

162.74 PRIOR DISCLOSURE

(a) In General.

(1) A prior disclosure is made if the person concerned discloses the circumstances of a violation (as defined in paragraph (b) of this section) of 19 U.S.C. 1592 or 19 U.S.C. 1593a, either orally or in writing to a Fines, Penalties & Forfeitures Officer before, or without knowledge of, the commencement of a formal investigation of that violation, and makes a tender of any actual loss of duties in accordance with paragraph (c) of this section.

(2) A person shall be accorded the full benefits of prior disclosure treatment if that person provides information orally or in writing to Customs with respect to a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a if the Fines, Penalties & Forfeitures Officer is satisfied that the information was provided before, or without knowledge of, the commencement of a formal investigation, and the information provided includes substantially the information specified in paragraph (b) of this section.

(b) Disclosure of the Circumstances of a Violation. The term "discloses the circumstances of a violation" means the act of providing to Customs a statement orally or in writing which:

(1) Identifies the class or kind of merchandise involved in the violation;

(2) Identifies the importation or drawback claim included in the disclosure by entry number, drawback claim number, or by indicating each concerned Customs port of entry and the approximate dates of entry or dates of drawback claims;

(3) Specifies the material false statements, omissions or acts; and

(4) Sets forth to the best of the violator's knowledge, the true and accurate information or data which should have been provided in the entry or drawback claim documents, and states that the person will provide any information or data which is unknown at the time of disclosure within 30 days of the initial disclosure date. Extensions of the 30 day period may be requested by the disclosing party from the concerned Fines, Penalties & Forfeitures Officer to enable the party to obtain the information or data.

(c) Tender of Actual Loss of Revenue. A person who discloses the circumstances of the violation shall tender any actual loss of revenue either at the time of disclosure or within 30 days after a Customs officer notifies the person in writing of his or her calculation of the actual loss of revenue.

The Fines, Penalties & Forfeitures Officer may extend the 30 day period if he or she determines there is good cause to do so. Failure to tender the actual loss of revenue finally calculated by Customs shall result in denial of the prior disclosure.

(d) Effective Time and Date of Prior Disclosure.

(1) If the documents which provide the disclosing information are sent by registered or certified mail, return-receipt requested, and are ultimately received by Customs, the disclosure shall be deemed to have been made at the time of mailing.

(2) If the documents are sent by other methods, including in-person delivery, the disclosure shall be deemed to have been made at the time of receipt by Customs. If the documents are delivered in person, the person delivering the documents is to request a receipt from Customs, stating the time and date of receipt.

(3) The provision of information which is not in writing but which qualifies for prior disclosure treatment pursuant to paragraph (a)(2) of this section shall be deemed to have occurred at the time which Customs was provided with information which substantially complies with the requirements set forth in paragraph (b) above.

(e) Addressing and Filing Prior Disclosure.

(1) Any documents relating to a prior disclosure should be addressed to the immediate attention of the Fines, Penalties & Forfeitures Officer with jurisdiction over the location of the Customs port of entry of the disclosed violation.

(2) In the case of a prior disclosure involving violations at multiple ports of entry, the disclosing party shall orally disclose or provide copies of the disclosure to all concerned Fines, Penalties & Forfeitures Officers. In accordance with internal Customs procedures, the officers will then seek consolidation of the disposition and handling of the disclosure.

(f) Verification of Disclosure. Upon receipt of a prior disclosure, the concerned Fines, Penalties and Forfeitures Officer shall notify Customs Office of Investigations of the disclosure. The violator may request, in the oral or written prior disclosure, that the Office of Investigations withhold the initiation of disclosure verification proceedings until after the party has provided the information or data within the time limits specified in paragraph (b)(4) above.

(g) Commencement of a Formal Investigation. A formal investigation of a violation is considered to be commenced on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation existed. In the event that a party is denied prior disclosure treatment on the basis that Customs had commenced a

formal investigation of the disclosed violation, and Customs initiates a penalty action against the disclosing party involving the disclosed violation, a copy of a "writing" evidencing the commencement of a formal investigation of the disclosed violation shall be attached to any required prepenalty notice issued to the disclosing party pursuant to 19 U.S.C. 1592 or 19 U.S.C. 1593a.

(h) Scope of the Disclosure and Expansion of a Formal Investigation. A formal investigation is deemed to have commenced as to additional violations not included or specified by the disclosing party in the party's original prior disclosure on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of such additional violations existed.

Additional violations not disclosed or covered within the scope of the party's prior disclosure which are discovered by Customs as a result of an investigation and/or verification of the prior disclosure shall not be entitled to treatment under the prior disclosure provisions.

(i) Knowledge of the Commencement of a Formal Investigation. A disclosing party who claims lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. A person shall be presumed to have had knowledge of the commencement of a formal investigation of a violation if before the claimed prior disclosure of the violation a formal investigation has been commenced and:

(1) A Customs officer, having reasonable cause to believe that there has been a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a, so informed the person concerning the type of or circumstances of the disclosed violation; or

(2) A Customs Special Agent, having properly identified himself or herself and the nature of his or her inquiry, had, either in person or writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation; or

(3) A Customs Special Agent having properly identified himself or herself and the nature of his or her inquiry, requested specific books and/or records of the person relating to the disclosed violation; or

(4) The disclosing party receives a prepenalty or penalty notice issued pursuant to 19 U.S.C. 1592 or 19 U.S.C. 1593a relating to the type of or circumstances of the disclosed violation; or

(5) The merchandise which is the subject of the disclosure was seized by Customs because of the type of or circumstances of the disclosed violation; or

(6) In the case of violations involving merchandise accompanying persons entering the United States or commercial merchandise inspected in connection with entry, by oral notification to the person of the officer's finding of a violation.

The presumption of knowledge may be rebutted by evidence that, notwithstanding the foregoing notice, inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed information.

