after the date of enactment of this section [Aug. 6, 2002], the Secretary of State shall determine whether the application of section 583 of the Tariff Act of 1930 [this section] to foreign mail transiting the United States that is imported or exported by the United States Postal Service is being handled in a manner consistent with international law and any international obligation of the United States. Section 583 of such Act shall not apply to such foreign mail unless the Secretary certifies to Congress that the application of such section 583 is consistent with international law and any international obligation of the United States.''

§ 1584. Falsity or lack of manifest; penalties

(a) General rule

(1) Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer (whether of the Customs Service or the Coast Guard) demanding the same shall be liable to a penalty of $1,000, and if any merchandise, including sea stores, is found on board of or after having been unladen from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be liable to a penalty equal to the lesser of $10,000 or the domestic value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or to the owner or person in charge of such vehicle, shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be subject to a penalty of $1,000: *Provided*, That if the Customs Service shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. For purposes of this subsection, the term ''clerical error'' means a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission (electronically or otherwise) of the manifest.

(2) If any of such merchandise so found consists of heroin, morphine, cocaine, isonipecaine, or opiate, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for heroin, morphine, cocaine, isonipecaine, or opiate being in such merchandise shall be liable to a penalty of $1,000 for each ounce thereof so found. If any of such merchandise so found consists of smoking opium, opium prepared for smoking, or marihuana, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for smoking opium, opium prepared for smoking, or marihuana being in such merchandise shall be liable to a penalty of $500 for each ounce thereof so found. If any of such merchandise so found consists of crude opium, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for crude opium being in such merchandise shall be liable to a penalty of $200 for each ounce thereof so found. Such penalties shall, notwithstanding the proviso in section 1594 of this title (relating to the immunity of vessels or vehicles used as common carriers), constitute a lien upon such vessel which may be enforced by a libel in rem; except that the master or owner of a vessel used by any person as a common carrier in the transaction of business as such common carrier shall not be liable to such penalties and the vessel shall not be held subject to the lien, if it appears to the satisfaction of the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such narcotic drugs were on board. Clearance of any such vessel may be withheld until such penalties are paid or until a bond, satisfactory to the Customs Service, is given for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law. As used in this paragraph, the terms ''opiate'' and ''marihuana'' shall have the same meaning given those terms by sections 802(18) and 802(16), respectively, of title 21.

(3) If any of such merchandise (sea stores excepted), the importation of which into the United States is prohibited, be so found upon any vessel not exceeding five hundred net tons, the vessel shall, in addition to any other penalties herein or by law provided, be seized and forfeited.

(b) Procedures

(1) If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a)(1) of this section and determines that further proceedings are warranted, the Customs Service shall issue or electronically transmit to the person concerned a notice of intent to issue or electronically transmit a claim for a monetary penalty. Such notice shall—

(A) describe the merchandise;

(B) set forth the details of the error in the manifest;

(C) specify all laws and regulations allegedly violated;

(D) disclose all the material facts which establish the alleged violation;

(E) state the estimated loss of lawful duties, if any, and, taking into account all of the circumstances, the amount of the proposed monetary penalty; and

(F) inform such person that he will have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

No notice is required under this subsection for any violation of subsection (a)(1) of this section for which the proposed penalty is $1,000 or less.

(2) After considering representations, if any, made by the person concerned pursuant to the

notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a)(1) of this section, as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, the Customs Service shall promptly issue or electronically transmit a statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, the Customs Service shall issue or electronically transmit a penalty claim to such person. The penalty claim shall specify all changes in the information provided under subparagraphs (A) through (E) of paragraph (1).

(June 17, 1930, ch. 497, title IV, § 584, 46 Stat. 748; Aug. 5, 1935, ch. 438, title II, § 204, 49 Stat. 523; July 1, 1944, ch. 377, § 10, 58 Stat. 722; Mar. 8, 1946, ch. 81, § 9, 60 Stat. 39; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 91–513, title III, § 1102(m), Oct. 27, 1970, 84 Stat. 1293; Pub. L. 95–410, title I, § 109, Oct. 3, 1978, 92 Stat. 892; Pub. L. 99–570, title III, § 3118, Oct. 27, 1986, 100 Stat. 3207–84; Pub. L. 103–182, title VI, § 619, Dec. 8, 1993, 107 Stat. 2180; Pub. L. 106–36, title I, § 1001(b)(7), June 25, 1999, 113 Stat. 132.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 584, 42 Stat. 980. Section 584 of the 1922 act was superseded by section 584 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions dealing with the subject matter of this section were contained in R.S. § 2809, imposing a penalty and providing for forfeiture for bringing in merchandise not included in the manifest, or without a manifest; section 2810, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 246, making an exception in case of mistake or accident, etc.; section 2814, imposing penalties for failing to produce, or deliver copies of the manifests, etc.; section 2815, requiring officers to report violations; section 2887, imposing a penalty if any package reported was not found, or if the merchandise did not agree with the report or manifest, etc. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1999—Subsec. (a)(2). Pub. L. 106–36, § 1001(b)(7)(A), in last sentence, substituted ''802(18) and 802(16), respectively, of title 21'' for ''802(17) and 802(15), respectively, of title 21''.

