

to which such limits or minimum requirements are not complied with.

(June 16, 1951, ch. 141, § 4, 65 Stat. 73; Pub. L. 93-618, title I, § 171(b), Jan. 3, 1975, 88 Stat. 2009.)

CODIFICATION

Section was not enacted as part of the Tariff Act of 1930 which comprises this chapter.

AMENDMENTS

1975—Subsec. (a). Pub. L. 93-618 substituted “United States International Trade Commission” for “Tariff Commission”.

§§ 1362 to 1365. Repealed. Pub. L. 87-794, title II, § 257(e)(1), Oct. 11, 1962, 76 Stat. 882

Section 1362, act June 16, 1951, ch. 141, § 5, 65 Stat. 73, related to suspension or withdrawal of concessions from Communistic areas. See section 1801 et seq. of this title.

Section 1363, acts June 16, 1951, ch. 141, § 6, 65 Stat. 73; June 21, 1955, ch. 169, § 4, 69 Stat. 165, provided for an escape clause for future agreements, and insertion in past agreements.

Section 1364, acts June 16, 1951, ch. 141, § 7, 65 Stat. 74; Aug. 7, 1953, ch. 348, title I, § 102, 67 Stat. 472; June 21, 1955, ch. 169, §§ 5, 6, 69 Stat. 166; Aug. 20, 1958, Pub. L. 85-686, §§ 5(a), (b)(1), (c), 6, 72 Stat. 676, related to the operation of the escape clause.

Section 1365, act June 16, 1951, ch. 141, § 8(a), 65 Stat. 75, provided for emergency action for perishable agricultural products.

PRESIDENTIAL ACTION IN EFFECT ON OCTOBER 11, 1962

Section 257(e)(2) of Pub. L. 87-794 provided that: “Action taken by the President under section 5 of such Act [former section 1362 of this title] and in effect on the date of the enactment of this Act [Oct. 11, 1962] shall be considered as having been taken by the President under section 231 [section 1861 of this title].”

CONTINUATION OF INVESTIGATIONS

Section 257(e)(3) of Pub. L. 87-794 provided that: “Any investigation by the Tariff Commission [now the United States International Trade Commission] under section 7 of such Act [former section 1364 of this title] which is in progress on the date of the enactment of this Act [Oct. 11, 1962] shall be continued under section 301 [section 1901 of this title] as if the application by the interested party were a petition under such section for tariff adjustment under section 351 [section 1981 of this title]. For purposes of section 301(f) [section 1901(f) of this title], such petition shall be treated as having been filed on the date of the enactment of this Act [Oct. 11, 1962].”

§ 1366. General Agreement on Tariff and Trade unaffected

The enactment of sections 1352(a), (c), 1354, and 1360 to 1367 of this title, and section 624(f) of title 7, shall not be construed to determine or indicate the approval or disapproval by the Congress of the Executive Agreement known as the General Agreement on Tariffs and Trade.

(June 16, 1951, ch. 141, § 10, 65 Stat. 75.)

REFERENCES IN TEXT

Sections 1362 to 1365 of this title, included in the reference to sections 1360 to 1367 of this title, were repealed by Pub. L. 87-749, title II, § 257(e)(1), Oct. 11, 1962, 76 Stat. 882; section 1367 of this title was repealed by Pub. L. 87-456, title III, § 303(c), May 24, 1962, 76 Stat. 78.

CODIFICATION

Section was not enacted as part of the Tariff Act of 1930 which comprises this chapter.

PRIOR PROVISIONS

Similar provisions were contained in act July 1, 1954, ch. 445, § 3, 68 Stat. 360, other sections of which amended section 1352(c) of this title and enacted section 1352a of this title; and in act Aug. 7, 1953, ch. 348, title I, § 103, 67 Stat. 472, which act amended section 624(b) of title 7, and sections 1330(d), 1352(c) and former section 1364(a) of this title, and enacted provisions set out as notes under sections 1351 and 1364 of this title.

CONGRESSIONAL APPROVAL OR DISAPPROVAL OF GENERAL AGREEMENT ON TARIFFS AND TRADE

Section 10 of Pub. L. 85-686 provided that: “The enactment of this Act [enacting section 1335 of this title, amending sections 1333, 1336, 1337, 1351, 1352a, 1360, and former section 1364 of this title, and enacting notes set out under sections 1352 and 1366 of this title] shall not be construed to determine or indicate the approval or disapproval by the Congress of the executive agreement known as the General Agreement on Tariffs and Trade.”

§ 1367. Repealed. Pub. L. 87-456, title III, § 303(c), May 24, 1962, 76 Stat. 78

Section, act June 16, 1951, ch. 141, § 11, 65 Stat. 75, required the President to take such measures as may be necessary to prevent the importation of ermine, fox, kolinsky, marten, mink, muskrat, and weasel furs and skins which are the product of the Union of Soviet Socialist Republics or of Communist China.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87-456, set out as a note preceding section 1202 of this title.

SUBTITLE III—ADMINISTRATIVE PROVISIONS

PART I—DEFINITIONS AND NATIONAL CUSTOMS AUTOMATION PROGRAM

SUBPART A—DEFINITIONS

§ 1401. Miscellaneous

When used in this subtitle or in part I of subtitle II of this chapter—

(a) Vessel

The word “vessel” includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water, but does not include aircraft.

(b) Vehicle

The word “vehicle” includes every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft.

(c) Merchandise

The word “merchandise” means goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited, and monetary instruments as defined in section 5312 of title 31.

(d) Person

The word “person” includes partnerships, associations, and corporations.

(e) Master

The word “master” means the person having the command of the vessel.

(f) Day

The word “day” means the time from eight o’clock antemeridian to five o’clock postmeridian.

(g) Night

The word “night” means the time from five o’clock postmeridian to eight o’clock antemeridian.

(h) United States

The term “United States” includes all Territories and possessions of the United States except the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam.

(i) Officer of the customs; customs officer

The terms “officer of the customs” and “customs officer” mean any officer of the United States Customs Service of the Treasury Department (also hereinafter referred to as the “Customs Service”) or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person, including foreign law enforcement officers, authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.

(j) Customs waters

The term “customs waters” means, in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance of the coast of the United States as the said authorities are or may be so enabled or permitted by such treaty or arrangement and, in the case of every other vessel, the waters within four leagues of the coast of the United States.

(k) Hovering vessel

The term “hovering vessel” means—

(1) any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws of the United States; and

(2) any vessel which has visited a vessel described in paragraph (1).

(l) Secretary

The term “Secretary” means the Secretary of the Treasury or his delegate.

(m) Controlled substance

The term “controlled substance” has the meaning given that term in section 802(6) of title 21. For purposes of this chapter, a controlled substance shall be treated as merchandise the importation of which into the United States is prohibited, unless the importation is authorized under—

(1) an appropriate license or permit; or

(2) the Controlled Substances Import and Export Act [21 U.S.C. 951 et seq.].

(n) Electronic transmission

The term “electronic transmission” means the transfer of data or information through an authorized electronic data interchange system consisting of, but not limited to, computer modems and computer networks.

(o) Electronic entry

The term “electronic entry” means the electronic transmission to the Customs Service of—

(1) entry information required for the entry of merchandise, and

(2) entry summary information required for the classification and appraisal of the merchandise, the verification of statistical information, and the determination of compliance with applicable law.

(p) Electronic data interchange system

The term “electronic data interchange system” means any established mechanism approved by the Commissioner of Customs through which information can be transferred electronically.

(q) National Customs Automation Program

The term “National Customs Automation Program” means the program established under section 1411 of this title.

(r) Import activity summary statement

The term “import activity summary statement” refers to data or information transmitted electronically to the Customs Service, in accordance with such regulations as the Secretary prescribes, at the end of a specified period of time which enables the Customs Service to assess properly the duties, taxes and fees on merchandise imported during that period, collect accurate statistics and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(s) Reconciliation

The term “reconciliation” means an electronic process, initiated at the request of an importer, under which the elements of an entry (other than those elements related to the admissibility of the merchandise) that are undetermined at the time the importer files or transmits the documentation or information required by section 1484(a)(1)(B) of this title, or the import activity summary statement, are provided to the Customs Service at a later time. A reconciliation is treated as an entry for purposes of liquidation, reliquidation, recordkeeping, and protest.

(t) Reconfigured entry

The term “reconfigured entry” means an entry filed on an import activity summary statement which substitutes for all or part of 1 or more entries filed under section 1484(a)(1)(A) of this title or filed on a reconciliation entry that aggregates the entry elements to be reconciled under section 1484(b) of this title for purposes of liquidation, reliquidation, or protest.

(June 17, 1930, ch. 497, title IV, §401, 46 Stat. 708; Aug. 5, 1935, ch. 438, title II, §201, 49 Stat. 521; June 25, 1938, ch. 679, §2, 52 Stat. 1077; Proc. No. 2695, July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; June

30, 1955, ch. 258, §2(a)(3), 69 Stat. 242; Pub. L. 91-271, title III, §301(c), June 2, 1970, 84 Stat. 288; Pub. L. 99-570, title III, §3111, Oct. 27, 1986, 100 Stat. 3207-80; Pub. L. 103-182, title VI, §634, Dec. 8, 1993, 107 Stat. 2198; Pub. L. 104-295, §§3(a)(6)(A), 18(a), Oct. 11, 1996, 110 Stat. 3515, 3524; Pub. L. 108-7, div. J, title I, §127(b), Feb. 20, 2003, 117 Stat. 441; Pub. L. 108-429, title I, §1561(a), (c), title II, §2106, Dec. 3, 2004, 118 Stat. 2581, 2582, 2598.)

REFERENCES IN TEXT

The Controlled Substances Import and Export Act, referred to in subsec. (m)(2), is title III of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§951 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 951 of Title 21 and Tables.

CODIFICATION

Section is based on the designated subsections of section 401 of act June 17, 1930, as amended. The last undesignated paragraph of section 401, as added by section 201 of act Aug. 5, 1935, was classified to section 1432a of this title, prior to being repealed by Pub. L. 103-182, §690(c)(5), Dec. 8, 1993, 107 Stat. 2223.

Words "the Philippine Islands" formerly set out in subsec. (h) were omitted on authority of Proc. No. 2695, which is set out as a note under section 1394 of Title 22, Foreign Relations and Intercourse, and in which the President proclaimed the independence of the Philippines.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §401, 42 Stat. 948, which superseded R.S. §§2766 and Section 401 of the 1922 act was superseded by section 401 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 Act.

Section III of the Underwood Tariff Act of Oct. 3, 1913, ch. 16, 38 Stat. 181, amending the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 131, was repealed by section 643 of the act of Sept. 21, 1922, ch. 356, title IV, 42 Stat. 989.

Section III, by subdivision A thereof, amended the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 131, as previously amended, to read as set forth in section III, subdivisions B-CC. By that amendment and reenactment, the Customs Administrative Act of June 10, 1890, and the amendments thereof by act July 24, 1897, ch. 11, §32, 30 Stat. 211, act May 17, 1898, ch. 341, 30 Stat. 417, act Dec. 15, 1902, ch. 1, 32 Stat. 753, act May 27, 1908, ch. 205, 35 Stat. 403, and the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 91, were superseded, except the provisions thereof mentioned in a proviso of section IV, S, of that act.

The Customs Administrative Act of June 10, 1890, as originally enacted and as amended previous to the Payne-Aldrich Tariff Act, consisted of thirty sections, of which section 30 prescribed the time when the act should go into effect. Of the preceding twenty-nine sections of the original act, section 15 providing for review by the courts of decisions of the Board of General Appraisers, was omitted from the act as further amended by the Payne-Aldrich Tariff Act, and the remaining twenty-eight sections were amended thereby, constituting sections 1-28 thereof. A new section, designated as section 29, was added by the Payne-Aldrich Tariff Act, which created a Court of Customs Appeals and prescribed its jurisdiction and powers, proceedings, etc. Its provisions were incorporated in and superseded by chapter 8 of the Judicial Code of March 3, 1911. Another new section, designated as section 30, was also added by the Payne-Aldrich Tariff Act, which provided for the appointment of an Assistant Attorney-General, a Deputy Assistant Attorney-General, and attorneys, in

charge of matters of reappraisal, etc., of imported goods and litigation incident thereto. Section 30 was incorporated into the Code as section 296 of former Title 5, Executive Departments and Government Officers and Employees, and subsequently repealed by Pub. L. 89-554, Sept. 6, 1966, §8(a), 80 Stat. 632.

AMENDMENTS

2004—Subsec. (i). Pub. L. 108-429, §1561(c), repealed Pub. L. 108-7, §127(b). See 2003 Amendment note below.
Pub. L. 108-429, §1561(a), inserted "including foreign law enforcement officers," after "or other person".

Subsec. (t). Pub. L. 108-429, §2106, added subsec. (t).
2003—Subsec. (i). Pub. L. 108-7, §127(b), which directed amendment of section 1401(i) of title 19 by inserting "including foreign law enforcement officers," after "or other person", was repealed by Pub. L. 108-429, §1561(c).

1996—Subsec. (s). Pub. L. 104-295, §18(a), amended first sentence generally. Prior to amendment, first sentence read as follows: "The term 'reconciliation' means an electronic process, initiated at the request of an importer, under which the elements of an entry, other than those elements related to the admissibility of the merchandise, that are undetermined at the time of entry summary are provided to the Customs Service at a later time."

Pub. L. 104-295, §3(a)(6)(A), inserted "recordkeeping," after "reliquidation,".

1993—Subsec. (k). Pub. L. 103-182, §634(1), amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows:

"(1) The term 'hovering vessel' means any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue.

"(2) For the purposes of sections 1432, 1433, 1434, 1448, 1585, and 1586 of this title, any vessel which—

"(A) has visited any hovering vessel;

"(B) has received merchandise while in the customs waters beyond the territorial sea; or

"(C) has received merchandise while on the high seas;

shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place."

Subsecs. (n) to (s). Pub. L. 103-182, §634(2), added subsecs. (n) to (s).

1986—Subsec. (c). Pub. L. 99-570, §3111(1), inserted "and monetary instruments as defined in section 5312 of title 31".

Subsec. (k). Pub. L. 99-570, §3111(2), (3), designated existing provisions as par. (1) and added par. (2).

Subsec. (m). Pub. L. 99-570, §3111(4), added subsec. (m).

1970—Subsec. (h). Pub. L. 91-271, §301(c)(1), (2), struck out subsec. (h) which defined "collector", and redesignated subsec. (k) as (h).

Subsec. (i). Pub. L. 91-271, §301(c)(1), (2), struck out subsec. (i) which defined "comptroller of customs", redesignated subsec. (l) as (i), and, as so redesignated, defined "customs officer".

Subsec. (j). Pub. L. 91-271, §301(c)(1), (2), struck out subsec. (j) which defined "appraiser", and redesignated subsec. (m) as (j).

Subsec. (k). Pub. L. 91-271, §301(c)(1), (2), redesignated subsec. (n) as (k). Former subsec. (k) redesignated (h).

Subsec. (l). Pub. L. 91-271, §301(c)(2), (3), added subsec. (l). Former subsec. (l) redesignated (i).

