DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

CBP DIRECTIVE NO. 5350-020A **DATE: 11/17/2021**

ORIGINATING OFFICE: OT:TRLED
SUPERSEDES: 5350-020, 7/25/2005
REVIEW DATE: 11/17/2024

SUBJECT: PROCESSING PRIOR DISCLOSURE SUBMISSIONS

1. PURPOSE. This directive provides guidance to U.S. Customs and Border Protection (CBP) personnel concerning the processing of claimed prior disclosures, submitted pursuant to the provisions of Title 19, United States Code (U.S.C.), Sections 1592 and 1593a, which notify CBP of the circumstances of a violation of the customs laws and regulations before, or without knowledge of, the commencement of a formal investigation of that violation by CBP or U.S. Immigration and Customs Enforcement (ICE)/Homeland Security Investigations (HSI).

2. POLICY. In accordance with Title 19, Code of Federal Regulations (C.F.R.), Section 162.74, CBP will determine the validity of all claimed prior disclosures submitted with respect to violations of 19 U.S.C. § 1592 and § 1593a, and CBP will provide written responses to disclosing parties in a timely manner. It is the policy of CBP to encourage the submission of valid prior disclosures that comport with applicable laws and regulations. CBP will not solicit nor direct violators to submit prior disclosures or delay an investigation or initiation of administrative penalty proceedings to allow a violator to submit a request for prior disclosure treatment.

3. AUTHORITIES/REFERENCES. 19 U.S.C. § 1509; 19 U.S.C. § 1592; 19 U.S.C. § 1593a; 19 C.F.R. § 162.74; 19 C.F.R. § 163.11; 19 C.F.R. Part 171, Appendices B and D; Seized Asset Management and Enforcement Procedures Handbook (SAMEPH) (HB 4400-01B);

(b)(7)(E)

4. RESPONSIBILITIES.

4.1 Office of Trade (OT)

4.1.1 Trade Remedy and Law Enforcement Directorate (TRLED), Civil Enforcement Division, is responsible for establishing, disseminating, and updating prior disclosure policy guidance, assisting with consolidation decisions, and providing policy and operational oversight for the overarching trade enforcement process.

4.1.2 Regulations and Rulings (RR), Penalties Branch, is responsible for reviewing the basis for CBP actual loss of duties, taxes and fees or actual loss of revenue determinations for loss of revenue that exceeds $100,000, at the request of the disclosing party, pursuant to 19 C.F.R. §

162.74(c). In certain circumstances, RR, Penalties Branch, may also be responsible for determining the validity of a prior disclosure in connection with a petition in a penalty case that is issued pursuant to 19 U.S.C. § 1592 and § 1593a.

4.1.3 Regulatory Audit and Agency Advisory Services (RAAAS) will review and approve/disapprove the application of any offsetting for overpayment of duties in all disclosures involving violations of 19 U.S.C. § 1592. RAAAS may, upon request, assist the Centers of Excellence and Expertise (Centers) personnel, U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) agents, by confirming disclosed facts and preparing reports. (b)(7)(E)

(b)(7)(E)

4.2 Office of Field Operations (OFO)

4.2.1 Directors, Field Operations (DFO) are responsible for ensuring that the provisions of this directive are carried out uniformly and effectively.

4.2.2 Center Directors will ensure that Import Specialists, Entry Specialists, Drawback Specialists, and Center TECs comply with the policies set forth in this directive. Center Directors will also ensure that personnel within their areas of responsibility (AOR) are trained in processing prior disclosures, and they will dedicate sufficient resources to ensure that Import Specialists, Entry Specialists, Drawback Specialists, and Center TECs within their AOR verify the information within a prior disclosure and confirm that the disclosure meets the requirements of 19 C.F.R. § 162.74. The Center Director is responsible for verifying or calculating any loss of revenue, making a recommendation as to the level of culpability and whether full benefits of prior disclosure treatment are merited. The recommendation will then be forwarded to the Fines, Penalties and Forfeitures Officer (FPFO) for review and issuance of a final determination.[1]

4.2.3 Port Directors (PDs)[2] will ensure that FPFOs are aware of and comply with the policies set forth in this directive. They will also ensure that personnel within their AOR have adequate training in processing prior disclosures and will dedicate sufficient resources to ensure the information within a perfected prior disclosure is verified, by performing the steps necessary to confirm that the disclosure meets the requirements of 19 C.F.R. § 162.74.

4.2.4 FPFOs will review the Center Director's recommendation and supporting documentation and determine whether claimed prior disclosures meet the requirements of applicable statutes and regulations. The FPFO is responsible for approving extension requests from the importers, and notifying the disclosing party, in writing, of either acceptance or denial of its claim for prior disclosure treatment. Written notification is required regardless of whether the prior disclosure was received orally or in writing. The FPFO will issue penalty notices for violations of 19 U.S.C. § 1592 and § 1593a to disclosing parties and/or any other culpable

[1] In Puerto Rico and U.S. Virgin Islands the port undertakes the responsibilities of Centers.
[2] The DFO or Assistant DFO will assume the PD responsibility for those FPFOs that report directly to them.

parties, as appropriate, for valid prior disclosures. If the FPFO determines that the claimed prior disclosure is not valid, the FPFO is responsible for notifying the TEC and initiating Section 1592 penalty action.

4.2.5 Center TECs are responsible for coordinating and tracking the review of prior disclosures in accordance with Section 5 of this directive. Center TECs are also responsible for communicating with other offices within CBP involved in the prior disclosure review (e.g., RAAAS, FPFO), and HSI.

4.2.6 Import Specialists, Entry Specialists, and Drawback Specialists assigned to the Center responsible for processing the prior disclosure will review and verify the prior disclosure in accordance with Section 5 of this directive to confirm that it meets the requirements of 19 C.F.R. § 162.74 (b).

4.2.7 National Account Managers (NAMs) will support verification activities of the Center personnel by facilitating communication between CBP and a managed account, as requested by the Center personnel.

4.2.8 (b)(7)(E)
(b)(7)(E)

4.3 Office of the Chief Counsel (OCC)

4.3.1 The appropriate Associate or Assistant Chief Counsel (ACC) office will be consulted to address any legal questions that may arise when processing prior disclosure submissions. This will include questions regarding the legal sufficiency of the evidence collected by the Center to support a demand and penalty under Section 1592.

5. GENERAL PROCEDURES. The following are general procedures for the processing of a prior disclosure.

5.1 Receipt of the Claimed Prior Disclosure

5.1.1 All documents will be date-stamped upon receipt.
(b)(7)(E)

5.1.2 CBP personnel will forward prior disclosures submitted to CBP with a payment to the local cashier within two (2) business days of receipt.

5.1.3 The Cashier, in accordance with Section 5.3.1, will deposit the payment within one (1) business day from the date the Cashier receives the payment and will send a receipt to the party who submitted the payment. The Cashier will also forward the prior disclosure, within five (5) business days of the deposit, along with a photocopy of the form of payment and cash receipt to

the appropriate Center's enforcement e-mail address, based on the Importer of Record Center assignment in ACE.