Subsec. (a)(3). Pub. L. 106–36, § 1001(b)(7)(B), struck out ''or which consists of any spirits, wines, or other alcoholic liquors for the importation of which into the United States a certificate is required under section 1707 of this title and the required certificate be not shown,'' after ''United States is prohibited,'' and substituted period at end for '', and, if any manifested merchandise (sea stores excepted) consisting of any such spirits, wines, or other alcoholic liquors be found upon any such vessel and the required certificate be not shown, the master of the vessel shall be liable to the penalty herein provided in the case of merchandise not duly manifested: *Provided*, That if the Customs Service shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred.''

1993—Subsec. (a)(1). Pub. L. 103–182, § 619(1), substituted ''officer (whether of the Customs Service or the Coast Guard) demanding the same'' for ''officer demanding the same'' and ''Customs Service shall be satisfied'' for ''appropriate customs officer shall be satisfied'' and inserted ''(electronically or otherwise)'' after ''submission'' in last sentence.

Subsec. (a)(2), (3). Pub. L. 103–182, § 619(1)(A), substituted ''Customs Service'' for ''appropriate customs officer'' wherever appearing.

Subsec. (b)(1). Pub. L. 103–182, § 619(2), substituted ''If the Customs Service'' for ''If the appropriate customs officer'' and ''the Customs Service shall issue or electronically transmit to the person concerned a notice of intent to issue or electronically transmit a claim'' for ''he shall issue to the person concerned a written notice of his intention to issue a claim''.

Subsec. (b)(2). Pub. L. 103–182, § 619(2)(A)–(C), substituted ''the Customs Service shall determine'' for ''the appropriate customs officer shall determine'', ''the Customs Service determines that there was no violation, the Customs Service shall promptly issue or electronically transmit a statement'' for ''such officer determines that there was no violation, he shall promptly issue a written statement'', ''the Customs Service determines that there was a violation, the Customs Service shall issue or electronically transmit a penalty claim'' for ''such officer determines that there was a violation, he shall issue a written penalty claim'' and ''The penalty claim shall specify'' for ''The written penalty claim shall specify''.

1986—Subsec. (a)(1). Pub. L. 99–570, § 3118(1), substituted ''$1,000'' for ''$500'' in two places.

Subsec. (a)(2). Pub. L. 99–570, § 3118(2)–(4), substituted ''$1,000'' for ''$50'', ''$500'' for ''$25'', and ''$200'' for ''$10''.

Subsec. (b)(1). Pub. L. 99–570, § 3118(1), substituted ''$1,000'' for ''$500''.

1978—Subsec. (a)(1). Pub. L. 95–410, § 109(1)(A), (2)–(4), inserted introductory heading ''(a) GENERAL RULE.—'', designated unnumbered first par. as par. (1), substituted for merchandise found or unladen but not included or described in the manifest a penalty the lesser of $10,000 or the domestic value of the merchandise for prior penalty equal to the value of the merchandise so found or unladen, made the above penalty and penalty of $500 for describing merchandise in the manifest without being found aboard the vessel or vehicle applicable to any person directly or indirectly responsible for any discrepancy between the merchandise and the manifest, and defined the term ''clerical error''.

Subsec. (a)(2). Pub. L. 95–410, § 109(1)(B), (5)–(7), designated unnumbered second par. as par. (2) and made the penalties of $50, $25, and $10 applicable to any person directly or indirectly responsible, respectively, for: heroin, morphine, cocaine, isonipecaine, or opiate being in the merchandise; smoking opium, opium prepared for smoking, or marihuana being in the merchandise; and crude opium being in the merchandise.

Subsec. (a)(3). Pub. L. 95–410, § 109(1)(C), designated unnumbered third par. as par. (3).

