

§ 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