5.1.4 The Center TEC will determine the lead Port and forward the claimed prior disclosure to the Fines, Penalties and Forfeitures (FPF) office at the lead Port and coordinate with the Intellectual Property Rights Coordination Center (IPR Center) when necessary.

5.1.5 (b)(7)(E)
(b)(7)(E)

5.1.6 (b)(7)(E)
(b)(7)(E)

5.1.7 The Center Director will issue a letter to the disclosing party that acknowledges receipt of the claimed prior disclosure and identifies which Center will be handling the disclosure. For a template of an Acknowledgement Letter, *see* Attachment 1 of this directive. The Center Director will determine if a statute of limitations (SOL) waiver from the disclosing party and any other liable parties, including sureties, is necessary in accordance with Section 5.11 of this directive. Acknowledgment letters will include the following statement to ensure disclosing parties are notified of offsetting requirements:

In accordance with 19 C.F.R. § 163.11(d)(3), offsetting applies when a private party submits a prior disclosure in accordance with 19 C.F.R. § 162.74 and CBP approves the party's self-review, including its execution and results. As 19 U.S.C. § 1509(b)(6)(A) requires all entries to be finally liquidated when used for offsetting, CBP will not allow any entry that is not finally liquidated upon date of receipt of this prior disclosure [insert the date of receipt of the prior disclosure] to be used for offsetting (when offsetting is applicable). Entries requiring correction(s) that are not finally liquidated upon receipt of this prior disclosure should be corrected via a Post Summary Correction (for unliquidated entries) or a formal protest (for entries that have been liquidated for up to 180 days). Furthermore, if using statistical sampling to calculate lost duties, taxes, and fees or lost revenue for the purpose of prior disclosure, mixed liquidation status of entries impacts the final approval of offsetting and may invalidate the statistical sampling projections of loss of revenue.

Also be advised that 19 C.F.R. § 163.11(d)(6) does not allow the application of offsetting where duties were paid on goods for which a duty allowance or preference was not claimed or established at the time of entry or within the time allowed after entry. Additionally, 19 C.F.R. § 163.11(d)(8) does not allow the application of offsetting when identified underpayments or under-declarations were made knowingly and intentionally.

5.1.8 The Center TEC will coordinate with Center Supervisors to assign the prior disclosure to an Import Specialist, Entry Specialist, or Drawback Specialist for review within five (5) business days of the Center's receipt of the prior disclosure.

5.1.9 The Import Specialist, Entry Specialist, or Drawback Specialist will:

- (b)(7)(E)
- Review the prior disclosure in accordance with Section 5.6 of this directive.
  - (b)(7)(E)
  - (b)(7)(E)

5.1.10 The Supervisory Import Specialist, Supervisory Entry Specialist, or Supervisory Drawback Specialist (b)(7)(E)
(b)(7)(E)

5.1.11 If a prior disclosure is made orally to a CBP employee, it must be immediately documented in writing to record the date, time, party making the disclosure, and the facts presented. Per 19 C.F.R. § 162.74(a)(2), the disclosing party is required to confirm the oral disclosure in writing within 10 days to the concerned FPFO. Upon receipt of the written disclosure, CBP personnel will follow the steps above.

5.2 Consolidation

5.2.1 If a prior disclosure involves violations at multiple ports of entry, the Center TEC will coordinate consolidation of the disposition and handling of the disclosure with potentially affected FPF offices upon receipt. Per the Consolidation provisions in the SAMEPH 13.1.4, the following factors will be considered in determining which FPF office is the best location to consolidate the prior disclosure and facilitate the verification of the disclosed facts:

- The CBP port at which the majority of entries were filed or the CBP port with the greatest cumulative valuation.
- The CBP port at which the principal business address or the entry records of the disclosing party are located.

5.2.2 (b)(7)(E)
(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

5.3 Processing of Payment

5.3.1 Cashier personnel will deposit any checks in the appropriate suspense account, using class code (b)(7)(E) within one (1) business day from the date the check is received by cashier personnel. If the collection is received after the depositary's cutoff time, or received too late for inclusion in the daily deposit, it will be deposited the subsequent business day ("same day/next day" deposit policy), in accordance with the guidance found in the Collections and Deposits Handbook (HB 5300-12C), and a receipt will be sent to the prior disclosure claimant. The time of presentation is the date the funds were first received by CBP, which is used as the collection date in the financial system. The Cashier will forward the prior disclosure and a photocopy of the check and cash receipt to the appropriate Center's (b)(7)(E) e-mail address within five (5) business days of deposit, based on the Importer of Record Center assignment in ACE. The TEC will provide copies of the check(s) and the cash receipt(s) to Center personnel. After a prior disclosure is accepted, the Center TEC will advise the appropriate cashier of the final collection code for funds that constitute loss of revenue.

5.4 (b)(7)(E)

5.4.1 (b)(7)(E)

(b)(7)(E)

5.4.2 (b)(7)(E)
(b)(7)(E)

5.4.3 (b)(7)(E)

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(b)(7)(E)

5.5 (b)(7)(E)

5.5.1 (b)(7)(E)

(b)(7)(E)

5.5.2 (b)(7)(E)

(b)(7)(E)

5.6 Review and Verification

5.6.1 Center personnel will verify that the prior disclosure meets the requirements of 19 C.F.R. § 162.74(b) within 60 business days of receipt of the perfected[3] prior disclosure. The Center Director may provide Center personnel with an extension beyond 60 business days for complex prior disclosures. When an extension is requested by the disclosing party for an unperfected[4] disclosure, the Center Director will forward an e-mail request, including the supporting documents such as an electronic copy of the disclosure, to the proper FPFO and the FPFO will grant no more than one (1) 60 business day extension to perfect the initial disclosure. The FPFO response should be sent to the claimant with a copy to the Center via the same means used to request the extension (e-mail or formal letter). *See* Attachment 3 for a template of the Extension Response Letter. Center personnel will save this correspondence electronically and add a note detailing the extension (b)(7)(E) Extensions beyond 60 business days must be approved by the Assistant Director of Field Operations, Trade. Center personnel will determine if an SOL waiver is necessary based on extensions requested and/or provided as indicated in Section 5.11.

5.6.2 For prior disclosures where the importer declines to timely calculate the actual loss of duties or actual loss of revenue or where the importer requests assistance in calculating the actual loss of duties or actual loss of revenue, the Center is responsible for calculating the actual loss of duties or actual loss of revenue in accordance with 19 C.F.R. § 162.74(c). (b)(7)(E)

[3] A "perfected" prior disclosure is one that satisfies the requirements of 19 CFR 162.74(a). A "perfected" prior disclosure will be subject to CBP review and may (or may not) be approved as a valid prior disclosure.
[4] An "unperfected" prior disclosure, does not satisfy the requirements of 19 CFR 162.74(a).

(b)(7)(E)

5.6.3 (b)(7)(E)

(b)(7)(E)

5.6.4 The prior disclosure verification process may require reaching out to several parties to ensure that the prior disclosure meets the requirements of 19 C.F.R. § 162.74(b) and that all violations are properly identified. The TEC may need to coordinate with:

- (b)(7)(E)
- ACC Office: If legal issues arise in determining whether the requirements of 19 C.F.R. § 162.74(b) have been met, if the Agency is considering the denial of prior disclosure benefits, or if any other legal issues concerning the prior disclosure are identified, the appropriate ACC office should be consulted for guidance.

