Stat. 290; Pub. L. 103–182, title VI, § 666, Dec. 8, 1993, 107 Stat. 2215.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 565, 42 Stat. 979. That section was superseded by section 565 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Act June 22, 1874, ch. 391, § 25, 18 Stat. 191, required cartage of merchandise in the custody of the government to be let to the lowest responsible bidder, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

AMENDMENTS

1993—Pub. L. 103–182 amended first sentence generally. Prior to amendment, first sentence read as follows: ''The cartage of merchandise entered for warehouse shall be done by cartmen to be appointed and licensed by the appropriate customs officer and who shall give a bond in a penal sum to be fixed by such customs officer, for the protection of the Government against any loss of, or damage to, such merchandise while being so carted.''

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

EFFECTIVE DATE OF 1970 AMENDMENT

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.

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.

PART V—ENFORCEMENT PROVISIONS

§ 1581. Boarding vessels

(a) Customs officers

Any officer of the customs may at any time go on board of any vessel or vehicle at any place in the United States or within the customs waters or, as he may be authorized, within a customs-enforcement area established under the Anti-Smuggling Act [19 U.S.C. 1701 et seq.], or at any other authorized place, without as well as within his district, and examine the manifest and other documents and papers and examine, inspect, and search the vessel or vehicle and every part thereof and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel or vehicle, and use all necessary force to compel compliance.

(b) Officers of Department of the Treasury

Officers of the Department of the Treasury and other persons authorized by such department may go on board of any vessel at any place in the United States or within the customs waters and hail, stop, and board such vessel in the enforcement of the navigation laws and arrest or, in case of escape or attempted escape, pursue and arrest any person engaged in the breach or violation of the navigation laws.

(c) Penalty for presenting forged, altered, or false documents

Any master of a vessel being examined as herein provided, who presents any forged, altered, or false document or paper to the examining officer, knowing the same to be forged, altered, or false and without revealing the fact shall, in addition to any forfeiture to which in consequence the vessel may be subject, be liable to a fine of not more than $5,000 nor less than $500.

(d) Penalty for failure to stop at command

Any vessel or vehicle which, at any authorized place, is directed to come to a stop by any officer of the customs, or is directed to come to a stop by signal made by any vessel employed in the service of the customs and displaying proper insignia, shall come to a stop, and upon failure to comply a vessel or vehicle so directed to come to a stop shall become subject to pursuit and the master, owner, operator, or person in charge thereof shall be liable to a penalty of not more than $5,000 nor less than $1,000.

(e) Seizure of vessel or merchandise

If upon the examination of any vessel or vehicle it shall appear that a breach of the laws of the United States is being or has been committed so as to render such vessel or vehicle, or the merchandise, or any part thereof, on board of, or brought into the United States by, such vessel or vehicle, liable to forfeiture or to secure any fine or penalty, the same shall be seized and any person who has engaged in such breach shall be arrested.

(f) Duty of customs officers to seize vessel

It shall be the duty of the several officers of the customs to seize and secure any vessel, vehicle, or merchandise which shall become liable to seizure, and to arrest any person who shall become liable to arrest, by virtue of any law respecting the revenue, as well without as within their respective districts, and to use all necessary force to seize or arrest the same.

(g) Vessels deemed employed within United States

Any vessel, within or without the customs waters, from which any merchandise is being, or has been, unlawfully introduced into the United States by means of any boat belonging to, or owned, controlled, or managed in common with, said vessel, shall be deemed to be employed within the United States and, as such, subject to the provisions of this section.

(h) Application of section to treaties of United States

The provisions of this section shall not be construed to authorize or require any officer of the United States to enforce any law of the United States upon the high seas upon a foreign vessel in contravention of any treaty with a foreign government enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon said vessel upon the high seas the laws of the United States except as such authorities are or may otherwise be enabled or permitted under special arrangement with such foreign government.

(June 17, 1930, ch. 497, title IV, § 581, 46 Stat. 747; Aug. 5, 1935, ch. 438, title II, § 203, 49 Stat. 521; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Sept. 1, 1954, ch. 1213, title V, § 504, 68 Stat. 1141.)

REFERENCES IN TEXT

The Anti-Smuggling Act, referred to in subsec. (a), is act Aug. 5, 1935, ch. 438, 49 Stat. 517, which is classified principally to chapter 5 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1711 of this title and Tables.

For definition of officer of the customs used in text, see section 1401 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 581, 42 Stat. 979. That section was superseded by section 581 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. § 3059, conferring powers similar in most respects to those conferred by this section, so far as it relates to vessels, on any officer of the customs, including inspectors and occasional inspectors, or of a revenue cutter, or authorized agent of the Treasury Department, or other persons specially appointed in writing; section 3060, requiring appointments under the preceding section to be filed in the custom house; section 3067, authorizing collectors, etc., and officers of revenue cutters to go on board vessels in port or within four leagues of the coast, for the purpose of demanding manifests, and examining and searching vessels; and section 3069, relative to noting and sealing, if necessary, packages found separate from the residue of the cargo. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1954—Subsec. (d). Act Sept. 1, 1954, provided a penalty against the owner, operator or person in charge, as well as the master, of a vessel failing to come to a required stop and struck out provisions relating to the duty of the customs officers to pursue such vessels.

1935—Act Aug. 5, 1935, amended section generally among which changes it subdivided the section into subsecs. (a) to (h), inclusive.

TRANSFER OF FUNCTIONS

Word ''Treasury'' was substituted for ''Commerce'' in subsec. (b) upon authority of Reorg. Plan No. 3 of 1946. See note set out under section 1613 of this title.

§ 1582. Search of persons and baggage; regulations

The Secretary of the Treasury may prescribe regulations for the search of persons and baggage and he is authorized to employ female inspectors for the examination and search of persons of their own sex; and all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the Government under such regulations.

(June 17, 1930, ch. 497, title IV, § 582, 46 Stat. 748.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. § 3064, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 582, 42 Stat. 979, and was repealed by section 642 thereof. Section 582 of the 1922 act was superseded by section 582 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1583. Examination of outbound mail

(a) Examination

(1) In general

For purposes of ensuring compliance with the Customs laws of the United States and other laws enforced by the Customs Service, including the provisions of law described in paragraph (2), a Customs officer may, subject to the provisions of this section, stop and search at the border, without a search warrant, mail of domestic origin transmitted for export by the United States Postal Service and foreign mail transiting the United States that is being imported or exported by the United States Postal Service.

(2) Provisions of law described

The provisions of law described in this paragraph are the following:

(A) Section 5316 of title 31 (relating to reports on exporting and importing monetary instruments).

(B) Sections 1461, 1463, 1465, and 1466, and chapter 110 of title 18 (relating to obscenity and child pornography).

(C) Section 953 of title 21 (relating to exportation of controlled substances).

(D) The Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.).

(E) Section 2778 of title 22.

(F) The International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(b) Search of mail not sealed against inspection and other mail

Mail not sealed against inspection under the postal laws and regulations of the United States, mail which bears a Customs declaration, and mail with respect to which the sender or addressee has consented in writing to search, may be searched by a Customs officer.

(c) Search of mail sealed against inspection weighing in excess of 16 ounces

(1) In general

Mail weighing in excess of 16 ounces sealed against inspection under the postal laws and regulations of the United States may be searched by a Customs officer, subject to paragraph (2), if there is reasonable cause to suspect that such mail contains one or more of the following:

(A) Monetary instruments, as defined in section 1956 of title 18.

(B) A weapon of mass destruction, as defined in section 2332a(b)[1] of title 18.

(C) A drug or other substance listed in schedule I, II, III, or IV in section 812 of title 21.

(D) National defense and related information transmitted in violation of any of sections 793 through 798 of title 18.

(E) Merchandise mailed in violation of section 1715 or 1716 of title 18.

(F) Merchandise mailed in violation of any provision of chapter 71 (relating to obscenity) or chapter 110 (relating to sexual exploitation and other abuse of children) of title 18.

[1] See References in Text note below.

(G) Merchandise mailed in violation of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.).

(H) Merchandise mailed in violation of section 2778 of title 22.

(I) Merchandise mailed in violation of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(J) Merchandise mailed in violation of the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.).

(K) Merchandise subject to any other law enforced by the Customs Service.

(2) Limitation

No person acting under the authority of paragraph (1) shall read, or authorize any other person to read, any correspondence contained in mail sealed against inspection unless prior to so reading—

(A) a search warrant has been issued pursuant to rule 41 of the Federal Rules of Criminal Procedure; or

(B) the sender or addressee has given written authorization for such reading.

(d) Search of mail sealed against inspection weighing 16 ounces or less

Notwithstanding any other provision of this section, subsection (a)(1) of this section shall not apply to mail weighing 16 ounces or less sealed against inspection under the postal laws and regulations of the United States.

(June 17, 1930, ch. 497, title IV, § 583, as added Pub. L. 107–210, div. A, title III, § 344(a), Aug. 6, 2002, 116 Stat. 986; amended Pub. L. 108–429, title II, § 2004(a)(12), Dec. 3, 2004, 118 Stat. 2590.)

REFERENCES IN TEXT

The Customs laws of the United States, referred to in subsec. (a)(1), are classified generally to this title.

The Export Administration Act of 1979, referred to in subsecs. (a)(2)(D) and (c)(1)(G), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of Title 50, Appendix, and Tables.

The International Emergency Economic Powers Act, referred to in subsecs. (a)(2)(F) and (c)(1)(I), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, as amended, which is classified generally to chapter 35 (§ 1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

Section 2332a(b) of title 18, referred to in subsec. (c)(1)(B), does not define the term ''weapon of mass destruction''. However, that term is defined elsewhere in that section.

The Trading with the Enemy Act, referred to in subsec. (c)(1)(J), is act Oct. 6, 1917, ch. 106, 40 Stat. 411, as amended, which is classified to sections 1 to 6, 7 to 39 and 41 to 44 of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Tables.

Rule 41 of the Federal Rules of Criminal Procedure, referred to in subsec. (c)(2)(A), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

PRIOR PROVISIONS

A prior section 1583, acts June 17, 1930, ch. 497, title IV, § 583, 46 Stat. 748; Aug. 2, 1956, ch. 887, § 4(c), 70 Stat. 948, related to delivery and certification of manifest, prior to repeal by Pub. L. 103–182, title VI, § 690(b)(9), Dec. 8, 1993, 107 Stat. 2223.

AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108–429 realigned margins.

EFFECTIVE DATE

Pub. L. 107–210, div. A, title III, § 344(c), Aug. 6, 2002, 116 Stat. 987, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), this section [enacting this section and provisions set out as a note under this section] and the amendments made by this section shall take effect on the date of enactment of this Act [Aug. 6, 2002].

''(2) CERTIFICATION WITH RESPECT TO FOREIGN MAIL.—The provisions of section 583 of the Tariff Act of 1930 [this section] relating to foreign mail transiting the United States that is imported or exported by the United States Postal Service shall not take effect until the Secretary of State certifies to Congress, pursuant to subsection (b) [set out as a note below], that the application of such section 583 is consistent with international law and any international obligation of the United States.''

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.

CERTIFICATION BY SECRETARY

Pub. L. 107–210, div. A, title III, § 344(b), Aug. 6, 2002, 116 Stat. 987, provided that: ''Not later than 3 months 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.

(e) Imprisonment of persons aiding in unlawful unlading or transshipment

Whoever, at any place, if a citizen of the United States, or at any place in the United States or within customs waters, if a foreign national, shall engage or aid or assist in any unlading or transshipment of any merchandise in consequence of which any vessel becomes subject to forfeiture under the provisions of this section shall, in addition to any other penalties provided by law, be liable to imprisonment for not more than 15 years.

(f) Unlading or transshipment because of accident, stress of weather, etc.

Whenever any part of the cargo or stores of a vessel has been unladen or transshipped because of accident, stress of weather, or other necessity, the master of such vessel and the master of any vessel to which such cargo or stores has been transshipped shall, as soon as possible thereafter, notify the Customs Service at the district within which such unlading or transshipment has occurred, or the Customs Service at the district at which such vessel shall first arrive thereafter, and shall furnish proof that such unlading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if the Customs Service is satisfied that the unlading or transshipment was in fact due to accident, stress of weather, or other necessity, the penalties described in this section shall not be incurred.

(June 17, 1930, ch. 497, title IV, § 586, 46 Stat. 749; Aug. 5, 1935, ch. 438, title II, § 205, 49 Stat. 524; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 99–570, title III, § 3119, Oct. 27, 1986, 100 Stat. 3207–84; Pub. L. 103–182, title VI, § 620, Dec. 8, 1993, 107 Stat. 2180.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §§586, 587, 42 Stat. 980, 981. These sections were superseded by section 586 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 this section, but applicable only to vessels ''bound to the United States'' were contained in R.S. §2867, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

Provisions substantially the same in effect as those contained in the act of 1922, §587, except that the penalty was treble the value of the merchandise, and the provision for forfeiture applied only to the vessel was contained in R.S. §2868, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS

1993—Subsecs. (a) to (c). Pub. L. 103–182, §620(1), inserted '', or of a hovering vessel which has received or delivered merchandise while outside the territorial sea,'' after ''from a foreign port or place''.

Subsec. (f). Pub. L. 103–182, §620(2), substituted ''the Customs Service at the district'' for ''the appropriate customs officer of the district'' and ''the appropriate customs officer within the district'' and ''the Customs Service is satisfied'' for ''the appropriate customs officer is satisfied''.

1986—Subsecs. (a) to (d). Pub. L. 99–570, §3119(1), substituted ''$10,000'' for ''$1,000'' wherever appearing.

Subsec. (e). Pub. L. 99–570, §3119(2)(A), substituted ''customs waters'' for ''one league of the coast of the United States''.

Pub. L. 99–570, §3119(2)(B), which directed that ''15 years'' be substituted for ''2 years'' was executed by making the substitution for ''two years'' as the probable intent of Congress.

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

1935—Act Aug. 5, 1935, redesignated existing provisions as subsecs. (a) and (f) and added subsecs. (b) to (e).

EFFECTIVE DATE OF 1970 AMENDMENT

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.

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.

§ 1587. Examination of hovering vessels

(a) Boarding and examination

Any hovering vessel, or any vessel which fails (except for unavoidable cause), at any place within the customs waters or within a customs-enforcement area established under the Anti-Smuggling Act [19 U.S.C. 1701 et seq.], to display lights as required by law, or which has become subject to pursuit as provided in section 1581 of this title, or which, being a foreign vessel to which subsection (h) of section 1581 of this title applies, is permitted by special arrangement with a foreign government to be so examined without the customs waters of the United States, may at any time be boarded and examined by any officer of the customs, and the provisions of said section 1581 shall apply thereto, as well without as within his district, and in examining the same, any such officer may also examine the master upon oath respecting the cargo and voyage of the vessel, and may also bring the vessel into the most convenient port of the United States to examine the cargo, and if the master of said vessel refuses to comply with the lawful directions of such officer or does not truly answer such questions as are put to him respecting the vessel, its cargo, or voyage, he shall be liable to a penalty of not more than $5,000 nor less than $500. If, upon the examination of any such vessel or its cargo by any officer of the customs, any dutiable merchandise destined to the United States is found, or discovered to have been, on board thereof, the vessel and its cargo shall be seized and forfeited. It shall be presumed that any merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, so found, or discovered to have been, on board thereof, is destined to the United States.

(b) Unexplained lightness of vessel or discharge of cargo

If any vessel laden with cargo be found at any place in the United States or within the customs waters or within a customs-enforcement area established under the Anti-Smuggling Act [19 U.S.C. 1701 et seq.] and such vessel afterwards is found light or in ballast or having discharged its cargo or any part thereof, and the master is unable to give a due account of the port or place at which the cargo, or any part thereof, consisting of any merchandise the importation of which into the United States is prohibited or any spirits, wines, or other alcoholic liquors, was lawfully discharged, the vessel shall be seized and forfeited.

(c) Vessel bona fide bound from one foreign port to another foreign port

Nothing contained in this section shall be construed to render any vessel liable to forfeiture which is bona fide bound from one foreign port to another foreign port, and which is pursuing her course, wind and weather permitting.

(June 17, 1930, ch. 497, title IV, §587, 46 Stat. 749; Aug. 5, 1935, ch. 438, title II, §206, 49 Stat. 525.)

REFERENCES IN TEXT

The Anti-Smuggling Act, referred to in subsecs. (a) and (b), is act Aug. 5, 1935, ch. 438, 49 Stat. 517, as amended, which is classified principally to chapter 5 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1711 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §588, 42 Stat. 981. That section was superseded by section 588 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions substantially the same as those in this section, except that they applied only to ports on the northern, northeastern and northwestern frontiers, were contained in R.S. §3110, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS

1937—Act Aug. 5, 1935, amended section generally.

§ 1588. Transportation between American ports via foreign ports

If any merchandise is laden at any port or place in the United States upon any vessel belonging wholly or in part to a subject of a foreign country, and is taken thence to a foreign port or place to be reladen and reshipped to any other port in the United States, either by the same or by another vessel, foreign or American, with intent to evade the provisions relating to the transportation of merchandise from one port or place of the United States to another port or place of the United States in a vessel belonging wholly or in part to a subject of any foreign power, the merchandise shall, on its arrival at such last-named port or place, be seized and forfeited to the United States, and the vessel shall pay a tonnage duty of 50 cents per net ton.

(June 17, 1930, ch. 497, title IV, § 588, 46 Stat. 749.)

§ 1589. Repealed. Pub. L. 100–690, title VII, § 7367(c)(5), Nov. 18, 1988, 102 Stat. 4480

Section, act June 17, 1930, ch. 497, title IV, § 589, as added Oct. 12, 1984, Pub. L. 98–473, title II, § 320, 98 Stat. 2056, set forth arrest authority of customs officers.

CODIFICATION

Another section 589 of act June 17, 1930, was added by Pub. L. 98–573, title II, § 213(a)(17), Oct. 30, 1984, 98 Stat. 2988, and is classified to section 1589a of this title.

A prior section 589 of act June 17, 1930, ch. 497, title IV, 46 Stat. 750, related to unlawful relanding and was classified to this section, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See section 544 of Title 18, Crimes and Criminal Procedure.

§ 1589a. Enforcement authority of customs officers

Subject to the direction of the Secretary of the Treasury, an officer of the customs may—

(1) carry a firearm;

(2) execute and serve any order, warrant, subpena, summons, or other process issued under the authority of the United States;

(3) make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States committed outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and

(4) perform any other law enforcement duty that the Secretary of the Treasury may designate.

(June 17, 1930, ch. 497, title IV, § 589, as added Pub. L. 98–573, title II, § 213(a)(17), Oct. 30, 1984, 98 Stat. 2988.)

