

Proposed Rules

Federal Register

Vol. 61, No. 188

Thursday, September 26, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 162

RIN 1515-AB98

Prior Disclosure

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to the Customs Regulations governing "prior disclosure" as well as implementing a provision of the Customs Modernization portion of the North American Free Trade Implementation Act (Mod Act) concerning prior disclosure by a person of a violation of law committed by that person involving the entry or introduction or attempted entry or introduction of merchandise into the United States by fraud, gross negligence or negligence. Pursuant to "prior disclosure" under 19 U.S.C. 1592(c)(4), as amended by the Mod Act, if a person who commits such a violation discloses the circumstances of the violation before, or without knowledge of, the commencement of a formal investigation of such violation, merchandise shall not be seized and any monetary penalty to be assessed under 19 U.S.C. 1592 shall be limited. The amendment to the Customs Regulations proposed in this document would spell out when there is "commencement of a formal investigation" for purposes of 19 U.S.C. 1592. The document also amends the regulations to give Fines, Penalties and Forfeitures Officers discretion to defer referral for full investigation of a disclosure of an unintentional violation of law until the disclosing party has an opportunity to explain all the circumstances underlying the disclosed violation.

DATE: Comments must be received on or before November 25, 1996.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the

Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW, Washington, DC 20229, and may be inspected at Franklin Court, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Pisani, Penalties Branch (202) 482-6946.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the President signed the North American Free Trade Agreement Implementation Act (Pub. L. 103-182). The Customs Modernization portion of this Act (Title VI), popularly known as the Customs Modernization Act, or "the Mod Act" became effective when it was signed. Section 621 of Title VI amended section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) (hereinafter referred to as section 592). This document involves the amendments to section 592(c)(4) effected by section 621(4) of Title VI.

Section 592 provides that no person, by fraud, gross negligence, or negligence may enter, introduce or attempt to enter or introduce any merchandise into the commerce of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or any omission which is material. Further, no person may aid or abet any other person in violating the above-stated prohibition. The statute provides maximum penalties for violations of its provisions.

Section 592(c)(4), the prior disclosure provision, affords a party who discloses a violation of section 592 with benefits of significantly reduced penalties (or in certain cases, no penalties) where the party fully discloses the circumstances of the violation, and does so before, or without knowledge of, "the commencement of a formal investigation" of the disclosed violation.

The Mod Act amendments to section 592(c)(4) involved the adoption of a statutory definition of the term "commencement of a formal investigation." Section 592(c)(4) now provides that a formal investigation is deemed commenced on the date recorded in writing by Customs as the date on which facts and circumstances were discovered or information was received which caused Customs to

believe that the possibility of a section 592 violation existed.

Presently, § 162.74 (d) and (e) of the Customs Regulations (19 CFR 162.74 (d) and (e)) set forth the agency definition of "commencement of a formal investigation" and this definition does not require, in all cases, that the "commencement" be evidenced by a writing or electronic transmission.

This document proposes to amend the Customs Regulations to set forth in § 162.74(g) a definition of "commencement of a formal investigation" consistent with the definition set forth in section 592. The language in § 162.74 (d) and (e), Customs Regulations that is inconsistent with the statutory definition is removed.

The document also attempts to simplify the regulations by bringing all material relating to the prior disclosure of section 592 violations into one section. Accordingly, the definition of the phrase "discloses the circumstances of the violation", which applies only to prior disclosure provisions, is proposed to be moved from § 162.71, Customs Regulations to paragraph (b) of § 162.74.

This document also proposes to amend the regulations to provide for the possibility of a delay of the verification of the violation by the Office of Investigations. Section 162.74(c), Customs Regulations, currently contains a requirement that all claimed prior disclosures immediately be referred for investigation. In the past, such referrals often have led to a rapid Customs deployment of investigative resources to the disclosing party's premises, or the rapid issuance of subpoenas or civil summonses for records—even in instances where the disclosing party is in the process of collecting the necessary information to "perfect" the claimed prior disclosure. In such cases, not only does strict adherence to the current immediate referral requirement sometimes result in delaying disposition of the disclosed violation, but also may serve to deter parties from making prior disclosures at all. Customs now proposes a new paragraph (f) which provides that the disclosing party may request the additional time to gather information in order to fully disclose the circumstances of the violation as defined in paragraph (b) of the proposed amendment. Customs believes that the disclosing party should be able to ask Customs to defer the Office of

Investigations verification proceedings until the party has completed its disclosure of the circumstances within the time permitted under the proposed paragraph (b).

Comments

Before adopting the proposed amendment, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, D.C.

Regulatory Flexibility Act

Insofar as the proposed regulations closely follow legislative direction, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), it is certified that the amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Paperwork Reduction Act

The collection of information contained in this rulemaking has been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995. (44 U.S.C. 3507).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number.

The collection of information in this regulation is in § 162. This information is to enable the Customs Service able to effectively administer the laws it is charged with enforcing while, at the same time, imposing a minimum burden on the public it is serving. Respondents are those parties who wish to voluntarily disclose the circumstances

of a violation of 19 U.S.C. 1592 in order to obtain reduced penalty benefits which are available pursuant to 19 U.S.C. 1592(c)(4). The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 3,500 hours.

Estimated average annual burden per respondent: 1 hour for each Customs entry involved in the prior disclosure.

Estimated number of respondents: 3,500.

Estimated annual frequency of responses: Because a prior disclosure of a Customs law violation is made voluntarily, it is impossible to predict with any accuracy the frequency at which such disclosures may be made.

Comments concerning the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC. 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 19 CFR Part 162

Customs duties and inspection, Law enforcement, Seizures and forfeitures.

Proposed Amendment

It is proposed to amend Part 162, Customs Regulations (19 CFR Part 162) as set forth below:

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The authority citation for Part 162 will continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

§ 162.71 [Amended]

2. Section 162.71 is amended by removing paragraph (e).

3. Section 162.74 is revised to read as follows:

§ 162.74 Prior disclosure.

(a) *In General.* (1) A prior disclosure of a violation 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 Customs 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. A Customs officer who receives such a tender in connection with a prior disclosure shall ensure that the tender is deposited with the concerned local Customs entry officer.

(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 concerned Fines, Penalties & Forfeitures Officer is satisfied that the information was provided before, or without knowledge of, the commencement of a formal investigation, and that 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 the calculation of the actual loss of revenue. The Fines, Penalties & Forfeitures Officer may extend the 30 day period if it is determined 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 benefits.

(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 which will indicate 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 when Customs was provided with information which substantially complies with the requirements set forth in paragraph (b) of this section.

(e) *Addressing and Filing Prior Disclosure.*

(1) A written prior disclosure should be addressed to the Commissioner of Customs and presented to a Customs officer at 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 Customs officer shall notify the 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) of this section. It is within the concerned Fines, Penalties & Forfeitures Officer's discretion to grant or deny such a request.

(g) *Commencement of a Formal Investigation.* A formal investigation of the 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 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 regarding 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.* (1) 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:

(i) 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

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

(iii) 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

(iv) 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

(v) 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

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

(2) 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.

Dated: August 27, 1996.

William F. Riley,

Acting Commissioner of Customs.

Approved: August 27, 1996

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 96-24657 Filed 9-25-96; 8:45 am]

BILLING CODE 4820-02-P

Internal Revenue Service

31 CFR Part 1

Privacy Act of 1974; Proposed Rule Exempting A System of Records from Certain Provisions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed Rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed amendment of 31 CFR 1.36 to exempt the system of records entitled the Automated Information