5.6.5 Upon completion of the verification, the Center TEC, or other designee, will refer the verification findings to the FPFO in the form of a 19 U.S.C. § 1592 (b)(7)(E) (b)(7)(E) The referral will include a copy of the (b)(7)(E) with entries sorted chronologically, and any other relevant supporting documents, including a sample entry, if available. (b)(7)(E)
Upon completion of the verification involving Drawback, the Drawback Specialists will prepare a (b)(7)(E)

5.7 Additional Duties and/or Other Revenue Due

5.7.1 A party making a claimed prior disclosure is only required to pay the actual loss of duties (for liquidated entries) resulting from the violation. Duty losses associated with the potential loss of duties (for unliquidated entries) are to be collected through the normal liquidation process. If additional duties, taxes, and/or fees are owed on liquidated entries, the reviewing Import Specialist or Entry Specialist will provide the Center TEC with a list of all liquidated entries, supporting calculations, and copies of the applicable bonds. The Center TEC will advise the Center Director who will request payment from the disclosing party and provide a copy of CBP's calculation along with the list of identified entries. A template letter can be found in Attachment 5. Additional duties received by CBP in response to this letter will be deposited in the (b)(7)(E) until the prior disclosure is determined to be valid and is accepted. After acceptance of the prior disclosure, the entry cashier will move this tender to class code (b)(7)(E)

5.7.2 Pursuant to 19 C.F.R. § 162.74(c), the disclosing party may request that Headquarters review the basis for CBP's determination of the actual loss of duties, taxes, or fees, provided that: (1) the actual loss of duties, taxes, or fees determined by CBP exceeds $100,000 and is deposited with CBP; (2) more than one (1) year remains under the SOL involving the shipments covered by the claimed prior disclosure; and, (3) the disclosing party has complied with all other prior disclosure regulatory provisions. The Chief, RR, Penalties Branch may serve as the point of contact for this request.

5.7.2.1 Headquarters review under this provision is limited to determining issues of correct tariff classification, correct rate of duty, elements of dutiable value, and correct application of any special rules (Generalized System of Preferences (GSP), Caribbean Basin Initiative (CBI), Harmonized Tariff Schedule (HTS) 9802, etc.).

5.7.2.2 After Headquarters renders its decision, the concerned Center Director will be notified, and the concerned Center will recalculate the actual loss of duties and will notify the disclosing party of any change in the calculated actual loss of duties, taxes, or fees. Any increases must be paid to CBP within 30 calendar days, unless the Center Director authorizes a longer period. Any reductions of the CBP calculated actual loss of duties or fees will be refunded to the disclosing party. Such Headquarters review decisions are final and not subject to appeal.

5.8 Offsetting

5.8.1 All prior disclosures that attempt to apply offsetting must be referred to RAAAS for audit to ensure that the requirements of 19 U.S.C. § 1509(b)(6) and 19 C.F.R. § 163.11(d) are met. RAAAS will deny offsetting on any entry that is not finally liquidated upon date of receipt of the prior disclosure as indicated in the acknowledgement letter to the disclosing party. Upon completion of the Offsetting Audit, RAAAS will provide a written memorandum indicating the offsetting amounts that should be approved or disapproved, to the reviewing Center's Import Specialist or Entry Specialist. The Import Specialist or Entry Specialist will advise the FPFO. The FPFO will communicate the determination to the claimant along with the prior disclosure acceptance or denial decision. To the extent any legal questions arise regarding the application for offsetting, the appropriate ACC office should be consulted.

5.8.1.1 Prior to referring the prior disclosure to RAAAS, Centers should determine that all other required elements of a valid prior disclosure have been satisfied. The Center TEC, or other designee, will refer the prior disclosure attempting to apply offsetting to the (b)(7)(E) (b)(7)(E) using the "Referral of Prior Disclosures Applying Offsetting to Regulatory Audit and Agency Advisory Services" form as found in Attachment 2. The RAAAS referral must include the following information:

- Confirmation that the Import Specialist or Entry Specialist has reviewed and agrees with the underlying violations;
- All prior disclosure documentation with applicable data in Excel format since RAAAS reviews the underlying calculations; and
- Any exceptions to final liquidation on a normal liquidation schedule.

5.8.2 Offsetting is not allowed in certain situations: 19 U.S.C. § 1592 violation made knowingly or intentionally (i.e., fraudulently) or where overpayment or over-declaration was made to violate any other provision of law, including laws other than customs laws.

5.8.2.1 Offsetting will not be allowed with respect to overpayments or over-declarations resulting from a failure to timely claim or establish a duty allowance or preference.

5.8.3 Any determination that offsets will be disallowed because overpayments/over-declarations were made for the purpose of violating any law, or because underpayments/under-declarations were made knowingly or intentionally, will be made by the appropriate FPFO in consultation with the appropriate ACC and the TEC.

5.9 Sampling

5.9.1 Disclosing parties may utilize statistical sampling in a prior disclosure, provided the sampling satisfies the criteria in 19 C.F.R. § 163.11(c). The disclosing party must provide CBP with a clear explanation of its sampling plan and methodology, as outlined in 19 C.F.R. § 162.74(j). After CBP and the disclosing party discuss and accept the sampling plan and methodology, or any appropriate adjustments, 19 C.F.R. § 163.11(c)(1) applies and generally prevents the disclosing party from later contesting the validity of the sampling plan except with regard to minor computational and clerical errors. Should the Centers require assistance, RAAAS has the expertise and may provide assistance in reviewing sampling plans and/or the results of sampling submitted by the disclosing party during the course of a prior disclosure. Note, however, that RAAAS is not required to review *every* sampling plan or disclosure employing statistical sampling.

5.10 Determination of Prior Disclosure Validity

5.10.1 If, after receiving a Center referral recommending acceptance of a prior disclosure request, the FPFO determines that the prior disclosure does not meet the requirements of 19 C.F.R. § 162.74, the FPFO must present the issue to the TEC, who will determine the appropriate course of action to address any deficiencies. However, the FPFO will make the final determination to accept or deny a request for prior disclosure treatment under 19 C.F.R. § 162.74(a)(2). When the prior disclosure is determined to not meet the requirements of 19 C.F.R.

§ 162.74, consideration should be given to issue a letter to the disclosing party that CBP has commenced a formal investigation pursuant to 19 C.F.R. § 162.74(g).

5.10.2 If the TEC and FPFO determine that a prior disclosure is not valid, and the case warrants a Section 1592, or other appropriate penalty action, the Center may proceed with investigating the violations, if necessary, and the involved FPFO may be asked to initiate a penalty action, or take other appropriate action, according to normal guidelines pursuant to 19 C.F.R. § 171, Appendix B or Appendix D. The Center should provide the FPFO with supporting documentation to initiate the penalty action (Section 5.12). *See* Attachment 6 for the Minimum Case Supporting Documentation Checklist.