Subsecs. (m), (n). Pub. L. 91-271, §301(c)(2), redesignated subsecs. (m) and (n) as (j) and (k), respectively.

1955—Subsec. (k). Act June 30, 1955, inserted "Johnston Island".

1938—Subsec. (k). Act June 25, 1938, inserted "Wake Island, Midway Islands, Kingman Reef" before "and the island of Guam".

1935—Subsecs. (l) to (n). Act Aug. 5, 1935, added subsecs. (l) to (n).

CHANGE OF NAME

United States Customs Service substituted for Bureau of Customs in subsec. (i) pursuant to Treasury Department Order 165-23, Apr. 4, 1973, eff. Aug. 1, 1973, 38 F.R. 13037. See, also, section 308 of Title 31, Money and Finance.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-429, title I, §1561(d), Dec. 3, 2004, 118 Stat. 2582, provided that: “This section [amending this section and section 1629 of this title and repealing provisions set out as a note under section 1629 of this title], and the amendments made by this section, take effect on the date of the enactment of this Act [Dec. 3, 2004].”

Pub. L. 108-429, title II, §2108, Dec. 3, 2004, 118 Stat. 2598, provided that: “The amendments made by this subtitle [subtitle B (§§2101-2108) of title II of Pub. L. 108-429, amending this section and sections 1484, 1501, 1504, 1514, 1515, and 1520 of this title] shall apply to merchandise entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act [Dec. 3, 2004].”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 3(a)(6)(A) 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 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 1955 AMENDMENT

Section 2(d) of act June 30, 1955, provided that: “The amendments made by this section [amending this section, sections 1557, 1562, and 1709 of this title, and sections 542, 544, and 545 of Title 18, Crimes and Criminal Procedure] shall take effect on the day following the day on which this Act is enacted [July 1, 1955].”

EFFECTIVE DATE OF 1938 AMENDMENT

Section 37 of act June 25, 1938, provided that: “Sections 31 and 34 of this Act [amending section 1001 of this title] shall take effect on the date of enactment of this Act [June 25, 1938]. Except as otherwise specially provided in this Act, the remainder of this Act [amending this section and sections 1001, 1201, 1304, 1308, 1309, 1315, 1317, 1402, 1451, 1459, 1460, 1484, 1485, 1491, 1499, 1501, 1516, 1520, 1524, 1553, 1557, 1558, 1559, 1562, 1563, 1603, 1607, 1609, 1613, 1623, and 1709 of this title, enacting sections 1321, 1467, and 1528 of this title, and amending section 331 of former Title 46, Shipping] shall take effect on the thirtieth day following the date of its 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.

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.

Functions of all 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 those 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.

§ 1401a. Value

(a) Generally

(1) Except as otherwise specifically provided for in this chapter, imported merchandise shall be appraised, for the purposes of this chapter, on the basis of the following:

(A) The transaction value provided for under subsection (b) of this section.

(B) The transaction value of identical merchandise provided for under subsection (c) of this section, if the value referred to in subparagraph (A) cannot be determined, or can be determined but cannot be used by reason of subsection (b)(2) of this section.

(C) The transaction value of similar merchandise provided for under subsection (c) of this section, if the value referred to in subparagraph (B) cannot be determined.

(D) The deductive value provided for under subsection (d) of this section, if the value referred to in subparagraph (C) cannot be determined and if the importer does not request alternative valuation under paragraph (2).

(E) The computed value provided for under subsection (e) of this section, if the value referred to in subparagraph (D) cannot be determined.

(F) The value provided for under subsection (f) of this section, if the value referred to in subparagraph (E) cannot be determined.

(2) If the value referred to in paragraph (1)(C) cannot be determined with respect to imported merchandise, the merchandise shall be appraised on the basis of the computed value provided for under paragraph (1)(E), rather than the deductive value provided for under paragraph (1)(D), if the importer makes a request to that effect to the customs officer concerned within such time as the Secretary shall prescribe. If the computed value of the merchandise cannot subsequently be determined, the merchandise may not be appraised on the basis of the value referred to in paragraph (1)(F) unless the deductive value of the merchandise cannot be determined under paragraph (1)(D).

(3) Upon written request therefor by the importer of merchandise, and subject to provisions of law regarding the disclosure of information, the customs officer concerned shall provide the importer with a written explanation of how the value of that merchandise was determined under this section.

(b) Transaction value of imported merchandise

(1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to—

(A) the packing costs incurred by the buyer with respect to the imported merchandise;

(B) any selling commission incurred by the buyer with respect to the imported merchandise;

(C) the value, apportioned as appropriate, of any assist;

(D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

(E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in subparagraphs (A) through (E) only to the extent that each such amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise concerned shall be treated, for purposes of this section, as one that cannot be determined.

(2)(A) The transaction value of imported merchandise determined under paragraph (1) shall be the appraised value of that merchandise for the purposes of this chapter only if—

(i) there are no restrictions on the disposition or use of the imported merchandise by the buyer other than restrictions that—

(I) are imposed or required by law,

(II) limit the geographical area in which the merchandise may be resold, or

(III) do not substantially affect the value of the merchandise;

(ii) the sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined with respect to the imported merchandise;

(iii) no part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment therefor can be made under paragraph (1)(E); and

(iv) the buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable, for purposes of this subsection, under subparagraph (B).

(B) The transaction value between a related buyer and seller is acceptable for the purposes of this subsection if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between such buyer and seller did not influence the price actually paid or payable; or if the transaction value of the imported merchandise closely approximates—

(i) the transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States; or

(ii) the deductive value or computed value for identical merchandise or similar merchandise;

but only if each value referred to in clause (i) or (ii) that is used for comparison relates to mer-

chandise that was exported to the United States at or about the same time as the imported merchandise.

(C) In applying the values used for comparison purposes under subparagraph (B), there shall be taken into account differences with respect to the sales involved (if such differences are based on sufficient information whether supplied by the buyer or otherwise available to the customs officer concerned) in—

(i) commercial levels;

(ii) quantity levels;

(iii) the costs, commissions, values, fees, and proceeds described in paragraph (1); and

(iv) the costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(3) The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (1):

(A) Any reasonable cost or charge that is incurred for—

(i) the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) the transportation of the merchandise after such importation.

(B) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable.

(4) For purposes of this subsection—

(A) The term “price actually paid or payable” means the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(B) Any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and seller after the date of the importation of the merchandise into the United States shall be disregarded in determining the transaction value under paragraph (1).

(c) Transaction value of identical merchandise and similar merchandise

(1) The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value for purposes of this chapter under subsection (b) of this section but adjusted under paragraph (2) of this subsection) of imported merchandise that is—

(A) with respect to the merchandise being appraised, either identical merchandise or similar merchandise, as the case may be; and

(B) exported to the United States at or about the time that the merchandise being appraised is exported to the United States.

(2) Transaction values determined under this subsection shall be based on sales of identical merchandise or similar merchandise, as the case may be, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise or similar merchandise at either a different commercial level or in different quantities, or both, shall be used, but adjusted to take account of any such difference. Any adjustment made under this paragraph shall be based on sufficient information. If in applying this paragraph with respect to any imported merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, such imported merchandise shall be appraised on the basis of the lower or lowest of such values.

(d) Deductive value

(1) For purposes of this subsection, the term “merchandise concerned” means the merchandise being appraised, identical merchandise, or similar merchandise.

(2)(A) The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (3)) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:

(i) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

(ii) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(iii) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This clause shall apply to appraisement of merchandise only if the importer so elects and notifies the customs officer concerned of that election within such time as shall be prescribed by the Secretary.

(B) For purposes of subparagraph (A), the unit price at which merchandise is sold in the greatest aggregate quantity is the unit price at which such merchandise is sold to unrelated persons, at the first commercial level after importation (in cases to which subparagraph (A)(i) or (ii) applies) or after further processing (in cases to

which subparagraph (A)(iii) applies) at which such sales take place, in a total volume that is (i) greater than the total volume sold at any other unit price, and (ii) sufficient to establish the unit price.

(3)(A) the price determined under paragraph (2) shall be reduced by an amount equal to—

(i) any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

(ii) the actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(iii) the usual costs and associated costs of transportation and insurance incurred with respect to shipments of such merchandise from the place of importation to the place of delivery in the United States, if such costs are not included as a general expense under clause (i);

(iv) the customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable; and

(v) (but only in the case of a price determined under paragraph (2)(A)(iii)) the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to cost of such processing.

(B) For purposes of applying paragraph (A)—

(i) the deduction made for profits and general expenses shall be based upon the importer’s profits and general expenses, unless such profits and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind, in which case the deduction shall be based on the usual profit and general expenses reflected in such sales, as determined from sufficient information; and

(ii) any State or local tax imposed on the importer with respect to the sale of imported merchandise shall be treated as a general expense.

(C) The price determined under paragraph (2) shall be increased (but only to the extent that such costs are not otherwise included) by an amount equal to the packing costs incurred by the importer or the buyer, as the case may be, with respect to the merchandise concerned.

(D) For purposes of determining the deductive value of imported merchandise, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned shall be disregarded.

(e) Computed value

(1) The computed value of imported merchandise is the sum of—

(A) the cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

(B) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(C) any assist, if its value is not included under subparagraph (A) or (B); and

(D) the packing costs.

(2) For purposes of paragraph (1)—

(A) the cost or value of materials under paragraph (1)(A) shall not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used; and

(B) the amount for profit and general expenses under paragraph (1)(B) shall be based upon the producer's profits and expenses, unless the producer's profits and expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States, in which case the amount under paragraph (1)(B) shall be based on the usual profit and general expenses of such producers in such sales, as determined from sufficient information.

(f) Value if other values cannot be determined or used

(1) If the value of imported merchandise cannot be determined, or otherwise used for the purposes of this chapter, under subsections (b) through (e) of this section, the merchandise shall be appraised for the purposes of this chapter on the basis of a value that is derived from the methods set forth in such subsections, with such methods being reasonably adjusted to the extent necessary to arrive at a value.

(2) Imported merchandise may not be appraised, for the purposes of this chapter, on the basis of—

(A) the selling price in the United States of merchandise produced in the United States;

(B) a system that provides for the appraisal of imported merchandise at the higher of two alternative values;

(C) the price of merchandise in the domestic market of the country of exportation;

(D) a cost of production, other than a value determined under subsection (e) of this section for merchandise that is identical merchandise or similar merchandise to the merchandise being appraised;

(E) the price of merchandise for export to a country other than the United States;

(F) minimum values for appraisal; or

(G) arbitrary or fictitious values.

This paragraph shall not apply with respect to the ascertainment, determination, or estimation of foreign market value or United States price under subtitle IV of this chapter.

(g) Special rules

(1) For purposes of this section, the persons specified in any of the following subparagraphs shall be treated as persons who are related:

(A) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.

(D) Partners.

(E) Employer and employee.

(F) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(G) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(2) For purposes of this section, merchandise (including, but not limited to, identical merchandise and similar merchandise) shall be treated as being of the same class or kind as other merchandise if it is within a group or range of merchandise produced by a particular industry or industry sector.

(3) For purposes of this section, information that is submitted by an importer, buyer, or producer in regard to the appraisal of merchandise may not be rejected by the customs officer concerned on the basis of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles. The term "generally accepted accounting principles" refers to any generally recognized consensus or substantial authoritative support regarding—

(A) which economic resources and obligations should be recorded as assets and liabilities;

(B) which changes in assets and liabilities should be recorded;

(C) how the assets and liabilities and changes in them should be measured;

(D) what information should be disclosed and how it should be disclosed; and

(E) which financial statements should be prepared.

The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the merchandise is sought to be established.

(h) Definitions

As used in this section—

(1)(A) The term "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(B) No service or work to which subparagraph (A)(iv) applies shall be treated as an assist for purposes of this section if such service or work—

(i) is performed by an individual who is domiciled within the United States;

(ii) is performed by that individual while he is acting as an employee or agent of the buyer of the imported merchandise; and

(iii) is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

(C) For purposes of this section, the following apply in determining the value of assists described in subparagraph (A)(iv):

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value thereof that is added outside the United States.

(2) The term “identical merchandise” means—

(A) merchandise that is identical in all respects to, and was produced in the same country and by the same person as, the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i) of this section, regardless of whether merchandise meeting such requirements can be found), merchandise that is identical in all respects to, and was produced in the same country as, but not produced by the same person as, the merchandise being appraised.

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(3) The term “packing costs” means the cost of all containers and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

(4) The term “similar merchandise” means—

(A) merchandise that—

(i) was produced in the same country and by the same person as the merchandise being appraised,

(ii) is like the merchandise being appraised in characteristics and component material, and

(iii) is commercially interchangeable with the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i) of this section, regardless of whether merchandise meeting such requirements can be found), merchandise that—

(i) was produced in the same country as, but not produced by the same person as, the merchandise being appraised, and

(ii) meets the requirement set forth in subparagraph (A)(ii) and (iii).

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(5) The term “sufficient information”, when required under this section for determining—

(A) any amount—

(i) added under subsection (b)(1) of this section to the price actually paid or payable,

(ii) deducted under subsection (d)(3) of this section as profit or general expense or value from further processing, or

(iii) added under subsection (e)(2) of this section as profit or general expense;

(B) any difference taken into account for purposes of subsection (b)(2)(C) of this section; or

(C) any adjustment made under subsection (c)(2) of this section;

means information that establishes the accuracy of such amount, difference, or adjustment.

(June 17, 1930, ch. 497, title IV, § 402, as added Aug. 2, 1956, ch. 887, § 2(a), 70 Stat. 943; amended Pub. L. 96-39, title II, § 201(a), July 26, 1979, 93 Stat. 194; Pub. L. 96-490, § 2, Dec. 2, 1980, 94 Stat. 2556.)

AMENDMENTS

1980—Subsec. (b)(2)(B). Pub. L. 96-490 amended par. (B) generally, omitting cl. (iii) which provided that “the transaction value determined under this subsection in sales to unrelated buyers of merchandise, for exportation to the United States, that is identical in all respects to the imported merchandise but was not produced in the country in which the imported merchandise was produced”, and omitting the provision relating to cl. (iii) which provided that “No two sales to unrelated buyers may be used for comparison for purposes of clause (iii) unless the sellers are unrelated.”

1979—Pub. L. 96-39 completely revised statutory standards for appraising the value of imported merchandise to conform to Customs Valuation Agreement, incorporating, as part of that revision, a new format of five methods of determining customs value in subsecs. (b) through (f), a group of special rules in subsec. (g), and definition of terms in subsec. (h).

EFFECTIVE DATE OF 1980 AMENDMENT

Section 2 of Pub. L. 96-490 provided in part that the amendment made by that section is “effective on the latest of—

“(1) the date on which the amendments made by title II of the Trade Agreements Act of 1979 (except the amendments made by section 223(b)) take effect [July 1, 1980],

“(2) the date on which the President accepts the Protocol [to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade] for the United States [Dec. 30, 1980], or

“(3) the date on which the President determines that the European Economic Community has implemented the Protocol under its laws [Jan. 1, 1981], and effective with respect to merchandise exported to the United States on or after that date”.

