

§ 162.79b Recovery of actual loss of duties, taxes and fees or actual loss of revenue.

Whether or not a monetary penalty is assessed under this subpart, the appropriate Customs field officer will require the deposit of any actual loss of duties, taxes and fees resulting from a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) or any actual loss of revenue resulting from a violation of section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), notwithstanding that the liquidation of the entry to which the loss is attributable has become final. If a person is liable for the payment of actual loss of duties, taxes and fees or actual loss of revenue in any case in which a monetary penalty is not assessed or a written notification of claim of monetary penalty is not issued, the port director will issue a written notice to the person of the liability for the actual loss of duties, taxes and fees or actual loss of revenue. The notice will identify the merchandise and entries involved, state the loss of duties, taxes and fees or loss of revenue and how it was calculated, and require the person to deposit or arrange for payment of the duties, taxes and fees or revenue within 30 days from the date of the notice. Any determination of actual loss of duties, taxes and fees or actual loss of revenue under this section is subject to review upon written application to the Commissioner of Customs.

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

§ 162.80 Liability for duties; liquidation of entries.

(a)(1) When an entry is the subject of an investigation for possible violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), or of a penalty action established under that section, the port director, subject to the provisions of paragraph (a)(2) of this section, may liquidate the entry and collect duties before the conclusion of the investigation or final disposition of the penalty action if he determines that liquidation would be in the interest of the Government.

(2)(i) An entry not liquidated within 1 year from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed

liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless the time for liquidation is extended by the port director because—

(A) Information needed by Customs for the proper appraisal or classification of the merchandise is not available.

(B) The importer, his consignee, or agent requests an extension and demonstrates good cause why the extension should be granted, or

(C) The 1-year liquidation period is suspended as required by statute or court order.

(ii) An entry not liquidated within 4 years from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless liquidation continues to be suspended by statute or court order. In that event, the entry shall be liquidated within 90 days after removal of the suspension.

(iii) The port director promptly shall notify the importer or consignee concerned and any authorized agent and surety of the importer or consignee in writing of any extension or suspension of the liquidation period.

(b) When merchandise not covered by an entry is subject to section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), a demand shall be made on the importer for payment of the duty estimated to be due on such merchandise.

(c) Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

[T.D. 84-18, 49 FR 1680, Jan. 13, 1984]

Subpart H—Civil Asset Forfeiture Reform Act

SOURCE: T.D. 00-88, 65 FR 78091, Dec. 14, 2000, unless otherwise noted.

§ 162.91 Exemptions.

The provisions of this subpart will apply to all seizures of property for

civil forfeiture made by Customs officers except for those seizures of property to be forfeited under the following statutes: The Tariff Act of 1930 or any other provision of law codified in title 19, United States Code; the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*); the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*); the Trading with the Enemy Act (50 U.S.C. App. 1 *et seq.*); the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 *et seq.*); and section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).

[T.D. 02-08, 67 FR 9191, Feb. 28, 2002]

§ 162.92 Notice of seizure.

(a) *Generally.* Customs will send written notice of seizure as provided in this section to all known interested parties as soon as practicable. Except as provided in paragraphs (b), (c) and (d) of this section, in no case may notice be sent more than 60 calendar days after the date of seizure. Any notice issued under this section will include all information that is required by § 162.31(a) and (b) of this part.

(b) *Seizure by state or local authorities.* In a case in which property is seized by a state or local law enforcement agency and turned over to Customs for the purpose of forfeiture under Federal law, notice will be sent not more than 90 calendar days after the date of seizure by the State or local law enforcement agency.

(c) *Identity or interest of party not determined.* If the identity or interest of a party is not determined until after the seizure or turnover, but it is determined before a declaration of forfeiture, notice will be sent to such interested party not later than 60 calendar days after the determination by Customs of the identity of the party or the party's interest.

(d) *Extensions by Customs.* (1) The Assistant Commissioner, Investigations, or his designee, may extend the period for sending notice under this section for a period not to exceed 30 calendar days, if it is determined that issuance of the notice within 60 calendar days of seizure may have an adverse result, including:

(i) Endangering the life or physical safety of an individual;

- (ii) Flight from prosecution;
- (iii) Destruction of or tampering with evidence;
- (iv) Intimidation of potential witnesses; or
- (v) Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(2) The period for sending notice of seizure as provided in paragraph (d)(1) of this section may not be further extended except by order of a court of competent jurisdiction as prescribed in paragraph (e) of this section.

(e) *Extensions by a court.* Upon motion by the Government, a court of competent jurisdiction may extend the period for sending notice for a period not to exceed 60 calendar days. This period may be further extended by the court for additional 60 calendar-day periods, as necessary, if the court determines, based on a written certification of the Assistant Commissioner, Investigations, or designee, that the conditions set forth in paragraph (d) of this section are present.

§ 162.93 Failure to issue notice of seizure.

If Customs does not send notice of a seizure of property in accordance with § 162.92 to the person from whom the property was seized, and no extension of time is granted, Customs will return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. Customs is not, however, required to return contraband or other property that the person may not legally possess.

§ 162.94 Filing of a claim for seized property.

(a) *Generally.* In lieu of filing a petition for relief in accordance with part 171 of this chapter, any person claiming property seized by Customs in a non-judicial civil forfeiture proceeding may file a claim with the appropriate Fines, Penalties, and Forfeitures Officer.

(b) *When filed.* Unless the Fines, Penalties, and Forfeitures Officer provides additional time to the person filing a claim for seized property pursuant to paragraph (a) of this section, the claim must be filed within 35 calendar days after the date the notice of seizure is