5.10.3 In most cases, the Center Director submits a recommendation to the FPFO as to the validity of a prior disclosure and the FPFO makes the final determination in accordance with 19 C.F.R. § 162.74(a)(2). However, in certain circumstances, the RR, Penalties Branch, may determine the validity of a prior disclosure in connection with a petition in 19 U.S.C. § 1592 and § 1593a penalty cases. A party will not be afforded prior disclosure benefits where the party fails to meet all statutory and regulatory requirements for prior disclosure treatment, including where the party has knowledge of a formal investigation before it submits a prior disclosure, fails to comply with a request for payment of the CBP-calculated outstanding actual loss of duties or actual loss of revenue at the time of the prior disclosure, or within 30 calendar days after CBP notifies the person in writing of the of the CBP calculation, or fails to meet the requirements of 19 C.F.R. § 162.74.

5.11 Review of Statute of Limitations Concerns

5.11.1 The Center Director will determine if an SOL waiver from the disclosing party and any other liable parties is necessary. The Center Director is responsible for requesting an SOL waiver concurrently from the disclosing party and its representative and any other liable parties, including sureties while the prior disclosure is under review by personnel within their AOR. The TEC must monitor the SOL and solicit waivers if less than two (2) years remain on the SOL (normally five (5) years from the date of entry), pursuant to Section 12.2.4 of the SAMEPH. Waivers of the SOL should be for a minimum of two (2) years. A SOL waiver template, acknowledgment letter, and SOL waiver solicitation letter can be found in Attachments 7, 8, and 9, respectively.

5.11.2 The FPFO will assume responsibility for monitoring and requesting SOL waivers upon receipt of a prior disclosure referral from the TEC. The FPFO will also ensure that all penalty cases are referred to the appropriate ACC no later than nine (9) months before the expiration of the SOL (or the waiver period) for subsequent referral to the Department of Justice (SAMEPH, 12.2.6).

5.11.3 To the extent any legal questions arise regarding SOL deadlines and/or waivers, the appropriate ACC should be consulted. Obtaining a SOL waiver will not, in and of itself, serve as grounds for granting any extensions of any deadlines under 19 C.F.R. § 162.74, or delaying any action in processing a prior disclosure. However, no extensions may be granted where the SOL for any of the subject entries has less than one (1) year before it expires. In the event that a

disclosing party, or any other liable party including sureties, declines to execute an SOL waiver, the Center should expedite the prior disclosure review and notify the responsible FPFO of the results so that the FPFO, in turn, can expedite administrative proceedings. Consideration must be given on an ongoing basis if subsequent SOL waivers are required.

5.11.4 Where the disclosing party provides a waiver that does not comport with the sample provided (Attachment 7), the TEC or FPFO will consult with the appropriate ACC to ensure that if another waiver is requested, the language used in the request does not jeopardize the validity of prior waivers accepted by Centers or FPF.

5.12 Issuance of a Pre-Penalty Notice

5.12.1 After the Center has verified the disclosure, the TEC is responsible for ensuring that a complete referral is submitted to the FPFO. (b)(7)(E) (b)(7)(E) (b)(7)(E) If additional clarification or information is needed, the FPFO will promptly advise the TEC of the specific deficiencies, and the necessary corrections.

5.12.2 Upon receipt of a complete referral, FPFOs are responsible for determining whether a pre-penalty notice is warranted. If the prior disclosure is verified and the actual loss of duties have been tendered, (b)(7)(E)

5.12.3 The FPFO is responsible for issuing pre-penalty notices to disclosing parties and other culpable parties, where applicable, as well as providing a copy to the TEC at the time of issuance. In the event the FPFO is unable to generate the notice in SEACATS, a pre-penalty notice template can be found in Attachment 10 and a pre-penalty statement template in Attachment 11.

5.12.3.1 Pursuant to 19 U.S.C. § 1592(d), if the United States has been deprived of lawful duties, taxes or fees as a result of a violation of subsection (a), the Agency will require that such lawful duties, taxes, or fees be restored, whether or not a monetary penalty is assessed. In such case, the FPFO will issue a pre-penalty notice that provides sufficient information related to the subsection (a) violation as to provide a basis for the subsection (d) lost revenue demand.

5.12.4 If the interest penalty calculation is less than $1,000, the penalty will be issued at the discretion of the FPFO. If the interest penalty under $1,000 will not be issued or the interest was submitted in the payment of the total loss of revenue, the FPFO will issue an acceptance letter to the disclosing party and provide a copy to the TEC at the time of issuance.

5.12.5 The Center TEC will submit the prior disclosure collection worksheet to the Port that made the initial collection. The Entry Specialist will ensure monies are applied to the appropriate entries.

5.13 Penalty or Interest Collections on Unliquidated and Liquidated Entries

5.13.1 Unliquidated Entries

5.13.1.1 In cases in which a prior disclosure is determined to be valid pertaining to entries that have not liquidated, and if the culpability is negligence or gross negligence, an interest penalty will not be assessed. If interest is paid pursuant to 19 U.S.C § 1505 on entries that have not liquidated, (b)(7)(E) Interest collected for unliquidated entries should be applied utilizing collection class code (b)(7)(E)

5.13.1.2 The duty for unliquidated entries will be applied to collection class code (b)(7)(E)

5.13.2 Liquidated Entries

5.13.2.1 For liquidated entries only, an interest penalty will be collected under a 19 U.S.C. § 1592 penalty case for negligent and gross negligent violations. If interest is not deposited with the prior disclosure and the interest calculation exceeds $1,000, then a pre-penalty/penalty notice will be issued and a case created in SEACATS.

5.13.2.2 If the correct interest amount is paid voluntarily with the prior disclosure at the same time the duties are paid, the attached "Referral of Prior Disclosures to Fines, Penalties and Forfeitures Officers" form should be noted accordingly. (b)(7)(E) The full referral should be submitted to the FPFO. (b)(7)(E)

(b)(7)(E)

5.13.2.3 The duty for liquidated entries will be applied to collection class code (b)(7)(E)

5.13.3 Penalty Calculations

5.13.3.1 Negligence or Gross Negligence Violations

5.13.3.1.1 For purposes of calculating the prior disclosure interest penalty in cases in which liquidation is final and the violation is determined to be the result of negligence or gross negligence, if there is an actual loss of revenue, the interest is computed from the date of liquidation to the date of tender of the actual loss of revenue. *See* 19 C.F.R. Part 171, Appendix B. There is no monetary penalty for non-duty loss negligent or gross negligent violations under 19 U.S.C. § 1592. If there is only a potential duty loss, there is no interest penalty assessed. The potential duty loss applies to entries where final liquidation has not occurred. These entries should be billed for interest.

5.13.3.1.2 The appropriate ACC should be consulted if the disclosing party claims that the Agency is barred from initiating a penalty action under the "reasonable care" standards or the Small Business Regulatory Enforcement Act to review the validity of the claim.

5.13.3.1.3 For a prior disclosure involving a negligent drawback violation, the interest penalty is equal to the interest on the amount of actual loss of revenue during the period that begins on the date of overpayment of the claim (includes a drawback accelerated payment) and ends on the date of tender of the overpayment. *See* 19 C.F.R. Part 171, Appendix D. There is no monetary penalty for a non-revenue loss negligent violation under 19 U.S.C. § 1593a.