[For delegation of authority of the President to make the determinations required by pars. (1) to (3), above, to the United States Trade Representative, see Memorandum of President of the United States, Dec. 17, 1980, 45 F.R. 83467.]

[For determination of the United States Trade Representative that the conditions of pars. (1) to (3), above, were satisfied effective on Jan. 1, 1981, see Determination of United States Trade Representative, 46 F.R. 1073.]

EFFECTIVE DATE OF 1979 AMENDMENT; TRANSITION TO NEW VALUATION STANDARDS

Section 204 of title II of Pub. L. 96-39 provided that:

“(a) EFFECTIVE DATE OF AMENDMENTS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this title [amending the Tariff Schedules of the United States (see Publication of Tariff Schedules note under section 1202 of this title), sections 1332, 1336, 1351, 1401a, 1500, and 2481 of this title, and section 993 of Title 26, Internal Revenue Code, repealing section 1402 of this title, and enacting provisions set out as notes under sections 1202, 1401a, and 2111 of this title] (except the amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States] shall take effect on—

“(A) January 1, 1981, if the Agreement enters into force with respect to the United States by that date; or

“(B) if subparagraph (A) does not apply, that date after January 1, 1981, on which the Agreement enters into such force; and shall apply with respect to merchandise that is exported to the United States on or after whichever of such dates applies.

“(2) EARLIER EFFECTIVE DATE UNDER CERTAIN CIRCUMSTANCES.—If the President determines before January 1, 1981, that—

“(A) the European Economic Community has accepted the obligations of the Agreement with respect to the United States; and

“(B) each of the member states of the European Economic Community has implemented the Agreement under its laws;

the President shall by proclamation announce such determination and the amendments made by this title (except the amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States] shall take effect on the date specified in the proclamation [July 1, 1980] (but not before July 1, 1980) and shall apply with respect to merchandise that is exported to the United States on or after such date; except that unless the Agreement enters into force with respect to the United States by January 1, 1981, all provisions of law that were amended by such amendments are revived (as in effect on the day before such amendments took effect) on January 1, 1981, and such provisions—

“(i) shall remain in effect until the date on which the Agreement enters into force with respect to the United States (and on such date the amendments made by this title (except the amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States]) are revived and shall apply with respect to merchandise exported to the United States on or after such date); and

“(ii) shall apply with respect to merchandise exported to the United States on or after January 1, 1981, and before the date on which the Agreement enters into such force.

“(b) APPLICATION OF OLD LAW VALUATION STANDARDS.—For purposes of the administration of the customs laws, all merchandise (other than merchandise to which subsections (a) and (c) apply) shall be appraised on the same basis, and in the same manner, as if the amendments made by this title had not been enacted.

“(c) SPECIAL TREATMENT FOR CERTAIN RUBBER FOOTWEAR.—The amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States] shall take effect July 1, 1981, or, if later, the date on which the Agreement enters into force with respect to the United States, and shall apply, together with the other amendments made by this title, to rubber footwear exported to the United States on or after such date. For purposes of the administration of the customs laws, all rubber footwear (other than rubber footwear to which the preceding sentence applies) shall be appraised on the same basis, and in the same manner, as if the amendments made by this title had not been enacted.

“(d) DEFINITION.—For purposes of this section, the term ‘rubber footwear’ means articles described in item 700.60 of the Tariff Schedules of the United States (as in effect on the day before the day on which the amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States] take effect).”

[For Presidential proclamation specifying in accordance with subsec. (a)(2), above, that the amendments by title II of Pub. L. 96-39 are effective July 1, 1980, see sections 5(b) and 2(a) of Proc. No. 4768, June 28, 1980, 45 F.R. 45136, 45137, set out as a note under section 2111 of this title.]

EFFECTIVE DATE

Section 8 of act Aug. 2, 1956, provided that: “This Act [enacting this section and provisions set out in notes under this section and sections 2, 160, 1351, and 1402 of this title, amending sections 1001, 1402, 1500, and 1583 of this title, and sections 372 and 711 of former Title 31, Money and Finance, and repealing sections 12 to 18, 21 to 24, 26 to 28, 30, 40, 53 to 57, 59, 61, 62, 67, 376, 379, 390, 494, 526, 541, 542, 549, and 579 of this title] shall be effective on and after the day following the date of its enactment [Aug. 2, 1956], except that section 2 [enacting this section and provisions set out in note under section 1351 of this title, and amending sections 1001, 1336, and 1402 of this title] shall be effective only as to articles entered, or withdrawn from warehouse, for consumption on or after the thirtieth day following the publication of the final list provided for in section 6(a) of this Act [set out in note under section 1402 of this title], and section 3 [amending section 372 of former Title 31] shall be effective as to entries filed on or after the thirtieth day following the date of enactment of this Act [Aug. 2, 1956].”

PRESIDENTIAL REPORT TO CONGRESS ON OPERATION OF AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE OVER 2-YEAR PERIOD

Section 203 of Pub. L. 96-39 provided that: “As soon as practicable after the close of the 2-year period beginning on the date on which the amendments made by this title (other than section 223(b), relating to certain rubber footwear) take effect [see Effective Date of 1979 Amendment note set out above], the President shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade approved under section 2(a) [section 2503(a) of this title] (hereinafter in this subtitle re-

ferred to as the 'Agreement'), both domestically and internationally, during that period."

LIST OF ARTICLES TO BE VALUED; PRELIMINARY LIST; ADDITIONS; FINAL LIST; TRANSMITTAL TO CONGRESSIONAL COMMITTEES

Section 6 of act Aug. 2, 1956, provided that:

"(a) The Secretary of the Treasury shall determine and make public a list of the articles which shall be valued in accordance with section 402a, Tariff Act of 1930, as amended by this Act [former section 1402 of this title], as follows:

"As soon as practicable after the enactment of this Act [Aug. 2, 1956] the Secretary shall make public a preliminary list of the imported articles which he shall have determined, after such investigation as he deems necessary, would have been appraised in accordance with section 402 of the Tariff Act of 1930, as amended by this Act [this section], at average values for each article which are 95 (or less) per centum of the average values at which such article was actually appraised during the fiscal year 1954. If within sixty days after the publication of such preliminary list any manufacturer, producer, or wholesaler in the United States presents to the Secretary his reason for belief that any imported articles not specified in such list and like or similar to articles manufactured, produced, or sold at wholesale by him would have been appraised in accordance with such section 402 [section 1401a of this title] at average values which are 95 (or less) per centum of the average values at which they were or would have been appraised under section 402a, Tariff Act of 1930, as amended by this Act, the Secretary shall cause such investigation of the matter to be made as he deems necessary. If in the opinion of the Secretary the reason for belief is substantiated by the investigation, the articles involved shall be added to the preliminary list and such list, including any additions so made thereto, shall be published as a final list. Every article so specified in the final list which is entered, or withdrawn from warehouse, for consumption on or after the thirtieth day following the date of publication of the final list shall be appraised in accordance with the provisions of section 402a, Tariff Act of 1930, as amended by this Act.

"(b) The final list published in accordance with the provisions of subsection (a), together with explanatory data, shall be transmitted promptly to the chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate."

§ 1402. Repealed. Pub. L. 96-39, title II, § 201(b), July 26, 1979, 93 Stat. 201

Section, acts June 17, 1930, ch. 497, title IV, § 402a, formerly § 402, 46 Stat. 708; June 25, 1938, ch. 679, § 8, 52 Stat. 1081, renumbered and amended Aug. 2, 1956, ch. 887, § 2(a), (f), 70 Stat. 943, 946; June 2, 1970, Pub. L. 91-271, title III, § 301(d), 84 Stat. 288, provided an alternative basis for valuation of articles designated by the Secretary of Treasury as provided for by act Aug. 2, 1956, ch. 887, § 6(a), 70 Stat. 948, as either the foreign value or the export value, whichever is higher, or if the appropriate customs officer determines that neither the foreign value nor the export value can be satisfactorily ascertained, then the United States value, or if the appropriate customs officer determines that neither the foreign value, the export value, nor the United States value can be satisfactorily ascertained, then the cost of production, or in the case of an article with respect to which there is in effect under section 1336 of this title a rate of duty based upon the American selling price of a domestic article, then the American selling price of such article, defined foreign value, export value, United States value, cost of production, and American selling price, and provided for review of the decision of the appropriate customs officer.

Provisions similar to those of this section were contained in act Oct. 3, 1913, ch. 16, § III, L and R, 38 Stat. 185, 189, and in act May 27, 1921, ch. 14, title III,

§§ 301-304, 42 Stat. 15, 16, all of which were superseded by act Sept. 21, 1922, ch. 356, title IV, § 402, 42 Stat. 949, and were repealed by section 643 thereof. Section 402 of the 1922 act was superseded by section 402 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Earlier provisions on the subject were contained in R.S. §§ 2905-2907, and 2952, prior to repeal by act June 10, 1890, ch. 407, § 29, 26 Stat. 141; and in act June 10, 1890, ch. 407, §§ 11 and 19, 26 Stat. 136, 139, as amended by act July 24, 1897, ch. 11, § 32, 30 Stat. 211, and act Aug. 5, 1909, ch. 6, § 28, 36 Stat. 97, 101, prior to repeal by act Oct. 3, 1913, ch. 16, § IV, S, 38 Stat. 201.

R.S. § 2906, requiring the collector to cause the actual market value, or wholesale price at the period of exportation, to be appraised, and providing that such appraised value should be considered the value upon which duty should be assessed, and R.S. § 2913, relative to the appraisal of gloves protected by trademark, were repealed by section 642 of the act of Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1980, see section 204(a)(2) of Pub. L. 96-39, set out as an Effective Date of 1979 Amendment note under section 1401a of this title.

SUBPART B—NATIONAL CUSTOMS AUTOMATION PROGRAM

§ 1411. National Customs Automation Program

(a) Establishment

The Secretary shall establish the National Customs Automation Program (hereinafter in this subpart referred to as the "Program") which shall be an automated and electronic system for processing commercial importations and shall include the following existing and planned components:

(1) Existing components:

- (A) The electronic entry of merchandise.
- (B) The electronic entry summary of required information.
- (C) The electronic transmission of invoice information.
- (D) The electronic transmission of manifest information.
- (E) Electronic payments of duties, fees, and taxes.
- (F) The electronic status of liquidation and reliquidation.

(G) The electronic selection of high risk entries for examination (cargo selectivity and entry summary selectivity).

(2) Planned components:

- (A) The electronic filing and status of protests.
- (B) The electronic filing (including remote filing under section 1414 of this title) of entry information with the Customs Service at any location.
- (C) The electronic filing of import activity summary statements and reconciliation.
- (D) The electronic filing of bonds.
- (E) The electronic penalty process.
- (F) The electronic filing of drawback claims, records, or entries.
- (G) Any other component initiated by the Customs Service to carry out the goals of this subpart.

(b) Participation in Program

The Secretary shall by regulation prescribe the eligibility criteria for participation in the

Program. The Secretary may, by regulation, require the electronic submission of information described in subsection (a) of this section or any other information required to be submitted to the Customs Service separately pursuant to this subpart.

(c) Foreign-trade zones

Not later than January 1, 2000, the Secretary shall provide for the inclusion of commercial importation data from foreign-trade zones under the Program.

(d) International Trade Data System

(1) Establishment

(A) In general

The Secretary of the Treasury (in this subsection, referred to as the “Secretary”) shall oversee the establishment of an electronic trade data interchange system to be known as the “International Trade Data System” (ITDS). The ITDS shall be implemented not later than the date that the Automated Commercial Environment (commonly referred to as “ACE”) is fully implemented.

(B) Purpose

The purpose of the ITDS is to eliminate redundant information requirements, to efficiently regulate the flow of commerce, and to effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by the United States Customs and Border Protection, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies.

(C) Participation

(i) In general

All Federal agencies that require documentation for clearing or licensing the importation and exportation of cargo shall participate in the ITDS.

(ii) Waiver

The Director of the Office of Management and Budget may waive, in whole or in part, the requirement for participation for any Federal agency based on the vital national interest of the United States.

(D) Consultation

The Secretary shall consult with and assist the United States Customs and Border Protection and other agencies in the transition from paper to electronic format for the submission, issuance, and storage of documents relating to data required to enter cargo into the United States. In so doing, the Secretary shall also consult with private sector stakeholders, including the Commercial Operations Advisory Committee, in developing uniform data submission requirements, procedures, and schedules, for the ITDS.

(E) Coordination

The Secretary shall be responsible for coordinating the operation of the ITDS among the participating agencies and the office

within the United States Customs and Border Protection that is responsible for maintaining the ITDS.

(2) Data elements

(A) In general

The Interagency Steering Committee (established under paragraph (3)) shall, in consultation with the agencies participating in the ITDS, define the standard set of data elements to be collected, stored, and shared in the ITDS, consistent with laws applicable to the collection and protection of import and export information. The Interagency Steering Committee shall periodically review the data elements in order to update the standard set of data elements, as necessary.

(B) Commitments and obligations

The Interagency Steering Committee shall ensure that the ITDS data requirements are compatible with the commitments and obligations of the United States as a member of the World Customs Organization (WCO) and the World Trade Organization (WTO) for the entry and movement of cargo.

(3) Interagency Steering Committee

There is established an Interagency Steering Committee (in this section, referred to as the “Committee”). The members of the Committee shall include the Secretary (who shall serve as the chairperson of the Committee), the Director of the Office of Management and Budget, and the head of each agency participating in the ITDS. The Committee shall assist the Secretary in overseeing the implementation of, and participation in, the ITDS.

(4) Report

The President shall submit a report before the end of each fiscal year to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. Each report shall include information on—

(A) the status of the ITDS implementation;

(B) the extent of participation in the ITDS by Federal agencies;

(C) the remaining barriers to any agency’s participation;

(D) the consistency of the ITDS with applicable standards established by the World Customs Organization and the World Trade Organization;

(E) recommendations for technological and other improvements to the ITDS; and

(F) the status of the development, implementation, and management of the Automated Commercial Environment within the United States Customs and Border Protection.

(5) Sense of Congress

It is the sense of Congress that agency participation in the ITDS is an important priority of the Federal Government and that the Secretary shall coordinate the operation of the ITDS closely among the participating agencies and the office within the United

States Customs and Border Protection that is responsible for maintaining the ITDS.

(6) Construction

Nothing in this section shall be construed as amending or modifying subsection (g) of section 301 of title 13.

(7) Definition

The term “Commercial Operations Advisory Committee” means the Advisory Committee established pursuant to section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (19 U.S.C. 2071 note) or any successor committee.

(June 17, 1930, ch. 497, title IV, § 411, as added Pub. L. 103–182, title VI, § 631(2), Dec. 8, 1993, 107 Stat. 2188; amended Pub. L. 106–36, title II, § 2405, June 25, 1999, 113 Stat. 169; Pub. L. 107–210, div. A, title III, § 338, Aug. 6, 2002, 116 Stat. 980; Pub. L. 109–347, title IV, § 405, Oct. 13, 2006, 120 Stat. 1929.)

REFERENCES IN TEXT

Section 9503(c) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (d)(7), is section 9503(c) of Pub. L. 100–203, which is set out as a note under section 2071 of this title.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–347 added subsec. (d).