CODIFICATION

Another section 589 of act June 17, 1930, as added by Pub. L. 98–473, title II, § 320, Oct. 12, 1984, 98 Stat. 2056, was classified to section 1589 of this title, prior to repeal by Pub. L. 100–690.

PRIOR PROVISIONS

A prior section 589 of act June 17, 1930, ch. 497, title IV, 46 Stat. 750, related to unlawful relanding and was classified to this section, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See section 544 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE

Section effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

§ 1590. Aviation smuggling

(a) In general

It is unlawful for the pilot of any aircraft to transport, or for any individual on board any aircraft to possess, merchandise knowing, or intending, that the merchandise will be introduced into the United States contrary to law.

(b) Sea transfers

It is unlawful for any person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the United States if such person has not been authorized by the Secretary to make such transfer and—

(1) either—

(A) the aircraft is owned by a citizen of the United States or is registered in the United States, or

(B) the vessel is a vessel of the United States (within the meaning of section 1703(b) of this title), or

(2) regardless of the nationality of the vessel or aircraft, such transfer is made under circumstances indicating the intent to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully.

(c) Civil penalties

Any person who violates any provision of this section is liable for a civil penalty equal to twice the value of the merchandise involved in the violation, but not less than $10,000. The value of any controlled substance included in the merchandise shall be determined in accordance with section 1497(b) of this title.

(d) Criminal penalties

In addition to being liable for a civil penalty under subsection (c) of this section, any person who intentionally commits a violation of any provision of this section is, upon conviction—

(1) liable for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, if none of the merchandise involved was a controlled substance; or

(2) liable for a fine of not more than $250,000 or imprisonment for not more than 20 years, or both, if any of the merchandise involved was a controlled substance.

(e) Seizure and forfeiture

(1) Except as provided in paragraph (2), a vessel or aircraft used in connection with, or in aiding or facilitating, any violation of this section, whether or not any person is charged in connection with such violation, may be seized and forfeited in accordance with the customs laws.

(2) Paragraph (1) does not apply to a vessel or aircraft operated as a common carrier.

(f) "Merchandise" defined

As used in this section, the term ''merchandise'' means only merchandise the importation of which into the United States is prohibited or restricted.

(g) Intent of transfer of merchandise

For purposes of imposing civil penalties under this section, any of the following acts, when per-

formed within 250 miles of the territorial sea of the United States, shall be prima facie evidence that the transportation or possession of merchandise was unlawful and shall be presumed to constitute circumstances indicating that the purpose of the transfer is to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully, and for purposes of subsection (e) of this section or section 1595a of this title, shall be prima facie evidence that an aircraft or vessel was used in connection with, or to aid or facilitate, a violation of this section:

(1) The operation of an aircraft or a vessel without lights during such times as lights are required to be displayed under applicable law.

(2) The presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law.

(3) The failure to identify correctly—

(A) the vessel by name or country of registration, or

(B) the aircraft by registration number and country of registration,

when requested to do so by a customs officer or other government authority.

(4) The external display of false registration numbers, false country of registration, or, in the case of a vessel, false vessel name.

(5) The presence on board of unmanifested merchandise, the importation of which is prohibited or restricted.

(6) The presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under Single Convention on Narcotic Drugs or other international treaty.

(7) The presence of any compartment or equipment which is built or fitted out for smuggling.

(8) The failure of a vessel to stop when hailed by a customs officer or other government authority.

(June 17, 1930, ch. 497, title IV, § 590, as added Pub. L. 99–570, title III, § 3120, Oct. 27, 1986, 100 Stat. 3207–84.)

PRIOR PROVISIONS

A prior section 1590, act June 17, 1930, ch. 497, title IV, § 590, 46 Stat. 750, related to false drawback claims, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See section 550 of Title 18, Crimes and Criminal Procedure.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

§ 1591. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, acts June 17, 1930, ch. 497, title IV, § 591, 46 Stat. 750; Aug. 5, 1935, ch. 438, title III, § 304(a), 49 Stat. 527, related to fraud and personal penalties. See section 542 of Title 18, Crimes and Criminal Procedure.

§ 1592. Penalties for fraud, gross negligence, and negligence

(a) Prohibition

(1) General rule

Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty, tax, or fee thereby, no person, by fraud, gross negligence, or negligence—

(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—

(i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or

(ii) any omission which is material, or

(B) may aid or abet any other person to violate subparagraph (A).

(2) Exception

Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

(b) Procedures

(1) Pre-penalty notice

(A) In general

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

(i) describe the merchandise;

(ii) set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;

(iii) specify all laws and regulations allegedly violated;

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

(v) state whether the alleged violation occurred as a result of fraud, gross negligence, or negligence;

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

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) Exceptions

The preceding subparagraph shall not apply if—

(i) the importation with respect to which the violation of subsection (a) of this section occurs is noncommercial in nature, or

(ii) the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less.

(2) Penalty claim

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) of this section, as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, it shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, it shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vi) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 1618 of this title to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 1618, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(c) Maximum penalties

(1) Fraud

A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise.

(2) Gross negligence

A grossly negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) four times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 40 percent of the dutiable value of the merchandise.

(3) Negligence

A negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) two times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise.

(4) Prior disclosure

If the person concerned discloses the circumstances of a violation of subsection (a) of this section before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) of this section shall not exceed—

(A) if the violation resulted from fraud—

(i) an amount equal to 100 percent of the lawful duties, taxes, and fees of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount, or

(ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or

(B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of title 26) on the amount of lawful duties, taxes, and fees of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount.

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge. For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) of this section existed.

(5) Prior disclosure regarding NAFTA claims

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim for preferential tariff treatment under section 3332 of this title if the importer—

(A) has reason to believe that the NAFTA Certificate of Origin (as defined in section 1508(b)(1) of this title) on which the claim was based contains incorrect information; and

(B) in accordance with regulations issued by the Secretary, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(6) Prior disclosure regarding claims under the United States-Chile Free Trade Agreement

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good qualifies as an originating good under section 202 of the United States-Chile Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily makes a corrected declaration and pays any duties owing.

(7) Prior disclosure regarding claims under the United States-Singapore Free Trade Agreement

(A) An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good quali-

fies as an originating good under section 202 of the United States-Singapore Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(B) In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim that a good qualifies as an originating good.

(8) Prior disclosure regarding claims under the United States-Australia free trade agreement

(A) In general

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States-Australia Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(B) Time periods for making corrections

In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim.

(9) Prior disclosure regarding claims under the Dominican Republic-Central America-United States Free Trade Agreement

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good qualifies as an originating good under section 4033 of this title if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing.

(10) Prior disclosure regarding claims under the United States-Peru Trade Promotion Agreement

An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States-Peru Trade Promotion Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing with respect to that good.

(11) Seizure

If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) of this section and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c) of this section.

(d) Deprivation of lawful duties, taxes, or fees

Notwithstanding section 1514 of this title, if the United States has been deprived of lawful duties, taxes, or fees as a result of a violation of subsection (a) of this section, the Customs Service shall require that such lawful duties, taxes, and fees be restored, whether or not a monetary penalty is assessed.

(e) Court of International Trade proceedings

Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery 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;

(3) if the monetary penalty is based on gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and

(4) 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 proof that the act or omission did not occur as a result of negligence.

(f) False certifications regarding exports to NAFTA countries

(1) In general

Subject to paragraph (3), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a NAFTA Certificate of Origin (as defined in section 1508(b)(1) of this title) that a good to be exported to a NAFTA country (as defined in section 3301(4) of this title) qualifies under the rules of origin set out in section 3332 of this title.

(2) Applicable provisions

The procedures and penalties of this section that apply to a violation of subsection (a) of this section also apply to a violation of paragraph (1), except that—

(A) subsection (d) of this section does not apply, and

(B) subsection (c)(5) of this section applies only if the person voluntarily and promptly provides, to all persons to whom the person provided the NAFTA Certificate of Origin, written notice of the falsity of the Certificate.

(3) Exception

A person may not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a NAFTA Certificate of Origin but was later rendered incorrect due to a change in circumstances; and

(B) the person voluntarily and promptly provides written notice of the change to all persons to whom the person provided the Certificate of Origin.

(g) False certifications of origin under the United States-Chile Free Trade Agreement

(1) In general

Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a Chile FTA Certificate of Origin (as defined in section 1508(f)(1)(B) of this title[1] that a good exported from the United States qualifies as an originating good under the rules of origin set out in section 202 of the United States-Chile Free Trade Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) of this section also apply to a violation of this subsection.

(2) Immediate and voluntary disclosure of incorrect information

No penalty shall be imposed under this subsection if, immediately after an exporter or producer that issued a Chile FTA Certificate of Origin has reason to believe that such certificate contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certificate was issued.

(3) Exception

A person may not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a Chile FTA Certificate of Origin but was later rendered incorrect due to a change in circumstances; and

(B) the person immediately and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certificate.

(h) False certifications of origin under the Dominican Republic-Central America-United States Free Trade Agreement

(1) In general

Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a CAFTA–DR certification of origin (as defined in section 1508(g)(1)(B) of this title) that a good exported from the United States qualifies as an originating good under the rules of origin set out in section 4033 of this title. The procedures and penalties of this section that apply to a violation of subsection (a) of this section also apply to a violation of this subsection.

(2) Prompt and voluntary disclosure of incorrect information

No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a CAFTA–DR certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

(3) Exception

A person may not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a CAFTA–DR certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

(i) False certifications of origin under the United States-Peru Trade Promotion Agreement

(1) In general

Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a PTPA certification of origin (as defined in section 1508(h)(1)(B) of this title) that a good exported from the United States qualifies as an originating good under the rules of origin provided for in section 203 of the United States-Peru Trade Promotion Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of this subsection.

(2) Prompt and voluntary disclosure of incorrect information

No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a PTPA certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

(3) Exception

A person shall not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a PTPA certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

[1] So in original. Probably should be followed by a closing parenthesis.

(June 17, 1930, ch. 497, title IV, § 592, 46 Stat. 750; Aug. 5, 1935, ch. 438, title III, § 304(b), 49 Stat. 527; Pub. L. 95–410, title I, § 110(a), Oct. 3, 1978, 92 Stat. 893; Pub. L. 96–417, title VI, § 609, Oct. 10, 1980, 94 Stat. 1746; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–182, title II, § 205(c), title VI, § 621, Dec. 8, 1993, 107 Stat. 2095, 2180; Pub. L. 104–295, §§ 3(a)(4), (5), 21(e)(12), (13), Oct. 11, 1996, 110 Stat. 3515, 3531; Pub. L. 106–36, title I, § 1001(b)(8), June 25, 1999, 113 Stat. 132; Pub. L. 108–77, title II, § 205(a), Sept. 3, 2003, 117 Stat. 930; Pub. L. 108–78, title II, § 204, Sept. 3, 2003, 117 Stat. 961; Pub. L. 108–286, title II, § 205, Aug. 3, 2004, 118 Stat. 939; Pub. L. 109–53, title II, § 206(a), Aug. 2, 2005, 119 Stat. 484; Pub. L. 110–138, title II, § 205(a), Dec. 14, 2007, 121 Stat. 1475.)

Amendment of Section

For termination of amendment by section 107(c) of Pub. L. 110–138, see Effective and Termination Dates of 2007 Amendment note below.

For termination of amendment by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 106(c) of Pub. L. 108–286, see Effective and Termination Dates of 2004 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 108–78, see Effective and Termination Dates of 2003 Amendments note below.

For termination of amendment by section 107(c) of Pub. L. 108–77, see Effective and Termination Dates of 2003 Amendments note below.

References in Text

Section 202 of the United States-Chile Free Trade Agreement Implementation Act, referred to in subsecs. (c)(6) and (g)(1), is section 202 of Pub. L. 108–77, which is set out in a note under section 3805 of this title.

Section 202 of the United States-Singapore Free Trade Agreement Implementation Act, referred to in subsec. (c)(7)(A), is section 202 of Pub. L. 108–78, which is set out in a note under section 3805 of this title.

Section 203 of the United States-Australia Free Trade Agreement Implementation Act, referred to in subsec. (c)(8)(A), is section 203 of Pub. L. 108–286, which is set out in a note under section 3805 of this title.

Section 203 of the United States-Peru Trade Promotion Agreement Implementation Act, referred to in subsecs. (c)(10) and (i)(1), is section 203 of Pub. L. 110–138, which is set out in a note under section 3805 of this title.

Prior Provisions

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, § III, H, 38 Stat. 183, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 592, 42 Stat. 982, and was repealed by section 643 thereof. Section 592 of the 1922 act was superseded by section 592 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

The provisions of section III, H, of the 1913 act were substituted for provisions of the same nature made by the Customs Administrative Act of June 10, 1890, ch. 407, §§ 6, 9, 26 Stat. 134, 135, amended and reenacted by Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 95, 97.

Those provisions superseded similar provisions made by R.S. § 2864, as amended by act Feb. 18, 1875, ch. 80, 18 Stat. 319, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

R.S. § 2839 provided for forfeiture of merchandise entered, but not invoiced according to the actual cost at the place of exportation, with the design to evade payment of duty. It was repealed by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141, and provisions of a similar nature were made by section 9 of that act, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 97, and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, § III, H, 38 Stat. 183.

Act June 22, 1874, ch. 391, § 16, 18 Stat. 189, required special findings as to fraud in actions, etc., to enforce forfeitures, etc., prior to repeal by Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141.

Amendments

2007—Subsec. (c)(10), (11). Pub. L. 110–138, §§ 107(c), 205(a)(1), temporarily added par. (10) and redesignated former par. (10) as (11). See Effective and Termination Dates of 2007 Amendment note below.

Subsec. (i). Pub. L. 110–138, §§ 107(c), 205(a)(2), temporarily added subsec. (i). See Effective and Termination Dates of 2007 Amendment note below.

2005—Subsec. (c)(9), (10). Pub. L. 109–53, §§ 107(d), 206(a)(1), temporarily added par. (9) and redesignated former par. (9) as (10). See Effective and Termination Dates of 2005 Amendment note below.

Subsec. (h). Pub. L. 109–53, §§ 107(d), 206(a)(2), temporarily added subsec. (h). See Effective and Termination Dates of 2005 Amendment note below.

2004—Subsec. (c)(8), (9). Pub. L. 108–286, §§ 106(c), 205, temporarily added par. (8) and redesignated former par. (8) as (9). See Effective and Termination Dates of 2004 Amendment note below.

2003—Subsec. (c)(6). Pub. L. 108–77, §§ 107(c), 205(a)(1)(B), temporarily added par. (6). Former par. (6) redesignated (7). See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (c)(7). Pub. L. 108–78, §§ 107(c), 204(2), temporarily added par. (7). Former par. (7) redesignated (8). See Effective and Termination Dates of 2003 Amendments note below.

Pub. L. 108–77, §§ 107(c), 205(a)(1)(A), temporarily redesignated par. (6) as (7). See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (c)(8). Pub. L. 108–78, §§ 107(c), 204(1), temporarily redesignated par. (7) as (8). See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (g). Pub. L. 108–77, §§ 107(c), 205(a)(2), temporarily added subsec. (g). See Effective and Termination Dates of 2003 Amendments note below.

1999—Subsec. (c)(4)(A)(i), (B). Pub. L. 106–36 amended Pub. L. 103–182, § 621(4)(A). See 1993 Amendment notes below.

1996—Subsec. (a)(1). Pub. L. 104–295, § 3(a)(4)(A), substituted ''lawful duty, tax, or fee'' for ''lawful duty''.

Subsecs. (b)(1)(A)(vi), (c)(2)(A)(ii), (3)(A)(ii). Pub. L. 104–295, § 3(a)(4)(B), substituted ''lawful duties, taxes, and fees'' for ''lawful duties''.

Subsec. (c)(4)(A)(i), (B). Pub. L. 104–295, § 21(e)(12), amended Pub. L. 103–182, § 621(4)(A). See 1993 Amendment notes below.

Pub. L. 104–295, § 3(a)(4)(B), substituted ''lawful duties, taxes, and fees'' for ''lawful duties'' in two places.

Subsec. (d). Pub. L. 104–295, § 21(e)(13), inserted comma after ''taxes'' in heading.

Pub. L. 104–295, § 3(a)(5), substituted ''and fees be restored'' for ''or fees be restored''.

1993—Subsec. (a)(1)(A)(i). Pub. L. 103–182, § 621(1), inserted ''or electronically transmitted data or information'' after ''document''.

Subsec. (a)(2). Pub. L. 103–182, § 621(2), inserted at end ''The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.''

Subsec. (b)(1)(A). Pub. L. 103–182, § 621(3)(A), substituted ''the Customs Service'' for ''the appropriate customs officer'', ''it shall issue'' for ''he shall issue'' and ''its intention'' for ''his intention'' in introductory provisions.

Subsec. (b)(2). Pub. L. 103–182, § 621(3)(B), substituted ''the Customs Service shall determine'' for ''the appropriate customs officer shall determine'', ''the Customs Service determines'' for ''such officer determines'' in

two places, ''it shall'' for ''he shall'' in two places, and ''the Customs Service shall provide'' for ''the appropriate customs officer shall provide''.

Subsec. (c)(4). Pub. L. 103–182, § 621(4)(B), inserted at end ''For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) of this section existed.''

Subsec. (c)(4)(A)(i). Pub. L. 103–182, § 621(4)(A), as amended by Pub. L. 104–295, § 21(e)(12); Pub. L. 106–36, § 1001(b)(8), substituted ''time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its'' for ''time of disclosure or within thirty days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his''.

Subsec. (c)(4)(B). Pub. L. 103–182, § 621(4)(A), as amended by Pub. L. 104–295, § 21(e)(12); Pub. L. 106–36, § 1001(b)(8), which directed the substitution of ''time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its'' for ''time of disclosure, or within 30 days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his'', was executed by making the substitution for text which began ''time of disclosure or within 30 days'', to reflect the probable intent of Congress.

Subsec. (c)(5), (6). Pub. L. 103–182, § 205(c)(1), added par. (5) and redesignated former par. (5) as (6).

Subsec. (d). Pub. L. 103–182, § 621(5), inserted '', taxes or fees'' after ''duties'' in heading and in text substituted ''duties, taxes, or fees'' for ''duties'' in two places and ''the Customs Service'' for ''the appropriate customs officer''.

Subsec. (f). Pub. L. 103–182, § 205(c)(2), added subsec. (f).

1986—Subsec. (c)(4)(B). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1980—Subsec. (e). Pub. L. 96–417 substituted in heading ''Court of International Trade'' for ''District court'' and in text ''proceeding commenced by the United States in the Court of International Trade'' for ''proceeding in a United States district court commenced by the United States pursuant to section 1604 of this title''.

