

tations. See section 545 of Title 18, Crimes and Criminal Procedure.

### § 1593a. Penalties for false drawback claims

#### (a) Prohibition

##### (1) General rule

No person, by fraud, or negligence—

(A) may seek, induce or affect, or attempt to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of—

(i) any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or

(ii) any omission which is material; or

(B) may aid or abet any other person to violate subparagraph (A).

##### (2) Exception

Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

#### (b) Procedures

##### (1) Prepenalty notice

###### (A) In general

If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a) of this section and determines that further proceedings are warranted, the Customs Service shall issue to the person concerned a written notice of intent to issue a claim for a monetary penalty. Such notice shall—

(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;

(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; and

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

###### (B) Exceptions

The Customs Service may not issue a prepenalty notice if the amount of the penalty in the penalty claim issued under paragraph (2) is \$1,000 or less. In such cases, the Customs Service may proceed directly with a penalty claim.

###### (C) Prior approval

No prepenalty notice in which the alleged violation occurred as a result of fraud shall

be issued without the prior approval of Customs Headquarters.

##### (2) Penalty claim

After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a) of this section, as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, the Customs Service shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, Customs shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vii) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 1618 of this title to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 1618 of this title, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination, and the findings of fact and conclusions of law on which such determination is based.

#### (c) Maximum penalties

##### (1) Fraud

A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed 3 times the actual or potential loss of revenue.

##### (2) Negligence

###### (A) In general

A negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed 20 percent of the actual or potential loss of revenue for the 1st violation.

###### (B) Repetitive violations

If the Customs Service determines that a repeat negligent violation occurs relating to the same issue, the penalty amount for the 2d violation shall be in an amount not to exceed 50 percent of the total actual or potential loss of revenue. The penalty amount for each succeeding repetitive negligent violation shall be in an amount not to exceed the actual or potential loss of revenue. If the same party commits a nonrepetitive violation, that violation shall be subject to a penalty not to exceed 20 percent of the actual or potential loss of revenue.

##### (3) Prior disclosure

###### (A) In general

Subject to subparagraph (B), if the person concerned discloses the circumstances of a violation of subsection (a) of this section before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this subsection may not exceed—

(i) if the violation resulted from fraud, an amount equal to the actual or potential

revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

(ii) if the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under section 6621 of title 26 on the amount of actual revenue of which the United States is or may be deprived during the period that—

(I) begins on the date of the overpayment of the claim; and

(II) ends on the date on which the person concerned tenders the amount of the overpayment.

**(B) Condition affecting penalty limitations**

The limitations in subparagraph (A) on the amount of the monetary penalty to be assessed under this subsection apply only if the person concerned tenders the amount of the overpayment made on the claim at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide), after notice by the Customs Service of its calculation of the amount of the overpayment.

**(C) Burden of proof**

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

**(4) Commencement of investigation**

For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information 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 of subsection (a) of this section existed.

**(5) Exclusivity**

Penalty claims under this section shall be the exclusive civil remedy for any drawback related violation of subsection (a) of this section.

**(d) Deprivation of lawful revenue**

Notwithstanding section 1514 of this title, if the United States has been deprived of lawful duties and taxes resulting from a violation of subsection (a) of this section, the Customs Service shall require that such duties and taxes be restored whether or not a monetary penalty is assessed.

**(e) Drawback compliance program**

**(1) In general**

After consultation with the drawback trade community, the Customs Service shall establish a drawback compliance program in which claimants and other parties in interest may participate after being certified by the Customs Service under paragraph (2). Participation in the drawback compliance program is voluntary.

**(2) Certification**

A party may be certified as a participant in the drawback compliance program after meet-

ing the general requirements established under the program or after negotiating an alternative program suited to the needs of the party and the Customs Service. Certification requirements shall take into account the size and nature of the party's drawback program and the volume of claims. In order to be certified, the participant must be able to demonstrate that it—

(A) understands the legal requirements for filing claims, including the nature of the records required to be maintained and produced and the time periods involved;

(B) has in place procedures to explain the Customs Service requirements to those employees that are involved in the preparation of claims, and the maintenance and production of required records;

(C) has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to the Customs Service;

(D) has designated a dependable individual or individuals to be responsible for compliance under the program and whose duties include maintaining familiarity with the drawback requirements of the Customs Service;

(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternate records or record-keeping formats other than the original records; and

(F) has procedures for notifying the Customs Service of variances to, and violations of, the requirements of the drawback compliance program or any negotiated alternative programs, and for taking corrective action when notified by the Customs Service for violations or problems regarding such program.

