procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor do these amendments meet the criteria for a ''significant regulatory action'' under E.O. 12866.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Vehicles.

Amendments to the Regulations

Part 12, Customs Regulations (19 CFR part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12, and the specific authority citation for § 12.74, continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.73 and 12.74 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;

* * * * *

2. Section 12.74 is revised to read as follows:

§ 12.74 Nonroad engine compliance with Federal antipollution emission requirements.

(a) *Applicability of EPA regulations.* The requirements governing the importation of nonroad engines subject to conformance with applicable emissions standards of the U.S. Environmental Protection Agency (EPA) are contained in EPA regulations, issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*). These EPA regulations should be consulted for detailed information as to the admission requirements for subject nonroad engines, as follows:

(1) For nonroad compression-ignition engines at or above 37 kilowatts, see 40 CFR part 89, subpart G;

(2) For nonroad spark-ignition engines at or below 19 kilowatts, see 40 CFR part 90, subpart G; and

(3) For marine spark-ignition engines, see 40 CFR part 91, subpart H.

(b) *Admission of nonconforming nonroad engines.* (1) *EPA declaration required.* EPA Form 3520–21, ''Importation of Nonroad Engines and Nonroad Engines Incorporated Into Nonroad Equipment or Vehicles, Subject to Federal Air Pollution Regulations'', must be completed by the importer and retained on file by him before making a customs entry for such nonroad engines/equipment/vehicles.

(2) *Retention and submission of records to Customs.* Documents supporting the information required in the EPA declaration must be retained by the importer for a period of at least 5 years in accordance with § 162.1c of this chapter and shall be provided to Customs upon request.

(c) *Release under bond.* (1) *Conditional admission.* If the EPA declaration states that the entry for a nonconforming nonroad engine is being filed under one of the exemptions described in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, under which the engine must be conditionally admitted under bond, the entry for such engine shall be accepted only if a bond is given on Customs Form 301 containing the conditions set forth in § 113.62 of this chapter for the presentation of an EPA statement that the engine has been brought into conformity with Federal emissions requirements.

(2) *Final admission.* Should final admission be sought and granted pursuant to EPA regulations for an engine conditionally admitted initially under one of the exemptions described in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, the importer or consignee shall deliver to the port director the prescribed statement. The statement shall be delivered within the period authorized by EPA for the specific exemption, or such additional period as the port director of Customs may allow for good cause shown. Otherwise, the importer or consignee shall deliver or cause to be delivered to the port director the subject engine, either for export or other disposition under applicable Customs laws and regulations (see paragraph (e) of this section). If such engine is not redelivered within 5 days following the allotted period, liquidated damages shall be assessed in the full amount of the bond, if a single entry bond, or if a continuous bond, the amount that would have been taken under a single entry bond (see 40 CFR 89.612–96(d), 90.613(c) & (d), 91.705(c) & (d)).

(3) *Exemptions.* The specific exemptions under which a nonconforming nonroad engine may be conditionally admitted, and for which a Customs bond is required, are as follows:

(i) Repairs or alterations (see 40 CFR 89.611–96(b)(1), 90.612(b)(1), 91.704(b)(1));

(ii) Testing (see 40 CFR 89.611–96(b)(2), 90.612(b)(2), 91.704(b)(2));

(iii) Precertification (see 40 CFR 89.611–96(b)(3), 89.906); and

(iv) Display (see 40 CFR 89.611–96(b)(4), 90.612(b)(3), 91.704(b)(3)).

(d) *Notice of inadmissibility or detention.* If an engine is found to be inadmissible either before or after release from Customs custody, the importer or consignee shall be notified in writing of the inadmissibility determination and/or redelivery requirement. However, an engine which cannot be released merely due to a failure to furnish with the entry any documentary information as required by EPA shall be held in detention by the port director for a period not to exceed 30 days after filing of the entry at the risk and expense of the importer pending submission of the missing information. An additional 30-day extension may be granted by the port director upon application for good cause shown. If at the expiration of a period not over 60 days the required documentation has not been filed, a notice of inadmissibility will be issued.

(e) *Disposal of engines not entitled to admission; prohibited importations.* A nonroad engine denied admission under EPA regulations shall be disposed of consistent with such EPA regulations and in accordance with applicable Customs laws and regulations. The importation of nonroad engines otherwise than as prescribed under EPA regulations is prohibited.

Douglas M. Browning,

Acting Commissioner of Customs.