Subsec. (b). Pub. L. 95–410, § 109(8), added subsec. (b).

1970—Pub. L. 91–271 substituted references to appropriate customs officer for references to collector wherever appearing.

Par. (2). Pub. L. 91–513 struck out ''isonipecaine'' from list of defined substances and substituted sections 802(17) and 802(15) of title 21 for sections 3228(e), 3228(f), and 3238(b) of title 26 as the sections where definitions referred to are to be found.

1946—Par. (2). Act Mar. 8, 1946, struck out ''or'' before ''isonipecaine'' and inserted ''or opiate'', after ''isonipecaine'' in first sentence, inserted ''opiate'' after ''isonipecaine'' and inserted ''3228(f)'' in last sentence.

1944—Par. (2). Act July 1, 1944, struck out ''or'' before ''cocaine,'' and inserted ''or isonipecaine'' after ''cocaine'' in first sentence, struck ''or'' before ''or opium prepared'' and inserted a comma in lieu thereof, inserted ''or Marihuana'' after ''prepared for smoking'' in second sentence, and inserted last sentence.

1935—Act Aug. 5, 1935, amended second par. and inserted last par.

EFFECTIVE DATE OF 1970 AMENDMENTS

Amendment by Pub. L. 91–513 effective on first day of the seventh calendar month that begins after Oct. 26,

1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

TRANSFER OF FUNCTIONS

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

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

STANDARDS OF CARE IN DISCOVERING CONTRABAND

Pub. L. 100–690, title VII, § 7369, Nov. 18, 1988, 102 Stat. 4481, directed Secretary of the Treasury, no later than 120 days after Nov. 18, 1988, and after an opportunity for public comment, to prescribe regulations which set forth criteria for use by the owner, master, pilot, operator, or officer of, or other employee in charge of, any common carrier in meeting the standards under sections 1584(a)(2) and 1594(c) of this title for the exercise of the highest degree of care and diligence to know whether controlled substances imported into the United States are on board the common carrier and, within 6 months after Nov. 18, 1988, to issue controlled substances regulations for a 2-year demonstration program to establish procedures for air carrier development and Customs Service approval of foreign and domestic security and inspection practices by permitting air carriers to request the Secretary of the Treasury to permit air carriers, the Customs Service, or an approved agent of the Customs Service to inspect at United States airports of entry, and aircraft arriving from foreign locations.

§ 1585. Repealed. Pub. L. 103–182, title VI, § 690(b)(10), Dec. 8, 1993, 107 Stat. 2223

Section, acts June 17, 1930, ch. 497, title IV, § 585, 46 Stat. 749; Aug. 5, 1935, ch. 438, title III, § 303, 49 Stat. 527; Oct. 27, 1986, Pub. L. 99–570, title III, § 3113(b), 100 Stat. 3207–82, set forth penalties assessed when vessel or vehicle from foreign port or place departed or unloaded merchandise before making report or entry.

§ 1586. Unlawful unlading or transshipment

(a) Penalty for unlading prior to grant of permission

The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within the customs waters and before such vessel has come to the proper place for the discharge of such merchandise, and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less than $10,000, and such vessel and its cargo and the merchandise so unladen shall be seized and forfeited.

(b) Penalty for transshipment to any vessel for purpose of unlawful entry

The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen from his vessel at any place upon the high seas adjacent to the customs waters of the United States to be transshipped to or placed in or received on any vessel of any description, with knowledge, or under circumstances indicating the purpose to render it possible, that such merchandise, or any part thereof, may be introduced, or attempted to be introduced, into the United States in violation of law, shall be liable to a penalty equal to twice the value of the merchandise but not less than $10,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

(c) Penalty for unlawful transshipment to any vessel of United States

The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores) destined to the United States, the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen, without permit to unlade, at any place upon the high seas adjacent to the customs waters of the United States, to be transshipped to or placed in or received on any vessel of the United States or any other vessel which is owned by any person a citizen of, or domiciled in, the United States, or any corporation incorporated in the United States, shall be liable to a penalty equal to twice the value of the merchandise but not less than $10,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

(d) Liability of master of receiving vessel in unlawful transshipment

If any merchandise (including sea stores) unladen in violation of the provisions of this section is transshipped to or placed in or received on any other vessel, the master of the vessel on which such merchandise is placed, and any person aiding or assisting therein, shall be liable to a penalty equal to twice the value of the merchandise, but not less than $10,000, and such vessel, and its cargo and such merchandise, shall be seized and forfeited.