2002—Subsec. (b). Pub. L. 107–210 inserted second sentence and struck out former second sentence which read as follows: “Participation in the Program is voluntary.”

1999—Subsec. (c). Pub. L. 106–36 added subsec. (c).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of this title on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 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.

§ 1412. Program goals

The goals of the Program are to ensure that all regulations and rulings that are administered or enforced by the Customs Service are administered and enforced in a manner that—

- (1) is uniform and consistent;
- (2) is as minimally intrusive upon the normal flow of business activity as practicable; and
- (3) improves compliance.

(June 17, 1930, ch. 497, title IV, § 412, as added Pub. L. 103–182, title VI, § 631(2), Dec. 8, 1993, 107 Stat. 2189.)

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.

§ 1413. Implementation and evaluation of Program

(a) Overall Program plan

(1) In general

Before the 180th day after December 8, 1993, the Secretary shall develop and transmit to the Committees an overall plan for the Program. The overall Program plan shall set forth—

- (A) a general description of the ultimate configuration of the Program;
- (B) a description of each of the existing components of the Program listed in section 1411(a)(1) of this title; and
- (C) estimates regarding the stages on which planned components of the Program listed in section 1411(a)(2) of this title will be brought on-line.

(2) Additional information

In addition to the information required under paragraph (1), the overall Program plan shall include a statement regarding—

- (A) the extent to which the existing components of the Program currently meet, and the planned components will meet, the Program goals set forth in section 1412 of this title; and
- (B) the effects that the existing components are currently having, and the effects that the planned components will likely have, on—

- (i) importers, brokers, and other users of the Program, and
- (ii) Customs Service occupations, operations, processes, and systems.

(b) Implementation plan, testing, and evaluation

(1) Implementation plan

For each of the planned components of the Program listed in section 1411(a)(2) of this title, the Secretary shall—

- (A) develop an implementation plan;
- (B) test the component in order to assess its viability;
- (C) evaluate the component in order to assess its contribution toward achieving the program goals; and
- (D) transmit to the Committees the implementation plan, the testing results, and an evaluation report.

In developing an implementation plan under subparagraph (A) and evaluating components under subparagraph (C), the Secretary shall publish a request for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(2) Implementation

(A) The Secretary may implement on a permanent basis any Program component referred to in paragraph (1) on or after the date

which is 30 days after paragraph (1)(D) is complied with.

(B) For purposes of subparagraph (A), the 30 days shall be computed by excluding—

(i) the days either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(ii) any Saturday and Sunday, not excluded under clause (i), when either House is not in session.

(3) Evaluation and report

The Secretary shall—

(A) develop a user satisfaction survey of parties participating in the Program;

(B) evaluate the results of the user satisfaction survey on a biennial basis (fiscal years) and transmit a report to the Committees on the evaluation by no later than the 90th day after the close of each 2d fiscal year;

(C) with respect to the existing Program component listed in section 1411(a)(1)(G) of this title transmit to the Committees—

(i) a written evaluation of such component before the 180th day after December 8, 1993, and before the implementation of the planned Program components listed in section 1411(a)(2)(B) and (C) of this title, and

(ii) a report on such component for each of the 3 full fiscal years occurring after December 8, 1993, which report shall be transmitted not later than the 90th day after the close of each such year; and

(D) not later than the 90th day after the close of fiscal year 1994, and annually thereafter through fiscal year 2000, transmit to the Committees a written evaluation with respect to the implementation and effect on users of each of the planned Program components listed in section 1411(a)(2) of this title.

In carrying out the provisions of this paragraph, the Secretary shall publish requests for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(c) Committees

For purposes of this section, the term “Committees” means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(June 17, 1930, ch. 497, title IV, §413, as added Pub. L. 103-182, title VI, §631(2), Dec. 8, 1993, 107 Stat. 2189; amended Pub. L. 104-295, §21(e)(15), Oct. 11, 1996, 110 Stat. 3531.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-295 made technical amendment to reference in original act which appears in text as reference to December 8, 1993.

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.

§ 1414. Remote location filing

(a) Core entry information

(1) In general

A Program participant may file electronically an entry of merchandise with the Customs Service from a location other than the district designated in the entry for examination (hereafter in this section referred to as a “remote location”) if—

(A) the Customs Service is satisfied that the participant has the capabilities referred to in paragraph (2)(A) regarding such method of filing; and

(B) the participant elects to file from the remote location.

(2) Requirements

(A) In general

In order to qualify for filing from a remote location, a Program participant must have the capability to provide, on an entry-by-entry basis, for the following:

(i) The electronic entry of merchandise.

(ii) The electronic entry summary of required information.

(iii) The electronic transmission of invoice information (when required by the Customs Service).

(iv) The electronic payment of duties, fees, and taxes.

(v) Such other electronic capabilities within the existing or planned components of the Program as the Secretary shall by regulation require.

(B) Restriction on exemption from requirements

The Customs Service may not permit any exemption or waiver from the requirements established by this section for participation in remote entry filing.

(3) Conditions on filing under this section

The Secretary may prohibit a Program participant from participating in remote location filing, and may remove a Program participant from participation in remote location filing, if the participant—

(i) fails to meet all the compliance requirements and operational standards of remote location filing; or

(ii) fails to adhere to all applicable laws and regulations.

(4) Alternative filing

Any Program participant that is eligible to file entry information electronically from a remote location but chooses not to do so in the case of any entry must file any paper documentation for the entry at the designated location referred to in subsection (d) of this section.

(b) Additional entry information

(1) In general

A Program participant that is eligible under subsection (a) of this section to file entry in-

formation from a remote location may, if the Customs Service is satisfied that the participant meets the requirements under paragraph (2), also electronically file from the remote location additional information that is required by the Customs Service to be presented before the acceptance of entry summary information and at the time of acceptance of entry summary information.

(2) Requirements

The Secretary shall publish, and periodically update, a list of those capabilities within the existing and planned components of the Program that a Program participant must have for purposes of this subsection.

(3) Filing of additional information

(A) If information electronically acceptable

A Program participant that is eligible under paragraph (1) to file additional information from a remote location shall electronically file all such information that the Customs Service can accept electronically.

(B) Alternative filing

If the Customs Service cannot accept additional information electronically, the Program participant shall file the paper documentation with respect to the information at the appropriate filing location.

(C) Appropriate location

For purposes of subparagraph (B), the “appropriate location” is—

(i) before January 1, 1999, a designated location; and

(ii) after December 31, 1998—

(I) if the paper documentation is required for release, a designated location; or

(II) if the paper documentation is not required for release, a remote location designated by the Customs Service or a designated location.

(D) Other

A Program participant that is eligible under paragraph (1) to file additional information electronically from a remote location but chooses not to do so must file the paper documentation with respect to the information at a designated location.

(c) Post-entry summary information

A Program participant that is eligible to file electronically entry information under subsection (a) of this section and additional information under subsection (b) of this section from a remote location may file at any remote location designated by the Customs Service any information required by the Customs Service after entry summary.

(d) Definitions

As used in this section:

(1) The term “designated location” means a customs office located in the customs district designated by the entry filer for purposes of customs examination of the merchandise.

(2) The term “Program participant” means, with respect to an entry of merchandise, any party entitled to make the entry under section 1484(a)(2)(B) of this title.

(June 17, 1930, ch. 497, title IV, §414, as added Pub. L. 103-182, title VI, §631(2), Dec. 8, 1993, 107 Stat. 2191.)

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 II—REPORT, ENTRY, AND UNLADING OF VESSELS AND VEHICLES

§ 1431. Manifests

(a) In general

Every vessel required to make entry under section 1434 of this title or obtain clearance under section 60105 of title 46 shall have a manifest that complies with the requirements prescribed under subsection (d) of this section.

(b) Production of manifest

Any manifest required by the Customs Service shall be signed, produced, delivered or electronically transmitted by the master or person in charge of the vessel, aircraft, or vehicle, or by any other authorized agent of the owner or operator of the vessel, aircraft, or vehicle in accordance with the requirements prescribed under subsection (d) of this section. A manifest may be supplemented by bill of lading data supplied by the issuer of such bill. If any irregularity of omission or commission occurs in any way in respect to any manifest or bill of lading data, the owner or operator of the vessel, aircraft or vehicle, or any party responsible for such irregularity, shall be liable for any fine or penalty prescribed by law with respect to such irregularity. The Customs Service may take appropriate action against any of the parties.

(c) Public disclosure of certain manifest information

(1) Except as provided in subparagraph (2), the following information, when contained in a vessel vessel¹ or aircraft manifest, shall be available for public disclosure:

(A) The name and address of each importer or consignee and the name and address of the shipper to such importer or consignee, unless the importer or consignee has made a biennial certification, in accordance with procedures adopted by the Secretary of the Treasury, claiming confidential treatment of such information.

(B) The general character of the cargo.

(C) The number of packages and gross weight.

(D) The name of the vessel, aircraft, or carrier.

(E) The seaport or airport of loading.

(F) The seaport or airport of discharge.

(G) The country of origin of the shipment.

(H) The trademarks appearing on the goods or packages.

¹ So in original.

(2) The information listed in paragraph (1) shall not be available for public disclosure if—

(A) the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure is likely to pose a threat of personal injury or property damage; or

(B) the information is exempt under the provisions of section 552(b)(1) of title 5.

(3) The Secretary of the Treasury, in order to allow for the timely dissemination and publication of the information listed in paragraph (1), shall establish procedures to provide access to manifests. Such procedures shall include provisions for adequate protection against the public disclosure of information not available for public disclosure from such manifests.

(d) Regulations

(1) In general

The Secretary shall by regulation—

(A) specify the form for, and the information and data that must be contained in, the manifest required by subsection (a) of this section;

(B) allow, at the option of the individual producing the manifest and subject to paragraph (2), letters and documents shipments to be accounted for by summary manifesting procedures;

(C) prescribe the manner of production for, and the delivery for electronic transmittal of, the manifest required by subsection (a) of this section; and

(D) prescribe the manner for supplementing manifests with bill of lading data under subsection (b) of this section.

(2) Letters and documents shipments

For purposes of paragraph (1)(B)—

(A) the Customs Service may require with respect to letters and documents shipments—

(i) that they be segregated by country of origin, and

(ii) additional examination procedures that are not necessary for individually manifested shipments;

(B) standard letter envelopes and standard document packs shall be segregated from larger document shipments for purposes of customs inspections; and

(C) the term “letters and documents” means—

(i) data described in General Headnote 4(c) of the Harmonized Tariff Schedule of the United States,

(ii) securities and similar evidences of value described in heading 4907 of such Schedule, but not monetary instruments defined pursuant to chapter 53 of title 31, and

(iii) personal correspondence, whether on paper, cards, photographs, tapes, or other media.

(June 17, 1930, ch. 497, title IV, § 431, 46 Stat. 710; Aug. 8, 1953, ch. 397, § 15, 67 Stat. 516; Pub. L. 98-573, title II, § 203, Oct. 30, 1984, 98 Stat. 2974; Pub. L. 100-690, title VII, § 7367(c)(1), Nov. 18, 1988, 102 Stat. 4479; Pub. L. 103-182, title VI, § 635, Dec. 8, 1993, 107 Stat. 2199; Pub. L. 104-153, § 11,

July 2, 1996, 110 Stat. 1389; Pub. L. 104-295, § 3(a)(3), Oct. 11, 1996, 110 Stat. 3515.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (d)(2)(C)(i), (ii), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

CODIFICATION

In subsec. (a), “section 60105 of title 46” substituted for “section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)” on authority of Pub. L. 109-304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

PRIOR PROVISIONS

R.S. §§ 2806, 2807 (as amended by act June 3, 1902, ch. 86, § 1, 27 Stat. 41), and 2808, requiring manifests, and prescribing their contents, were superseded by act Sept. 21, 1922, ch. 356, title IV, § 431, 42 Stat. 950, and repealed by section 642 thereof. Section 431 of the 1922 act was superseded by section 431 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

R.S. § 2805, relative to the administration of oaths required by that chapter, was superseded to a great extent by the Customs Administrative Act of June 10, 1890, ch. 407, § 22, 26 Stat. 140, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 102, and by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, § IV, S., 38 Stat. 201, which abolished all oaths administered by officers of the customs, except as provided in those acts and repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-295 substituted “a vessel manifest” for “such manifest” in introductory provisions.

Pub. L. 104-153 inserted “vessel or aircraft” before “manifest” in introductory provisions, amended subpars. (D) to (F) generally, substituting “vessel, aircraft, or carrier” for “vessel or carrier” in subpar. (D) and “seaport or airport” for “port” in subpars. (E) and (F), and added subpar. (H).

1993—Subsecs. (a) and (b). Pub. L. 103-182, § 635(1), amended subsecs. (a) and (b) generally, substituting present provisions for provisions relating to, in subsec. (a), the requirement, form, and contents of manifests and, in subsec. (b), the signing and delivery of manifests.

Subsec. (d). Pub. L. 103-182, § 635(2), added subsec. (d). 1988—Subsec. (c)(1)(G). Pub. L. 100-690 substituted “country of origin” for “country or origin”.

1984—Subsec. (a). Pub. L. 98-573, § 203(1), inserted “; and the names of the shippers of such merchandise” in par. Third.

Subsec. (c). Pub. L. 98-573, § 203(2), added subsec. (c). 1953—Act Aug. 8, 1953, designated existing provisions as subsec. (a) and added subsec. (b).

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.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98-573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment to this section effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

REGULATIONS

Section 14 of Pub. L. 104-153 provided that: “Not later than 6 months after the date of the enactment of this

Act [July 2, 1996], the Secretary of the Treasury shall prescribe such regulations or amendments to existing regulations that may be necessary to carry out the amendments made by sections 9, 10, 11, 12, and 13 of this Act [amending this section, sections 1484 and 1526 of this title, and section 80302 of Title 49, Transportation].”

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.

§ 1431a. Documentation of waterborne cargo

(a) Applicability

This section shall apply to all cargo to be exported that is moved by a vessel carrier from a port in the United States.

(b) Documentation required

(1) No shipper of cargo subject to this section (including an ocean transportation intermediary that is a non-vessel-operating common carrier (as defined in section 40102(16) of title 46) may tender or cause to be tendered to a vessel carrier cargo subject to this section for loading on a vessel in a United States port, unless such cargo is properly documented pursuant to this subsection.

(2) For the purposes of this subsection, cargo shall be considered properly documented if the shipper submits to the vessel carrier or its agent a complete set of shipping documents no later than 24 hours after the cargo is delivered to the marine terminal operator, but under no circumstances later than 24 hours prior to departure of the vessel.

(3) A complete set of shipping documents shall include—

(A) for shipments for which a shipper's export declaration is required, a copy of the export declaration or, if the shipper files such declarations electronically in the Automated Export System, the complete bill of lading, and the master or equivalent shipping instructions, including the Internal Transaction Number (ITN); or

(B) for shipments for which a shipper's export declaration is not required, a shipper's export declaration exemption statement and such other documents or information as the Secretary may by regulation prescribe.

(4) The Secretary shall by regulation prescribe the time, manner, and form by which shippers shall transmit documents or information required under this subsection to the Customs Service.