Approved: May 6, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–14164 Filed 5–27–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 98–51]

RIN 1515–AC26

Automated Clearinghouse Credit

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

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations on an interim basis to provide for payments of funds to Customs by Automated Clearinghouse (ACH) credit. Under ACH credit, a payer

will be able to transmit daily statement, deferred tax, and bill payments electronically through a financial institution directly to a Customs account maintained by the Department of the Treasury. ACH credit allows the payer to exercise more control over the payment process, does not require the disclosure of bank account information to Customs, and expands the types of payments that may be made through ACH.

DATES: This interim rule is effective June 29, 1998. Comments must be received before July 27, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ben Robbin, Financial Systems Division, Financial Management Services Center, Office of Finance, U.S. Customs Service (317–298–1520, ext. 1428).

SUPPLEMENTARY INFORMATION:

Background

Part 206 of the Financial Management Service (FMS) Regulations (31 CFR Part 206) concerns, among other things, the management of Federal agency receipts and disbursements and applies to all Government departments and agencies within the Executive Branch. Section 206.4(a) of the FMS Regulations (31 CFR 206.4(a)) sets forth the general rule that all funds are to be collected and disbursed by electronic funds transfer (EFT) when cost-effective, practicable, and consistent with current statutory authority. Section 206.2 of the FMS Regulations (31 CFR 206.2) defines EFT as follows:

> *Electronic funds transfer (EFT)* means any transfer of funds, other than a transaction originated by cash, check or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, Fed Wire transfers, Automated Clearing House (ACH) transfers, transfers made at automatic teller machines (ATM) and Point-of-Sale (POS) terminals (to include use of the Government small purchase card), and other means of credit card transactions.

Section 24.25 of the Customs Regulations (19 CFR 24.25) concerns ''statement processing'' and ''automated clearinghouse (ACH)'' and thus, by virtue of the latter, in part implements the policy reflected in the FMS Regulations referred to above. Paragraph (a) of § 24.25 describes statement processing as a voluntary automated program which allows participants in the Automated Broker Interface (ABI) to group entry/entry summaries and entry summaries on a daily basis and to pay the related duties, taxes and fees with a single payment. Paragraph (a) of § 24.25 further provides that the preferred method for such single payment is by ACH, except where the importer of record has provided (normally, to a customs broker who files the entry on behalf of the importer) a separate check payable to Customs for the Customs charges.

The ACH payment process currently set forth in § 24.25 is a debit payment method (hereinafter referred to as ''ACH debit'') whereby ABI filers provide Customs with the bank routing and account number from which ACH payments are to be electronically debited by a Treasury-designated ACH processor bank upon receipt of an electronic message sent by Customs. However, following implementation of statement processing and ACH debit on January 1, 1990, Customs found that the ACH debit procedure did not achieve all of the intended results because some daily statement payers have remained reluctant to provide the U.S. Government with their bank account information and, therefore, such parties still make their daily statement payments by check. Moreover, the current ACH debit process is limited to daily statement payments and thus does not cover bill payments under § 24.3 of the Customs Regulations (19 CFR 24.3) and deferred tax payments under § 24.4 of the Customs Regulations (19 CFR 24.4), which are accepted primarily through check (through a Customs lockbox) and Fed Wire respectively, and for which Customs believes some payers would prefer to use the ACH environment.

The FMS and Riggs National Bank of Washington, D.C. have developed another ACH payment procedure for the Federal Government, referred to herein as ''ACH credit''. This process allows the Federal Government to receive ACH payments initiated directly by the private sector payer. This process benefits payers by allowing them to effect payment without having to disclose bank account information to the Government and by allowing them to maintain more control over the origination and timing of their payments. The ACH credit process benefits the Government in that transit routing and bank account authorization does not have to be obtained from the remitter and the Government does not have to do anything to effect an individual payment.

Customs has received authorization from the FMS to receive ACH credit payments, and appropriate modifications have been made to the Automated Commercial System (ACS) to accept the transfer of payment and remittance information from Riggs Bank and to apply those payments to the appropriate receivables. Since the ACH credit procedure represents a significant enhancement of the electronic entry and payment process and provides important benefits to both Customs and the trade community, Customs believes that it should be made available to the public, for use on a voluntary basis, at the earliest practicable date and that it should encompass not only daily statement payments but also bill payments and deferred tax payments.

The purpose of this document is to provide an appropriate regulatory context for the ACH credit procedure. The ACH credit procedure and the regulatory changes reflected in this document are discussed in more detail below.