1978—Pub. L. 95–410 substituted subsecs. (a) to (e) relating to penalties for fraud, gross negligence, and negligence for prior provisions which: provided for forfeiture of merchandise, or recovery of value thereof, where entry or attempted entry of the merchandise was made using fraudulent or false invoice, declaration, affidavit, letter, paper, or false statement, written or verbal, false or fraudulent practice or appliance, or false statement in a declaration on entry without reasonable cause to believe the truth of the statement or aided or procured the making any such false statement as to any material matter without reasonable cause to believe the truth of the statement, regardless of deprivation of lawful duties, or guilty of any willful act or omission when there was a deprivation of such duties; made the forfeiture applicable to the whole of the merchandise or the value thereof where package contained the particular articles to which the fraud or false paper or statement related; and defined attempt to enter the merchandise without an actual entry having been made or offered.

1935—Act Aug. 5, 1935, inserted ''whether or not the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement;''.

EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT

Amendment by Pub. L. 110–138 effective on the date the United States-Peru Trade Promotion Agreement enters into force (Feb. 1, 2009) and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 110–138, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by Pub. L. 109–53 effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on date Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA–DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as an Effective and Termination Dates note under section 4001 of this title.

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENT

Amendment by Pub. L. 108–286 effective on the date on which the United States-Australia Free Trade Agreement enters into force (Jan. 1, 2005) and to cease to be effective on the date on which the Agreement terminates, see section 106(a), (c) of Pub. L. 108–286, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENTS

Amendment by Pub. L. 108–78 effective on the date the United States-Singapore Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108–78, set out in a note under section 3805 of this title.

Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108–77, set out in a note under section 3805 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 3(a)(4), (5) of Pub. L. 104–295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–295, set out as a note under section 1321 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 205(c) of Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 applicable with respect to civil actions commenced on or after 90th day after Nov. 1, 1980, see section 701(c)(2) of Pub. L. 96–417, set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 110(f) of Pub. L. 95–410 provided that:

''(1)(A) Except as provided in subparagraphs (B) and (C), subsections (a), (b), and (c) (other than new subsection (e) of section 592 of the Tariff Act of 1930 as added by subsection (a)) [subsec. (a), (b), and (c), not including (e) of this section] shall be effective with respect to proceedings commenced after the 89th day after the date of enactment of this Act [Oct. 3, 1978].

''(B) Except as provided in subparagraph (C), section 592 of the Tariff Act of 1930 [this section] (as such section existed on the day before the date of enactment of this Act) [Oct. 3, 1978] shall apply to any alleged intentional violation thereof involving television receivers that are the product of Japan and that were or are the subject of antidumping proceedings if the alleged intentional violation—

''(i) occurred before the date of enactment of this Act, and

''(ii) was the subject of an investigation by the Customs Service which was begun before the date of enactment of this Act.

''(C) Except as provided in the next sentence, subsection (e) of section 592 of the Tariff Act of 1930 (as added by subsection (a)) [subsec. (e) of this section] shall be effective on the date of enactment of this Act [Oct. 3, 1978]. Notwithstanding any provision of law, in any proceeding in a United States district court commenced by the United States pursuant to section 604 of the Tariff Act of 1930 [section 1604 of this title] for the recovery of any monetary penalty claimed under section 592 of such Act [this section] for an alleged intentional violation described in subparagraph (B)—

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

''(ii) the United States shall have the burden of proof to establish such violation by a preponderance of the evidence.

''(2)(A) The amendment made by subsection (e) [to section 1621 of this title] shall apply with respect to alleged violations of section 592 of the Tariff Act of 1930 [this section] resulting from gross negligence or negligence which are committed on or after the date of the enactment of this Act [Oct. 3, 1978].

''(B) In the case of any alleged violation of such section 592 [this section] resulting from gross negligence or negligence which was committed before the date of the enactment of this Act [Oct. 3, 1978] and for which no suit or action for recovery was commenced before such date of enactment, no suit or action for recovery with respect to such alleged violation shall be instituted after—

''(i) the closing date of the 5-year period beginning on the date on which the alleged violation was committed, or

''(ii) the closing date of the 2-year period beginning on such date of enactment,

whichever date later occurs, except that no such suit or action may be instituted after the date on which such suit or action would have been barred under section 621 of the Tariff Act of 1930 [section 1621 of this title] (as in effect on the day before such date of enactment).''

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.

§ 1592a. Special provisions regarding certain violations

(a) Publication of names of certain violators

(1) Publication

The Secretary of the Treasury is authorized to publish in the Federal Register a list of the name of any producer, manufacturer, supplier, seller, exporter, or other person located outside the customs territory of the United States—

(A) against whom the Customs Service has issued a penalty claim under section 1592 of this title, and

(B) if a petition with respect to that claim has been filed under section 1618 of this title, against whom a final decision has been issued under such section after exhaustion of administrative remedies,

citing any of the violations of the customs laws referred to in paragraph (2). Such list shall be published not later than March 31 and September 30 of each year.

(2) Violations

The violations of the customs laws referred to in paragraph (1) are the following:

(A) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products.

(B) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the customs territory of the United States of textile or apparel products.

(C) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labelled as to country of origin or source.

(D) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

(3) Removal from list

Any person whose name has been included in a list published under paragraph (1) may petition the Secretary to be removed from such list. If the Secretary finds that such person has not committed any violations described in paragraph (2) for a period of not less than 3 years after the date on which the person's name was so published, the Secretary shall remove such person from the list as of the next publication of the list under paragraph (1).

(4) Reasonable care required for subsequent imports

(A) Responsibility of importers and others

After the name of a person has been published under paragraph (1), the Secretary of the Treasury shall require any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labelling that are accurate as to its origin. Such reasonable care shall not include reliance solely on a source of information which is the named person.

(B) Failure to exercise reasonable care

If the Customs Service determines that merchandise is not from the country claimed on the documentation accompanying the merchandise, the failure to exercise reasonable care described in subparagraph (A) shall be considered when the Customs Service determines whether the importer of record is in violation of section 1484(a) of this title.

(b) List of high risk countries

(1) List

The President or his designee, upon the advice of the Secretaries of Commerce and Treasury, and the heads of other appropriate departments and agencies, is authorized to publish a list of countries in which illegal activities have occurred involving transshipped textile or apparel products or activities designed to evade quotas of the United States on textile or apparel products, if those countries fail to demonstrate a good faith effort to cooperate with United States authorities in ceasing such activities. Such list shall be published in the Federal Register not later than March 31 of each year. Any country that is on the list and that subsequently demonstrates a good faith effort to cooperate with United States authorities in ceasing illegal activities described in the first sentence shall be removed from the list, and such removal shall be published in the Federal Register as soon as practicable.

(2) Reasonable care required for subsequent imports

(A) Responsibility of importers of record

The Secretary of the Treasury shall require any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products indicated, on the documentation, packaging, or labelling accompanying such products, to be from any country on the list published under paragraph (1) to show, to the satisfaction of the Secretary, that such importer, consignee, or purchaser has exercised reasonable care to ascertain the true country of origin of the textile or apparel products.

(B) Failure to exercise reasonable care

If the Customs Service determines that merchandise is not from the country claimed on the documentation accompanying the merchandise, the failure to exercise reasonable care described in subparagraph (A) shall be considered when the Customs Service determines whether the importer of record is in violation of section 1484(a) of this title.

(3) "Country" defined

For purposes of this subsection, the term ''country'' means a foreign country or territory, including any overseas dependent territory or possession of a foreign country.

(June 17, 1930, ch. 497, title IV, § 592A, as added Pub. L. 103–465, title III, § 333, Dec. 8, 1994, 108 Stat. 4947; amended Pub. L. 104–295, § 20(c)(3), Oct. 11, 1996, 110 Stat. 3528.)

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–295 substituted ''list under paragraph (1)'' for ''list under paragraph (2)''.

EFFECTIVE DATE

Section effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 335 of Pub. L. 103–465, set out as a note under section 3591 of this title.

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, set out as a note under section 542 of Title 6.

§ 1593. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, act June 17, 1930, ch. 497, title IV, § 593, 46 Stat. 751, related to smuggling and clandestine importations. See section 545 of Title 18, Crimes and Criminal Procedure.

§ 1593a. Penalties for false drawback claims

(a) Prohibition

(1) General rule

No person, by fraud, or negligence—

(A) may seek, induce or affect, or attempt to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of—

(i) any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or

(ii) any omission which is material; or

(B) may aid or abet any other person to violate subparagraph (A).

(2) Exception

Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

(b) Procedures

(1) Prepenalty notice

(A) In general

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

(i) identify the drawback claim;

(ii) set forth the details relating to the seeking, inducing, or affecting, or the attempted seeking, inducing, or affecting, or the aiding or procuring of, the drawback claim;

(iii) specify all laws and regulations allegedly violated;

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

(v) state whether the alleged violation occurred as a result of fraud or negligence;

(vi) state the estimated actual or potential loss of revenue due to the drawback claim, and, taking into account all circumstances, the amount of the proposed monetary penalty; and

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) Exceptions

The Customs Service may not issue a prepenalty notice if the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less. In such cases, the Customs Service may proceed directly with a penalty claim.

(C) Prior approval

No prepenalty notice in which the alleged violation occurred as a result of fraud shall be issued without the prior approval of Customs Headquarters.

(2) Penalty claim

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) 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 a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, Customs shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vii) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 1618 of this title to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 1618 of this title, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination, and the findings of fact and conclusions of law on which such determination is based.

(c) Maximum penalties

(1) Fraud

A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed 3 times the actual or potential loss of revenue.

(2) Negligence

(A) In general

A negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed 20 percent of the actual or potential loss of revenue for the 1st violation.

(B) Repetitive violations

If the Customs Service determines that a repeat negligent violation occurs relating to the same issue, the penalty amount for the 2d violation shall be in an amount not to exceed 50 percent of the total actual or potential loss of revenue. The penalty amount for each succeeding repetitive negligent violation shall be in an amount not to exceed the actual or potential loss of revenue. If the same party commits a nonrepetitive violation, that violation shall be subject to a penalty not to exceed 20 percent of the actual or potential loss of revenue.

(3) Prior disclosure

(A) In general

Subject to subparagraph (B), if the person concerned discloses the circumstances of a violation of subsection (a) of this section before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this subsection may not exceed—

(i) if the violation resulted from fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

(ii) if the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under section 6621 of title 26 on the amount of actual revenue of which the United States is or may be deprived during the period that—

(I) begins on the date of the overpayment of the claim; and

(II) ends on the date on which the person concerned tenders the amount of the overpayment.

(B) Condition affecting penalty limitations

The limitations in subparagraph (A) on the amount of the monetary penalty to be assessed under this subsection apply only if the person concerned tenders the amount of the overpayment made on the claim at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide), after notice by the Customs Service of its calculation of the amount of the overpayment.

(C) Burden of proof

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(4) Commencement of investigation

For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) of this section existed.

(5) Exclusivity

Penalty claims under this section shall be the exclusive civil remedy for any drawback

related violation of subsection (a) of this section.

(d) Deprivation of lawful revenue

Notwithstanding section 1514 of this title, if the United States has been deprived of lawful duties and taxes resulting from a violation of subsection (a) of this section, the Customs Service shall require that such duties and taxes be restored whether or not a monetary penalty is assessed.

(e) Drawback compliance program

(1) In general

After consultation with the drawback trade community, the Customs Service shall establish a drawback compliance program in which claimants and other parties in interest may participate after being certified by the Customs Service under paragraph (2). Participation in the drawback compliance program is voluntary.

(2) Certification

A party may be certified as a participant in the drawback compliance program after meeting the general requirements established under the program or after negotiating an alternative program suited to the needs of the party and the Customs Service. Certification requirements shall take into account the size and nature of the party's drawback program and the volume of claims. In order to be certified, the participant must be able to demonstrate that it—

(A) understands the legal requirements for filing claims, including the nature of the records required to be maintained and produced and the time periods involved;

(B) has in place procedures to explain the Customs Service requirements to those employees that are involved in the preparation of claims, and the maintenance and production of required records;

(C) has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to the Customs Service;

(D) has designated a dependable individual or individuals to be responsible for compliance under the program and whose duties include maintaining familiarity with the drawback requirements of the Customs Service;

(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternate records or recordkeeping formats other than the original records; and

(F) has procedures for notifying the Customs Service of variances to, and violations of, the requirements of the drawback compliance program or any negotiated alternative programs, and for taking corrective action when notified by the Customs Service for violations or problems regarding such program.

(f) Alternatives to penalties

(1) In general

When a party that—

(A) has been certified as a participant in the drawback compliance program under subsection (e) of this section; and

(B) is generally in compliance with the appropriate procedures and requirements of the program;

commits a violation of subsection (a) of this section, the Customs Service, shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty, issue a written notice of the violation to the party. Repeated violations by a party may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

(2) Contents of notice

A notice of violation issued under paragraph (1) shall—

(A) state that the party has violated subsection (a) of this section;

(B) explain the nature of the violation; and

(C) warn the party that future violations of subsection (a) of this section may result in the imposition of monetary penalties.

(3) Response to notice

Within a reasonable time after receiving written notice under paragraph (1), the party shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

(g) Repetitive violations

(1) A party who has been issued a written notice under subsection (f)(1) of this section and subsequently commits a repeat negligent violation involving the same issue is subject to the following monetary penalties:

(A) 2d violation

An amount not to exceed 20 percent of the loss of revenue.

(B) 3rd violation

An amount not to exceed 50 percent of the loss of revenue.

(C) 4th and subsequent violations

An amount not to exceed 100 percent of the loss of revenue.

(2) If a party that has been certified as a participant in the drawback compliance program under subsection (e) of this section commits an alleged violation which was not repetitive, the party shall be issued a ''warning letter'', and, for any subsequent violation, shall be subject to the same maximum penalty amounts stated in paragraph (1).

(h) Regulation

The Secretary shall promulgate regulations and guidelines to implement this section. Such regulations shall specify that for purposes of subsections (c) and (g) of this section, a repeat negligent violation involving the same issue shall be treated as a repetitive violation for a maximum period of 3 years.

(i) Court of International Trade proceedings

Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the re-

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.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–570 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''If any officer or person authorized to make searches and seizures shall have cause to suspect the presence in any dwelling house, store, or other building or place of any merchandise upon which the duties have not been paid, or which has been otherwise brought into the United States contrary to law, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any United States magistrate, 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: *Provided*, That if any such house, store, or other building, or place in which such merchandise shall be found, is upon or within ten feet of the boundary line between the United States and a foreign country, such portion thereof as is within the United States may forthwith be taken down or removed.''

1970—Subsec. (a). Pub. L. 91–271 struck out ''collector of customs or other'' before ''officer or person''.

CHANGE OF NAME

''Magistrate judge'' substituted for ''magistrate'' in subsec. (a)(1) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1970 AMENDMENT

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.

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.

§ 1595a. Forfeitures and other penalties

(a) Importation, removal, etc. contrary to laws of United States

Except as specified in subsection (b) or (c) of section 1594 of this title, every vessel, vehicle, animal, aircraft, or other thing used in, to aid in, or to facilitate, by obtaining information or in any other way, the importation, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced, into the United States contrary to law, whether upon such vessel, vehicle, animal, aircraft, or other thing or otherwise, may be seized and forfeited together with its tackle, apparel, furniture, harness, or equipment.

(b) Penalty for aiding unlawful importation

Every person who directs, assists financially or otherwise, or is in any way concerned in any unlawful activity mentioned in the preceding subsection shall be liable to a penalty equal to the value of the article or articles introduced or attempted to be introduced.

(c) Merchandise introduced contrary to law

Merchandise which is introduced or attempted to be introduced into the United States contrary to law shall be treated as follows:

(1) The merchandise shall be seized and forfeited if it—

(A) is stolen, smuggled, or clandestinely imported or introduced;

(B) is a controlled substance, as defined in the Controlled Substances Act (21 U.S.C. 801 et seq.), and is not imported in accordance with applicable law;

(C) is a contraband article, as defined in section 80302 of title 49; or

(D) is a plastic explosive, as defined in section 841(q) of title 18, which does not contain a detection agent, as defined in section 841(p) of such title.

(2) The merchandise may be seized and forfeited if—

(A) its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute;

(B) its importation or entry requires a license, permit or other authorization of an agency of the United States Government and the merchandise is not accompanied by such license, permit, or authorization;

(C) it is merchandise or packaging in which copyright, trademark, or trade name protection violations are involved (including, but not limited to, violations of section 1124, 1125, or 1127 of title 15, section 506 of title 17, or section 2318 or 2320 of title 18);

(D) it is trade dress merchandise involved in the violation of a court order citing section 1125 of title 15;

(E) it is merchandise which is marked intentionally in violation of section 1304 of this title; or

(F) it is merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been marked in violation of section 1304 of this title.

(3) If the importation or entry of the merchandise is subject to quantitative restrictions requiring a visa, permit, license, or other similar document, or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement, the merchandise shall be subject to detention in accordance with section 1499 of this title unless the appropriate visa, license, permit, or similar document or stamp is presented to the Customs Service; but if the visa, permit, license, or similar document or stamp which is presented in connection with the importation or entry of the merchandise is counterfeit, the merchandise may be seized and forfeited.

(4) If the merchandise is imported or introduced contrary to a provision of law which governs the classification or value of merchandise and there are no issues as to the admissibility of the merchandise into the United States, it shall not be seized except in accordance with section 1592 of this title.

(5) In any case where the seizure and forfeiture of merchandise are required or authorized by this section, the Secretary may—

(A) remit the forfeiture under section 1618 of this title, or

(B) permit the exportation of the merchandise, unless its release would adversely affect health, safety, or conservation or be in contravention of a bilateral or multilateral agreement or treaty.

(d) Merchandise exported contrary to law

Merchandise exported or sent from the United States or attempted to be exported or sent from the United States contrary to law, or the proceeds or value thereof, and property used to facilitate the exporting or sending of such merchandise, the attempted exporting or sending of such merchandise, or the receipt, purchase, transportation, concealment, or sale of such merchandise prior to exportation shall be seized and forfeited to the United States.