(c) Loading undocumented cargo prohibited

(1) No marine terminal operator (as defined in section 40102(14) of title 46) may load, or cause to be loaded, any cargo subject to this section on a vessel unless instructed by the vessel carrier operating the vessel that such cargo has been properly documented in accordance with this section.

(2) When cargo is booked by 1 vessel carrier to be transported on the vessel of another vessel carrier, the booking carrier shall notify the operator of the vessel that the cargo has been properly documented in accordance with this section. The operator of the vessel may rely on such notification in releasing the cargo for loading aboard the vessel.

(d) Reporting of undocumented cargo

(1) In general

A vessel carrier shall notify the Customs Service of any cargo tendered to such carrier that is not properly documented pursuant to this section and that has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal, and the location of the cargo in the marine terminal.

(2) Sharing arrangements

For vessel carriers that are members of vessel sharing agreements (or any other arrangement whereby a carrier moves cargo on another carrier's vessel), the vessel carrier accepting the booking shall be responsible for reporting undocumented cargo, without regard to whether it operates the vessel on which the transportation is to be made.

(3) Reassignment to another vessel

For purposes of this subsection and subsection (f) of this section, if merchandise has been tendered to a marine terminal operator and subsequently reassigned for carriage on another vessel, the merchandise shall be considered properly documented if the information provided reflects carriage on the previously assigned vessel and otherwise meets the requirements of subsection (b) of this section. Notwithstanding the preceding sentence, it shall be the responsibility of the vessel carrier to notify the Customs Service promptly of any reassignment of merchandise for carriage on a vessel other than the vessel on which the merchandise was originally assigned.

(4) Multiple containers

If a single shipment is comprised of multiple containers, the 48-hour period described in paragraph (1) shall begin to run from the time the last container of the shipment is delivered to the marine terminal operator. It shall be the responsibility of the person tendering the cargo to inform the carrier that the shipment consists of multiple containers that will be delivered to the marine terminal operator at different times as part of a single shipment.

(e) Assessment of penalties

Whoever is found to have violated subsection (b) of this section shall be liable to the United States for civil penalties in a monetary amount up to the value of the cargo, or the actual cost of the transportation, whichever is greater.

(f) Seizure of undocumented cargo

(1) Any cargo that is not properly documented pursuant to this section and has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal operator shall be subject to search, seizure, and forfeiture.

(2) The shipper of any such cargo is liable to the marine terminal operator and to the ocean carrier for demurrage and other applicable charges for any undocumented cargo which has been notified to or searched or seized by the Customs Service for the entire period the cargo remains under the order and direction of the Customs Service. Unless the cargo is seized by the Customs Service and forfeited, the marine terminal operator and the ocean carrier shall have a lien on the cargo for the amount of the demurrage and other charges.

(g) Effect on other provisions

Nothing in this section shall be construed, interpreted, or applied to relieve or excuse any party from compliance with any obligation or requirement arising under any other law, regulation, or order with regard to the documentation or carriage of cargo.

(June 17, 1930, ch. 497, title IV, §431A, as added Pub. L. 107–210, div. A, title III, §343(b), Aug. 6, 2002, 116 Stat. 983; amended Pub. L. 107–295, title I, §108(a), Nov. 25, 2002, 116 Stat. 2088.)

CODIFICATION

In subsec. (b)(1), “(as defined in section 40102(16) of title 46)” substituted for “(as defined in section 3(17)(B) of the Shipping Act of 1984 (46 U.S.C. App. 1702(17)(B))” and in subsec. (c)(1), “section 40102(14) of title 46” substituted for “section 3(14) of the Shipping Act of 1984 (46 U.S.C. App. 1702(14))” on authority of Pub. L. 109–304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 40102 of Title 46, Shipping.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–295 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: “A vessel carrier shall notify the Customs Service of any cargo tendered to such carrier that is not properly documented pursuant to this section and that has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal, and the location of the cargo in the marine terminal. For vessel carriers that are members of vessel sharing agreements (or any other arrangement whereby a carrier moves cargo on another carrier’s vessel), the vessel carrier accepting the booking shall be responsible for reporting undocumented cargo, without regard to whether it operates the vessel on which the transportation is to be made.”

EFFECTIVE DATE

Section applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of this title on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as an Effective Date of 2002 Amendment note preceding section 2271 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.

§§ 1432, 1432a. Repealed. Pub. L. 103–182, title VI, § 690(b)(1), (c)(5), Dec. 8, 1993, 107 Stat. 2223

Section 1432, acts June 17, 1930, ch. 497, title IV, §432, 46 Stat. 710; June 2, 1970, Pub. L. 91–271, title III, §301(b),

84 Stat. 287, required that the manifest of any vessel arriving from foreign port or place separately specify articles to be retained on board as sea stores, ship’s stores, bunker coal, or bunker oil and provided for forfeiture and penalties for omitted articles.

Section 1432a, act June 17, 1930, ch. 497, title IV, §401 (part), as added Aug. 5, 1935, ch. 438, title II, §201, 49 Stat. 521, provided that any vessel which had visited any hovering vessel would be deemed to have arrived from a foreign port or place, for purposes of certain provisions of law. Section 690(c)(5) of Pub. L. 103–182 which directed the repeal of the “last undesignated paragraph of section 201 of the Act of August 5, 1935 (19 U.S.C. 1432a)”, was executed by repealing this section, which was based on the last undesignated paragraph of section 401 of act June 17, 1930, as added by section 201 of act Aug. 5, 1935, to reflect the probable intent of Congress.

§ 1433. Report of arrival of vessels, vehicles, and aircraft

(a) Vessel arrival

(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of—

- (A) any vessel from a foreign port or place;
- (B) any foreign vessel from a domestic port;
- (C) any vessel of the United States carrying foreign merchandise for which entry has not been made; or

(D) any vessel which has visited a hovering vessel or received merchandise while outside the territorial sea;

the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

(2) The Secretary may by regulation—

(A) prescribe the manner in which arrivals are to be reported under paragraph (1); and

(B) extend the time in which reports of arrival must be made, but not later than 24 hours after arrival.

(b) Vehicle arrival

(1) Vehicles may arrive in the United States only at border crossing points designated by the Secretary.

(2) Except as otherwise authorized by the Secretary, immediately upon the arrival of any vehicle in the United States at a border crossing point, the person in charge of the vehicle shall—

(A) report the arrival; and

(B) present the vehicle, and all persons and merchandise (including baggage) on board, for inspection;

to the customs officer at the customs facility designated for that crossing point.

(c) Aircraft arrival

The pilot of any aircraft arriving in the United States or the Virgin Islands from any foreign airport or place shall comply with such advance notification, arrival reporting, and landing requirements as the Secretary may by regulation prescribe.

(d) Presentation of documentation

The master, person in charge of a vehicle, or aircraft pilot shall present, or transmit pursuant to an electronic data interchange system, to the Customs Service such information, data,

documents, papers, or manifests as the Secretary may by regulation prescribe.

(e) Prohibition on departures and discharge

Unless otherwise authorized by law, a vessel, aircraft or vehicle after arriving in the United States or Virgin Islands may, but only in accordance with regulations prescribed by the Secretary—

- (1) depart from the port, place, or airport of arrival; or
- (2) discharge any passenger or merchandise (including baggage).

(June 17, 1930, ch. 497, title IV, § 433, 46 Stat. 711; Pub. L. 99-570, title III, § 3112, Oct. 27, 1986, 100 Stat. 3207-80; Pub. L. 103-182, title VI, § 652, Dec. 8, 1993, 107 Stat. 2209; Pub. L. 106-476, title I, § 1452(a)(1), Nov. 9, 2000, 114 Stat. 2167.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 433, 42 Stat. 951. That section was superseded by section 433 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

R.S. § 2774, requiring a report of arrival, and a further report in the form of a manifest, and imposing a penalty for violations was superseded by act Sept. 21, 1922, ch. 356, title IV, § 433, 42 Stat. 951, and repealed by section 642 of that act.

R.S. § 2772, relative to report and entry by the master of every vessel, bound to a port of delivery; section 2775, requiring a special report by the master of any vessel having on board distilled spirits or wines; and section 2832, relative to report of arrival of vessels proceeding to the ports of Natchez or Vicksburg, were also repealed by section 642 of the act of Sept. 21, 1922, ch. 356.

AMENDMENTS

2000—Subsec. (a)(1)(C). Pub. L. 106-476 struck out “bonded merchandise, or” before “foreign merchandise”.

1993—Subsec. (a)(1)(D). Pub. L. 103-182, § 652(1), added subpar. (D).

Subsec. (d). Pub. L. 103-182, § 652(2), substituted “present, or transmit pursuant to an electronic data interchange system, to the Customs Service such information, data,” for “present to customs officers such”.

Subsec. (e). Pub. L. 103-182, § 652(3), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Unless otherwise authorized by law, a vessel, aircraft, or vehicle may, after arriving in the United States or the Virgin Islands—

- “(1) depart from the port, place, or airport of arrival; or
- “(2) discharge any passenger or merchandise (including baggage);

only in accordance with regulations prescribed by the Secretary.”

1986—Pub. L. 99-570 amended section generally. Prior to amendment, section read as follows: “Within twenty-four hours after the arrival of any vessel from a foreign port or place, or of a foreign vessel from a domestic port, or of a vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made, at any port or place within the United States at which such vessel shall come to, the master shall, unless otherwise provided by law, report the arrival of the vessel at the nearest customhouse, under such regulations as the Commissioner of Customs may prescribe.”

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-476, except as otherwise provided, applicable with respect to goods entered, or withdrawn from warehouse, for consumption, on or

after the 15th day after Nov. 9, 2000, see section 1471 of Pub. L. 106-476, set out as a note under section 58c 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.

§ 1434. Entry; vessels

(a) Formal entry

Within 24 hours (or such other period of time as may be provided under subsection (c)(2) of this section) after the arrival at any port or place in the United States of—

- (1) any vessel from a foreign port or place;
- (2) any foreign vessel from a domestic port;
- (3) any vessel of the United States having on board foreign merchandise for which entry has not been made; or
- (4) any vessel which has visited a hovering vessel or has delivered or received merchandise while outside the territorial sea;

the master of the vessel shall, unless otherwise provided by law, make formal entry at the nearest customs facility or such other place as the Secretary may prescribe by regulation.

(b) Preliminary entry

The Secretary may by regulation permit the master to make preliminary entry of the vessel with the Customs Service in lieu of formal entry or before formal entry is made. In permitting preliminary entry, the Customs Service shall board a sufficient number of vessels to ensure compliance with the laws it enforces.

(c) Regulations

The Secretary may by regulation—

- (1) prescribe the manner and format in which entry under subsection (a) of this section or subsection (b) of this section, or both, must be made, and such regulations may provide that any such entry may be made electronically pursuant to an electronic data interchange system;
- (2) provide that—

(A) formal entry must be made within a greater or lesser time than 24 hours after arrival, but in no case more than 48 hours after arrival, and

(B) formal entry may be made before arrival; and

- (3) authorize the Customs Service to permit entry or preliminary entry of any vessel to be made at a place other than a designated port of entry, under such conditions as may be prescribed.

(June 17, 1930, ch. 497, title IV, § 434, 46 Stat. 711; Aug. 5, 1935, ch. 438, title III, § 301, 49 Stat. 527; Pub. L. 91-271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 103-182, title VI, § 653, Dec. 8, 1993, 107 Stat. 2210; Pub. L. 106-476, title I, § 1452(a)(2), Nov. 9, 2000, 114 Stat. 2167.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §434, 42 Stat. 951. That section was superseded by section 434 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions for deposit of the register and other papers previous to entry, and for their return to the master or owner of the vessel on clearance of the vessel, were contained in R.S. §2790, which was superseded by act Sept. 21, 1922, ch. 356, title IV, §434, 42 Stat. 951, and repealed by section 642 of that act.

R.S. §2836, relative to the entry of vessels arriving within the districts of Petersburg or Richmond (abolished by the Plan of Reorganization of the Customs Service set forth in a note to section 1 of this title) was also repealed by section 642 of act Sept. 21, 1922, ch. 356.

Special provisions for Astoria and Portland were contained in R.S. §§2588–2590, which were also repealed by section 642 of the act of Sept. 21, 1922, ch. 356.

R.S. §2835, prescribing the duties of masters of vessels bound up James River, Virginia, in regard to deposit of manifests, etc., was repealed by act Mar. 3, 1897, ch. 389, §16, 29 Stat. 691.

Special provisions to facilitate the entry of steamships running in an established line in foreign trade, made by act June 5, 1894, ch. 92, §1, 28 Stat. 85, and extended to steamships trading between Porto Rico and Hawaii and the United States by act May 31, 1900, ch. 600, 31 Stat. 249, were repealed by section 6 of act Feb. 13, 1911, ch. 46, the preceding sections of which act made more comprehensive provisions for preliminary entry of any vessel from a foreign port, and for the lading or unlading of such vessels at night. Sections 1 to 4 of said act of 1911, were repealed by section 643 of the act of Sept. 21, 1922, ch. 356.

AMENDMENTS

2000—Subsec. (a)(3). Pub. L. 106–476 struck out “bonded merchandise or” before “foreign merchandise”.

1993—Pub. L. 103–182 amended section generally. Prior to amendment, section read as follows: “Except as otherwise provided by law, and under such regulations as the Commissioner of Customs may prescribe, the master of a vessel of the United States arriving in the United States from a foreign port or place shall, within forty-eight hours after its arrival within the limits of any customs collection district, make formal entry of the vessel at the customhouse by producing and depositing with the appropriate customs officer the vessel’s crew list, its register, or document in lieu thereof, the clearance and bills of health issued to the vessel at the foreign port or ports from which it arrived, together with the original and one copy of the manifest, and shall make oath that the ownership of the vessel is as indicated in the register, or document in lieu thereof, and that the manifest was made out in accordance with section 1431 of this title.”

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

1935—Act Aug. 5, 1935, inserted “or document in lieu thereof” after “indicated in the register”.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–476, except as otherwise provided, applicable with respect to goods entered, or withdrawn from warehouse, for consumption, on or after the 15th day after Nov. 9, 2000, see section 1471 of Pub. L. 106–476, set out as a note under section 58c 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, as modified, set out as a note under section 542 of Title 6.

§ 1435. Repealed. Pub. L. 103–182, title VI, § 690(b)(2), Dec. 8, 1993, 107 Stat. 2223

Section, act June 17, 1930, ch. 497, title IV, §435, 46 Stat. 711, set forth entry requirements for foreign vessels arriving within limits of any customs collection district.

§ 1435a. Transferred

CODIFICATION

Section, act May 4, 1934, ch. 212, 48 Stat. 663, was transferred to section 91a of former Title 46, Shipping, and subsequently repealed by Pub. L. 103–182, title VI, § 690(c)(7), Dec. 8, 1993, 107 Stat. 2223.

§ 1435b. Repealed. Pub. L. 103–182, title VI, § 690(c)(6), Dec. 8, 1993, 107 Stat. 2223

Section, acts June 16, 1937, ch. 362, 50 Stat. 303; 1946 Reorg. Plan No. 3, §§101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; June 2, 1970, Pub. L. 91–271, title III, §320, 84 Stat. 293, related to clearance of vessels arriving on Sundays, holidays, or at night.