How ACH Credit Works

Companies and other payers interested in enrolling in the ACH credit program must indicate such interest by providing the following information to Customs: Payer name and address; payer contact name(s); payer telephone number(s) and facsimile number; payer identification number (importer number, Social Security number, or Customs assigned number); and 3-digit filer code. This information should be sent to the Financial Management Services Center, U.S. Customs Service, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, by mail or facsimile transmission (317–298–1013). Pre-printed enrollment forms for this purpose, together with detailed information regarding the ACH credit program, are available from the Financial Management Services Center contact person identified earlier in this document.

The payer and its financial institution are responsible for determining the methodology used for originating the ACH credit payment (telephone or computer generated instructions, diskettes, etc.) and the methodology used for notifying the payer that its account has been charged. The financial institution that the payer uses must be capable of structuring ACH credit transactions according to the payment and addendum conventions prescribed by the National Automated

Clearinghouse Association, that is, the financial institution must use either the CCD+ or the CTX payment formats and must use the TXP data segment for the payment-related information within the addendum record for each daily statement or deferred tax or bill payment. Payments transmitted by ACH credit must be formatted as described in the format instructions provided by the Financial Management Services Center.

Following receipt of the enrollment information, the Financial Management Services Center provides the payer with specific ACH credit routing and format instructions and advises the payer that the following information must be provided to its financial institution when originating its payments: Company name; company contact person name and telephone number; company identification number (coded Internal Revenue Service employer identification number or DUNS number or Customs assigned number); company payment description; effective date; receiving company name (*i.e.* U.S. Customs); transaction code; Customs transit routing number and Customs account number (provided to the payer by Customs); payment amount; payer identifier (importer number or Social Security number or Customs assigned number or filer code if the payer is a broker who is the importer of record); document number (daily statement number, entry or warehouse withdrawal number for a deferred tax payment, or bill number); payment type code (which identifies the payment as a daily statement payment or deferred tax payment or bill payment); settlement date (no later than the payment due date); and document payment amount.

Before effecting any payments of funds through the ACH credit process, the payer is instructed by Customs to follow a trial run ''prenotification'' procedure, involving a non-funds message transmission through its financial institution to the Customs account, in order to validate the routing instructions. Once the routing instructions are validated, the Financial Management Services Center notifies the payer that the prenotification transaction has been accepted and that payments may be originated on or after the tenth calendar day following the prenotification acceptance date.

The payer obtains the source data (the document number and amount) for the ACH credit payment transaction from the daily statement or from the entry or warehouse withdrawal documentation in the case of a deferred tax or from the Customs bill. The payer, through its financial institution, originates payment information to the Customs account no later than one business day prior to the payment due date (daily statement payments are due no later than ten working days after release or withdrawal of the merchandise; deferred tax payments are due on the 14th day or 29th day of the month, with special rules if the due date falls on a weekend or Federal holiday; bills must be paid no later than the late payment date appearing on the bill). The next day (the settlement date), the payer's account is charged by its financial institution and the payment is credited by Customs and applied to the appropriate daily statement or entry or warehouse withdrawal or bill as of that settlement date.

If daily statement payments are involved, a statement filer who is not the importer of record (and thus will not be making or authorizing the payment) must still obtain the preliminary statement through ABI and must still present the preliminary statement and the corresponding entry summaries (when paper is required) to the Customs location, as provided in § 24.25(c). However, the process differs in the case of payments to be made by ACH credit in that such a filer will provide the payer with the statement number and the statement amount at least one business day prior to the due date.

The payer is responsible for following the routing and format instructions provided by the Financial Management Services Center, and for ensuring the accuracy of the information provided to its financial institution, when originating its payment. Erroneous information provided by the payer (for example, non-standard formatting, incorrect document number, payment amount different from the amount due) will delay the prompt posting of the payment to the receivable. If a payer repeatedly provides erroneous information when originating payments, the payer may be advised in writing to refrain from using ACH credit and to submit its payments by bank draft or check pursuant to § 24.1 or by the ACH debit payment method under § 24.25.

Regulatory Implementation

In view of the fact that ACH credit is a voluntary program intended to provide flexibility, efficiency and related benefits to the trade community and to Customs, it appears appropriate to implement the ACH program as an interim rule, subject to public comment procedures before adoption of a final rule. Moreover, since present § 24.25 concerns only statement processing and describes ACH debit procedures whereas ACH credit will also apply to deferred tax and bill payments, Customs believes that it is preferable (1) to deal with ACH credit in a separate new § 24.26 and (2) to make conforming changes to present § 24.25 to reflect the adoption of the new section, including, where appropriate, the addition of the word ''debit'' to clarify the meaning of the references to ACH in that section.