(June 17, 1930, ch. 497, title IV, § 596, as added Sept. 1, 1954, ch. 1213, title V, § 502, 68 Stat. 1140; amended Pub. L. 99–570, title III, § 3123, Oct. 27, 1986, 100 Stat. 3207–87; Pub. L. 103–182, title VI, § 624, Dec. 8, 1993, 107 Stat. 2187; Pub. L. 104–132, title VI, § 606, Apr. 24, 1996, 110 Stat. 1290; Pub. L. 109–177, title III, § 311(d), Mar. 9, 2006, 120 Stat. 242; Pub. L. 110–403, title II, § 209(b), Oct. 13, 2008, 122 Stat. 4264.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (c)(1)(B), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

CODIFICATION

In subsec. (c)(1)(C), ''section 80302 of title 49'' substituted for ''section 1 of the Act of August 9, 1939 (49 U.S.C. App. 781)'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

2008—Subsec. (c)(2)(C). Pub. L. 110–403, which directed amendment of section 596(c)(2)(c) of the Tariff Act of 1950 by striking out ''or 509'', was executed by striking out ''or 509'' after ''506'' in subsec. (c)(2)(C) of this section, which is section 596 of the Tariff Act of 1930, to reflect the probable intent of Congress.

2006—Subsec. (d). Pub. L. 109–177 added subsec. (d).

1996—Subsec. (c)(1)(D). Pub. L. 104–132 added subpar. (D).

1993—Subsec. (c). Pub. L. 103–182 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Any merchandise that is introduced or attempted to be introduced into the United States contrary to law (other than in violation of section 1592 of this title) may be seized and forfeited.''

1986—Subsec. (a). Pub. L. 99–570, § 3123(1), (2), substituted ''subsection (b) or (c) of section 1594'' for ''the proviso to section 1594'' and ''may be seized'' for ''shall be seized''.

Subsec. (c). Pub. L. 99–570, § 3123(3), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 effective 1 year after Apr. 24, 1996, see section 607 of Pub. L. 104–132, set out as a note under section 841 of Title 18, Crimes and Criminal Procedure.

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.

§§ 1596 to 1598. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section 1596, act June 17, 1930, ch. 497, title IV, § 596, 46 Stat. 752, related to buildings on boundary. See section 547 of Title 18, Crimes and Criminal Procedure.

Section 1597, act June 17, 1930, ch. 497, title IV, § 597, 46 Stat. 752, related to fraudulent treatment of goods in warehouses. See section 548 of Title 18.

Section 1598, acts June 17, 1930, ch. 497, title IV, § 598, 46 Stat. 752; June 25, 1938, ch. 679, § 26, 52 Stat. 1089, related to offenses concerning seals and unlawful removal of goods from custom custody. See section 549 of Title 18.

§ 1599. Officers not to be interested in vessels or cargo

No person employed under the authority of the United States, in the collection of duties on imports or tonnage, shall own, either in whole or in part, any vessel (other than a yacht or other pleasure boat), or act as agent, attorney, or consignee for the owner or owners of any vessel, or of any cargo or lading on board the same; nor shall any such person import, or be concerned directly or indirectly in the importation of, any merchandise for sale into the United States. Every person who violates this section shall be liable to a penalty of $500.

(June 17, 1930, ch. 497, title IV, § 599, 46 Stat. 753; Pub. L. 95–410, title II, § 212, Oct. 3, 1978, 92 Stat. 904.)

PRIOR PROVISIONS

Identical provisions were contained in R.S. § 2638, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 599, 42 Stat. 984, and repealed by section 642 thereof. Section 599 of the 1922 act was superseded by section 599 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1978—Pub. L. 95–410 excepted from the interest prohibition ownership of a yacht or other pleasure boat.

§ 1600. Application of the customs laws to other seizures by customs officers

The procedures set forth in sections 1602 through 1619 of this title shall apply to seizures of any property effected by customs officers under any law enforced or administered by the Customs Service unless such law specifies different procedures.

(June 17, 1930, ch. 497, title IV, § 600, as added Pub. L. 98–473, title II, § 323, Oct. 12, 1984, 98 Stat. 2057.)

PRIOR PROVISIONS

A prior section 600 of act June 17, 1930, ch. 497, title IV, 46 Stat. 753, related to gratuities, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

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.

§§ 1601, 1601a. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section 1601, act June 17, 1930, ch. 497, title IV, § 601, 46 Stat. 753, related to bribery.

Section 1601a, act Aug. 5, 1935, ch. 438, title III, § 309, 49 Stat. 528, related to wearing of uniform or badge of Coast Guard or Customs Service while violating revenue laws. See sections 702, 703, and 912 of Title 18.

§ 1602. Seizure; report to customs officer

It shall be the duty of any officer, agent, or other person authorized by law to make seizures of merchandise or baggage subject to seizure for violation of the customs laws, to report every such seizure immediately to the appropriate customs officer for the district in which such violation occurred, and to turn over and deliver to such customs officer any vessel, vehicle, aircraft, merchandise, or baggage seized by him, and to report immediately to such customs officer every violation of the customs laws.

(June 17, 1930, ch. 497, title IV, § 602, 46 Stat. 754; Pub. L. 91–271, title III, § 301(z), June 2, 1970, 84 Stat. 290; Pub. L. 98–473, title II, § 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, § 213(a)(1), Oct. 30, 1984, 98 Stat. 2984.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 602, 42 Stat. 984. That section was superseded by section 602 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions requiring officers or persons employed in the customs revenue service, upon detection of any violation of the customs laws, to make complaint to the collector, were contained in act June 22, 1874, ch. 391, § 15, 18 Stat. 189, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

AMENDMENTS

1984—Pub. L. 98–573 and Pub. L. 98–473 inserted reference to aircraft.

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

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

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.

§ 1603. Seizure; warrants and reports

(a) Any property which is subject to forfeiture to the United States for violation of the customs laws and which is not subject to search and seizure in accordance with the provisions of section 1595 of this title, may be seized by the appropriate officer or person upon process issued in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure. This authority is in addition to any seizure authority otherwise provided by law.

(b) Whenever a seizure of merchandise for violation of the customs laws is made, or a violation of the customs laws is discovered, and legal proceedings by the United States attorney in connection with such seizure or discovery are required, it shall be the duty of the appropriate customs officer to report promptly such seizure or violation to the United States attorney for the district in which such violation has occurred, or in which such seizure was made, and to include in such report a statement of all the facts and circumstances of the case within his knowledge, with the names of the witnesses and a citation to the statute or statutes believed to have been violated, and on which reliance may be had for forfeiture or conviction.

(June 17, 1930, ch. 497, title IV, § 603, 46 Stat. 754; June 25, 1938, ch. 679, § 27, 52 Stat. 1089; Pub. L. 91–271, title III, § 301(aa), June 2, 1970, 84 Stat. 291; Pub. L. 95–410, title I, § 110(b), Oct. 3, 1978, 92 Stat. 896; Pub. L. 100–690, title VII, § 7365, Nov. 18, 1988, 102 Stat. 4478.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (a), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 603, 42 Stat. 984. That section was superseded by section 603 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision requiring the collector or other person causing a seizure to be made to give information thereof to the Solicitor of the Treasury, was contained in R.S. § 3083, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247. R.S. § 3084 required collectors to report to the district attorney of the district in which any fine, penalty, or forfeiture might be incurred, a statement of all the facts and circumstances. Officers of customs detecting violations of the customs laws were required to report to the collectors, and the latter were required to report to the district attorneys, by act June 22, 1874, ch. 391, § 15, 18 Stat. 189. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §§ 642, 643, 42 Stat. 989.

AMENDMENTS

1988—Pub. L. 100–690, § 7365, substituted ''Seizure; warrants and reports'' for ''Seizure; customs officer's reports'' in section catchline, added subsec. (a), and designated existing provisions as subsec. (b).

1978—Pub. L. 95–410 inserted ''promptly'' after ''to report''.

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector or principal local officer of Customs Agency Service.

1938—Act June 25, 1938, amended section generally.

EFFECTIVE DATE OF 1970 AMENDMENT

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.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs Service was under Department of the Treasury.

§ 1604. Seizure; prosecution

It shall be the duty of the Attorney General of the United States immediately to inquire into the facts of cases reported to him by customs officers and the laws applicable thereto, and if it appears probable that any fine, penalty, or forfeiture has been incurred by reason of such violation, for the recovery of which the institution of proceedings in the United States district court or the Court of International Trade is necessary, forthwith to cause the proper proceedings to be commenced and prosecuted, without delay, for the recovery of such fine, penalty, or forfeiture in such case provided, unless, upon inquiry and examination, the Attorney General decides that such proceedings can not probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case he shall report the facts to the Secretary of the Treasury for his direction in the premises.

(June 17, 1930, ch. 497, title IV, §604, 46 Stat. 754; Pub. L. 91–271, title III, §301(bb), June 2, 1970, 84 Stat. 291; Pub. L. 96–417, title VI, §610, Oct. 10, 1980, 94 Stat. 1746.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §604, 42 Stat. 984. That section was superseded by section 604 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions substantially similar in effect, with a further provision for an allowance for expenses and services, were contained in R.S. §3085. Provisions requiring district attorneys to cause investigations to be made before a United States commissioner and to initiate and prosecute proper proceedings to recover fines and penalties were contained in act June 22, 1874, ch. 391, §15, 18 Stat. 189. Both of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §§642, 643, 42 Stat. 989.

The 1922 act also superseded a provision contained in R.S. §3087, requiring collectors to cause suits to be commenced without delay and prosecuted to effect.

AMENDMENTS

1980—Pub. L. 96–417 substituted ''the Attorney General of the United States'' and ''the Attorney General'' for ''every United States district attorney'' and ''such district attorney'', respectively, and authorized institution of proceedings in the Court of International Trade.

1970—Pub. L. 91–271 substituted reference to customs officers for reference to collectors.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1970 AMENDMENT

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.

§ 1605. Seizure; custody; storage

All vessels, vehicles, aircraft, merchandise, and baggage seized under the provisions of the customs laws, or laws relating to the navigation, registering, enrolling or licensing, or entry or clearance, of vessels, unless otherwise provided by law, shall be placed and remain in the custody of the appropriate customs officer for the district in which the seizure was made to await disposition according to law.

Pending such disposition, the property shall be stored in such place as, in the customs officer's opinion, is most convenient and appropriate with due regard to the expense involved, whether or not the place of storage is within the judicial district or the customs collection district in which the property was seized; and storage of the property outside the judicial district or customs collection district in which it was seized shall in no way affect the jurisdiction of the court which would otherwise have jurisdiction over such property.

(June 17, 1930, ch. 497, title IV, §605, 46 Stat. 754; Sept. 1, 1954, ch. 1213, title V, §505, 68 Stat. 1141; Pub. L. 91–271, title III, §301(cc), June 2, 1970, 84 Stat. 291; Pub. L. 98–473, title II, §321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, §213(a)(2), Oct. 30, 1984, 98 Stat. 2984.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §605, 42 Stat. 985. That section was superseded by section 605 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions substantially similar to those in this section so far as it relates to merchandise or property seized under the customs laws, were contained in R.S. §3086, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS

1984—Pub. L. 98–573 and Pub. L. 98–473 inserted reference to aircraft in first par.

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

1954—Act Sept. 1, 1954, permitted collector of seized property to store it in such places as he considers convenient or appropriate, whether within or without the judicial district in which it was seized, without affecting the jurisdiction of the court over such property.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

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.

§ 1606. Seizure; appraisement

The appropriate customs officer shall determine the domestic value, at the time and place of appraisement, of any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws.

(June 17, 1930, ch. 497, title IV, § 606, 46 Stat. 754; Pub. L. 91–271, title III, § 301(dd), June 2, 1970, 84 Stat. 291; Pub. L. 98–473, title II, § 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, § 213(a)(3), Oct. 30, 1984, 98 Stat. 2984.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 606, 42 Stat. 985. That section was superseded by section 606 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions for appraisement of property seized under the customs laws, or laws relating to the registering, enrolling or licensing of vessels, were contained in R.S. § 3074, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1984—Pub. L. 98–573 and Pub. L. 98–473 inserted reference to aircraft.

1970—Pub. L. 91–271 substituted ''appropriate customs officer shall'' for ''collector shall require the appraiser to''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

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.

§ 1607. Seizure; value $500,000 or less, prohibited articles, transporting conveyances

(a) Notice of seizure

If—

(1) the value of such seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed $500,000;

(2) such seized merchandise is merchandise the importation of which is prohibited;

(3) such seized vessel, vehicle, or aircraft was used to import, export, transport, or store any controlled substance or listed chemical; or

(4) such seized merchandise is any monetary instrument within the meaning of section 5312(a)(3) of title 31;

the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

(b) "Controlled substance" and "listed chemical" defined

As used in this section, the terms ''controlled substance'' and ''listed chemical'' have the meaning given such terms in section 802 of title 21.

(c) Report to Congress

The Commissioner of Customs shall submit to the Congress, by no later than February 1 of each fiscal year, a report on the total dollar value of uncontested seizures of monetary instruments having a value of over $100,000 which, or the proceeds of which, have not been deposited into the Customs Forfeiture Fund under section 1613b of this title within 120 days of seizure, as of the end of the previous fiscal year.

(June 17, 1930, ch. 497, title IV, § 607, 46 Stat. 754; June 25, 1938, ch. 679, § 28(a), 52 Stat. 1089; Sept. 1, 1954, ch. 1213, title V, § 506, 68 Stat. 1141; Pub. L. 91–271, title III, § 301(ee), June 2, 1970, 84 Stat. 291; Pub. L. 95–410, title I, § 111(a), Oct. 3, 1978, 92 Stat. 897; Pub. L. 98–473, title II, § 311, Oct. 12, 1984, 98 Stat. 2053; Pub. L. 98–573, title II, § 213(a)(4), Oct. 30, 1984, 98 Stat. 2984; Pub. L. 101–382, title I, § 122, Aug. 20, 1990, 104 Stat. 642; Pub. L. 104–237, title II, § 201(c), Oct. 3, 1996, 110 Stat. 3101.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 607, 42 Stat. 985. That section was superseded by section 607 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions for publication or posting of notice of seizure, requiring claimants to appear and file their claim, when the appraised value did not exceed $500, were contained in R.S. § 3075, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–237, § 201(c)(1), inserted ''or listed chemical'' after ''controlled substance''.

Subsec. (b). Pub. L. 104–237, § 201(c)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''As used in this section, the term 'controlled substance' has the meaning given that term in section 802 of title 21.''

1990—Pub. L. 101–382, § 122(6), substituted ''$500,000'' for ''$100,000'' in section catchline.

Subsec. (a)(1). Pub. L. 101–382, § 122(1), substituted ''$500,000'' for ''$100,000''.

Subsec. (a)(4). Pub. L. 101–382, § 122(2)–(4), added par. (4).

Subsec. (c). Pub. L. 101–382, § 122(5), added subsec. (c).

1984—Pub. L. 98–573 amended section generally. See explanation below for amendment by Pub. L. 98–473.

Pub. L. 98–473 amended section generally in manner substantially identical to amendment by Pub. L. 98–573. Prior to amendment, section read as follows: ''If such value of such vessel, vehicle, merchandise, or baggage does not exceed $10,000, the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. For the purposes of this section and sections 1610 and 1612 of this title merchandise the importation of which is prohibited shall be held not to exceed $10,000 in value.''

1978—Pub. L. 95–410 substituted ''$10,000'' for ''$2,500'' wherever appearing.

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector, and struck out reference to appraiser's return of value.

1954—Act Sept. 1, 1954, substituted ''$2,500'' for ''$1,000'' wherever appearing.

1938—Act June 25, 1938, substituted ''forfeit and sell or otherwise dispose of the same according to law'' for ''forfeit and sell the same''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

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.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

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.

§ 1608. Seizure; claims; judicial condemnation

Any person claiming such vessel, vehicle, aircraft, merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure file with the appropriate customs officer a claim stating his interest therein. Upon the filing of such claim, and the giving of a bond to the United States in the penal sum of $5,000 or 10 percent of the value of the claimed property, whichever is lower, but not less than $250, with sureties to be approved by such customs officer, conditioned that in case of condemnation of the articles so claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, such customs officer shall transmit such claim and bond, with a duplicate list and description of the articles seized, to the United States attorney for the district in which seizure was made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law.

(June 17, 1930, ch. 497, title IV, § 608, 46 Stat. 755; Pub. L. 91–271, title III, § 301(e), June 2, 1970, 84 Stat. 288; Pub. L. 98–473, title II, §§ 312, 321, Oct. 12, 1984, 98 Stat. 2054, 2056; Pub. L. 98–573, title II, § 213(a)(5), Oct. 30, 1984, 98 Stat. 2985; Pub. L. 99–570, title I, § 1862, Oct. 27, 1986, 100 Stat. 3207–54; Pub. L. 100–690, title VII, § 7367(c)(2), Nov. 18, 1988, 102 Stat. 4479.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. § 3076, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 608, 42 Stat. 985, and was repealed by section 642 thereof. Section 608 of the 1922 act was superseded by section 608 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1988—Pub. L. 100–690 reenacted section without change. See 1984 and 1986 Amendment notes below.

1986—Pub. L. 99–570, § 1862(a), substituted ''$5,000'' for ''$2,500''. See 1984 Amendment notes below.

Pub. L. 99–570, § 1862(b), which provided that ''Section 608 of such Act [this section], as enacted by Public Law 98–473, is repealed'', was not executed to text because such section was amended (rather than enacted) by Pub. L. 98–473, and to reflect the probable intent of Congress to repeal the amendment made by Pub. L. 98–473 in view of later amendment by Pub. L. 98–573. See 1984 Amendment notes below.

1984—Pub. L. 98–573, § 213(a)(5)(B), which directed the insertion of ''$2,500 or 10 percent of the value of the claimed property, whichever is lower, but not less than'' after ''penal sum of'', was executed to text as superseding the amendment made by Pub. L. 98–473 to reflect the probable intent of Congress. See 1986 Amendment note above.

Pub. L. 98–473, § 312, inserted ''$5,000 or 10 per centum of the value of the claimed property, whichever is lower, but not less than,'' after ''penal sum of''. See 1984 and 1986 Amendment notes above.

Pub. L. 98–573, § 213(a)(5)(A), and Pub. L. 98–473, § 321, inserted reference to aircraft.

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

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

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.

§ 1609. Seizure; summary forfeiture and sale

(a) In general

If no such claim is filed or bond given within the twenty days hereinbefore specified, the appropriate customs officer shall declare the vessel, vehicle, aircraft, merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold or otherwise dispose of the same according to law, and shall deposit the proceeds of sale, after deducting the expenses described in section 1613 of this title, into the Customs Forfeiture Fund.