§ 1436. Penalties for violations of arrival, reporting, entry, and clearance requirements**(a) Unlawful acts**

It is unlawful—

(1) to fail to comply with section 1431, 1433, or 1434 of this title or section 60105 of title 46;

(2) to present or transmit, electronically or otherwise, any forged, altered, or false document, paper, information, data or manifest to the Customs Service under section 1431, 1433(d), or 1434 of this title or section 60105 of title 46 without revealing the facts;

(3) to fail to make entry or to obtain clearance as required by section 1434 or 1644 of this title, section 60105 of title 46, or section 1644a(b)(1) or (c)(1) of this title; or

(4) to fail to comply with, or violate, any regulation prescribed under any section referred to in any of paragraphs (1) through (3).

(b) Civil penalty

Any master, person in charge of a vehicle, or aircraft pilot who commits any violation listed in subsection (a) of this section is liable for a civil penalty of \$5,000 for the first violation, and \$10,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

(c) Criminal penalty

In addition to being liable for a civil penalty under subsection (b) of this section, any master, person in charge of a vehicle, or aircraft pilot who intentionally commits any violation listed in subsection (a) of this section is, upon conviction, liable for a fine of not more than \$2,000 or imprisonment for 1 year, or both; except that if the conveyance has, or is discovered to have had, on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the

United States is prohibited, such individual is liable for an additional fine of not more than \$10,000 or imprisonment for not more than 5 years, or both.

(d) Additional civil penalty

If any merchandise (other than sea stores or the equivalent for conveyances other than a vessel) is imported or brought into the United States in or aboard a conveyance which was not properly reported or entered, the master, person in charge of a vehicle, or aircraft pilot shall be liable for a civil penalty equal to the value of the merchandise and the merchandise may be seized and forfeited unless properly entered by the importer or consignee. If the merchandise consists of any controlled substance listed in section 1584 of this title, the master, individual in charge of a vehicle, or pilot shall be liable to the penalties prescribed in that section.

(June 17, 1930, ch. 497, title IV, § 436, 46 Stat. 711; Aug. 5, 1935, ch. 438, title II, § 202, 49 Stat. 521; Pub. L. 99-570, title III, § 3113(a), Oct. 27, 1986, 100 Stat. 3207-81; Pub. L. 103-182, title VI, § 611, Dec. 8, 1993, 107 Stat. 2170; Pub. L. 104-295, § 21(e)(3), Oct. 11, 1996, 110 Stat. 3530.)

CODIFICATION

In subsec. (a)(1) to (3), “section 60105 of title 46” substituted for “section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)” on authority of Pub. L. 109-304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

In subsec. (a)(3), “section 1644a(b)(1) or (c)(1) of this title” substituted for “section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1509)” 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. § 2834, as amended by act Mar. 3, 1897, ch. 389, § 15, 29 Stat. 691, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 436, 42 Stat. 951, and was repealed by section 642 thereof. Section 436 of the 1922 act was superseded by section 436 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104-295 substituted “1431” for “1431(e)” and struck out “or” after semicolon at end.

1993—Pub. L. 103-182, § 611(2), substituted “entry, and clearance” for “and entry” in section catchline.

Subsec. (a)(1). Pub. L. 103-182, § 611(1)(A), substituted “section 1431, 1433, or 1434 of this title or section 91 of title 46, Appendix” for “section 1433 of this title”.

Subsec. (a)(2), (3). Pub. L. 103-182, § 611(1)(B), (C), amended pars. (2) and (3) generally. Prior to amendment, pars. (2) and (3) read as follows:

“(2) to present any forged, altered, or false document, paper, or manifest to a customs officer under section 1433(d) of this title without revealing the facts;

“(3) to fail to make entry as required by section 1434, 1435, or 1644 of this title or section 1509 of title 49, Appendix; or”.

1986—Pub. L. 99-570 amended section generally. Prior to amendment, section read as follows: “Every master who fails to make the report or entry provided for in sections 1433, 1434, or 1435 of this title shall, for each offense, be liable to a fine of not more than \$1,000 and, if the vessel have, or be discovered to have had, on board any merchandise (sea stores excepted), the importation of which into the United States is prohibited, or any

spirits, wines, or other alcoholic liquors, such master shall be subject to an additional fine of not more than \$2,000 or to imprisonment for not more than one year, or to both such fine and imprisonment.

“Every master who presents a forged, altered, or false document or paper on making entry of a vessel as required by section 1434 or 1435 of this title, 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 \$50 or to imprisonment for not more than two years, or to both such fine and imprisonment.”

1935—Act Aug. 5, 1935, inserted provisions relating to additional penalty for vessel carrying nonimportable merchandise or liquor and added second par.

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.

§ 1437. Repealed. Pub. L. 103-182, title VI, § 690(b)(3), Dec. 8, 1993, 107 Stat. 2223

Section, act June 17, 1930, ch. 497, title IV, § 437, 46 Stat. 711, provided for return of register or document to master or owner of vessel upon clearance.

§ 1438. Unlawful return of foreign vessel's papers

It shall not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of section 1434 of this title, or regulations issued thereunder, until such master shall produce to him a clearance in due form from the Customs Service in the port in which such vessel has entered. Any consul offending against the provisions of this section shall be liable to a fine of not more than \$5,000.

(June 17, 1930, ch. 497, title IV, § 438, 46 Stat. 712; Pub. L. 91-271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 103-182, title VI, § 654, Dec. 8, 1993, 107 Stat. 2210.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 438, 42 Stat. 952. That section was superseded by section 438 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1993—Pub. L. 103-182 substituted “section 1434” for “section 1435”, inserted “, or regulations issued thereunder,” before “until such master”, and substituted “the Customs Service in the port in which such vessel has entered” for “the appropriate customs officer of the port where such vessel has been entered”.

1970—Pub. L. 91-271 substituted reference to appropriate customs officers for reference to collector.

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.

§§ 1439, 1440. Repealed. Pub. L. 103-182, title VI, § 690(b)(4), (5), Dec. 8, 1993, 107 Stat. 2223

Section 1439, acts June 17, 1930, ch. 497, title IV, § 439, 46 Stat. 712; Aug. 8, 1953, ch. 397, § 2(b), 67 Stat. 507, required master of a vessel from a foreign port or place, immediately upon arrival, to mail or deliver to designated employee a copy of manifest and any corrections thereto.

Section 1440, acts June 17, 1930, ch. 497, title IV, § 440, 46 Stat. 712; Aug. 8, 1953, ch. 397, § 2(c), 67 Stat. 508, required master of a vessel to make post entry of any baggage or merchandise not included on manifest and to mail or deliver such entry to designated employee.

§ 1441. Exceptions to vessel entry and clearance requirements

The following vessels shall not be required to make entry under section 1434 of this title or to obtain clearance under section 60105 of title 46:

(1) Vessels of war and public vessels employed for the conveyance of letters and dispatches and not permitted by the laws of the nations to which they belong to be employed in the transportation of passengers or merchandise in trade.

(2) Passenger vessels making three trips or oftener a week between a port of the United States and a foreign port, or vessels used exclusively as ferryboats, carrying passengers, baggage, or merchandise: *Provided*, That the master of any such vessel shall be required to report such baggage and merchandise to the appropriate customs officer within twenty-four hours after arrival.

(3) Any vessel carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, if—

(A) the vessel does not in any way violate the customs or navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of the vessel, if there is on board any article required by law to be entered, reports the article to the Customs Service immediately upon arrival.

(4) Any United States documented vessel with recreational endorsement or any undocumented United States pleasure vessel not engaged in trade, if—

(A) the vessel complies with the reporting requirements of section 1433 of this title, and with the customs and navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of, and any other person on board, the vessel, if the master or such person has on board any article required by law to be entered or declared, reports such article to the Customs Service immediately upon arrival.

(5) Vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, sea

stores, or ship's stores and which shall depart within twenty-four hours after arrival without having landed or taken on board any passengers, or any merchandise other than bunker coal, bunker oil, sea stores, or ship's stores: *Provided*, That the master, owner, or agent of such vessel shall report under oath to the appropriate customs officer the hour and date of arrival and departure and the quantity of bunker coal, bunker oil, sea stores, or ship's stores taken on board.

(6) Any vessel required to anchor at the Belle Isle Anchorage in the waters of the Detroit River in the State of Michigan, for the purposes of awaiting the availability of cargo or berthing space or for the purpose of taking on a pilot or awaiting pilot services, or at the direction of the Coast Guard, prior to proceeding to the Port of Toledo, Ohio, where the vessel makes entry under section 1434 of this title or obtains clearance under section 60105 of title 46.

(June 17, 1930, ch. 497, title IV, § 441, 46 Stat. 712; Aug. 5, 1935, ch. 438, title III, § 302, 49 Stat. 527; Aug. 14, 1937, ch. 620, § 1, 50 Stat. 638; Sept. 1, 1954, ch. 1213, title V, § 501(b), 68 Stat. 1140; Pub. L. 91-271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 98-573, title II, § 204, Oct. 30, 1984, 98 Stat. 2974; Pub. L. 103-182, title VI, § 655, Dec. 8, 1993, 107 Stat. 2210; Pub. L. 104-295, § 21(e)(5), Oct. 11, 1996, 110 Stat. 3530; Pub. L. 106-36, title I, § 1001(b)(10), June 25, 1999, 113 Stat. 132; Pub. L. 106-476, title I, § 1452(b), Nov. 9, 2000, 114 Stat. 2168.)

CODIFICATION

“Section 60105 of title 46” substituted in introductory provisions for “section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)” and in par. (6) for “section 4197 of the Revised Statutes of the United States” on authority of Pub. L. 109-304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

PRIOR PROVISIONS

Provisions somewhat similar to those in par. (1) of this section were contained in R.S. § 2791. R.S. § 3123 provided that steam-tugs duly enrolled and licensed to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, when exclusively employed in towing vessels, should not be required to report and clear at the custom-house but that when employed in towing rafts or other vessels without sale or steam motive-power, not required to be enrolled or licensed they should report and clear in the same manner as other vessels. Both sections were superseded and more closely assimilated to this section by act Sept. 21, 1922, ch. 356, title IV, § 441, 42 Stat. 952, and repealed by section 642 thereof. Section 441 of the 1922 act was superseded by section 441 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

2000—Par. (6). Pub. L. 106-476 added par. (6).

1999—Par. (6). Pub. L. 106-36 struck out par. (6) which read as follows: “Tugs documented under chapter 121 of title 46 with a Great Lakes endorsement when towing vessels which are required by law to enter and clear.”

1996—Pars. (1), (2), (4), (5). Pub. L. 104-295 substituted period for semicolon at end of pars. (1), (2), and (4) and substituted period for “; and” at end of par. (5).

1993—Pub. L. 103-182, § 655(1), (5), substituted catchline for one which read “Vessels not required to enter”

and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "The following vessels shall not be required to make entry at the customhouse."

Par. (3). Pub. L. 103-182, §655(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Vessels carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, and licensed yachts or undocumented American pleasure vessels not engaged in trade: *Provided*, That such vessels do not in any way violate the customs or navigation laws of the United States and have not visited any hovering vessel: *Provided further*, That the master of any such vessel which has on board any article required by law to be entered shall be required to report such article to the appropriate customs officer within twenty-four hours after arrival."

Pars. (4), (5). Pub. L. 103-182, §655(3), added par. (4) and redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Par. (6). Pub. L. 103-182, §655(3), (4), redesignated par. (5) as (6) and substituted "documented under chapter 121 of title 46 with a Great Lakes endorsement" for "enrolled and licensed to engage in the foreign and coasting trade in the northern, northeastern, and northwestern frontiers".

1984—Par. (3). Pub. L. 98-573 amended par. (3) generally, inserting provision referring to vessels carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning.

1970—Pars. (2) to (4). Pub. L. 91-271 substituted references to appropriate customs officer for references to collector wherever appearing.

1954—Par. (3). Act Sept. 1, 1954, exempted undocumented American pleasure vessels from entry requirements, and provided that both yachts and undocumented pleasure vessels report to the collector of customs, within 24 hours after arrival, all articles, whether dutiable or not, for which a customs entry is required.

1937—Par. (4). Act Aug. 14, 1937, substituted "sea stores, or ship's stores" for "or necessary sea stores" wherever appearing.

1935—Par. (3). Act. Aug. 5, 1935, inserted "And not visiting any hovering vessel, nor having at any time or, if forfeited to the United States or to a foreign government, at any time after forfeiture, become liable to seizure and forfeiture for any violation of the laws of the United States".

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-476, except as otherwise provided, applicable with respect to goods entered, or withdrawn from warehouse, for consumption, on or after the 15th day after Nov. 9, 2000, see section 1471 of Pub. L. 106-476, set out as a note under section 58c of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 applicable with respect to vessels returning from the British Virgin Islands on or after 15th day after Oct. 30, 1984, see section 214(a), (c)(1) 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 1937 AMENDMENT

Section 2 of act Aug. 14, 1937, provided as follows: "The amendment made by this Act [amending this section] shall take effect on the day following the date of its enactment [Aug. 14, 1937]."

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.

§ 1442. Residue cargo

Any vessel having on board merchandise shown by the manifest to be destined to a foreign port or place may, after the report and entry of such vessel under the provisions of this chapter, proceed to such foreign port of destination with the cargo so destined therefor, without unloading the same and without the payment of duty thereon. Any vessel arriving from a foreign port or place having on board merchandise shown by the manifest to be destined to a port or ports in the United States other than the port of entry at which such vessel first arrived and made entry may proceed with such merchandise from port to port or from district to district for the unloading thereof.

(June 17, 1930, ch. 497, title IV, § 442, 46 Stat. 713.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. §§2776 (as amended by act June 26, 1884, ch. 121, §29, 23 Stat. 59), 2777-2779, 2782, and 2783, all of which were superseded by act Sept. 21, 1922, ch. 356, title IV, § 442, 42 Stat. 952, and were repealed by section 642 thereof. Section 442 of the 1922 act was superseded by section 442 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions authorizing the Secretary of the Treasury to require bonds in cases of vessels carrying goods destined for ports other than port of entry were contained in the 1922 act and prior acts. These provisions were omitted from this section. General provisions authorizing the Secretary to require bonds where not specifically required are contained in section 1623 of this title.

Special provisions concerning Astoria and Portland were contained in R.S. §§2588 and 2590, prior to repeal by section 642 of the act of Sept. 21, 1922, ch. 356.

§§ 1443 to 1445. Repealed. Pub. L. 103-182, title VI, § 690(b)(6), Dec. 8, 1993, 107 Stat. 2223

Section 1443, acts June 17, 1930, ch. 497, title IV, § 443, 46 Stat. 713; June 2, 1970, Pub. L. 91-271, title III, § 301(b), 84 Stat. 287, related to manifests and permits for merchandise arriving for delivery in different districts or ports of entry.

Section 1444, acts June 17, 1930, ch. 497, title IV, § 444, 46 Stat. 713; June 2, 1970, Pub. L. 91-271, title III, § 301(b), 84 Stat. 287, required master to report his arrival at another port to a customs officer within twenty-four hours and to produce copies of permit and manifest.