Comments

Before adopting this interim regulation as a final rule, 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 Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

Inapplicability of Prior Public Notice and Comment Procedures

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. The ACH credit process implemented by this regulation is an entirely voluntary payment procedure that provides benefits to the public in that it facilitates the electronic entry and payment process, addresses some concerns of the public regarding existing electronic payments procedures, and has the overall effect of reducing the regulatory burden on the public.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments,

approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0218.

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 these regulations is in § 24.26. This information is required in connection with an election to use the ACH credit procedure for making electronic payments of funds to Customs. The information will be used by the U.S. Customs Service to ensure that payments to Customs are properly transmitted, received, and credited. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting and/ or recordkeeping burden: 17 hours.

Estimated average annual burden per respondent/ recordkeeper: .083 hours.

Estimated number of respondents and/or recordkeepers: 200.

Estimated annual number of responses: 200.

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; (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; and (e) estimates of capital or start up costs and costs of operations, maintenance, and purchase of services to provide information. Comments should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Imports, Taxes.

Amendments to the Regulations

For the reasons set forth above, Part 24, Customs Regulations (19 CFR Part 24), is amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURES

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1450, 1624; 31 U.S.C. 9701.

* * * * *

§ 24.25 [Amended]

2. In § 24.25:

a. The third sentence of paragraph (a) is amended by adding after ''(ACH)'' the words ''debit or ACH credit'';

b. The sixth sentence of paragraph (a) is amended by adding the words ''debit (see paragraph (b)(2) of this section)'' after ''ACH'' the first time it appears and adding at the end of the sentence before the period the words ''; ACH credit is described in § 24.26'';

c. The heading of paragraph (b)(2) is amended by adding after ''Clearinghouse'' the word ''debit'';

d. The first sentence of paragraph (b)(2) is amended by adding after ''through ACH'' the word ''debit''; and

e. The first sentence of paragraph (c)(4) is amended by removing the words ''ACH payment authorization'' and adding, in their place, the words ''ACH debit payment authorization or ACH credit payment''.

3. Section 24.26 is added to read as follows:

§ 24.26 Automated Clearinghouse Credit.

(a) *Description.* Automated Clearinghouse (ACH) credit is an optional payment method that allows a payer to transmit statement processing payments (see § 24.25) or deferred tax payments (see § 24.4) or bill payments (see § 24.3) electronically, through its financial institution, directly to the Customs account maintained by the Department of the Treasury.

(b) *Enrollment procedure.* A payer interested in enrolling in the ACH credit program must indicate such interest by providing the following information to the Financial Management Services Center, U.S. Customs Service, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278: Payer name and address; payer contact name(s); payer telephone number(s) and facsimile number; payer identification number (importer number or Social Security number or Customs assigned number); and 3-digit filer code.

(c) *Routing and format instructions.* Following receipt of the enrollment information, the Financial Management Services Center will provide the payer with specific ACH credit routing and format instructions and will advise the payer that the following information must be provided to its financial institution when originating its payments: Company name; company contact person name and telephone number; company identification number (coded Internal Revenue Service employer identification number or DUNS number or Customs assigned number); company payment description; effective date; receiving company name; transaction code; Customs transit routing number and Customs account number; payment amount; payer identifier (importer number or Social Security number or Customs assigned number or filer code if the payer is a broker who is the importer of record); document number (daily statement number, entry or warehouse withdrawal number for a deferred tax payment, or bill number); payment type code; settlement date; and document payment amount.

(d) *Prenotification procedure.* Before effecting any payments of funds through the ACH credit process, the payer must follow a prenotification procedure, involving a non-funds message transmission through its financial institution to the Customs account, in order to validate the routing instructions. When the routing instructions are validated, the Financial Management Services Center will notify the payer that the prenotification transaction has been accepted and that payments may be originated on or after the tenth calendar day following the prenotification acceptance date.

(e) *Payment origination procedures.* (1) *General.* Once the payer has received authorization to begin originating ACH credit payments under paragraph (d) of this section, the payer, through its financial institution, must originate each payment transaction to the Customs account no later than one business day prior to the payment due date. The payer's account will be charged by the financial institution on the settlement date identified in the transaction. The payer is responsible for following the routing and format instructions provided by Customs and for ensuring the accuracy of the information when originating each payment. Improperly formatted or erroneous information provided by the payer will delay the prompt posting of the payment to the receivable.

(2) *Procedures for daily statement filers.* The procedures set forth in § 24.25(c) for ABI filers using statement processing remain applicable when payment is effected through ACH credit. However, when the ABI filer is a customs broker who is not the importer of record and thus is not responsible for the payment, the ABI filer must provide

the statement number and statement amount to the importer of record at least one business day prior to the due date so that the importer of record can originate the payment.