5.13.3.2 Fraudulent Violations

5.13.3.2.1 If a party submits a prior disclosure that the Center determines to be a fraudulent violation of 19 U.S.C. § 1592, the Center will consult ACC to determine whether this culpability is legally supported. If the ACC indicates that a finding of fraud is supported, and the prior disclosure is determined to be valid, the penalty is calculated pursuant to 19 U.S.C. § 1592(c)(4)(A). For revenue loss violations, the penalty will be 100 percent of the total loss of revenue (i.e., actual or potential). If the fraudulent violation resulted in no revenue loss, the penalty will be equal to 10 percent of the dutiable value of the merchandise in question.

5.13.3.2.2 If a party submits a prior disclosure involving a fraudulent violation of 19 U.S.C. § 1593a, the penalty will be in an amount equal to the actual or potential revenue of which the United States was deprived as a result of overpayment of the claim. There is no monetary penalty for a non-revenue loss fraud violation under 19 U.S.C. § 1593a.

5.13.4 Midpoint Date Calculations

5.13.4.1 The disclosing party may calculate the total amount of interest due. If the disclosing party does not provide a list of entries or the number of entries provided is voluminous, the interest will be calculated using a midpoint date. Specifically, if a list of entries is not provided, the interest will be calculated from the middle point of the disclosure period[5] to the date payment is received for the prior disclosure. Locate a midpoint by using the first date of the disclosing period to the last date of the disclosing period and divide the number of days calculated in half. If it is determined that the violations and loss of revenue mainly occurred at the beginning of the disclosure period, an earlier calculation point can be considered. If a voluminous list of entries is provided, the interest will be calculated from the middle point of the liquidation period to the date payment is received for the prior disclosure. Locate the midpoint by using the first date of liquidation and the last date of liquidation and then divide the number of days calculated in half.

5.14 Denying a Prior Disclosure

5.14.1 Before the benefits of a prior disclosure submission are denied, the TEC and FPFO will determine if CBP posseses the necessary information and evidence to support a Section 1592 action. The TEC and FPFO will consult with the appropriate ACC if there are questions as to whether such action is legally sufficient and options for obtaining the necessary supporting evidence before denying the submission.

[5] The Disclosure Period is the date of the first entry to the date of the last entry listed in the prior disclosure.

5.14.2 A prior disclosure submission should be denied if CBP has evidence that the party had knowledge of the commencement of a "formal investigation" prior to submitting a prior disclosure, which is a broad legal term and may be fulfilled under a wide range of circumstances as defined under 19 C.F.R. 162.74(g). A formal investigation of a violation is considered to be commenced with regard to the disclosing party on the date recorded in writing by [CBP] as the date on which facts and circumstances were discovered or information was received that caused [CBP] to believe that a possibility of a violation existed. 19 C.F.R. § 162.74(g). 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 party's knowledge is presumed if one of the conditions identified in 19 C.F.R. § 162.74(i) is satisfied. Per 19 C.F.R. § 162.74(g), in the event that a party affirmatively asserts a prior disclosure and is denied prior disclosure treatment on the basis that CBP had commenced a "formal investigation" of the disclosed violation, CBP must attach a copy of a "writing" to the pre-penalty notice evidencing the commencement of a formal investigation of the disclosed violation, subject to any redactions for protected/privileged information. The "writing" can take many forms. It can be formal correspondence or documentation. It can also be less formal. For example, an internal email can be a "writing." Another example of a writing is an informal note that shows that CBP advised the violator of the Agency's inquiry into the matter. Consult the appropriate ACC Office for specific questions regarding whether a particular prior disclosure meets the legal requirements set forth in applicable CBP regulations.

5.14.3 (b)(7)(E)

(b)(7)(E)

6. MEASUREMENTS.

6.1 Ports and Centers will have successfully executed the requirements of this directive by properly processing prior disclosures within the mandated timeframes and according to the policies and procedures set forth in this directive.

6.2 Ports and Centers will have successfully executed the requirements of this directive by effectively communicating and documenting prior disclosures in CBP systems as outlined in this directive.

6.3 Each Port and Center will conduct post enforcement analysis to establish that prior disclosures were properly processed and documented as required by this directive. Guidelines for post enforcement analysis are contained in the Self-Inspection Program Directive, CBP Directive 1520-001D, dated December 20, 2019.

7. **NO PRIVATE RIGHT CREATED.** The statements made herein are not intended to create or confer any rights, privileges, or benefits for any private person, but are intended merely for internal CBP guidance.

(b)(6); (b)(7)(C)

Executive Assistant Commissioner
Office of Trade
Attachments

Attachment 1 – Prior Disclosure Acknowledgement Letter

Date

Name
Company Name
Address
City, State

Re: XXX
Prior Disclosure

Dear XXX:

This will acknowledge receipt of your initial prior disclosure claim dated *(date)*. The claimed disclosure covers entries of *(merchandise)* imported with *(issue)* which may have resulted in additional duties owed to U.S. Customs and Border Protection. *(Name of Center)* will be handling this prior disclosure.

[If an oral disclosure is received, begin letter with this paragraph and omit the one above]

This will acknowledge our conversation on (*date*) where you orally made an initial prior disclosure claim. On *(date)*, you followed up in writing as required by regulation. The claimed disclosure covers entries of *(merchandise)* imported with *(issue)* which may have resulted in additional duties owed to U.S. Customs and Border Protection. *(Name of Center)* will be handling this prior disclosure.

If your prior disclosure claim employs offsetting, please note the following:

In accordance with 19 C.F.R. § 163.11(d)(3), offsetting applies when a private party submits a prior disclosure in accordance with 19 C.F.R. § 162.74 and CBP approves the party's self-review, including its execution and results. As 19 U.S.C. § 1509(b)(6)(A) requires all entries to be finally liquidated when used for offsetting, CBP will not allow any entry that is not finally liquidated upon date of receipt of this prior disclosure [insert the date of receipt of the prior disclosure] to be used for offsetting (when offsetting is applicable). Entries requiring correction(s) that are not finally liquidated upon receipt of this prior disclosure should be corrected via a Post Summary Correction (for unliquidated entries) or a formal protest (for entries that have been liquidated for up to 180 days). Furthermore, if using statistical sampling to calculate lost duties, taxes, and fees or lost revenue for the purpose of prior disclosure, mixed liquidation status of entries impacts the final approval of offsetting and may invalidate the statistical sampling projections of loss of revenue.

