

§ 162.78

19 CFR Ch. I (4-1-06 Edition)

(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 determines 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]

§ 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 de-

posit 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.