(f) *Date of collection.* The date that the ACH credit payment transaction is received by Customs shall be the collection date which equates to the settlement date. The appropriate daily statement or entry or warehouse withdrawal or bill shall be identified as paid as of that collection date.

(g) *Removal from the ACH credit program.* If a payer repeatedly provides improperly formatted or erroneous information when originating ACH credit payments, the Financial Management Services Center may advise the payer in writing to refrain from using ACH credit and to submit its payments by bank draft or check pursuant to § 24.1 or, in the case of daily statement payments, to use the ACH debit payment method under § 24.25.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: May 5, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–14166 Filed 5–27–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 162 and 178

[T.D. 98–49]

RIN 1515–AB98

Prior Disclosure

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

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations governing ''prior disclosure'', including implementation of the Customs modernization provisions 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 filing or attempted filing of a drawback claim, or an entry or introduction, or attempted entry or introduction of merchandise into the United States by fraud, gross negligence, or negligence. Pursuant to the ''prior disclosure'' provision of 19 U.S.C. 1592(c)(4) as amended by the Mod Act, and 19 U.S.C. 1593a(c)(3), if a person commits a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a and 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 shall be limited. ''Commencement of a formal investigation'' for purposes of 19 U.S.C. 1592 and 1593a is defined in these regulations. The document also amends the regulations to give Fines, Penalties and Forfeitures Officers discretion to defer Customs disclosure verification proceedings until the disclosing party has an opportunity to explain all the circumstances underlying the disclosed violation.

EFFECTIVE DATE: June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Pisani, Penalties Branch (202) 927–2344.

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), and section 622 of Title VI added new section 593a. On September 26, 1996, Customs published in the **Federal Register** (61 FR 50459) a notice of proposed rulemaking to amend the Customs Regulations governing prior disclosure as it relates to sections 592 and 593a. Pursuant to the ''prior disclosure'' provision of 19 U.S.C. 1592(c)(4) as amended by the Mod Act, and 19 U.S.C. 1593a(c)(3), if a person commits a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a and 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 shall be limited.

It is noted that it is the policy of the Customs Service to encourage the submission of prior disclosures.

The notice of proposed rulemaking invited public comments on the proposals, which would be considered before adoption of a final rule. The public comment period closed on November 25, 1996.

Analysis of Comments

A total of thirty-seven commenters responded to the solicitation of comments during the public comment period. Many commenters applauded Customs efforts to re-organize and simplify the regulations involving prior disclosure. Ten of the commenters set forth specific recommendations to change the proposed amendments on a ''section by section'' basis. Five of these ten commenters made general comments which were not directly related to a specific section of the proposal. The remaining twenty-seven commenters set forth the single recommendation to amend the proposal to include a regulatory prohibition that would specify that a valid prior disclosure precludes the assessment of a liquidated damage claim for the disclosed violation.

The specific ''section by section'' recommendations and/or suggestions, general recommendations and/or suggestions, and the Customs responses thereto, are set forth below.

Proposed § 162.74(a)

Comment: One commenter suggests that § 162.74(a)(2) be amended to preclude ''oral'' prior disclosures. If adopted, the commenter recommends deleting all other references to oral prior disclosures in the proposal. No reason is articulated for suggesting this change.

Customs Response: We can find no valid reason for precluding a party from making an oral prior disclosure. Of course, as with a party making a written prior disclosure, a party who elects to make an oral disclosure must meet the regulatory criteria governing ''disclosure of the circumstances of the violation'' before, or without knowledge of the commencement of a formal investigation of such violation, in order to obtain prior disclosure benefits.

Comment: One commenter suggests that Customs change proposed § 162.74(a)(2) to reflect that the ''appropriate Customs officer,'' rather than the Fines, Penalties and Forfeitures Officer, be the deciding official regarding whether the party had included substantially the information set forth in paragraph (b) of proposed § 162.74. The commenter is of the opinion that the decision-making authority should be vested in a Customs officer not connected to a potential penalty action. For similar reasons, another commenter suggests that the port director should be the deciding official instead of the Fines, Penalties and Forfeitures Officer.

Customs Response: We disagree. Inasmuch as the evaluation of information regarding the potential assessment of penalties under 19 U.S.C. 1592 or 19 U.S.C. 1593a is within the province of the Fines, Penalties and Forfeitures Officer, we are of the opinion that the Fines, Penalties and