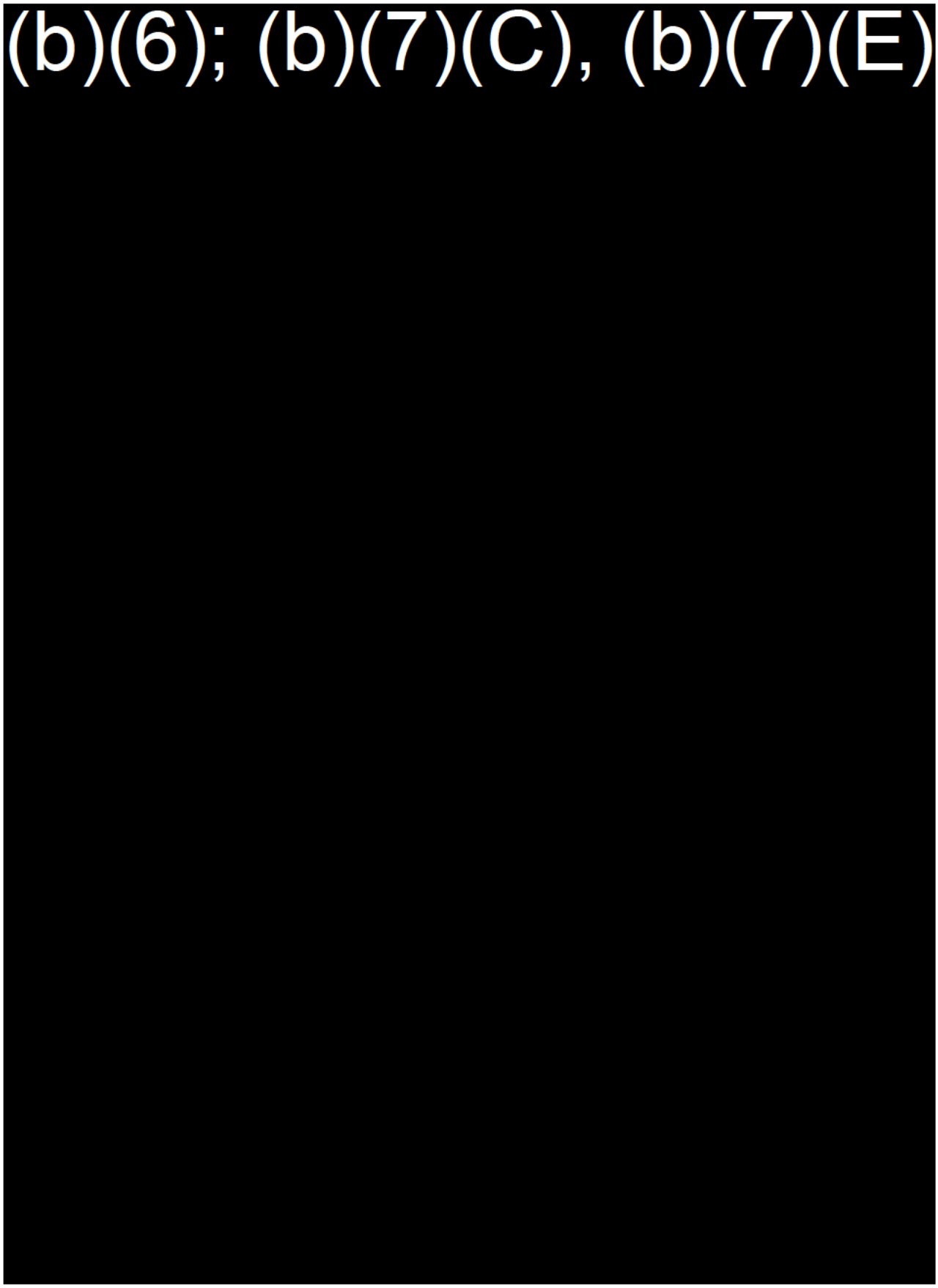
Also be advised that 19 C.F.R. § 163.11(d)(6) does not allow the application of offsetting where duties were paid on goods for which a duty allowance or preference was not claimed or established at the time of entry or within the time allowed after entry. Additionally, 19 C.F.R. §

163.11(d)(8) does not allow the application of offsetting when identified underpayments or under-declarations were made knowingly and intentionally.

If you have any questions, please contact this office at (###) ###-#### or by email at XXX@cbp.dhs.gov.

Sincerely,
Name
Center Director

Attachment 2 – (b)(7)(E)



Attachment 3 – Extension Request

Date

Name
Company Name
Address
City, State

Re: XXX
Prior Disclosure

Dear Mr. XXX:

This will acknowledge receipt of your initial prior disclosure claim dated *(date)*. The claimed disclosure covers entries of *(merchandise)* imported *(issue)*, which may have resulted in additional duties owed to U.S. Customs and Border Protection.

You have requested a *(days)* day extension to perfect the prior disclosure. The extension request is approved. The perfected prior disclosure is due in this office on *(date)*.

If you have any questions, please contact this office at (###) ###-#### or by email at XXX@cbp.dhs.gov.

Sincerely,

Name
Fines, Penalties and Forfeitures Officer

Attachment 4 Attachment 4 – FPFO Referral Form

U.S. Customs and Border Protection

REFERRAL OF PRIOR DISCLOSURE TO FINES, PENALTIES AND FORFEITURES OFFICER

DATE
MEMORANDUM FOR
FROM
SUBJECT Referral of Claimed Prior Disclosure
Disclosing Party Name:

The purpose of this memorandum is to provide a report/recommendation on the subject prior disclosure. A summary of the contents of this referral package follows.

Processing Center	
Center Team	**Supervisor**
IOR Number(s)	
Date of Disclosure	**Scope of Disclosure to**
Description of Violation	
Commodity Description	
Priority Trade Issue	**ACE VA No.**

(b)(7)(E)

Recommendation:	**Accept Disclosure**	**Deny Disclosure**

Disclosed LOR $	**Amount Tendered $**
Actual LOR $	**Potential LOR $**
Domestic Value $	
Dutiable Value $	
Entered Value $	
Additional Tender Necessary, SAMEPH Attachment 13-E Letter Required	

See attached Appraisal Worksheet for details.

Proposed Interest Penalty Amount $

Attached for your records are copies of the following supporting documentation (if applicable).

Appraisal Worsksheet	**Interest Calc. Worksheet**	**Collection Receipt(s)**
SOL Waiver(s)	**Reg Audit Report**	**ICE/HSI Report**
Other:		

Comments

Point of Contact for This Referral

Name	**Title**
Signature	**Phone**

Attachment 5 – Center Director Further Tender Letter

CERTIFIED – RETURN RECEIPT REQUESTED

Name
Address
City, State

Re: Prior Disclosure filed by (*importer name*)

Dear XXX,

This letter responds to your correspondence dated (*date*) concerning a violation of 19 U.S.C. § 1592. We have carefully reviewed your correspondence and accompanying information and determined that the total actual loss of revenue resulting from the violation is $YYY. Accordingly, payment of $YYY [or a further tender of $ZZZ ($YYY - $XXX)] within 30 calendar days from the date of your receipt of this letter, in accord with 19 U.S.C. § 1592(c)(4), will permit further processing of your prior disclosure claim.