(b) Effect

A declaration of forfeiture under this section shall have the same force and effect as a final decree and order of forfeiture in a judicial forfeiture proceeding in a district court of the United States. Title shall be deemed to vest in the United States free and clear of any liens or encumbrances (except for first preferred ship mortgages pursuant to subsection O of section 30 of the Ship Mortgage Act, 1920 (46 U.S.C. App. 961) or any corresponding revision, consolidation, and enactment of such subsection in title 46) from the date of the act for which the forfeiture was incurred. Officials of the various States, insular possessions, territories, and commonwealths of the United States shall, upon application of the appropriate customs officer accompanied by a certified copy of the declaration of forfeiture, remove any recorded liens or encumbrances which apply to such property and issue or reissue the necessary certificates of title, registration certificates, or similar documents to the United States or to any transferee of the United States.

(June 17, 1930, ch. 497, title IV, § 609, 46 Stat. 755; June 25, 1938, ch. 679, § 28(b), 52 Stat. 1089; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 98–473, title II, §§ 313, 321, Oct. 12, 1984, 98 Stat. 2054, 2056; Pub. L. 98–573, title II, § 213(a)(6), Oct. 30, 1984, 98 Stat. 2985; Pub. L. 100–690, title VII, § 7367(b), Nov. 18, 1988, 102 Stat. 4479.)

REFERENCES IN TEXT

Subsection O of section 30 of the Ship Mortgage Act, 1920 (46 U.S.C. App. 961), referred to in subsec. (b), was classified to section 961 of the former Appendix to Title 46, Shipping, and was repealed and partially reenacted in sections 31326(a), 31327, 31328, and 31329 of Title 46, Shipping, by Pub. L. 100–710, title I, §§102(c), 106(b)(2), Nov. 23, 1988, 102 Stat. 4738, 4752. Section 31328 of Title 46 was subsequently repealed by Pub. L. 104–324, title XI, §1113(b)(1), Oct. 19, 1996, 110 Stat. 3970. Section 105(a) of Pub. L. 100–710, set out as a note preceding section 101 of Title 46, provides that a reference to a law replaced by section 102 of Pub. L. 100–710 is deemed to refer to the corresponding provision of Pub. L. 100–710. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §609, 42 Stat. 985. That section was superseded by section 609 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions for sale of the property by the collector if no claim should be filed or bond given, were contained in R.S. §3077, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS

1988—Pub. L. 100–690 amended section generally. Prior to amendment, section read as follows:

''(a) If no such claim is filed or bond given within the twenty days hereinbefore specified, the appropriate customs officer shall declare the vessel, vehicle, aircraft, merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold or otherwise dispose of the same according to law, and (except as provided in subsection (b) of this section) shall deposit the proceeds of sale, after deducting expenses enumerated in section 1613 of this title into the Customs Forfeiture Fund.

''(b) During the period beginning on October 30, 1984, and ending on September 30, 1987, the appropriate customs officer shall deposit the proceeds of sale (after deducting such expenses) in the Customs Forfeiture Fund.''

1984—Pub. L. 98–573 designated existing provisions as subsec. (a), inserted reference to aircraft, inserted ''(except as provided in subsection (b) of this section)'' after ''according to law, and'', and added subsec. (b).

Pub. L. 98–473, §321, inserted reference to aircraft.

Pub. L. 98–473, §313, substituted ''after deducting expenses enumerated in section 1613 of this title into the Customs Forfeiture Fund'' for ''after deducting the actual expenses of seizure, publication, and sale in the Treasury of the United States''.

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

1938—Act June 25, 1938, inserted ''or otherwise dispose of the same according to law'' after ''in the same manner as merchandise abandoned to the United States is sold''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

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.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

§ 1610. Seizure; judicial forfeiture proceedings

If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title, the appropriate customs officer shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.

(June 17, 1930, ch. 497, title IV, §610, 46 Stat. 755; Sept. 1, 1954, ch. 1213, title V, §506, 68 Stat. 1141; Pub. L. 91–271, title III, §301(ee), June 2, 1970, 84 Stat. 291; Pub. L. 95–410, title I, §111(b), Oct. 3, 1978, 92 Stat. 898; Pub. L. 98–473, title II, §314, Oct. 12, 1984, 98 Stat. 2054; Pub. L. 98–573, title II, §213(a)(7), Oct. 30, 1984, 98 Stat. 2985; Pub. L. 100–690, title VII, §7367(c)(3), Nov. 18, 1988, 102 Stat. 4480.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §610, 42 Stat. 985. That section was superseded by section 610 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1988—Pub. L. 100–690 reenacted section without change.

1984—Pub. L. 98–573 substituted ''If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title'' for ''If the value of any vessel, vehicle, merchandise, or baggage so seized is greater than $10,000''.

Pub. L. 98–473 amended section in manner substantially identical to amendment by Pub. L. 98–573.

1978—Pub. L. 95–410 substituted ''$10,000'' for ''$2,500'' wherever appearing.

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector, and struck out reference to appraiser's return of value.

1954—Act Sept. 1, 1954, substituted ''$2,500'' for ''$1,000''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

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.

§ 1611. Seizure; sale unlawful

If the sale of any vessel, vehicle, aircraft, merchandise, or baggage forfeited under the customs laws in the district in which seizure thereof was made be prohibited by the laws of the State in which such district is located, or if a sale may be made more advantageously in any other district, the Secretary of the Treasury may order such vessel, vehicle, aircraft, merchandise, or baggage to be transferred for sale in any customs district in which the sale thereof may be permitted. Upon the request of the Secretary of the Treasury, any court may, in proceedings for the forfeiture of any vessel, vehicle, aircraft, merchandise, or baggage under the customs laws, provide in its decree of forfeiture

that the vessel, vehicle, aircraft, merchandise, or baggage, so forfeited, shall be delivered to the Secretary of the Treasury for disposition in accordance with the provisions of this section. If the Secretary of the Treasury is satisfied that the proceeds of any sale will not be sufficient to pay the costs thereof, he may order a destruction by the customs officers: *Provided*, That any merchandise forfeited under the customs laws, the sale or use of which is prohibited under any law of the United States or of any State, may, in the discretion of the Secretary of the Treasury, be destroyed, or remanufactured into an article that is not prohibited, the resulting article to be disposed of to the profit of the United States only.

(June 17, 1930, ch. 497, title IV, § 611, 46 Stat. 755; Pub. L. 98–473, title II, § 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, § 213(a)(8), Oct. 30, 1984, 98 Stat. 2985.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 611, 42 Stat. 985. That section was superseded by section 611 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1984—Pub. L. 98–573 and Pub. L. 98–473 inserted reference to aircraft in four places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

§ 1612. Seizure; summary sale

(a) Whenever it appears to the Customs Service that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and such vessel, vehicle, aircraft, merchandise, or baggage is subject to section 1607 of this title, and such vessel, vehicle, aircraft, merchandise, or baggage has not been delivered under bond, the Customs Service shall proceed forthwith to advertise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title, the Customs Service shall forthwith transmit its report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, aircraft, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the Customs Service or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, aircraft, merchandise, or baggage so sold would have been subject to such claim.

(b) If the Customs Service determines that the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, the Customs Service may promptly order the destruction or other appropriate disposition of such property under regulations prescribed by the Secretary. No customs officer shall be liable for the destruction or other disposition of property made pursuant to this section.

(June 17, 1930, ch. 497, title IV, § 612, 46 Stat. 755; June 25, 1948, ch. 646, § 1, 62 Stat. 869; Sept. 1, 1954, ch. 1213, title V, § 506, 68 Stat. 1141; Pub. L. 91–271, title III, § 301(ff), June 2, 1970, 84 Stat. 291; Pub. L. 95–410, title I, § 111(c), Oct. 3, 1978, 92 Stat. 898; Pub. L. 98–473, title II, § 315, Oct. 12, 1984, 98 Stat. 2054; Pub. L. 98–573, title II, § 213(a)(9), Oct. 30, 1984, 98 Stat. 2985; Pub. L. 100–690, title VII, § 7367(c)(4), Nov. 18, 1988, 102 Stat. 4480; Pub. L. 103–182, title VI, § 667, Dec. 8, 1993, 107 Stat. 2215.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 612, 42 Stat. 986. That section was superseded by section 612 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions concerning the sale of property liable to perish or waste, etc., were contained in R.S. § 3080, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–182, § 667(1), substituted ''the Customs Service'' for ''the appropriate customs officer'' after ''Whenever it appears to'', for ''such officer'' after ''delivered under bond,'', for ''such officer'' before ''shall forthwith transmit'' and for ''the customs officer'' after ''Whether such sale be made by'' and substituted ''its report of the seizure'' for ''the appraiser's return and his report of the seizure''.

Subsec. (b). Pub. L. 103–182, § 667(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''If the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, and such value is less than $1,000, such officer may proceed forthwith to order destruction or other appropriate disposition of such property, under regulations prescribed by the Secretary of the Treasury.''

1988—Pub. L. 100–690 reenacted section substantially without change.

1984—Subsec. (a). Pub. L. 98–573 designated existing provisions as subsec. (a), inserted reference to aircraft in six places and substituted ''the value thereof, and such vessel'' for ''the value thereof, and the value of such vessel'', ''is subject to section 1607 of this title'' for ''as determined under section 1606 of this title, does not exceed $10,000'', ''If such vessel'' for ''If such value of such vessel'', and ''baggage is not subject to section 1607 of this title,'' for ''baggage exceeds $10,000'', and added subsec. (b).

Pub. L. 98–473 amended section in manner substantially identical to amendment by Pub. L. 98–573, but did not add a subsec. (b) or provisions similar thereto.

1978—Pub. L. 95–410 substituted ''$10,000'' for ''$2,500'' wherever appearing.

1970—Pub. L. 91–271 substituted references to appropriate customs officer or such officer for references to collector wherever appearing therein, and struck out references to appraiser and appraiser's return of value.

1954—Act Sept. 1, 1954, substituted ''$2,500'' for ''$1,000'' wherever appearing.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted ''United States attorney'' for ''United States district

attorney''. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Note thereunder.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

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.

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, set out as a note under section 542 of Title 6.

§ 1613. Disposition of proceeds of forfeited property

(a) Application for remission of forfeiture and restoration of proceeds of sale; disposition of proceeds when no application has been made

Except as provided in subsection (b) of this section, any person claiming any vessel, vehicle, aircraft, merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this chapter, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or to the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. If no application for such remission or restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs, the proceeds of sale shall be disposed of as follows:

(1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale, and if condemned by a decree of a district court and a bond for such costs was not given, the costs as taxed by the court;

(2) For the satisfaction of liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and

(3) The residue shall be deposited in the general fund of the Treasury of the United States.[1]

(b) Disposition of proceeds in excess of penalty assessed under section 1592

If merchandise is forfeited under section 1592 of this title, any proceeds from the sale thereof in excess of the monetary penalty finally assessed thereunder and the expenses and costs described in subsection (a)(1) and (2) of this section or subsection (a)(1), (a)(3), or (a)(4) of section 1613b of this title incurred in such sale shall be returned to the person against whom the penalty was assessed.

(c) Treatment of deposits

If property is seized by the Secretary under law enforced or administered by the Customs Service, or otherwise acquired under section 1605 of this title, and relief from the forfeiture is granted by the Secretary, or his designee, upon terms requiring the deposit or retention of a monetary amount in lieu of the forfeiture, the amount recovered shall be treated in the same manner as the proceeds of sale of a forfeited item.

(d) Expenses

In any judicial or administrative proceeding to forfeit property under any law enforced or administered by the Customs Service or the Coast Guard, the seizure, storage, and other expenses related to the forfeiture that are incurred by the Customs Service or the Coast Guard after the seizure, but before the institution of, or during, the proceedings, shall be a priority claim in the same manner as the court costs and the expenses of the Federal marshal.

(June 17, 1930, ch. 497, title IV, § 613, 46 Stat. 756; June 25, 1938, ch. 679, § 29, 52 Stat. 1089; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 95–410, title I, § 110(c), Oct. 3, 1978, 92 Stat. 896; Pub. L. 98–473, title II, §§ 316, 321, Oct. 12, 1984, 98 Stat. 2054, 2056; Pub. L. 98–573, title II, § 213(a)(10), Oct. 30, 1984, 98 Stat. 2986; Pub. L. 99–570, title III, § 3124, Oct. 27, 1986, 100 Stat. 3207–88.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 613, 42 Stat. 986. That section was superseded by section 613 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions authorizing applications to the Secretary of the Treasury for remission of forfeitures and restoration of the proceeds of sales, and provisions substantially the same as those in this section concerning the granting of such applications, were contained in R.S. § 3078. R.S. § 3079 provided that if no application was made within three months the proceeds should be distributed in the same manner as if the property had been condemned and sold under a decree of court. R.S.

[1] See 1984 Amendment note below.

§ 3090, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248, also specified how the proceeds of fines, penalties, and forfeitures incurred under customs laws, should be applied and distributed. All these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1986—Subsecs. (c), (d). Pub. L. 99–570 added subsecs. (c) and (d).

1984—Subsec. (a). Pub. L. 98–573, § 213(a)(10)(A), and Pub. L. 98–473, § 321, inserted reference to aircraft in provisions preceding par. (1).

Subsec. (a)(3). Pub. L. 98–573, § 213(a)(10)(B), substituted ''in the general fund of the Treasury of the United States'' for ''with the Treasurer of the United States as a customs or navigation fine''.

Pub. L. 98–473, § 316, which directed the substitution of ''The residue shall be deposited in the Customs Forfeiture Fund'' for ''The residue shall be deposited with the Treasurer of the United States as a customs or navigation fine'' was not executed to text in view of the later amendment by section 213(a)(10)(B) of Pub. L. 98–573.

Subsec. (b). Pub. L. 98–573, § 213(a)(10)(C), inserted ''or subsection (a)(1), (a)(3), or (a)(4) of section 1613b of this title''.

1978—Subsec. (a). Pub. L. 95–410, § 110(c)(1), designated existing provisions as subsec. (a) and substituted ''Except as provided in subsection (b) of this section, any'' for ''Any''.

Subsec. (b). Pub. L. 95–410, § 110(c)(2), added subsec. (b).

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

1938—Act June 25, 1938, inserted ''and'' at end of subd. (2), struck out subd. (3), and redesignated subd. (4) as (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

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.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

TRANSFER OF FUNCTIONS

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, set out as a note under section 542 of Title 6.

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, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation, and functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14. See section 108 of Title 49, Transportation.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Commissioner of Customs, referred to in text, was an officer in Department of the Treasury. Functions of Coast Guard and Commandant of Coast Guard excepted from transfer when Coast Guard is operating as part of Navy under sections 1 and 3 of Title 14, Coast Guard.

By Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5, Government Organization and Employees, functions of Secretary of Commerce relating to remission and mitigation of fines, penalties and forfeitures incurred for violation of navigation laws were transferred to Commandant of Coast Guard and Commissioner of Customs, subject to direction and control of Secretary of the Treasury, except as otherwise required by law with respect to United States Coast Guard whenever it operates as a part of Navy. Accordingly, references to Commandant of Coast Guard and Commissioner of Customs substituted in text for ''the Secretary of Commerce''.

APPROPRIATIONS

Section 2 of act June 26, 1934, ch. 756, 48 Stat. 1225, which was classified to section 725a of former Title 31, Money and Finance, repealed the permanent appropriation under the title ''Proceeds of goods seized and sold (Customs) (2x322)'' effective July 1, 1935, and provided that such portions of any Acts as make permanent appropriations to be expended under such account are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations.

§ 1613a. Repealed. Pub. L. 99–514, title XVIII, § 1888(7), Oct. 22, 1986, 100 Stat. 2925

Section, act June 17, 1930, ch. 497, title IV, § 613a, as added and amended Oct. 12, 1984, Pub. L. 98–473, title II, §§ 317, 2304, 98 Stat. 2054, 2193; Oct. 27, 1986, Pub. L. 99–570, title I, § 1152(b)(1), 100 Stat. 3207–12; July 11, 1987, Pub. L. 100–71, title I, § 101, 101 Stat. 438, related to establishment, purpose, etc. of the Customs Forfeiture Fund. See section 1613b of this title.

Section 1152(b)(1) of Pub. L. 99–570, which amended this section subsequently to repeal by Pub. L. 99–514, was repealed by section 101 of Pub. L. 100–71, which also provided in part that section 1152(b) of Pub. L. 99–570 be treated as though it had never been enacted.

§ 1613b. Customs Forfeiture Fund

(a) In general

(1) There is established in the Treasury of the United States a fund to be known as the ''Customs Forfeiture Fund'' (hereafter in this section referred to as the ''Fund''), which shall be available to the United States Customs Service, subject to appropriation, with respect to seizures and forfeitures by the United States Customs Service and the United States Coast Guard under any law enforced or administered by those agencies for payment, or for reimbursement to the appropriation from which payment was made, for—

(A) all proper expenses of the seizure (including investigative costs incurred by the United

States Customs Service leading to seizures) or the proceedings of forfeiture and sale, including, but not limited to, the expenses of inventory, security, and maintenance of custody of the property, advertisement and sale of the property, and if condemned by the court and a bond for such costs was not given, the costs as taxed by the court;

(B) awards of compensation to informers under section 1619 of this title;

(C) satisfaction of—

(i) liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law, and

(ii) other liens against forfeited property;

(D) amounts authorized by law with respect to remission and mitigation;

(E) claims of parties in interest to property disposed of under section 1612(b) of this title, in the amounts applicable to such claims at the time of seizure; and

(F) equitable sharing payments made to other Federal agencies, State and local law enforcement agencies, and foreign countries under the authority of section 1616a(c) of this title or section 981 of title 18.

(2)(A) Any payment made under subparagraph (C) or (D) of paragraph (1) with respect to a seizure or a forfeiture of property shall not exceed the value of the property at the time of the seizure.

(B) Any payment made under subparagraph (F) of paragraph (1) with respect to a seizure or forfeiture of property shall not exceed the value of the property at the time of disposition.

(3) In addition to the purposes described in paragraph (1), the Fund shall be available for—

(A) purchases by the United States Customs Service of evidence of—

(i) smuggling of controlled substances, and

(ii) violations of the currency and foreign transaction reporting requirements of chapter 51 of title 31, if there is a substantial probability that the violations of these requirements are related to the smuggling of controlled substances;

(B) equipment for any vessel, vehicle, or aircraft available for official use by the United States Customs Service to enable the vessel, vehicle, or aircraft to assist in law enforcement functions;

(C) the reimbursement, at the discretion of the Secretary, of private persons for expenses incurred by such persons in cooperating with the United States Customs Service in investigations and undercover law enforcement operations;

(D) publication of the availability of awards under section 1619 of this title;

(E) equipment for any vessel, vehicle, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the conveyance will be used in joint law enforcement operations with the United States Customs Service; and

(F) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in joint law enforcement operations with the United States Customs Service.

