covery of any monetary penalty claimed under this section—

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

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

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

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

AMENDMENTS

2004—Subsec. (h). Pub. L. 108–429 substituted ''subsections (c) and (g)'' for ''subsection (g)''.

EFFECTIVE DATE OF 2004 AMENDMENT

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

EFFECTIVE DATE

Section 622(b) of Pub. L. 103–182 provided that: ''The amendment made by subsection (a) [enacting this section] applies to drawback claims filed on and after the nationwide operational implementation of an automated drawback selectivity program by the Customs Service. The Customs Service shall publish notice of this date in the Customs Bulletin.''

TRANSFER OF FUNCTIONS

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

§ 1594. Seizure of conveyances

(a) In general

Whenever—

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

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

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

(b) Exceptions

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

(A) on the person;

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

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

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

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

(c) Prohibited merchandise on conveyance

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

(1) on board a conveyance used as a common carrier in the transaction of business as a common carrier in one or more packages or containers—

(A) that are not manifested (or not shown on bills of lading or airway bills); or

(B) whose marks, numbers, weight or quantities disagree with the manifest (or with the bills of lading or airway bills); or

(2) concealed in or on such a conveyance, but not in the cargo;

the conveyance may be seized, and after investigation, forfeited unless it is established that neither the owner or operator, master, pilot, nor any other employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence could have known, that such merchandise was on board.

(d) Definitions

For purposes of this section—

(1) The term ''owner or operator'' includes—

(A) a lessee or person operating a conveyance under a rental agreement or charter party; and

(B) the officers and directors of a corporation;

(C) station managers and similar supervisory ground personnel employed by airlines;

(D) one or more partners of a partnership;

(E) representatives of the owner or operator in charge of the passenger or cargo operations at a particular location; and

(F) and other persons with similar responsibilities.

(2) The term ''master'' and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported in the conveyance.

(e) Costs and expenses of seizure

When a common carrier has been seized in accordance with the provisions of subsection (c) of this section and it is subsequently determined that a violation of such subsection occurred but that the vessel will be released, the conveyance is liable for the costs and expenses of the seizure and detention.

(June 17, 1930, ch. 497, title IV, § 594, 46 Stat. 751; Pub. L. 99–570, title III, § 3121, Oct. 27, 1986, 100 Stat. 3207–86; Pub. L. 100–690, title VI, § 6076(b), Nov. 18, 1988, 102 Stat. 4324.)

PRIOR PROVISIONS

Provisions substantially similar to subsec. (a) of this section, so far as it relates to vessels, except that they referred to the ''revenue laws,'' instead of the ''customs laws,'' were contained in R.S. § 3088. Provisions substantially similar to subsec. (b), so far as it relates to vessels, were contained in act Feb. 8, 1881, ch. 34, 21 Stat. 322. Provisions similar to subsec. (b), except that they applied to railway cars, engines, other vehicles, and teams, and referred to the owner, superintendent, or agent of the owner in charge, instead of the ''conductor, driver,'' etc., were contained in R.S. § 3063. All of these sections were superseded and more closely assimilated to this section by act Sept. 21, 1922, ch. 356, title IV, § 594, 42 Stat. 982, and repealed by sections 642 and 643 thereof. Section 594 of the 1922 act was superseded by section 594 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–690 designated existing provisions as par. (1), redesignated former pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, and added par. (2).

1986—Pub. L. 99–570 amended section generally. Prior to amendment, section catchline read ''Libel of vessels and vehicles'' and text read as follows: ''Whenever a vessel or vehicle, or the owner or master, conductor, driver, or other person in charge thereof, has become subject to a penalty for violation of the customs-revenue laws of the United States, such vessel or vehicle shall be held for the payment of such penalty and may be seized and proceeded against summarily by libel to recover the same: *Provided*, That no vessel or vehicle used by any person as a common carrier in the transaction of business as such common carrier shall be so held or subject to seizure or forfeiture under the customs laws, unless it shall appear that the owner or master of such vessel or the conductor, driver, or other person in charge of such vehicle was at the time of the alleged illegal act a consenting party or privy thereto.''

§ 1595. Searches and seizures

(a) Warrant

(1) If any officer or person authorized to make searches and seizures has probable cause to believe that—

(A) any merchandise upon which the duties have not been paid, or which has been otherwise brought into the United States unlawfully;

(B) any property which is subject to forfeiture under any provision of law enforced or administered by the United States Customs Service; or

(C) any document, container, wrapping, or other article which is evidence of a violation of section 1592 of this title involving fraud or of any other law enforced or administered by the United States Customs Service,

is in any dwelling house, store, or other building or place, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any Federal magistrate judge, and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other place at night or by day, and to search for and seize such merchandise or other article described in the warrant.

(2) If any house, store, or other building or place, in which any merchandise or other article subject to forfeiture is found, is upon or within 10 feet of the boundary line between the United States and a foreign country, such portion thereof that is within the United States may be taken down or removed.

(b) Entry upon property of others

Any person authorized by this chapter to make searches and seizures, or any person assisting him or acting under his directions, may, if deemed necessary by him or them, enter into or upon or pass through the lands, inclosures, and buildings, other than the dwelling house, of any person whomsoever, in the discharge of his official duties.

(June 17, 1930, ch. 497, title IV, § 595, 46 Stat. 752; Pub. L. 91–271, title III, § 301(y), June 2, 1970, 84 Stat. 290; Pub. L. 99–570, title III, § 3122, Oct. 27, 1986, 100 Stat. 3207–87; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 595, 42 Stat. 983. That section was superseded by section 595 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in subsec. (a), but authorizing searches in the daytime only, with a further provision as to forfeitures, were contained in R.S. § 3066, as amended by act Apr. 25, 1882, ch. 89, 22 Stat. 49. Provisions for searches of buildings on or near the boundary line, and for seizure and forfeiture of merchandise, and removal of the building, were contained in R.S. § 3107. Provisions empowering persons, authorized to make searches and seizures, to enter into or upon lands, inclosures, and buildings, were contained in R.S. § 3065. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

R.S. § 3091, authorized the issuance of a warrant, upon complaint and affidavit of fraud on the revenue, directing the marshal of the district to enter any place and seize books or papers relating to merchandise in respect to which the alleged fraud was committed, and produce them before the judge.

R.S. § 3092, provided that no warrant for such seizure should be issued unless the complaint should set forth the character of the fraud alleged, its nature, the importations in respect to which it was committed, and the papers to be seized, and required the return of such warrant as other warrants are returned.

R.S. § 3093, provided that books and papers so seized should be subject to the order of the judge, who should allow the examination of the same by the collector or any officer authorized by him, and authorized the retention by the judge of such books and papers as he might deem necessary.

The provisions of act July 18, 1866, § 39, and of act Mar. 2, 1867, § 2, which were incorporated into these three sections, were repealed by the Anti-Moiety Act of June 22, 1874, ch. 391, § 1, 18 Stat. 186. These sections were repealed, therefore, by that act, it having effect as subsequent to the Revised Statutes, and as repealing any portion of the revision inconsistent therewith, by virtue of R.S. § 5601.