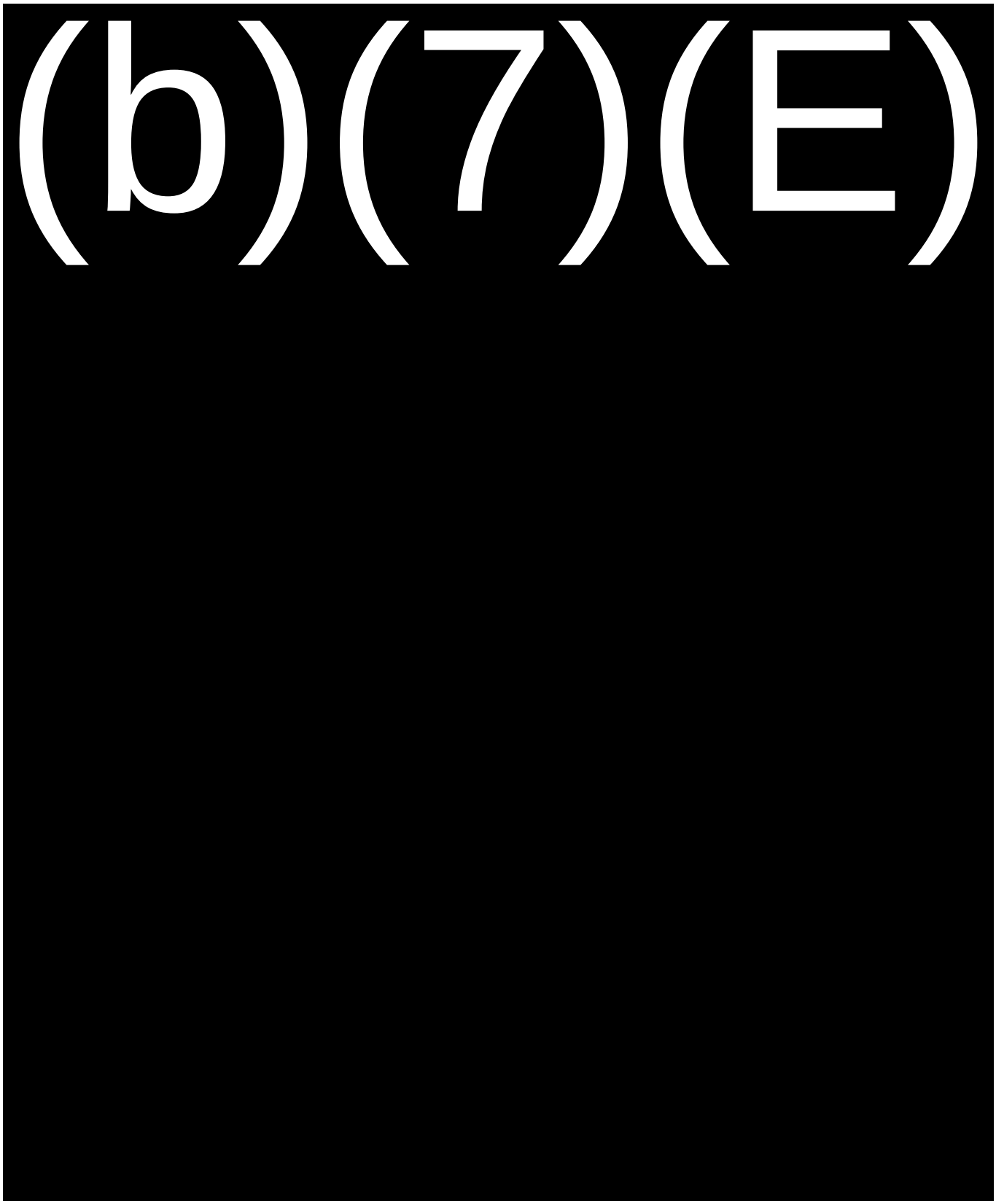
> ***Insert this paragraph if a SOL waiver is required:***
> Our records reflect the statute of limitations will expire on _____. As such, a two (2) year statute of limitations waiver is being solicited. In this regard, a Statute of Limitations Waiver form is enclosed. The properly executed waiver, along with a corporate resolution authorizing execution of the waiver, should be returned to this office. (*As necessary*: Due to the short statute date, any presentation must be made within **seven (7) working days** from the date of this letter pursuant to Title 19, Code of Federal Regulations, Section 162.78. However, if (*importer*) submits a two (2) year statute of limitations waiver, additional time will be provided).

Should further information be required, please contact the (Center Name / Center Contact person) at (*phone number*). If applicable, all inquiries should reference the case number.

Sincerely,

(*Name*)
Center Director
(*Address*)

Attachment 6 – 19 U.S.C. § 1592 (b)(7)(E)



Attachment 7 – Statute of Limitations Waiver

U.S. Customs and Border Protection
Statute of Limitations Waiver

Center Director
U.S. Customs and Border Protection
(Street Address)
(City, State and Zip Code)

Dear Center Director,

(*Name of Party*) hereby waives the period of limitations contained in Title 19, United States Code, Section 1621 and any other applicable statute(s) of limitations, with respect to (*Number of Entries*) U.S. Customs and Border Protection (CBP) entries of (*Description of Article(s) Entered*), Entry No(s).

_____ dated _____ (*or range of entry dates*), and entered at (*Port(s) of Entry*) for a period of (two) 2 years. The two (2) year period for this ("*initial*" or "*subsequent*") waiver commences with the date of the ("*expiration of the statute of limitations for the oldest entry listed above*" or "*previous waiver's expiration*"). (*Name of Party*) agrees that it will not assert any statutes of limitations defense in any action brought by the United States Government concerning the entries designated above with respect to the (two) 2 year period for which the statute of limitations is hereby waived.

This waiver is made knowingly and voluntarily by (*Name of Party*), in order that (*Name of Party*) might obtain the benefits of the orderly continuation and conclusion of administrative proceedings currently being conducted or contemplated by CBP, in which CBP is reviewing all of the formal CBP entries, including the entries designated above.

Date:_____

By: _____
(*Signature of Party*)
(*Printed Name of Party)*
(*Title of Party if acting for corp. entity*)
(*Address of Party*)

_____

_____

I hereby acknowledge receipt of the above waiver.

Date:_____ Signature:_____

(Attachment 12-A, SAMEPH)

Attachment 8 – Acknowledgement of Statute of Limitations Waiver
(Center Director Cover Letter)

Name
Address
City, State

Re: Prior Disclosure filed by XXX

Dear XXX,

This letter is in response to the waiver of the statute of limitations contained in Title 19, United States Code, Section 1621, and in any other applicable statutes of limitations filed by *(Name of Party)*. The waiver is hereby acknowledged for the period through and including (*date*). A copy of the Statute of Limitations Waiver Acknowledgement letter is enclosed.

Should further information be required, please contact *(Center name/Center Contact person)* at *(phone number)* or via email at *(email address)*. If applicable, all inquiries should reference the above-identified case number above.

Sincerely,

(*Name*)
Center Director
(*Address*)

Enclosure(s)

Attachment 9 – 19 U.S.C. 1592 Waiver Solicitation

Name
Company Name
Address
City, State

Re: Prior Disclosure filed by XXXX

Dear Sir/Madam,

Our records, in connection with the above referenced prior disclosure, reflect the statute of limitations may expire on XXX. As such, a two (2) year statute of limitations waiver sample is enclosed. The properly executed waiver, along with a corporate resolution authorizing execution of the waiver, should be returned to this office.

Please forward the requested waiver to U.S. Customs and Border Protection, (street address), (city, state, and zip code), within 30 days from the date of this letter.

Should further information be required, please contact the (Center name and Center contact person) at (phone number) or via email (email address).