(b) United States Coast Guard

The Commissioner of Customs shall make available to the United States Coast Guard, from funds appropriated under subsection (f)(2) of this section in excess of $10,000,000 for a fiscal year, proceeds in the Fund derived from seizures by the Coast Guard. Funds made available under this subsection may be used for—

(1) equipment for any vessel, vehicle, or aircraft available for official use by the United States Coast Guard to enable the vessel, vehicle, or aircraft to assist in law enforcement functions;

(2) equipment for any vessel, vehicle, equipment, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the conveyance will be used in joint law enforcement operations with the United States Coast Guard;

(3) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in joint law enforcement operations with the United States Coast Guard; and

(4) expenses incurred in bringing vessels into compliance with applicable environmental laws prior to disposal by sinking.

(c) Deposits

There shall be deposited into the Fund all forfeited currency and proceeds from forfeiture under any law enforced or administered by the United States Customs Service or the United States Coast Guard and all income from investments made under subsection (d) of this section.

(d) Investment

Amounts in the Fund which are not currently needed for the purposes of this section shall be invested in obligations of, or guaranteed by, the United States.

(e) Annual reports; audits

(1) The Commissioner of Customs shall transmit to the Congress, by no later than February 1 of each fiscal year the following detailed reports:

(A) a report on—

(i) the estimated total value of property forfeited under any law enforced or administered by the United States Customs Service or the United States Coast Guard with respect to which funds were not deposited in the Fund during the previous fiscal year, and

(ii) the estimated total value of all such property transferred to any State or local law enforcement agency;

(B) a report on—

(i) the balance of the Fund at the beginning of the preceding fiscal year;

(ii) liens and mortgages paid and amount of money shared with State and local law enforcement agencies during the previous fiscal year;

(iii) the net amount realized from the operations of the Fund during the previous fis-

cal year, the amount of seized cash being held as evidence, and the amount of money that has been carried over to the current fiscal year;

(iv) any defendant's equity in property valued at $1,000,000 or more;

(v) the balance of the Fund at the end of the previous fiscal year; and

(C) a report containing, for the previous fiscal year—

(i) a complete set of audited financial statements (including a balance sheet, income statement, and cash flow analysis) prepared in a manner consistent with the requirements of the Comptroller General, and

(ii) an analysis of income and expenses showing the revenue received or lost—

(I) by property category (general property, vehicles, vessels, aircraft, cash, and real property) and

(II) by type of disposition (sales, remissions, cancellations, placed into official use, sharing with State and local agencies, and destructions).

(2) The Fund shall be subject to audits conducted by the Comptroller General of the United States, under such conditions as the Comptroller General determines appropriate.

(f) Authorization of appropriations

(1) There are hereby appropriated from the Fund such sums as may be necessary to carry out the purposes set forth in subsection (a)(1) of this section.

(2)(A) Subject to subparagraph (B), there are authorized to be appropriated from the Fund not to exceed $20,000,000 for each fiscal year to carry out the purposes set forth in subsections (a)(3) and (b) of this section for such fiscal year.

(B) Of the amount authorized to be appropriated under subparagraph (A), not to exceed the following, shall be available to carry out the purposes set forth in subsection (a)(3) of this section:

(i) $14,855,000 for fiscal year 1991.

(ii) $15,598,000 for fiscal year 1992.

(3) At the end of each fiscal year, any unobligated amount in excess of $15,000,000 remaining in the Fund shall be deposited into the general fund of the Treasury of the United States.

(June 17, 1930, ch. 497, title IV, § 613A, as added Pub. L. 98–573, title II, § 213(a)(11), Oct. 30, 1984, 98 Stat. 2986; amended Pub. L. 99–570, title I, § 1152(b)(2), title III, § 3142(a), Oct. 27, 1986, 100 Stat. 3207–12, 3207–93; Pub. L. 100–71, title I, § 101, July 11, 1987, 101 Stat. 438; Pub. L. 100–202, § 101(m) [title I, § 106], Dec. 22, 1987, 101 Stat. 1329–390, 1329–397; Pub. L. 100–418, title I, § 1912, Aug. 23, 1988, 102 Stat. 1320; Pub. L. 100–690, title VII, § 7364, Nov. 18, 1988, 102 Stat. 4475; Pub. L. 101–382, title I, § 121, Aug. 20, 1990, 104 Stat. 640; Pub. L. 101–508, title X, § 10012(a), Nov. 5, 1990, 104 Stat. 1388–390; Pub. L. 104–316, title I, § 110(a), Oct. 19, 1996, 110 Stat. 3832.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 613a of act June 17, 1930, as added by Pub. L. 98–473, title II, § 317, Oct. 12, 1984, 98 Stat. 2054, which was classified to section 1613a of this title and subsequently repealed.

AMENDMENTS

1996—Subsec. (e)(2). Pub. L. 104–316 struck out "annual financial" before "audits conducted" and inserted before period at end ", under such conditions as the Comptroller General determines appropriate".

1990—Subsec. (a)(1)(F). Pub. L. 101–382, § 121(1), added subpar. (F).

Subsec. (a)(2). Pub. L. 101–382, § 121(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c). Pub. L. 101–382, § 121(3), inserted "forfeited currency and" before "proceeds".

Subsec. (e)(1)(B). Pub. L. 101–382, § 121(4)(B)(i), (ii), redesignated cls. (iii) through (vi) as (ii) through (v), respectively, and struck out former cl. (ii), which read as follows: "sources of receipts (seized cash, conveyances, and others) of the Fund during the previous fiscal year;".

Subsec. (e)(1)(C). Pub. L. 101–382, § 121(4)(A), (B)(iii), (iv), (C), added subpar. (C).

Subsec. (f). Pub. L. 101–382, § 121(5), which amended subsec. (f) generally to read as follows:

"(1) Subject to paragraph (2), there are authorized to be appropriated from the Fund not to exceed $20,000,000 for each fiscal year to carry out the purposes set forth in subsections (a)(3) and (b) of this section for such fiscal year.

"(2) Of the amount authorized to be appropriated under paragraph (1), not to exceed the following shall be available to carry out the purposes set forth in subsection (a)(3) of this section:

"(A) $14,855,000 for fiscal year 1991.

"(B) $15,598,000 for fiscal year 1992."

was repealed by Pub. L. 101–508, § 10012(a)(1). See Construction of 1990 Amendment note below.

Subsec. (f)(2). Pub. L. 101–508, § 10012(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "There are authorized to be appropriated from the Fund not to exceed $20,000,000 for each fiscal year to carry out the purposes set forth in subsections (a)(3) and (b) of this section for such fiscal year."

1988—Pub. L. 100–690 amended section generally.

Subsec. (a)(iii). Pub. L. 100–418, § 1912(2), substituted "private persons" for "private citizens".

Subsec. (c). Pub. L. 100–418, § 1912(1), substituted "described in subsection (a) of this section for which the fund is available to the United States Customs Service," for "beginning on October 30, 1984, and ending on September 30, 1987,".

1987—Pub. L. 100–71 repealed Pub. L. 99–570, § 1152(b)(2). See 1986 Amendment note below.

Subsec. (a)(5)(v), (vi). Pub. L. 100–202 added cls. (v) and (vi).

1986—Pub. L. 99–570, § 1152(b)(2), which directed the repeal of this section, was itself repealed by Pub. L. 100–71. See Repeal and Revival of Section note below.

Subsec. (a). Pub. L. 99–570, § 3142(a)(1)(A), (F), substituted "1991" for "1987" in introductory provisions and amended generally concluding provisions which had read as follows: "In addition to the purposes described in paragraphs (1) through (6), the fund shall be available for purchases by the United States Customs Service of evidence of (A) smuggling of controlled substances, and (B) violations of the currency and foreign transaction reporting requirements of chapter 53 of title 31 if there is a substantial probability that the violations of these requirements are related to the smuggling of controlled substances."

Subsec. (a)(1). Pub. L. 99–570, § 3142(a)(1)(B), inserted "(including investigative costs leading to seizures)" after "of the seizure".

Subsec. (a)(5), (6). Pub. L. 99–570, § 3142(a)(1)(C)–(E), redesignated par. (6) as (5) and struck out former par. (5) which provided that the fund would be available with respect to seizures and forfeitures by the United States Customs Service for equipping for law enforcement functions of forfeited vessels, vehicles and aircraft retained as provided by law for official use by the Customs Service.

Subsec. (f). Pub. L. 99–570, § 3142(a)(2), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

''(1) There are authorized to be appropriated from the fund for each of the four fiscal years beginning with fiscal year 1984, not more than $10,000,000.

''(2) At the end of each of the first three of such four fiscal years, any amount in the fund in excess of $10,000,000 shall be deposited in the general fund of the Treasury. At the end of the last of such four fiscal years, any amount in the fund shall be deposited in the general fund of the Treasury, and the fund shall cease to exist.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 10012(c) of Pub. L. 101–508 provided that: ''The provisions of this section [amending this section] take effect August 21, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 3142(b) of Pub. L. 99–570 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect October 1, 1986.''

EFFECTIVE DATE

Section effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

CONSTRUCTION OF 1990 AMENDMENT

Section 10012(a)(1) of Pub. L. 101–508 provided that: ''Paragraph (5) of section 121 of the Customs and Trade Act of 1990 [Pub. L. 101–382] is repealed and subsection (f) of section 613A of the Tariff Act of 1930 [subsec. (f) of this section] shall be applied as if the amendment made by such paragraph (5) had not been enacted.''

REPEAL AND REVIVAL OF SECTION

Section 1152(b)(2) of Pub. L. 99–570, which had directed the repeal of this section, was repealed by section 101 of Pub. L. 100–71, which also provided in part that section 1152(b) of Pub. L. 99–570 be treated as though it had never been enacted.

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.

§ 1614. Release of seized property

If any person claiming an interest in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this chapter offers to pay the value of such vessel, vehicle, aircraft, merchandise, or baggage, as determined under section 1606 of this title, and it appears that such person has in fact a substantial interest therein, the appropriate customs officer may, subject to the approval of the Secretary of the Treasury if under the customs laws, or the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if under the navigation laws, accept such offer and release the vessel, vehicle, aircraft, merchandise, or baggage seized upon the payment of such value thereof, which shall be distributed in the order provided in section 1613 of this title.

(June 17, 1930, ch. 497, title IV, § 614, 46 Stat. 757; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 98–473, title II, § 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, § 213(a)(12), Oct. 30, 1984, 98 Stat. 2987.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 614, 42 Stat. 987. That section was superseded by section 614 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision authorizing collectors, subject to the approval of the Secretary of the Treasury, to release seized merchandise on payment of the appraised value when the appraised value did not exceed $1,000, were contained in R.S. § 3081, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1984—Pub. L. 98–573 and Pub. L. 98–473 inserted reference to aircraft in three places.

1970—Pub. L. 91–271 substituted reference to the appropriate customs officer for reference to the collector.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

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.

TRANSFER OF FUNCTIONS

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, set out as a note under section 542 of Title 6.

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, set out as a note under section 542 of Title 6.

Substitution in text of reference to Commandant of the Coast Guard or Commissioner of Customs for ''the Secretary of Commerce'' under the authority of Reorg. Plan No. 3 of 1946, see Transfer of Functions note set out under section 1613 of this title.

§ 1615. Burden of proof in forfeiture proceedings

In all suits or actions (other than those arising under section 1592 of this title) brought for the forfeiture of any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof

shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, aircraft, merchandise, or baggage, because of violation of any such law, the burden of proof shall be upon the defendant: *Provided*, That probable cause shall be first shown for the institution of such suit or action, to be judged of by the court, subject to the following rules of proof:

(1) The testimony or deposition of the officer of the customs who has boarded or required to come to a stop or seized a vessel, vehicle, or aircraft, or has arrested a person, shall be prima facie evidence of the place where the act in question occurred.

(2) Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying mechandise[1] or containers of merchandise, shall be prima facie evidence of the foreign origin of such merchandise.

(3) The fact that a vessel of any description is found, or discovered to have been, in the vicinity of any hovering vessel and under any circumstances indicating contact or communication therewith, whether by proceeding to or from such vessel, or by coming to in the vicinity of such vessel, or by delivering to or receiving from such vessel any merchandise, person, or communication, or by any other means effecting contact or communication therewith, shall be prima facie evidence that the vessel in question has visited such hovering vessel.

(June 17, 1930, ch. 497, title IV, § 615, 46 Stat. 757; Aug. 5, 1935, ch. 438, title II, § 207, 49 Stat. 525; Pub. L. 95–410, title I, § 110(d), Oct. 3, 1978, 92 Stat. 896; Pub. L. 98–473, title II, § 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, § 213(a)(13), Oct. 30, 1984, 98 Stat. 2987.)

PRIOR PROVISIONS

Provisions somewhat similar to those in this section were contained in act Oct. 3, 1913, ch. 16, § III, T, 38 Stat. 189, the provisions of which were originally enacted in the Customs Administrative Act of June 10, 1890, ch. 407, § 21, 26 Stat. 140, and reenacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 101, and amended by the 1913 act. Section III of the 1913 act was superseded by act Sept. 21, 1922, ch. 356, title IV, § 615, 42 Stat. 987, and was repealed by section 643 thereof. Section 615 of the 1922 act was superseded by section 615 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1984—Pub. L. 98–573 and Pub. L. 98–473 inserted reference to aircraft in provisions preceding par. (1) and in par. (1).

1978—Pub. L. 95–410 inserted ''(other than those arising under section 1592 of this title)'' after ''In all suits or actions''.

1935—Act Aug. 5, 1935, inserted a comma in place of a period at the end, inserted ''subject to the following rules of proof'', and added subds. (1) to (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

[1] So in original. Probably should be ''merchandise''.

§ 1616. Repealed. Pub. L. 99–570, title I, § 1863(b), Oct. 27, 1986, 100 Stat. 3207–54

Section, act June 17, 1930, ch. 497, title IV, § 616, as added Oct. 12, 1984, Pub. L. 98–473, title II, § 318, 98 Stat. 2055, related to disposition of forfeited property.

Another section 616 of act June 17, 1930, as added by Pub. L. 98–573, title II, § 213(a)(4), Oct. 30, 1984, 98 Stat. 2987, is classified to section 1616a of this title.

A prior section 616 of act June 17, 1930, ch. 497, title IV, 46 Stat. 757, related to prohibition against compromising Government claims and was classified to this section, prior to repeal by act June 25, 1948, ch. 645, § 24, 62 Stat. 682, eff. Sept. 1, 1948. See section 1915 of Title 18, Crimes and Criminal Procedure.

§ 1616a. Disposition of forfeited property

(a) State proceedings

The Secretary of the Treasury may discontinue forfeiture proceedings under this chapter in favor of forfeiture under State law. If a complaint for forfeiture is filed under this chapter, the Attorney General may seek dismissal of the complaint in favor of forfeiture under State law.

(b) Transfer of seized property; notice

If forfeiture proceedings are discontinued or dismissed under this section—

(1) the United States may transfer the seized property to the appropriate State or local official; and

(2) notice of the discontinuance or dismissal shall be provided to all known interested parties.

(c) Retention or transfer of forfeited property

(1) The Secretary of the Treasury may apply property forfeited under this chapter in accordance with subparagraph (A) or (B), or both:

(A) Retain any of the property for official use.

(B) Transfer any of the property to—

(i) any other Federal agency;

(ii) any State or local law enforcement agency that participated directly or indirectly in the seizure or forfeiture of the property; or

(iii) the Civil Air Patrol.

(2) The Secretary may transfer any forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—

(A) has been agreed to by the Secretary of State;

(B) is authorized in an international agreement between the United States and the foreign country; and

(C) is made to a country which, if applicable, has been certified under section 2291j(b) of title 22.

(3) Aircraft may be transferred to the Civil Air Patrol under paragraph (1)(B)(iii) in support of air search and rescue and other emergency services and, pursuant to a memorandum of understanding entered into with a Federal agency, illegal drug traffic surveillance. Jet-powered aircraft may not be transferred to the Civil Air Patrol under the authority of paragraph (1)(B)(iii).

(d) Liability of United States after transfer

The United States shall not be liable in any action relating to property transferred under

this section if such action is based on an act or omission occurring after the transfer.

(June 17, 1930, ch. 497, title IV, § 616, as added Pub. L. 98–573, title II, § 213(a)(14), Oct. 30, 1984, 98 Stat. 2987; amended Pub. L. 99–570, title I, § 1863(a), Oct. 27, 1986, 100 Stat. 3207–54; Pub. L. 100–690, title VII, § 7366(a), Nov. 18, 1988, 102 Stat. 4478; Pub. L. 101–207, § 3(e), Dec. 7, 1989, 103 Stat. 1834; Pub. L. 103–447, title I, § 102(c), Nov. 2, 1994, 108 Stat. 4693.)

CODIFICATION

Another section 616 of act June 17, 1930, as added by Pub. L. 98–473, title II, § 318, Oct. 12, 1984, 98 Stat. 2055, was classified to section 1616 of this title and subsequently repealed.

AMENDMENTS

1994—Subsec. (c)(2)(C). Pub. L. 103–447 substituted ''section 2291j(b) of title 22'' for ''section 2291(h) of title 22''.

1989—Subsec. (c)(1)(B). Pub. L. 101–207, § 3(e)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Transfer any of the property to any—

''(i) other Federal agency; or

''(ii) State or local law enforcement agency that participated directly or indirectly in the seizure or forfeiture of the property.''

Subsec. (c)(3). Pub. L. 101–207, § 3(e)(2), added par. (3).

1988—Subsec. (c). Pub. L. 100–690 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Secretary of the Treasury may transfer any property forfeited under this chapter to any other Federal agency or to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property.''

1986—Subsec. (c). Pub. L. 99–570 inserted ''any other Federal agency or to'' after ''property forfeited under this chapter to''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7366(b) of Pub. L. 100–690 provided that: ''The amendment made by subsection (a) [amending this section] applies with respect to property forfeited under the Tariff Act of 1930 [this chapter] on or after the date of the enactment of this Act [Nov. 18, 1988].''

EFFECTIVE DATE

Section effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

§ 1617. Compromise of Government claims by Secretary of the Treasury

Upon a report by a customs officer, United States attorney, or any special attorney, having charge of any claim arising under the customs laws, showing the facts upon which such claim is based, the probabilities of a recovery and the terms upon which the same may be compromised, the Secretary of the Treasury is authorized to compromise such claim, if such action shall be recommended by the General Counsel for the Department of the Treasury.