**(f) Alternatives to penalties**

**(1) In general**

When a party that—

(A) has been certified as a participant in the drawback compliance program under subsection (e) of this section; and

(B) is generally in compliance with the appropriate procedures and requirements of the program;

commits a violation of subsection (a) of this section, the Customs Service, shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty, issue a written notice of the violation to the party. Repeated violations by a party may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

**(2) Contents of notice**

A notice of violation issued under paragraph (1) shall—

(A) state that the party has violated subsection (a) of this section;

(B) explain the nature of the violation; and

(C) warn the party that future violations of subsection (a) of this section may result in the imposition of monetary penalties.

**(3) Response to notice**

Within a reasonable time after receiving written notice under paragraph (1), the party shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

**(g) Repetitive violations**

(1) A party who has been issued a written notice under subsection (f)(1) of this section and subsequently commits a repeat negligent violation involving the same issue is subject to the following monetary penalties:

**(A) 2d violation**

An amount not to exceed 20 percent of the loss of revenue.

**(B) 3rd violation**

An amount not to exceed 50 percent of the loss of revenue.

**(C) 4th and subsequent violations**

An amount not to exceed 100 percent of the loss of revenue.

(2) If a party that has been certified as a participant in the drawback compliance program under subsection (e) of this section commits an alleged violation which was not repetitive, the party shall be issued a “warning letter”, and, for any subsequent violation, shall be subject to the same maximum penalty amounts stated in paragraph (1).

**(h) Regulation**

The Secretary shall promulgate regulations and guidelines to implement this section. Such regulations shall specify that for purposes of subsections (c) and (g) of this section, a repeat negligent violation involving the same issue shall be treated as a repetitive violation for a maximum period of 3 years.

**(i) Court of International Trade proceedings**

Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence; and

(3) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of providing evidence that the act or omission did not occur as a result of negligence.

(June 17, 1930, ch. 497, title IV, § 593A, as added Pub. L. 103-182, title VI, § 622(a), Dec. 8, 1993, 107 Stat. 2181; amended Pub. L. 108-429, title I, § 1563(f), Dec. 3, 2004, 118 Stat. 2587.)

## AMENDMENTS

2004—Subsec. (h). Pub. L. 108-429 substituted “subsections (c) and (g)” for “subsection (g)”.

## EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-429 effective Dec. 3, 2004, and applicable to drawback entries filed on or after

Dec. 3, 2004, and to those filed before Dec. 3, 2004, if liquidation of the drawback entry is not final on Dec. 3, 2004, see section 1563(g)(1) of Pub. L. 108-429, set out as a note under section 1313 of this title.

## EFFECTIVE DATE

Pub. L. 103-182, title VI, § 622(b), Dec. 8, 1993, 107 Stat. 2186, provided that: “The amendment made by subsection (a) [enacting this section] applies to drawback claims filed on and after the nationwide operational implementation of an automated drawback selectivity program by the Customs Service. The Customs Service shall publish notice of this date in the Customs Bulletin.”

## TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**§ 1594. Seizure of conveyances****(a) In general**

Whenever—

(1) any vessel, vehicle, or aircraft; or

(2) the owner or operator, or the master, pilot, conductor, driver, or other person in charge of a vessel, vehicle, or aircraft;

is subject to a penalty for violation of the customs laws, the conveyance involved shall be held for the payment of such penalty and may be seized and forfeited and sold in accordance with the customs laws. The proceeds of sale, if any, in excess of the assessed penalty and expenses of seizing, maintaining, and selling the property shall be held for the account of any interested party.

**(b) Exceptions**

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to seizure and forfeiture under the customs laws for violations relating to merchandise contained—

(A) on the person;

(B) in baggage belonging to and accompanying a passenger being lawfully transported on such conveyance; or

(C) in the cargo of the conveyance if the cargo is listed on the manifest and marks, numbers, weights and quantities of the outer packages or containers agree with the manifest;

unless the owner or operator, or the master, pilot, conductor, driver or other person in charge participated in, or had knowledge of, the violation, or was grossly negligent in preventing or discovering the violation.

(2) Except as provided in paragraph (1) or subsection (c) of this section, no vessel, vehicle, or aircraft is subject to forfeiture to the extent of an interest of an owner for a drug-related offense established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.

**(c) Prohibited merchandise on conveyance**

If any merchandise the importation of which is prohibited is found to be, or to have been—