 19 U.S.C. 1593a if the amount of the proposed monetary penalty is \$1,000 or less.

(d) *Prior approval.* If an alleged violation of 19 U.S.C. 1593a occurred as a result of fraud, a prepenalty notice will not be issued without prior approval by Customs Headquarters.

[T.D. 00-5; 65 FR 3809, Jan. 25, 2000]

**§ 162.78 Presentations responding to prepenalty notice.**

(a) *Time within which to respond.* Unless a shorter period is specified in the prepenalty notice or an extension is given in accordance with paragraph (b) of this section, the named person shall have 30 days from the date of mailing of the prepenalty notice to make a written and an oral presentation. The

Fines, Penalties, and Forfeitures Officer may specify a shorter reasonable period of time, but not less than 7 days, if less than 1 year remains before the statute of limitations may be asserted as a defense. If a period of fewer than 30 days is specified, the Fines, Penalties, and Forfeitures Officer, if possible, shall inform the named person of the prepenalty notice and its contents by telephone at or about the time of issuance.

(b) *Extensions.* If at least 1 year remains before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer, upon written request, may extend the time for filing a written presentation, or making an oral presentation, or both, for any of the reasons given in part 171 of this chapter (except for the reason described in §171.15(a)(4)), relating to extensions of time for filing petitions for relief. In addition, an extension may be granted if, upon the request of the alleged violator, the Commissioner of Customs determines that the case involves an issue which is a proper matter for submission to Customs Headquarters under the internal advice procedures of §177.11(b)(2) of this chapter. Other extensions may be authorized only by Headquarters.

(c) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is the written presentation in response to the prepenalty notice. It should contain answers to the allegations in the prepenalty notice and set forth the reasons why the person believes the claim should not be issued or, if issued, why it should be in a lesser amount than proposed.

(d) *Additional presentations.* In addition to one written and one oral presentation, the Fines, Penalties, and Forfeitures Officer, in his discretion, may allow further presentations.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 85-195, 50 FR 50290, Dec. 10, 1985; T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

#### § 162.79 Determination as to violation.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice, the Fines, Penalties, and Forfeitures Officer deter-

mines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no claim for a monetary penalty will be issued.

(b) *Violation—(1) Written notice of claim.* If, after considering any presentations made in response to the prepenalty notice, the Fines, Penalties, and Forfeitures Officer determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of a claim for a monetary penalty to that person.

(2) *Contents.* The notice of a claim for a monetary penalty shall contain any changes in the information provided in the prepenalty notice, and shall inform the person of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with part 171 of this chapter. If the person to whom the notice is issued is liable for any actual loss of duties recoverable under section 592(d), Tariff Act of 1930, as amended (19 U.S.C. 1592(d)), the notice shall identify the entries involved, state the amount of duties payable and how it was calculated, and require the person to deposit or arrange for payment of the duties within 30 days of the date of the notice.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 84-18, 49 FR 1680, Jan. 13, 1984; T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

#### § 162.79a Other notice.

If no prepenalty notice is issued, a written notice of any monetary penalty incurred shall contain the information required under §162.76(b)(1), §162.77(b)(1) or §162.77a(b)(1) and (b)(2), except that the notice shall state the amount of the claim for a monetary penalty. The notice also shall inform the person of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with part 171 of this chapter.

[T.D. 79-160, 44 FR 31958, June 4, 1979, as amended by T.D. 00-5, 65 FR 3809, Jan. 25, 2000]