(June 17, 1930, ch. 497, title IV, § 617, 46 Stat. 757; May 10, 1934, ch. 277, § 512(b), 48 Stat. 759; June 25, 1948, ch. 646, § 1, 62 Stat. 869; Pub. L. 91–271, title III, § 301(gg), June 2, 1970, 84 Stat. 291.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 617, 42 Stat. 987. That section was superseded by section 617 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1970—Pub. L. 91–271 substituted reference to customs officer for reference to collector and struck out reference to customs agents.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted ''United States attorney'' for ''district attorney''. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Note thereunder.

EFFECTIVE DATE OF 1970 AMENDMENT

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.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Treasury, General Counsel of Department of the Treasury, or Department of the Treasury under this section with respect to functions transferred to Secretary of Commerce in sections 1303 and 1671 et seq. of this title by section 5(a)(1)(C) of Reorg. Plan No. 3 of 1979 were transferred to Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(C), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1–107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

Act May 10, 1934, ch. 277, § 512(b), 48 Stat. 759, abolished offices of General Counsel and Assistant General Counsel for Bureau of Internal Revenue, and office of Solicitor and Assistant Solicitor of the Treasury and transferred powers, duties, and functions thereof to General Counsel for Department of the Treasury.

§ 1618. Remission or mitigation of penalties

Whenever any person interested in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if under the navigation laws, before the sale of such vessel, vehicle, aircraft, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs officer to take testimony upon such petition: *Provided*, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

(June 17, 1930, ch. 497, title IV, § 618, 46 Stat. 757; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 91–271,

title III, § 301(hh), June 2, 1970, 84 Stat. 291; Pub. L. 98–473, title II, § 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, § 213(a)(16), Oct. 30, 1984, 98 Stat. 2988.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 618, 42 Stat. 987. That section was superseded by section 618 of act June 17, 1930, comprising this section, and was repealed by section 651(a)(1) of the 1930 act.

Provisions for a petition to the judge of the district, a summary investigation before the judge or a United States Commissioner, and transmission of the facts appearing thereon, with a certified copy of the evidence, to the Secretary of the Treasury, and provisions authorizing the Secretary to remit fines and penalties, etc., were contained in act June 22, 1874, ch. 391, §§ 17, 18, 20, 18 Stat. 189, 190, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

AMENDMENTS

1984—Pub. L. 98–573 and Pub. L. 98–473 inserted reference to aircraft in two places.

1970—Pub. L. 91–271 substituted ''customs officer'' for ''customs agent, collector, judge of the United States Customs Court, or United States commissioner''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

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.

TRANSFER OF FUNCTIONS

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, set out as a note under section 542 of Title 6.

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, set out as a note under section 542 of Title 6.

Substitution in text of references to Commandant of the Coast Guard and Commissioner of Customs for ''the Secretary of Commerce'' under the authority of Reorg. Plan No. 3 of 1946, see note set out under section 1613 of this title.

§ 1619. Award of compensation to informers

(a) In general

If—

(1) any person who is not an employee or officer of the United States—

(A) detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws and reports such detection and seizure to a customs officer, or

(B) furnishes to a United States attorney, the Secretary of the Treasury, or any customs officer original information concerning—

(i) any fraud upon the customs revenue, or

(ii) any violation of the customs laws or the navigation laws which is being, or has been, perpetrated or contemplated by any other person; and

(2) such detection and seizure or such information leads to a recovery of—

(A) any duties withheld, or

(B) any fine, penalty, or forfeiture of property incurred;

the Secretary may award and pay such person an amount that does not exceed 25 percent of the net amount so recovered.

(b) Forfeited property not sold

If—

(1) any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States and is thereafter, in lieu of sale—

(A) destroyed under the customs or navigation laws, or

(B) delivered to any governmental agency for official use, and

(2) any person would be eligible to receive an award under subsection (a) of this section but for the lack of sale of such forfeited property,

the Secretary may award and pay such person an amount that does not exceed 25 percent of the appraised value of such forfeited property.

(c) Dollar limitation

The amount awarded and paid to any person under this section may not exceed $250,000 for any case.

(d) Source of payment

Unless otherwise provided by law, any amount paid under this section shall be paid out of appropriations available for the collection of the customs revenue.

(e) Recovery of bail bond

For purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred.

(June 17, 1930, ch. 497, title IV, § 619, 46 Stat. 758; Aug. 5, 1935, ch. 438, title III, § 305, 49 Stat. 527; Pub. L. 98–473, title II, §§ 319, 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, § 213(a)(15), Oct. 30, 1984, 98 Stat. 2988; Pub. L. 99–570, title III, § 3125, Oct. 27, 1986, 100 Stat. 3207–88.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 619, 42 Stat. 988. That section was superseded by section 619 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 this section, but applicable in part to any officer of the customs or other person, were contained in act June 22, 1874, ch. 391, § 4, 18 Stat. 186. Section 3 of the 1874 act required the Secretary of the Treasury to make suitable compensation in certain cases, as thereinafter provided, made an appropriation and required payments to be reported to Congress. Section 6 required claims to compensation to be established to the satisfaction of the court or judge, and required satisfactory proof when the fine, etc., was collected without judicial proceed-

ings. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

Section 2 of the act of June 22, 1874, ch. 391, repealed all provisions under which moieties of fines, etc., were paid to informers, etc., and required the proceeds of all fines, penalties, and forfeitures to be paid into the Treasury. This last provision was omitted from the Code as superseded by section 527 of this title (act Mar. 4, 1907, ch. 2918, § 1, 34 Stat. 1315).

Section 26 of that Act repealed inconsistent laws and saved existing rights. It was omitted from the Code as temporary and executed.

R.S. § 2948, providing that additional duties were not to be deemed fines, etc., for distribution to customs officers, became inoperative by the repeal of all provisions for payment of moieties of fines, etc., to informers or officers, by the act of June 2, 1874, ch. 391, § 2, and was repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

An appropriation for compensation in lieu of moieties was made by act Mar. 2, 1926, ch. 43, § 1, 44 Stat. 141. Similar appropriations were contained in prior acts.

AMENDMENTS

1986—Pub. L. 99–570 amended section generally. Prior to amendment, section read as follows: ''Any person not an officer of the United States who detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws, and who reports the same to an officer of the customs, or who furnishes to a United States attorney, to the Secretary of the Treasury, or to any customs officer original information concerning any fraud upon the customs revenue, or a violation of the customs laws or the navigation laws, perpetrated or contemplated, which detection and seizure or information leads to a recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, may be awarded and paid by the Secretary of the Treasury a compensation of 25 per centum of the net amount recovered, but not to exceed $250,000 in any case, which shall be paid out of any appropriations available for the collection of the revenue from customs. For the purposes of this section an amount recovered under a bail bond shall be deemed a recovery of a fine incurred. If any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States, and is thereafter, in lieu of sale, destroyed under the customs or navigation laws or delivered to any governmental agency for official use, compensation of 25 per centum of the appraised value thereof may be awarded and paid by the Secretary of the Treasury under the provisions of this section, but not to exceed $250,000 in any case. In no event shall the Secretary delegate the authority to pay an award under this section in excess of $10,000 to an official below the level of the Commissioner of Customs.''

1984—Pub. L. 98–573, § 213(a)(15)(A), and Pub. L. 98–473, § 321, inserted reference to aircraft in two places.

Pub. L. 98–573, § 213(a)(15)(B), substituted ''$250,000'' for ''$50,000'' in two places.

Pub. L. 98–473, § 319(a), substituted ''$150,000'' for ''$50,000''.

Pub. L. 98–473, § 319(b), inserted ''In no event shall the Secretary delegate the authority to pay an award under this section in excess of $10,000 to an official below the level of the Commissioner of Customs.''

1935—Act Aug. 5, 1935, inserted ''or the navigation laws'' after ''customs laws'', and provisions authorizing award of compensation of 25 per centum of the appraised value, but not to exceed $50,000 in any case.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

§ 1620. Acceptance of money by United States officers

Any officer of the United States who directly or indirectly receives, accepts, or contracts for any portion of the money which may accrue to any person making such detection and seizure, or furnishing such information, shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or both, and shall be thereafter ineligible to any office of honor, trust, or emolument. Any such person who pays to any such officer, or to any person for the use of such officer, any portion of such money, or anything of value for or because of such money, shall have a right of action against such officer, or his legal representatives, or against such person, or his legal representatives, and shall be entitled to recover the money so paid or the thing of value so given.

(June 17, 1930, ch. 497, title IV, § 620, 46 Stat. 758.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 620, 42 Stat. 988. That section was superseded by section 620 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 this section but excepting cases of smuggling were contained in act June 22, 1874, ch. 391, § 7, 18 Stat. 187, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

§ 1621. Limitation of actions

No suit or action to recover any duty under section 1592(d), 1593a(d) of this title, or any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered, or in the case of forfeiture, within 2 years after the time when the involvement of the property in the alleged offense was discovered, whichever was later; except that—

(1) in the case of an alleged violation of section 1592 or 1593a of this title, no suit or action (including a suit or action for restoration of lawful duties under subsection (d) of such sections) may be instituted unless commenced within 5 years after the date of the alleged violation or, if such violation arises out of fraud, within 5 years after the date of discovery of fraud, and

(2) the time of the absence from the United States of the person subject to the penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within the 5-year period of limitation.

(June 17, 1930, ch. 497, title IV, § 621, 46 Stat. 758; Aug. 5, 1935, ch. 438, title III, § 306, 49 Stat. 527; Pub. L. 95–410, title I, § 110(e), Oct. 3, 1978, 92 Stat. 897; Pub. L. 103–182, title VI, § 668, Dec. 8, 1993, 107 Stat. 2216; Pub. L. 106–185, § 11, Apr. 25, 2000, 114 Stat. 217.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 621, 42 Stat. 988. That section was superseded by section 621 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions substantially similar to those in this section, except that the period of limitation was three years, were contained in act June 22, 1874, ch. 391, § 22, 18 Stat. 190, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

AMENDMENTS

2000—Pub. L. 106–185 inserted ‘‘, or in the case of forfeiture, within 2 years after the time when the involvement of the property in the alleged offense was discovered, whichever was later’’ after ‘‘within five years after the time when the alleged offense was discovered’’ in introductory provisions.

1993—Pub. L. 103–182 inserted ‘‘any duty under section 1592(d), 1593a(d) of this title, or’’ before ‘‘any pecuniary penalty’’ and substituted ‘‘discovered; except that—’’ along with pars. (1) and (2) for ‘‘discovered: *Provided*, That in the case of an alleged violation of section 1592 of this title arising out of gross negligence or negligence, such suit or action shall not be instituted more than five years after the date the alleged violation was committed: *Provided further*, That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation.’’

1978—Pub. L. 95–410 prescribed for any suit or action for violation of section 1592 of this title arising out of gross negligence or negligence a five year limitation period following date of alleged violation.

1935—Act Aug. 5, 1935, substituted ‘‘the alleged offense was discovered’’ for ‘‘such penalty or forfeiture accrued’’.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–185 applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1978 AMENDMENT

Effective date of amendment by Pub. L. 95–410 for alleged violation of section 1592 of this title arising out of gross negligence or negligence committed on or after Oct. 3, 1978, or before such date without commencement of proceedings except where barred by provisions of this section in effect prior to such date, see section 110(f)(2) of Pub. L. 95–410, set out as a note under section 1592 of this title.

§ 1622. Foreign landing certificates

The Secretary of the Treasury may by regulations require the production of landing certificates in respect of merchandise exported from the United States, or in respect of residue cargo, in cases in which he deems it necessary for the protection of the revenue, or to comply with international obligations.

(June 17, 1930, ch. 497, title IV, § 622, 46 Stat. 759; Pub. L. 99–570, title III, § 3126, Oct. 27, 1986, 100 Stat. 3207–89.)

AMENDMENTS

1986—Pub. L. 99–570 inserted ‘‘, or to comply with international obligations’’ before period at end.

§ 1623. Bonds and other security

(a) Requirement of bond by regulation

In any case in which bond or other security is not specifically required by law, the Secretary of the Treasury may by regulation or specific instruction require, or authorize customs officers to require, such bonds or other security as he, or they, may deem necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which the Secretary of the Treasury or the Customs Service may be authorized to enforce.

(b) Conditions and form of bond

Whenever a bond is required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, the Secretary of the Treasury may—

(1) Except as otherwise specifically provided by law, prescribe the conditions and form of such bond and the manner in which the bond may be filed with or, pursuant to an authorized electronic data interchange system, transmitted to the Customs Service, and fix the amount of penalty thereof, whether for the payment of liquidated damages or of a penal sum: *Provided*, That when a consolidated bond authorized by paragraph 4 of this subsection is taken, the Secretary of the Treasury may fix the penalty of such bond without regard to any other provision of law, regulation, or instruction.

(2) Provide for the approval of the sureties on such bond, without regard to any general provision of law.

(3) Authorize the execution of a term bond the conditions of which shall extend to and cover similar cases of importations over such period of time, not to exceed one year, or such longer period as he may fix when in his opinion special circumstances existing in a particular instance require such longer period.

(4) Authorize, to the extent that he may deem necessary, the taking of a consolidated bond (single entry or term), in lieu of separate bonds to assure compliance with two or more provisions of law, regulations, or instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce. A consolidated bond taken pursuant to the authority contained in this subsection shall have the same force and effect in respect of every provision of law, regulation, or instruction for the purposes for which it is required as though separate bonds had been taken to assure compliance with each such provision.

(c) Cancellation of bond

The Secretary of the Treasury may authorize the cancellation of any bond provided for in this section, or of any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon the payment of such lesser amount or penalty or upon such other terms and conditions as he may deem sufficient. In order to assure uniform, reasonable, and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder.

(d) Validity of bond

No condition in any bond taken to assure compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce shall be held invalid on the ground that such condition is not specified in the law, regulation, or instruction authorizing or requiring the taking of such bond. Any bond transmitted to the Customs Service pursuant to an authorized electronic data interchange system shall have the same force and effect and be binding upon the parties thereto as if such bond were manually executed, signed, and filed.

(e) Deposit of money or obligation of United States in lieu of bond

The Secretary of the Treasury is authorized to permit the deposit of money or obligations of the United States, in such amount and upon such conditions as he may by regulation prescribe, in lieu of sureties on any bond required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce.

(June 17, 1930, ch. 497, title IV, § 623, 46 Stat. 759; June 25, 1938, ch. 679, § 30, 52 Stat. 1089; Pub. L. 91–271, title III, § 301(ii), June 2, 1970, 84 Stat. 291; Pub. L. 100—418, title I, § 1904, Aug. 23, 1988, 102 Stat. 1313; Pub. L. 103–182, title VI, § 647, Dec. 8, 1993, 107 Stat. 2207.)

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–182, § 647(1), inserted ''and the manner in which the bond may be filed with or, pursuant to an authorized electronic data interchange system, transmitted to the Customs Service'' after ''form of such bond''.

Subsec. (d). Pub. L. 103–182, § 647(2), inserted at end ''Any bond transmitted to the Customs Service pursuant to an authorized electronic data interchange system shall have the same force and effect and be binding upon the parties thereto as if such bond were manually executed, signed, and filed.''

1988—Subsec. (c). Pub. L. 100–418 provided for publication of guidelines establishing customs bond cancellation standards.

1970—Subsec. (a). Pub. L. 91–271 substituted reference to customs officers for reference to collectors of customs.

1938—Act June 25, 1938, amended section generally, among other changes adding subsecs. (c) to (e).

EFFECTIVE DATE OF 1970 AMENDMENT

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.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

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.

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs Service was under Department of the Treasury.

§ 1624. General regulations

In addition to the specific powers conferred by this chapter the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this chapter.

(June 17, 1930, ch. 497, title IV, § 624, 46 Stat. 759.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 623, 42 Stat. 988. That section was superseded by section 624 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1625. Interpretive rulings and decisions; public information

(a) Publication

Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this chapter with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall otherwise make such ruling or decision available for public inspection.

(b) Appeals

A person may appeal an adverse interpretive ruling and any interpretation of any regulation prescribed to implement such ruling to a higher level of authority within the Customs Service for de novo review. Upon a reasonable showing of business necessity, any such appeal shall be considered and decided no later than 60 days following the date on which the appeal is filed. The Secretary shall issue regulations to implement this subsection.

(c) Modification and revocation

A proposed interpretive ruling or decision which would—

(1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or

(2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;

shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

(d) Publication of customs decisions that limit court decisions

A decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision.

(e) Public information

The Secretary may make available in writing or through electronic media, in an efficient,

comprehensive and timely manner, all information, including directives, memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs[1] laws and regulations. All information which may be made available pursuant to this subsection shall be subject to any exemption from disclosure provided by section 552 of title 5.

(June 17, 1930, ch. 497, title IV, § 625, as added Pub. L. 95–410, title I, § 112, Oct. 3, 1978, 92 Stat. 898; amended Pub. L. 103–182, title VI, § 623, Dec. 8, 1993, 107 Stat. 2186; Pub. L. 104–295, § 21(e)(14), Oct. 11, 1996, 110 Stat. 3531.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–295 made technical amendment to reference in original act which appears in text as reference to ''this chapter''.

1993—Pub. L. 103–182 amended section generally. Prior to amendment, section read as follows: ''Within 120 days after issuing any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision) under this chapter with respect to any customs transaction, the Secretary shall have such decision published in the Customs Bulletin or shall otherwise make such decision available for public inspection.''

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, set out as a note under section 542 of Title 6.

STUDY AND REPORT RELATING TO TIMELINESS OF PROSPECTIVE RULINGS

Pub. L. 107–210, div. A, title III, § 335, Aug. 6, 2002, 116 Stat. 978, required the Comptroller General, not later than 1 year after Aug. 6, 2002, to conduct a study and report to committees of Congress on the extent to which the Office of Regulations and Rulings of the Customs Service had made improvements to decrease the time between requests for, and issuance of, prospective rulings relating to the proper classification, valuation, or marking of goods proposed to be imported into the United States.

§ 1626. Steel products trade enforcement

(a) Export validation requirement

In order to monitor and enforce export measures required by a foreign government or customs union, pursuant to an international arrangement with the United States, the Secretary of the Treasury may, upon receipt of a request by the President of the United States and by a foreign government or customs union, require the presentation of a valid export license or other documents issued by such foreign government or customs union as a condition for entry into the United States of steel mill products specified in the request. The Secretary may provide by regulation for the terms and conditions under which such merchandise attempted to be entered without an accompanying valid export license or other documents may be denied entry into the United States.

(b) Period of applicability

This section applies only to requests received by the Secretary of the Treasury prior to January 1, 1983, and for the duration of the arrangements.