Section 1445, acts June 17, 1930, ch. 497, title IV, § 445, 46 Stat. 713; June 2, 1970, Pub. L. 91-271, title III, § 301(b), 84 Stat. 287, set forth penalties for failure of master to obtain or produce permit or manifest.

§ 1446. Supplies and stores retained on board

Vessels arriving in the United States from foreign ports may retain on board, without the

payment of duty, all coal and other fuel supplies, ships' stores, sea stores, and the legitimate equipment of such vessels. Any such supplies, ships' stores, sea stores, or equipment landed and delivered from such vessel shall be considered and treated as imported merchandise: *Provided*, That bunker coal, bunker oil, ships' stores, sea stores, or the legitimate equipment of vessels belonging to regular lines plying between foreign ports and the United States, which are delayed in port for any cause, may be transferred under a permit by the appropriate customs officer and under customs supervision from the vessel so delayed to another vessel of the same line and owner, and engaged in the foreign trade, without the payment of duty thereon.

(June 17, 1930, ch. 497, title IV, § 446, 46 Stat. 713; Pub. L. 91-271, title III, § 301(b), June 2, 1970, 84 Stat. 287.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 446, 42 Stat. 953. That section was superseded by section 446 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions similar to those in the last sentence of this section concerning sea stores and equipment, were contained in R.S. § 2797, as amended by act Mar. 3, 1897, ch. 389, § 17, 29 Stat. 691. A provision that steam vessels might retain coal on board without being required to land it or pay duty was contained in R.S. § 2798. Provision for collection of duty on excessive quantities of sea stores was made by R.S. § 2796. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

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

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.

§ 1447. Place of entry and unloading

It shall be unlawful to make entry of any vessel or to unlade the cargo or any part thereof of any vessel elsewhere than at a port of entry: *Provided*, That upon good cause therefor being shown, the Commissioner of Customs may permit entry of any vessel to be made at a place other than a port of entry designated by him, under such conditions as he shall prescribe: *And provided further*, That any vessel laden with merchandise in bulk may proceed after entry of such vessel to any place designated by the Secretary of the Treasury for the purpose of unloading such cargo, under the supervision of customs officers if the Customs Service considers the same necessary, and in such case the compensation and expenses of such officers shall be reimbursed to the Government by the party in interest.

(June 17, 1930, ch. 497, title IV, § 447, 46 Stat. 714; 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. 103-182, title VI, § 649(a), Dec. 8, 1993, 107 Stat. 2208.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 447, 42 Stat. 953. That section was superseded by section 447 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions concerning the place of entry and unloading of foreign vessels and vessels from foreign ports were contained in R.S. §§ 2770 and 2771, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

Special provisions concerning the place of lading and unloading vessels laden with the products of Canada, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island were contained in R.S. § 3129, prior to repeal by section 642 of the 1922 act.

R.S. § 2897 authorized Secretary of the Treasury, under regulations by him prescribed, to permit unloading of salt, imported from foreign places, on right bank of Mississippi River, opposite New Orleans, at any point on said bank between upper and lower corporate limits of said city, prior to repeal by act Mar. 3, 1897, ch. 389, § 16, 29 Stat. 691.

AMENDMENTS

1993—Pub. L. 103-182 substituted "the Customs Service considers" for "the appropriate customs officer shall consider".

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

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.

Functions of all 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 personnel, referred to in text, were under Department of the Treasury.

"Commissioner of Customs" substituted in text for "Secretary of Commerce" on authority of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5.

§ 1448. Unloading

(a) Permits and preliminary entries

Except as provided in section 1441 of this title (relating to vessels not required to enter or clear), no merchandise, passengers, or baggage shall be unladen from any vessel required to make entry under section 1434 of this title, or vehicle required to report arrival under section 1433 of this title, until entry of such vessel or report of the arrival of such vehicle has been made and a permit for the unloading of the same issued or transmitted pursuant to an electronic data interchange system by the Customs Service. After the entry of any vessel or report of the arrival of any vehicle, the Customs Service may

issue a permit, electronically pursuant to an authorized electronic data interchange system or otherwise, to the master of the vessel, or to the person in charge of the vehicle, to unladen merchandise or baggage, but except as provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unloading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unloading without a permit therefor having been issued. The owner or master of any vessel or vehicle, or agent thereof, shall notify the Customs Service of any merchandise or baggage so unladen for which entry is not made within the time prescribed by law or regulation. The Secretary shall by regulation prescribe administrative penalties not to exceed \$1,000 for each bill of lading for which notice is not given. Any such administrative penalty shall be subject to mitigation and remittance under section 1618 of this title. Such unentered merchandise or baggage shall be the responsibility of the master or person in charge of the importing vessel or vehicle, or agent thereof, until it is removed from the carrier's control in accordance with section 1490 of this title.

(b) Special delivery permit

The Secretary of the Treasury is authorized to provide by regulations for the issuing of special permits for delivery, prior to formal entry therefor, of perishable articles and other articles, the immediate delivery of which is necessary.

(June 17, 1930, ch. 497, title IV, § 448, 46 Stat. 714; Pub. L. 91-271, title III, § 301(e), June 2, 1970, 84 Stat. 288; Pub. L. 103-182, title VI, § 656, Dec. 8, 1993, 107 Stat. 2211.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 448, 42 Stat. 953. That section was superseded by section 448 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions similar to those in this section concerning preliminary entries, and a further provision that on making such entry lading might proceed by both day and night, were contained in act Feb. 13, 1911, ch. 46, § 2, 36 Stat. 900, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

Provisions for the estimation of duties, and the issuance of permits for delivery of merchandise, and provisions prescribing the contents of such permits, were contained in R.S. § 2869, (as amended by act June 5, 1894, ch. 92, § 2, 28 Stat. 86) and § 2870, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

Provisions as to the removal of merchandise brought in any vessel from a foreign port or place, from the wharf or place where it might be landed or put, before it had been weighed, gauged, measured, etc., were contained in R.S. § 2882, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Pub. L. 103-182 in first sentence, substituted “enter or clear” for “enter” and “required to make entry under section 1434 of this title, or vehicle required to report arrival under section 1433 of this

title,” for “or vehicle arriving from a foreign port or place”, inserted “or transmitted pursuant to an electronic data interchange system” after “issued”, and substituted “the Customs Service.” for “the appropriate customs officer: *Provided*, That the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel's manifest and delivering the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall not excuse the master from making formal entry of his vessel at the customhouse, as provided by this chapter.”, in second sentence, struck out “, preliminary or otherwise,” after “After the entry”, substituted “the Customs Service” for “such customs officer”, and inserted “, electronically pursuant to an authorized electronic data interchange system or otherwise,” after “may issue a permit”, and substituted last four sentences for former last sentence which read as follows: “Any merchandise or baggage so unladen from any vessel or vehicle for which entry is not made within forty-eight hours exclusive of Sunday and holidays from the time of the entry of the vessel or report of the vehicle, unless a longer time is granted by such customs officer, as provided in section 1484 of this title, shall be sent to a bonded warehouse or the public stores and held as unclaimed at the risk and expense of the consignee in the case of merchandise and of the owner in the case of baggage, until entry thereof is made.”

1970—Subsec. (a). Pub. L. 91-271 substituted references to appropriate customs officer or such customs officer for references to 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.

§ 1449. Unlading at port of entry

Except as provided in sections 1442 and 1447 of this title (relating to residue cargo and to bulk cargo respectively), merchandise and baggage imported in any vessel by sea shall be unladen at the port of entry to which such vessel is destined, unless (1) such vessel is compelled by any cause to put into another port of entry, and the Customs Service issues a permit for the unloading of such merchandise or baggage at such port, or (2) the Secretary of the Treasury, because of an emergency existing at the port of destination, authorizes such vessel to proceed to another port of entry. Merchandise and baggage so unladen may be entered in the same manner as other imported merchandise or baggage and may be treated as unclaimed merchandise or baggage and stored at the expense and risk of the owner thereof, or may be reladen without entry upon the vessel from which it was unladen for transportation to its destination.

(June 17, 1930, ch. 497, title IV, § 449, 46 Stat. 714; Pub. L. 91-271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 103-182, title VI, § 649(b), Dec. 8, 1993, 107 Stat. 2208.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §449, 42 Stat. 954. That section was superseded by section 449 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions concerning protests and reports by vessels compelled by distress of weather or other necessity to put into a port of the United States; permits for the unloading thereof; the storage of the goods; the disposal of perishable goods; variances between the report, and the delivery of the cargo, and the reloading of such vessels, and a special provision for Spanish vessels arriving in distress, were contained in R.S. §§2891–2895. Provisions for report and entry of vessels prevented by ice from getting to the port or place at which her cargo was intended to be delivered, and for the unloading or landing of the cargo, were contained in R.S. §2896. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS

1993—Pub. L. 103–182 substituted “Customs Service issues a permit for the unloading of such merchandise or baggage at such port,” for “appropriate customs officer of such port issues a permit for the unloading of such merchandise or baggage.”

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

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.

§ 1450. Unlading on Sundays, holidays, or during overtime hours

No merchandise, baggage, or passengers arriving in the United States from any foreign port or place, and no bonded merchandise or baggage being transported from one port to another, shall be unladen from the carrying aircraft, vessel or vehicle on Sunday, a holiday, or during overtime hours, except under special license granted by the appropriate customs officer under such regulations as the Secretary of the Treasury may prescribe.

(June 17, 1930, ch. 497, title IV, §450, 46 Stat. 715; Pub. L. 91–271, title III, §301(b), June 2, 1970, 84 Stat. 287; Pub. L. 103–66, title XIII, §13811(b)(2), Aug. 10, 1993, 107 Stat. 670.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. §2872, as amended by the act of June 26, 1884, ch. 121, §25, 23 Stat. 59, which was superseded by act Sept. 21, 1922, ch. 356, title IV, §450, 42 Stat. 954, and was repealed by section 642 thereof. Section 450 of the 1922 act was superseded by section 450 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

R.S. §2871 providing for the granting of a special license to unlade at night, and the amendment thereof

by act June 30, 1906, ch. 3909, 34 Stat. 633, were repealed by section 6 of act Feb. 13, 1911, ch. 46, and provision for the grant of a special license to lade or unlade at night, and the grant of permits for immediate lading and unloading of vessels admitted to preliminary entry, etc., was made, in sections 1 and 4 of that act, which were repealed by section 643 of the act of Sept. 21, 1922, ch. 356.

A special provision on the subject matter of this section for the northern, northeastern and northwestern frontiers was contained in R.S. §3120, as amended by act Feb. 27, 1877, ch. 69, §1, 19 Stat. 248, prior to repeal by section 642 of the act of Sept. 21, 1922, ch. 356.

AMENDMENTS

1993—Pub. L. 103–66 in section catchline substituted “during overtime hours” for “at night”, and in text substituted “during overtime hours” for “at night” and inserted “aircraft,” before “vessel”.

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

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to customs inspectional services provided on or after Jan. 1, 1994, see section 13811(c) of Pub. L. 103–66, set out as a note under section 267 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.

§ 1451. Extra compensation

Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle, or the person in charge of such vehicle, shall be required to deposit sufficient money to pay, or to give a bond in an amount to be fixed by the Secretary conditioned to pay, the compensation and expenses of the customs officers and employees assigned to duty in connection with such unloading at night or on Sunday or a holiday, in accordance with the provisions of section 267 of this title. In lieu of such deposit or bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in an amount to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unloading of such vessels or vehicles for a period not to exceed one year. Upon a request made by the owner, master, or person in charge of a vessel or vehicle, or by or on behalf of a common carrier or by or on behalf of the owner or consignee of any merchandise or baggage, for overtime services of customs officers or employees at night or on a Sunday or holiday, the appropriate customs officer shall assign sufficient customs officers or employees if available to perform any such services which may lawfully be performed by them during regular hours of business, but only if the person requesting such services deposits sufficient money to pay, or gives a bond in an amount to be fixed by the¹ such customs officer, conditioned to pay the compensation and expenses of such customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees

¹ So in original. The word “the” probably should not appear.

assigned to duty in connection with lading or unlading at night or on Sunday or a holiday. Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employees to regular tours of duty at nights or on Sundays or holidays when such assignments are in the public interest: *Provided*, That the provisions of this section, sections 1450 and 1452 of this title, and the provisions of section 267 of this title insofar as such section 267 of this title requires payment of compensation by the master, owner, agent, or consignee of a vessel or conveyance, shall not apply to the owner, operator, or agent of a highway vehicle, bridge, tunnel, or ferry, between the United States and Canada or between the United States and Mexico, nor to the lading or unlading of merchandise, baggage, or persons arriving in or departing from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway, bridge, tunnel, or ferry. At ports of entry and customs stations where any merchandise, baggage, or persons shall arrive in or depart from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway, bridge, tunnel, or ferry, between the United States and Canada or between the United States and Mexico, the appropriate customs officer, under such regulations as the Secretary of the Treasury may prescribe, shall assign customs officers and employees to duty at such times during the twenty-four hours of each day, including Sundays and holidays, as the Secretary of the Treasury in his discretion may determine to be necessary to facilitate the inspection and passage of such merchandise, baggage, or persons. Officers and employees assigned to such duty at night or on Sunday or a holiday shall be paid compensation in accordance with existing law as interpreted by the United States Supreme Court in the case of the United States v. Howard C. Myers (320 U.S. 561); but all compensation payable to such customs officers and employees shall be paid by the United States without requiring any license, bond, obligation, financial undertaking, or payment in connection therewith on the part of any owner, operator, or agent of any such highway vehicle, bridge, tunnel, or ferry, or other person. As used in this section, the term "ferry" shall mean a passenger service operated with the use of vessels which arrive in the United States on regular schedules at intervals of at least once each hour during any period in which customs service is to be furnished without reimbursement as above provided.

(June 17, 1930, ch. 497, title IV, § 451, 46 Stat. 715; June 25, 1938, ch. 679, § 9, 52 Stat. 1082; June 3, 1944, ch. 233, § 1, 58 Stat. 269; Sept. 1, 1954, ch. 1213, title V, § 503, 68 Stat. 1141; Pub. L. 91-271, title III, § 301(f), June 2, 1970, 84 Stat. 288.)

PRIOR PROVISIONS

Provisions similar to those in this section, but applying also to the issuance of a permit for immediate lading or unlading after preliminary entry, were contained in act Feb. 13, 1911, ch. 46, § 3, 36 Stat. 900, which was superseded in part by act Sept. 21, 1922, ch. 356, title IV,

§ 451, 42 Stat. 954, and was repealed by section 643 thereof. Section 451 of the 1922 act was superseded by section 451 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 references to appropriate customs officer or such customs officer for references to collector wherever appearing.

1954—Act Sept. 1, 1954, permitted the deposit of sufficient money to cover costs of night, Sunday, or holiday service in lieu of filing of bond.

1944—Act June 3, 1944, inserted proviso.

1938—Act June 25, 1938, amended third sentence 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 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 those 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.

