Subpart G—Special Procedures for Certain Violations

§ 162.70 Applicability.
(a) The provisions of this subpart apply only to fines, penalties, or forfeitures incurred for the following violations of the customs laws:
(1) Violations of sections 466 and 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), that occur after October 3, 1978, and
(2) Except as provided in paragraph (b) of this section, violations of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), with respect to which proceedings have commenced after December 31, 1978. For purposes of this subparagraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.
(b) The provisions of this subpart do not apply to alleged intentional violations of 19 U.S.C. 1592 if the alleged violation:
(1) Involves television receivers that are the products of Japan and were or are the subject to antidumping proceedings,
(2) Occurred before October 3, 1978, and
(3) Was the subject of a Customs investigation begun before October 3, 1978.
(c) The provisions of subparts A through F of this part shall apply to the violations referred to in paragraph (a) of this section unless this subpart specifically provides otherwise.

§ 162.71 Definitions.
When used in this subpart, the following terms shall have the meanings indicated:
(a) Loss of duties under section 592. “Loss of duties” means the duties of which the Government is or may be deprived by reason of the violation and includes both actual and potential loss of duties.

(1) Actual loss of duties. “Actual loss of duties” means the duties of which the Government has been deprived by reason of the violation in respect of entries on which liquidation had become final.

(2) Potential loss of duties. “Potential loss of duties” means the duties of which the Government tentatively was deprived by reason of the violation in respect of entries on which liquidation had not become final.

(b) Loss of revenue under section 592A. When used in §162.73a, the term “loss of revenue” means the amount of drawback (see §191.2(i) of this chapter) that is claimed and to which the claimant is not entitled and includes both actual and potential loss of revenue.

(1) Actual loss of revenue. When used in §§162.73a, 162.74, 162.77a and 162.79b, the term “actual loss of revenue” means the amount of drawback (see §191.2(i) of this chapter) that is claimed and has been paid to the claimant and to which the claimant is not entitled.

(2) Potential loss of revenue. When used in §162.77a, the term “potential loss of revenue” means the amount of drawback (see §191.2(i) of this chapter) that is claimed and has not been paid to the claimant and to which the claimant is not entitled.

(c) Repetitive violation. When used in §162.73a to describe a violation, “repetitive” has reference to a violation by a person that involves the same issue as a prior violation by that person.

(d) Noncommercial importation. “Noncommercial importation” means merchandise imported by a traveler for an individual’s personal or household use, or as a gift, but not imported for sale or other commercial purposes.

(e) Clerical error. “Clerical error” means an error in the preparation, assembly, or submission of a document which results when a person intends to do one thing but does something else. It includes, for example, errors in transcribing numbers, errors in arithmetic, and the failure to assemble all the documents in a record.

(f) Mistake of fact. “Mistake of fact” means an action based upon a belief by a person that the material facts are other than they really are; it can be that a fact exists but is unknown to...
the person, or that he believes some-
thing is a fact when in reality it is not.
An action is not a mistake of fact if the erroneous belief is caused by the
neglect of a legal duty.

[T.D. 79–160, 44 FR 31958, June 4, 1979, as
amended by T.D. 84–18, 49 FR 1678, Jan. 13,
1984; 49 FR 3886, Feb. 1, 1984; T.D. 98–49, 63 FR
25, 2000]

§ 162.72 Penalties and forfeitures
under sections 466 and 584(a)(1),
Tariff Act of 1930, as amended.

(a) Foreign repairs and equipment pur-
chases; election to proceed. If the Fines,
Penalties, and Forfeitures Officer has
reasonable cause to believe that a vi-
olation of section 466, Tariff Act of 1930,
as amended (19 U.S.C. 1466), has oc-
curred, he may elect to proceed against
the vessel or aircraft, or against the vi-
olator for forfeiture of a monetary
amount up to the domestic value of the
vessel or aircraft.

(b) Lack of manifest or discrepancy in
manifest. The penalties for violation of
section 584(a)(1), Tariff Act of 1930, as
amended (19 U.S.C. 1584(a)(1)), are as
follows:

(1) A penalty of $1,000 against the
master of a vessel, the commander of
an aircraft, or the person in charge of
a vehicle bound to the United States
who does not produce the manifest on
demand.

(2) A penalty of $1,000 against the
master of a vessel, the commander of
an aircraft, or the person in charge of
a vessel or aircraft, or vehicle, or any person directly
or indirectly responsible for the dis-
crepancy, if any merchandise described
in the manifest is not found on board (a
"shortage").

(3)(i) A penalty equal to the lesser of
$10,000 or the domestic value of mer-
chandise found on board of or after
having been unladen from a vessel or
vehicle, or

(ii) A penalty of $1,000 (see §122.161
of this chapter) if merchandise (other
than narcotics or marihuana—see
§162.65 of this chapter) is found on
board of or after having been unladen
from an aircraft—if the merchandise is
not included or described in the mani-
fest or does not agree with the mani-
fest (an "overage").

(3)(ii) Unmanifested merchandise be-
longing to or consigned to the master
or crew of the vessel, the commander
or crew of the aircraft, or to the owner
or person in charge of the vehicle, also
shall be subject to forfeiture.

The appropriate of these penalties may
be assessed against the master or crew
of the vessel, the commander or crew of
the aircraft, the person in charge of
the vehicle, the owner of the vessel, air-
craft, or vehicle, or any person directly
or indirectly responsible for the dis-
crepancy.

(c) Exception. There is no violation,
and consequently no penalty incurred
under paragraph (b), in the cir-
stances described in §§4.12(a)(5) and
122.162 of this chapter.

[T.D. 79–160, 44 FR 31958, June 4, 1979, as
amended by T.D. 86–59, 51 FR 8490, Mar. 12,
FR 43267, Aug. 10, 1999]

§ 162.73 Penalties under section 592,
Tariff Act of 1930, as amended.

(a) Maximum penalty without prior dis-
closure. If the person concerned has not
made a prior disclosure as provided in
§162.74, the monetary penalty under
section 592, Tariff Act of 1930, as
amended (19 U.S.C. 1592), shall not ex-
ceed:

(1) For fraudulent violations, the do-
monic value of the merchandise;

(2) For grossly negligent violations,
(i) The lesser of the domestic value of
the merchandise or four times the loss
of duties, taxes and fees or
(ii) If there is no loss of duties, taxes
and fees 40 percent of the dutiable
value of the merchandise; and

(3) For negligent violations,
(i) The lesser of the domestic value of
the merchandise or two times the loss
of duties, taxes and fees or
(ii) If there is no loss of duties, taxes
and fees 20 percent of the dutiable
value of the merchandise.

(b) Maximum penalty with prior dis-
closure. If the person concerned has made
a prior disclosure, the monetary pen-
alty shall not exceed:

(1) For fraudulent violations,
(1) One times the loss of duties, taxes
and fees or