Sincerely,
(*Name*)
Center Director
(*Address*)

Enclosure(s)

Attachment 10 – Pre-Penalty Letter and Statement

Name
Address
City, State

Re: Case Number xxxx-xxxx-xxxxx
importer name

Dear xxx:

This is to advise that the issuance of a claim for monetary penalty is being contemplated against *(importer)* violation of *19 USC 1592 or 19 USC 1593a (select one).*

The facts of the violation and the amount of proposed penalty are set forth in the enclosed Pre-Penalty Statement.

Prior to the issuance of a Notice of Penalty, *(importer)* has the right to make an oral and/or written presentation as to why a claim for monetary penalty should not be issued in the amount proposed in the Pre-Penalty Statement. Any presentation must be made within 30 days (or less time, down to a minimum of seven (7) business days, if there is less than one (1) year remaining on the statute of limitations for any entry) from the date of this letter. If *(importer)* wishes to make an oral presentation, please contact this office at *(telephone number)* to set a date and time for the presentation.

Insert this paragraph if a formal investigation was commenced:
Attached, please find a copy of the (email/letter/report) indicating the commencement of a formal investigation into this matter.

Insert this paragraph if a SOL waiver is required:
Our records reflect the statute of limitations may expire on _____. As such, a two (2) year statute of limitations waiver is being solicited. In this regard, a sample Statute of Limitations Waiver form is enclosed. The properly executed waiver, along with a corporate resolution authorizing execution of the waiver, should be returned to this office. (*As necessary*: Due to the short statute date, any presentation must be made within **seven (7) working days** from the date of this letter pursuant to 19 CFR 162.78. However, if *(importer)* submits a two (2) year statute of limitations waiver, additional time will be provided.)

The Small Business and Regulatory Enforcement Ombudsman and ten Regional Fairness Boards were established to receive comments from small business about federal agency enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement action of Customs and Border Protection call 1-888-REG-FAIR (888-7343247).

Please note: The National Ombudsman/RegFair Board process has no effect on your rights or obligations under the procedures of the agency on which you are commenting. You must still comply with all of that agency's processes and procedures.

Should further information be required, contact the Fines, Penalties and Forfeitures Office at (*phone number*). Inquiries should reference the case number.

Sincerely,
(*Name*)
Fines, Penalties & Forfeitures Officer

Enclosure **(Attachment 13-B, SAMEPH)**

Attachment 11 - PRE-PENALTY STATEMENT FOR VIOLATION OF 19 USC 1592 or 1593a

Case Number xxxx-xxxx-xxxxx

Description of Merchandise

XXX

Details of Entry/Introduction of Merchandise

XX entries through the Port of ____between the dates of _____and_____, as detailed on the attached appraisal worksheet

Law Violated

19 USC 1592 or 1593a

Facts Establishing the Violation

(*importer*) entered the above-described merchandise by means of a material, false statement (or act, practice, omission) that resulted in the…..

> **For example 1592**: underpayment of applicable anti-dumping duties. Anti-dumping Case A570-901 (effective April 17, 2006) required the deposit of 258.21% anti-dumping duties on certain lined paper products from China. During the period of May 5, 2006, through June 7, 2006, _(*importer*)_ filed 11 entries of lined paper products from China, subject to Antidumping Case A-570-901, incorrectly entering them as "01" (consumption) entries instead of "03" (anti-dumping). Additionally, _(*importer*)_ failed to comply with 19 CFR 141.61(c) which requires the filer to include the unique identifying number assigned by the Department of Commerce, International Trade Administration (ADD order number) on its entry summary (CBP Form 7501). This resulted in (*importer*)'s failure to deposit the appropriate anti-dumping duties.
>
> **For Example 1593a**: filing of twelve drawback claims with false country of export documents. Drawback claims filed by (importer) from April 2013 to June 2016 contained export shipments exported from Mexico to the United States resulting in overpaid drawback of $724,063.23.

Tentative Determination of Culpability

(state: Negligence, Gross Negligence, or Fraud)

Loss of Duties

$ 0.00 actual loss of revenue
+$ 0.00 potential loss of revenue
$ 0.00 Total Loss of revenue

Amount of Proposed Penalty

$xxx **(Attachment 13-B, SAMEPH)**

Attachment 12 – Prior Disclosure Pre-Penalty Letter

Name
Address
City, State

Re: Case Number xxxx-xxxx-xxxxx
importer name

Dear xxx:

This is in response to the letter dated _____ wherein (*importer name*) disclosed the fact (describe violation). This action resulted in the underpayment of duties and fees in the amount of $_____. This amount was tendered on ____.

Customs and Border Protection considers (*importer name*)'s admission of the false statements made at the time of entry as a violation of 19 USC 1592. In accordance with 19 CFR 162.74, this is to advise that the issuance of a claim for monetary penalty is being contemplated against (*importer name*) for violation of 19 USC 1592. The facts of the violation and the amount of proposed penalty are set forth in the enclosed Pre-Penalty Statement.

The request for prior disclosure treatment pursuant to 19 CFR 162.74 has been accepted. The penalty assessable under 19 USC 1592(c)(4) is the interest due on the duties and fees owed, as calculated from the date of liquidation of the affected entries to the date of collection of such duties and fees by Customs. We have calculated interest on the underpayment to be $_____.

Prior to the issuance of a Notice of Penalty, (*importer name*) has the right to make an oral and/or written presentation as to why a claim for monetary penalty should not be issued in the amount proposed in the Pre-Penalty Statement. Any presentation must be made within 30 days (or less time, down to a minimum of seven (7) business days, if there is less than one (1) year remaining on the statute of limitations for any entry) from the date of this letter. If (*importer name*) wishes to make an oral presentation, please contact this office at 912-447-9440 to set a date and time for the presentation. However, should the balance due on the penalty be tendered ($_____) to this office within the same time period, we will consider this matter closed.

> Insert this paragraph if a SOL waiver is required:
> Our records reflect the statute of limitations may expire on _____. As such, a two (2) year statute of limitations waiver is being solicited. In this regard, a Statute of Limitations Waiver form is enclosed. The properly executed waiver, along with a corporate resolution authorizing execution of the waiver, should be returned to this office. (*As necessary*: Due to the short statute date, any presentation must be made within **seven (7) working days** from the date of this letter pursuant to 19 CFR 162.78. However, if (*importer*) submits a two (2) year statute of limitations waiver, additional time will be provided.)

The Small Business and Regulatory Enforcement Ombudsman and ten Regional Fairness Boards were established to receive comments from small business about federal agency enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement action of U.S. Customs call 1-888-REG-FAIR (888-734-3247).

Please note: The National Ombudsman/RegFair Board process has no effect on your rights or obligations under the procedures of the agency on which you are commenting. You must still comply with all of that agency's processes and procedures.

Should further information be required, contact the Fines, Penalties and Forfeitures Office at (*phone number*). Inquiries should reference the case number.

Sincerely,

(*Name*)
Fines, Penalties and Forfeitures Officer

Enclosure

(Attachment 13-C, SAMEPH)

Attachment 13 – General Prior Disclosure Collection Worksheet Template

Port of Entry	Importer ID	Date of Entry	Liquidated Date	Entry Number	Line Number	Entered Classification	Line Value	Corrected Classification XXXX.XX.XXX, HTS duty rate	Amount Owed	Amount Tendered with Disclosure	Class Code	Reason Code	Notes for no interest penalty