(June 17, 1930, ch. 497, title IV, § 626, as added Pub. L. 96–276, § 153, Oct. 2, 1982, 96 Stat. 1202.)

§ 1627. Repealed. Pub. L. 100–690, title VII, § 7367(c)(6), Nov. 18, 1988, 102 Stat. 4480

Section, act June 17, 1930, ch. 497, title IV, § 627, as added Oct. 25, 1984, Pub. L. 98–547, title III, § 302, 98 Stat. 2771, related to unlawful importation or exportation of certain vehicles and equipment.

Another section 627 of act June 17, 1930, as added by Pub. L. 98–573, title II, § 205, Oct. 30, 1984, 98 Stat. 2974, is classified to section 1627a of this title.

§ 1627a. Unlawful importation or exportation of certain vehicles; inspections

(a) Violations; penalties; seizures and forfeitures

(1) Whoever knowingly imports, exports, or attempts to import or export—

(A) Any[1] stolen self-propelled vehicle, vessel, aircraft, or part of a self-propelled vehicle, vessel, or aircraft; or

(B) any self-propelled vehicle or part of a self-propelled vehicle from which the identification number has been removed, obliterated, tampered with, or altered;

shall be subject to a civil penalty in an amount determined by the Secretary, not to exceed $10,000 for each violation.

(2) Any violation of this subsection shall make such self-propelled vehicle, vessel, aircraft, or part thereof subject to seizure and forfeiture under this chapter.

(b) Regulations; violations; penalties

A person attempting to export a used self-propelled vehicle shall present, pursuant to regulations prescribed by the Secretary, to the appropriate customs officer both the vehicle and a document describing such vehicle which includes the vehicle identification number, before lading if the vehicle is to be transported by vessel or aircraft, or before export if the vehicle is to be transported by rail, highway, or under its own power. Failure to comply with the regulations of the Secretary shall subject such person to a civil penalty of not more than $500 for each violation.

(c) Definitions

For purposes of this section—

(1) the term ''self-propelled vehicle'' includes any automobile, truck, tractor, bus, motorcycle, motor home, self-propelled agricultural machinery, self-propelled construction equipment, self-propelled special use equipment, and any other self-propelled vehicle used or designed for running on land but not on rail;

(2) the term ''aircraft'' has the meaning given it in section 40102(a)(6) of title 49;

(3) the term ''used'' refers to any self-propelled vehicle the equitable or legal title to

[1] So in original. Probably should not be capitalized.

[1] So in original. Probably should not be capitalized.

which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser; and

(4) the term ''ultimate purchaser'' means the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a self-propelled vehicle for purposes other than resale.

(d) Cooperation of law enforcement and governmental authorities

Customs officers may cooperate and exchange information concerning motor vehicles, off-highway mobile equipment, vessels, or aircraft, either before exportation or after exportation or importation, with such Federal, State, local, and foreign law enforcement or governmental authorities, and with such organizations engaged in theft prevention activities, as may be designated by the Secretary.

(June 17, 1930, ch. 497, title IV, § 627, as added Pub. L. 98–573, title II, § 205, Oct. 30, 1984, 98 Stat. 2974.)

CODIFICATION

In subsec. (c)(2), ''section 40102(a)(6) of title 49'' substituted for ''section 101(5) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(5))'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Another section 627 of act June 17, 1930, as added by Pub. L. 98–547, title III, § 302, Oct. 25, 1984, 98 Stat. 2771, was classified to section 1627 of this title and subsequently repealed.

EFFECTIVE DATE

Section effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

§ 1628. Exchange of information

(a) In general

The Secretary may by regulation authorize customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Secretary reasonably believes the exchange of information is necessary to—

(1) insure compliance with any law or regulation enforced or administered by the Customs Service;

(2) administer or enforce multilateral or bilateral agreements to which the United States is a party;

(3) assist in investigative, judicial and quasi-judicial proceedings in the United States; and

(4) an action comparable to any of those described in paragraphs (1) through (4)[1] undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.

(b) Nondisclosure and uses of information provided

(1) Information may be provided to foreign customs and law enforcement agencies under subsection (a) of this section only if the Secretary obtains assurances from such agencies that such information will be held in confidence and used only for the law enforcement purposes for which such information is provided to such agencies by the Secretary.

(2) No information may be provided under subsection (a) of this section to any foreign customs or law enforcement agency that has violated any assurances described in paragraph (1).

(c) Government agency of NAFTA country

The Secretary may authorize the Customs Service to exchange information with any government agency of a NAFTA country, as defined in section 3301(4) of this title, if the Secretary—

(1) reasonably believes the exchange of information is necessary to implement chapter 3, 4, or 5 of the North American Free Trade Agreement, and

(2) obtains assurances from such country that the information will be held in confidence and used only for governmental purposes.

(June 17, 1930, ch. 497, title IV, § 628, as added Pub. L. 99–570, title III, § 3127, Oct. 27, 1986, 100 Stat. 3207–89; amended Pub. L. 103–182, title II, § 209, Dec. 8, 1993, 107 Stat. 2098.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–182 added subsec. (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

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.

§ 1629. Inspections and preclearance in foreign countries

(a) In general

When authorized by treaty or executive agreement, the Secretary may station customs officers in foreign countries for the purpose of examining persons and merchandise prior to their arrival in, or subsequent to their exit from, the United States.

(b) Functions and duties

Customs officers stationed in a foreign country under subsection (a) of this section may exercise such functions and perform such duties (including inspections, searches, seizures and arrests) as may be permitted by the treaty, agreement or law of the country in which they are stationed.

(c) Compliance

The Secretary may by regulation require compliance with the customs laws of the United States in a foreign country and, in such a case the customs laws and other civil and criminal laws of the United States relating to the impor-

[1] So in original. Probably should be ''(3)''.

tation or exportation of merchandise, filing of false statements, and the unlawful removal of merchandise from customs custody shall apply in the same manner as if the foreign station is a port of entry or exit within the customs territory of the United States.

(d) Seizures

When authorized by treaty, agreement or foreign law, merchandise which is subject to seizure or forfeiture under United States law may be seized in a foreign country and transported under customs custody to the customs territory to the United States to be proceeded against under the customs law.

(e) Stationing of foreign customs and agriculture inspection officers in the United States

The Secretary of State, in coordination with the Secretary and the Secretary of Agriculture, may enter into agreements with any foreign country authorizing the stationing in the United States of customs and agriculture inspection officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of ensuring that persons and merchandise going directly to that country from the United States, or that have gone directly from that country to the United States, comply with the customs and other laws of that country governing the importation or exportation of merchandise. Any foreign customs or agriculture inspection official stationed in the United States under this subsection may exercise such functions, perform such duties, and enjoy such privileges and immunities as United States officials may be authorized to perform or are afforded in that foreign country by treaty, agreement, or law.

(f) Application of certain laws

When customs officials of a foreign country are stationed in the United States in accordance with subsection (e) of this section, and if similar provisions are applied to United States officials stationed in that country—

(1) sections 111 and 1114 of title 18 shall apply as if the officials were designated in those sections; and

(2) any person who in any matter before a foreign customs official stationed in the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, is liable for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

(g) Privileges and immunities

Any person designated to perform the duties of an officer of the Customs Service pursuant to section 1401(i) of this title shall be entitled to the same privileges and immunities as an officer of the Customs Service with respect to any actions taken by the designated person in the performance of such duties.

(h) Customs procedures and commitments

(1) In general

The Secretary of Homeland Security, the United States Trade Representative, and other appropriate Federal officials shall work through appropriate international organizations including the World Customs Organization (WCO), the World Trade Organization (WTO), the International Maritime Organization, and the Asia-Pacific Economic Cooperation, to align, to the extent practicable, customs procedures, standards, requirements, and commitments in order to facilitate the efficient flow of international trade.

(2) United States Trade Representative

(A) In general

The United States Trade Representative shall seek commitments in negotiations in the WTO regarding the articles of GATT 1994 that are described in subparagraph (B) that make progress in achieving—

(i) harmonization of import and export data collected by WTO members for customs purposes, to the extent practicable;

(ii) enhanced procedural fairness and transparency with respect to the regulation of imports and exports by WTO members;

(iii) transparent standards for the efficient release of cargo by WTO members, to the extent practicable; and

(iv) the protection of confidential commercial data.

(B) Articles described

The articles of the GATT 1994 described in this subparagraph are the following:

(i) Article V (relating to transit).

(ii) Article VIII (relating to fees and formalities associated with importation and exportation).

(iii) Article X (relating to publication and administration of trade regulations).

(C) GATT 1994

The term ''GATT 1994'' means the General Agreement on Tariff and Trade annexed to the WTO Agreement.

(3) Customs

The Secretary of Homeland Security, acting through the Commissioner and in consultation with the United States Trade Representative, shall work with the WCO to facilitate the efficient flow of international trade, taking into account existing international agreements and the negotiating objectives of the WTO. The Commissioner shall work to—

(A) harmonize, to the extent practicable, import data collected by WCO members for customs purposes;

(B) automate and harmonize, to the extent practicable, the collection and storage of commercial data by WCO members;

(C) develop, to the extent practicable, transparent standards for the release of cargo by WCO members;

(D) develop and harmonize, to the extent practicable, standards, technologies, and protocols for physical or nonintrusive ex-

aminations that will facilitate the efficient flow of international trade; and

(E) ensure the protection of confidential commercial data.

(4) Definition

In this subsection, the term ''Commissioner'' means the Commissioner responsible for the United States Customs and Border Protection in the Department of Homeland Security.

(June 17, 1930, ch. 497, title IV, § 629, as added Pub. L. 99–570, title III, § 3128, Oct. 27, 1986, 100 Stat. 3207–89; amended Pub. L. 108–7, div. J, title I, § 127(c), Feb. 20, 2003, 117 Stat. 441; Pub. L. 108–429, title I, § 1561(b), (c), Dec. 3, 2004, 118 Stat. 2581, 2582; Pub. L. 109–280, title XIV, § 1635(f)(1), Aug. 17, 2006, 120 Stat. 1171; Pub. L. 109–347, title IV, § 404, Oct. 13, 2006, 120 Stat. 1928.)

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–280 substituted ''ensuring'' for ''insuring''.

Subsec. (h). Pub. L. 109–347 added subsec. (h).

2004—Pub. L. 108–429, § 1561(c), repealed Pub. L. 108–7, § 127(c). See 2003 Amendment notes below.

Subsec. (a). Pub. L. 108–429, § 1561(b)(1), inserted '', or subsequent to their exit from,'' after ''prior to their arrival in''.

Subsec. (c). Pub. L. 108–429, § 1561(b)(2), inserted ''or exportation'' after ''relating to the importation'' and ''or exit'' after ''port of entry''.

Subsec. (e). Pub. L. 108–429, § 1561(b)(3), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''The Secretary of State, in coordination with the Secretary, may enter into agreements with any foreign country authorizing the stationing in the United States of customs and officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of insuring that persons and merchandise going directly to that country from the United States comply with the customs and other laws of that country governing the importation of merchandise. Any foreign customs official stationed in the United States under this subsection may exercise such functions, and perform such duties, as United States officials may be authorized to perform in that foreign country under reciprocal agreement.''

Subsec. (g). Pub. L. 108–429, § 1561(b)(4), added subsec. (g).

2003—Subsec. (a). Pub. L. 108–7, § 127(c)(1), which directed insertion of '', or subsequent to their exit from,'' after ''prior to their arrival in'' in section 1629 of title 19, was repealed by Pub. L. 108–429, § 1561(c).

Subsec. (c). Pub. L. 108–7, § 127(c)(2), which directed insertion of ''or exportation'' after ''relating to the importation'' and ''or exit'' after ''port of entry'' in section 1629 of title 19, was repealed by Pub. L. 108–429, § 1561(c).

Subsec. (e). Pub. L. 108–7, § 127(c)(3), which directed substitution of ''such functions,'' for ''such functions and'' and ''by treaty, agreement or law'' for ''under reciprocal agreement'', and insertion of ''and agriculture inspection'' after ''States of customs'' and ''foreign customs'', ''and the Secretary of Agriculture'' after ''in coordination with the Secretary'', ''or that have gone directly from that country to the United States'' after ''to that country from the United States'', ''or exportation'' after ''governing the importation'', '', and enjoy such privileges and immunities'' after ''such duties'', and ''or are afforded'' after ''authorized to perform'', in section 1629 of title 19, was repealed by Pub. L. 108–429, § 1561(c).

Subsec. (g). Pub. L. 108–7, § 127(c)(4), which directed addition of subsec. (g) to section 1629 of title 19, was repealed by Pub. L. 108–429, § 1561(c).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Aug. 17, 2006, see section 1641 of Pub. L. 109–280, set out as a note under section 58c of this title.

AUTHORITY FOR THE ESTABLISHMENT OF INTEGRATED BORDER INSPECTION AREAS AT THE UNITED STATES-CANADA BORDER

Pub. L. 108–429, title I, § 1560, Dec. 3, 2004, 118 Stat. 2580, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The increased security and safety concerns that developed in the aftermath of the terrorist attacks in the United States on September 11, 2001, need to be addressed.

''(2) One concern that has come to light is the vulnerability of the international bridges and tunnels along the United States borders.

''(3) It is necessary to ensure that potentially dangerous vehicles are inspected prior to crossing these bridges and tunnels; however, currently these vehicles are not inspected until after they have crossed into the United States.

''(4) Establishing Integrated Border Inspection Areas (IBIAs) would address these concerns by inspecting vehicles before they gained access to the infrastructure of international bridges and tunnels joining the United States and Canada.

''(b) CREATION OF INTEGRATED BORDER INSPECTION AREAS.—

''(1) IN GENERAL.—The Commissioner of the Customs Service [Bureau of Customs and Border Protection], in consultation with the Canadian Customs and Revenue Agency (CCRA), shall seek to establish Integrated Border Inspection Areas (IBIAs), such as areas on either side of the United States-Canada border, in which United States Customs officers can inspect vehicles entering the United States from Canada before they enter the United States, or Canadian Customs officers can inspect vehicles entering Canada from the United States before they enter Canada. Such inspections may include, where appropriate, employment of reverse inspection techniques.

''(2) ADDITIONAL REQUIREMENT.—The Commissioner of Customs, in consultation with the Administrator of the General Services Administration when appropriate, shall seek to carry out paragraph (1) in a manner that minimizes adverse impacts on the surrounding community.

''(3) ELEMENTS OF THE PROGRAM.—Using the authority granted by this section and under section 629 of the Tariff Act of 1930 [19 U.S.C. 1629], the Commissioner of Customs, in consultation with the Canadian Customs and Revenue Agency, shall seek to—

''(A) locate Integrated Border Inspection Areas in areas with bridges or tunnels with high traffic volume, significant commercial activity, and that have experienced backups and delays since September 11, 2001;

''(B) ensure that United States Customs officers stationed in any such IBIA on the Canadian side of the border are vested with the maximum authority to carry out their duties and enforce United States law;

''(C) ensure that United States Customs officers stationed in any such IBIA on the Canadian side of the border shall possess the same immunity that they would possess if they were stationed in the United States; and

''(D) encourage appropriate officials of the United States to enter into an agreement with Canada permitting Canadian Customs officers stationed in any such IBIA on the United States side of the border to enjoy such immunities as permitted in Canada.''

CREATION OF INTEGRATED BORDER INSPECTION AREAS

Pub. L. 108–7, div. J, title I, § 127(a), Feb. 20, 2003, 117 Stat. 440, which related to the creation of integrated

border inspection areas on either side of the United States–Canada border, was repealed by Pub. L. 108–429, title I, § 1561(c), Dec. 3, 2004, 118 Stat. 2582.

§ 1630. Authority to settle claims

(a) In general

With respect to a claim that cannot be settled under chapter 171 of title 28, the Secretary may settle, for not more than $50,000 in any one case, a claim for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28) who is employed by the Customs Service and acting within the scope of his or her employment.

(b) Limitations

The Secretary may not pay a claim under subsection (a) that—

(1) concerns commercial property;

(2) is presented to the Secretary more than 1 year after it occurs; or

(3) is presented by an officer or employee of the United States Government and arose within the scope of employment.

(c) Final settlement

A claim may be paid under this section only if the claimant accepts the amount of settlement in complete satisfaction of the claim.

(June 17, 1930, ch. 497, title IV, § 630, as added Pub. L. 103–182, title VI, § 670, Dec. 8, 1993, 107 Stat. 2216.)

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.

§ 1631. Use of private collection agencies

(a) In general

Notwithstanding any other provision of law, the Secretary, under such terms and conditions as the Secretary considers appropriate, shall enter into contracts and incur obligations with one or more persons for collection services to recover indebtedness arising under the customs laws and owed the United States Government, but only after the Customs Service has exhausted all administrative efforts, including all claims against applicable surety bonds, to collect the indebtedness.

(b) Contract requirements

Any contract entered into under subsection (a) of this section shall provide that—

(1) the Secretary retains the authority to resolve a dispute, compromise a claim, end collection action, and refer a matter to the Attorney General to bring a civil action; and

(2) the person is subject to—

(A) section 552a of title 5 to the extent provided in subsection (m) of such section; and

(B) laws and regulations of the United States Government and State governments related to debt collection practices.

(c) Payment of costs

The debtor shall be assessed and pay any and all costs associated with collection efforts pursuant to this section. Notwithstanding section 3302(b) of title 31, any sum so collected shall be used to pay the costs of debt collection services.

(June 17, 1930, ch. 497, title IV, § 631, as added Pub. L. 103–182, title VI, § 671, Dec. 8, 1993, 107 Stat. 2217; amended Pub. L. 104–295, § 3(a)(9), Oct. 11, 1996, 110 Stat. 3516; Pub. L. 106–36, title I, § 1001(b)(5)(A), June 25, 1999, 113 Stat. 132.)

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–36 amended directory language of Pub. L. 104–295. See 1996 Amendment note below.

1996—Subsec. (c). Pub. L. 104–295, as amended by Pub. L. 106–36, added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–295, set out as a note under section 1321 of this title.

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, set out as a note under section 542 of Title 6.

PART VI—MISCELLANEOUS PROVISIONS

§ 1641. Customs brokers

(a) Definitions

As used in this section:

(1) The term ''customs broker'' means any person granted a customs broker's license by the Secretary under subsection (b) of this section.

(2) The term ''customs business'' means those activities involving transactions with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.

(3) The term ''Secretary'' means the Secretary of the Treasury.

(b) Customs broker's licenses

(1) In general

No person may conduct customs business (other than solely on behalf of that person) unless that person holds a valid customs broker's license issued by the Secretary under paragraph (2) or (3).