§ 1451a. Repealed. Pub. L. 103-66, title XIII, § 13811(b)(1), Aug. 10, 1993, 107 Stat. 670

Section, act June 3, 1944, ch. 233, § 2, 58 Stat. 270, provided that certain extra compensation of customs officers and employees assigned to performance of inspectional services in connection with traffic over highways, toll bridges, etc. on Sundays or holidays prior to June 3, 1944, was to be payable by the U.S. without reimbursement by the applicant for such services and that any reimbursement which had accrued and been collected since Jan. 6, 1941, was to be refunded.

EFFECTIVE DATE OF REPEAL

Repeal applicable to customs inspectional services provided on or after Jan. 1, 1994, see section 13811(c) of Pub. L. 103-66, set out as an Effective Date of 1993 Amendment note under section 267 of this title.

§ 1452. Lading on Sundays, holidays, or at night

No merchandise or baggage entered for transportation under bond or for exportation with the benefit of drawback, or other merchandise or baggage required to be laden under customs supervision, shall be laden on any vessel or vehicle at night or on Sunday or a holiday, except under special license therefor to be issued by the appropriate customs officer under the same conditions and limitations as pertain to the unlading of imported merchandise or merchandise being transported in bond.

(June 17, 1930, ch. 497, title IV, § 452, 46 Stat. 715; Pub. L. 91-271, title III, § 301(b), June 2, 1970, 84 Stat. 287.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 452, 42

Stat. 955. That section was superseded by section 452 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 appropriate customs officer for reference to collector.

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.

§ 1453. Lading and unlading of merchandise or baggage; penalties

If any merchandise or baggage is laden on, or unladen from, any vessel or vehicle without a special license or permit therefor issued by the appropriate customs officer, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, or in removing or otherwise securing such merchandise or baggage, shall each be liable to a penalty equal to the value of the merchandise or baggage so laden or unladen, and such merchandise or baggage shall be subject to forfeiture, and if the value thereof is \$500 or more, the vessel or vehicle on or from which the same shall be laden or unladen shall be subject to forfeiture.

(June 17, 1930, ch. 497, title IV, § 453, 46 Stat. 716; Pub. L. 91-271, title III, § 301(b), June 2, 1970, 84 Stat. 287.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 453, 42 Stat. 955. That section was superseded by section 453 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions imposing penalties and forfeitures for violation of R.S. § 2872, which required a special license for unloading or delivering merchandise otherwise than in open day, were contained in R.S. §§ 2873 and 2874, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

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

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.

§ 1454. Unlading of passengers; penalty

If any passenger is unladen from any vessel or vehicle without a special license or permit therefor issued by the appropriate customs officer, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, shall each be liable to a penalty of \$1,000 for the first passenger and \$500 for each additional such passenger so unladen.

(June 17, 1930, ch. 497, title IV, § 454, 46 Stat. 716; Pub. L. 91-271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 99-570, title III, § 3114, Oct. 27, 1986, 100 Stat. 3207-82.)

AMENDMENTS

1986—Pub. L. 99-570 substituted "\$1,000 for the first passenger and \$500 for each additional such passenger" for "\$500 for each such passenger".

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

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.

§ 1455. Boarding and discharging inspectors

The appropriate customs officer for the district in which any vessel or vehicle arrives from a foreign port or place may put on board of such vessel or vehicle while within such district, and if necessary while going from one district to another, one or more inspectors or other customs officers to examine the cargo and contents of such vessel or vehicle and superintend the unlading thereof, and to perform such other duties as may be required by law or the customs regulations for the protection of the revenue. Such inspector or other customs officer may, if he shall deem the same necessary for the protection of the revenue, secure the hatches or other communications or outlets of such vessel or vehicle with customs seals or other proper fastenings while such vessel is not in the act of unlading and such fastenings shall not be removed without permission of the inspector or other customs officer. Such inspector or other customs officer may require any vessel or vehicle to discontinue or suspend unlading during the continuance of unfavorable weather or any conditions rendering the discharge of cargo dangerous or detrimental to the revenue. Any officer, owner, agent of the owner, or member of the crew of any such vessel who obstructs or hinders any such inspector or other customs officer in the performance of his duties, shall be liable to a penalty of not more than \$500.

(June 17, 1930, ch. 497, title IV, § 455, 46 Stat. 716; Pub. L. 91-271, title III, § 301(b), June 2, 1970, 84 Stat. 287.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 454, 42 Stat. 955. That section was superseded by section 455 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions on the subject matter of this section were contained in R.S. §§ 2834 (as amended by act Mar. 3, 1897, ch. 389, § 15, 29 Stat. 691), 2875, and 3070; and special provisions for particular ports in sections 2588, 2590 and 2832. Provisions as to the duties of inspectors, the records to be kept and returns to be made by them and the comparison of their returns with the manifests and entries, were contained in R.S. §§ 2876, 2877, 2888 and 2889. All the foregoing sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

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

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.

§ 1456. Compensation and expenses of inspectors between ports; reimbursement

The compensation of any inspector or other customs officer, stationed on any vessel or vehi-

cle while proceeding from one port to another and returning therefrom, shall be reimbursed to the Government by the master or owner of such vessel, together with the actual expense of such inspector or customs officer for subsistence, or in lieu of such expenses such vessel or vehicle may furnish such inspector or customs officer, the accommodations usually supplied to passengers.

(June 17, 1930, ch. 497, title IV, § 456, 46 Stat. 716.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 455, 42 Stat. 955. That section was superseded by section 456 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions on the subject matter of this section were contained in R.S. § 2878, and particular provisions for certain ports in sections 2588 and 2833. Section 2878 contained a further provision prohibiting inspectors from performing any other duties or service than what was required by that title. All these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

§ 1457. Time for unloading

Whenever any merchandise remains on board any vessel or vehicle from a foreign port more than twenty-five days after the date on which report of said vessel or vehicle was made, the appropriate customs officer may take possession of such merchandise and cause the same to be unladen at the expense and risk of the owners thereof, or may place one or more inspectors or other customs officers on board of said vessel or vehicle to protect the revenue. The compensation and expenses of any such inspector or customs officer for subsistence while on board of such vessel or vehicle shall be reimbursed to the Government by the owner or master of such vessel or vehicle.

(June 17, 1930, ch. 497, title IV, § 457, 46 Stat. 716; Pub. L. 91-271, title III, § 301(b), June 2, 1970, 84 Stat. 287.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. §§ 2879, 2880 and 2969 (as amended by act May 9, 1896, ch. 164, 29 Stat. 115), which were superseded by act Sept. 21, 1922, ch. 356, title IV, § 456, 42 Stat. 955, and were repealed by section 642 thereof. Section 456 of the 1922 act was superseded by section 457 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 appropriate customs officer for reference to collector.

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.

§ 1458. Bulk cargo, time for unloading

The limitation of time for unloading shall not extend to vessels laden exclusively with merchandise in bulk consigned to one consignee and arriving at a port for orders, but if the master of such vessel requests a longer time to discharge its cargo, the compensation of the inspectors or other customs officers whose services are re-

quired in connection with the unloading shall, for every day consumed in unloading in excess of twenty-five days from the date of the vessel's entry, be reimbursed by the master or owner of such vessel.

(June 17, 1930, ch. 497, title IV, § 458, 46 Stat. 717.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 458, 42 Stat. 956. That section was superseded by section 458 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 laden with specified articles, were contained in R.S. § 2881, as amended by act June 3, 1892, ch. 86, § 2, 27 Stat. 41, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

§ 1459. Reporting requirements for individuals

(a) Individuals arriving other than by conveyance

Except as otherwise authorized by the Secretary, individuals arriving in the United States other than by vessel, vehicle, or aircraft shall—

(1) enter the United States only at a border crossing point designated by the Secretary; and

(2) immediately—

(A) report the arrival, and

(B) present themselves, and all articles accompanying them for inspection;

to the customs officer at the customs facility designated for that crossing point.

(b) Individuals arriving by reported conveyance

Except as otherwise authorized by the Secretary, passengers and crew members aboard a conveyance the arrival in the United States of which was made or reported in accordance with section 1433 or 1644 of this title or section 1644a(b)(1) or (c)(1) of this title, or in accordance with applicable regulations, shall remain aboard the conveyance until authorized to depart the conveyance by the appropriate customs officer. Upon departing the conveyance, the passengers and crew members shall immediately report to the designated customs facility with all articles accompanying them.

(c) Individuals arriving by unreported conveyance

Except as otherwise authorized by the Secretary, individuals aboard a conveyance the arrival in the United States of which was not made or reported in accordance with the laws or regulations referred to in subsection (b) of this section shall immediately notify a customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, and present their property for customs examination and inspection.

(d) Departure from designated customs facilities

Except as otherwise authorized by the Secretary, any person required to report to a designated customs facility under subsection (a), (b), or (c) of this section may not depart that facility until authorized to do so by the appropriate customs officer.

(e) Unlawful acts

It is unlawful—

(1) to fail to comply with subsection (a), (b), or (c) of this section;

(2) to present any forged, altered, or false document or paper to a customs officer under subsection (a), (b), or (c) of this section without revealing the facts;

(3) to violate subsection (d) of this section; or

(4) to fail to comply with, or violate, any regulation prescribed to carry out subsection (a), (b), (c), or (d) of this section.

(f) Civil penalty

Any individual who violates any provision of subsection (e) of this section is liable for a civil penalty of \$5,000 for the first violation, and \$10,000 for each subsequent violation.

(g) Criminal penalty

In addition to being liable for a civil penalty under subsection (f) of this section, any individual who intentionally violates any provision of subsection (e) of this section is, upon conviction, liable for a fine of not more than \$5,000, or imprisonment for not more than 1 year, or both.

(June 17, 1930, ch. 497, title IV, § 459, 46 Stat. 717; June 25, 1938, ch. 679, § 10(a), 52 Stat. 1082; Pub. L. 99-570, title III, § 3115(a), Oct. 27, 1986, 100 Stat. 3207-82.)

CODIFICATION

In subsec. (b), "section 1644a(b)(1) or (c)(1) of this title" substituted for "section 1109 of the Federal Aviation Act of 1958" 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 459, 42 Stat. 956. That section was superseded by section 459 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

R.S. § 3109, as amended by act Feb. 17, 1898, ch. 26, § 4, 30 Stat. 248, was omitted from the Code as superseded by this section. It read as follows: "The master of any foreign vessel, laden or in ballast, arriving, whether by sea or otherwise, in the waters of the United States from any foreign territory adjacent to the northern, northeastern, or northwestern frontiers of the United States, shall report at the office of any collector or deputy collector of the customs, which shall be nearest to the point at which such vessel may enter such waters; and such vessel shall not transfer her cargo or passengers to another vessel or proceed farther inland, either to unlade or take in cargo, without a special permit from such collector or deputy collector, issued under and in accordance with such general or special regulations as the Secretary of the Treasury may, in his discretion, from time to time prescribe. This section shall also apply to trade with or through Alaska. For any violation of this section such vessel shall be seized and forfeited."

Provisions concerning the manner of importation, landing and unloading except in districts on the northern, northwestern and western boundaries, were contained in R.S. § 3095, as amended by act April 27, 1904, ch. 1625, § 1, 33 Stat. 362.

Additional provisions concerning importations on the northern and northwestern boundaries, reports, manifests, entries, etc., were contained in R.S. §§ 3096 and 3097.

Provisions for the delivery of a manifest by the master of vessels, except registered vessels, and the person in charge of boats, vehicles, etc., coming from any for-

eign territory adjacent to the United States, were contained in R.S. § 3098.

R.S. § 3121, provided that the master of any vessel with cargo, passengers, or baggage from any foreign port, should obtain a permit and comply with existing laws before discharging or landing the same.

R.S. § 3128, made special provision for landing of merchandise imported by steamboat on Lake Champlain.

All of the foregoing sections of the Revised Statutes (3095-3098, 3109, 3121 and 3128) with the exception of R.S. § 3109, were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1986—Pub. L. 99-570 amended section generally. Prior to amendment, section read as follows: "The master of any vessel of less than five net tons carrying merchandise and the person in charge of any vehicle arriving in the United States from contiguous country, shall immediately report his arrival to the customs officer at the port of entry or customhouse which shall be nearest to the place at which such vessel or vehicle shall cross the boundary line or shall enter the territorial waters of the United States, and if such vessel or vehicle have on board any merchandise, shall produce to such customs officer a manifest as required by law, and no such vessel or vehicle shall proceed farther inland nor shall discharge or land any merchandise, passengers, or baggage without receiving a permit therefor from such customs officer. Any person importing or bringing merchandise into the United States from a contiguous country otherwise than in a vessel or vehicle shall immediately report his arrival to the customs officer at the port of entry or customhouse which shall be nearest to the place at which he shall cross the boundary line and shall present such merchandise to such customs officer for inspection."

1938—Act June 25, 1938, substituted provisions requiring any person importing merchandise from a contiguous country otherwise than in a vessel to report his arrival at the nearest customhouse and present such merchandise for inspection for provisions setting penalties of \$100 for the failure of the master of any vessel to report its arrival in the United States, forfeiture of vessel and goods for unloading without a permit, and \$500 for the unloading of any passenger without a permit.

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.

§ 1460. Repealed. Pub. L. 99-570, title III, § 3115(b), Oct. 27, 1986, 100 Stat. 3207-83

Section, acts June 17, 1930, ch. 497, title IV, § 460, 46 Stat. 717; June 25, 1938, ch. 679, § 10(b), 52 Stat. 1082, related to penalties for failure to report or file manifest.

§ 1461. Inspection of merchandise and baggage

All merchandise and baggage imported or brought in from any contiguous country, except as otherwise provided by law or by regulations of the Secretary of the Treasury, shall be unladed in the presence of and be inspected by a customs officer at the first port of entry at which the same shall arrive; and such officer may require the owner, or his agent, or other person having charge or possession of any trunk, traveling bag, sack, valise, or other container, or of any closed vehicle, to open the same for inspection, or to furnish a key or other means for opening the same.

(June 17, 1930, ch. 497, title IV, § 461, 46 Stat. 717.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. §3100, as amended by act Feb. 18, 1875, ch. 80, §1, 18 Stat. 319, and act Feb. 27, 1877, ch. 69, §1, 19 Stat. 248, which was superseded by act Sept. 21, 1922, ch. 356, title IV, §461, 42 Stat. 956, and was repealed by section 642 thereof. Section 461 of the 1922 act was superseded by section 461 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1462. Forfeiture

If such owner, agent, or other person shall fail to comply with his demand, the officer shall retain such trunk, traveling bag, sack, valise, or other container or closed vehicle, and open the same, and, as soon thereafter as may be practicable, examine the contents, and if any article subject to duty or any article the importation of which is prohibited is found therein, the whole contents and the container or vehicle shall be subject to forfeiture.

(June 17, 1930, ch. 497, title IV, §462, 46 Stat. 718.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. §3101, which was superseded by act Sept. 21, 1922, ch. 356, title IV, §462, 42 Stat. 956, and was repealed by section 642 thereof. Section 462 of the 1922 act was superseded by section 462 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1463. Sealed vessels and vehicles

To avoid unnecessary inspection of merchandise imported from a contiguous country at the first port of arrival, the master of the vessel or the person in charge of the vehicle in which such merchandise is imported may apply to the customs officer of the United States stationed in the place from which such merchandise is shipped, and such officer may seal such vessel or vehicle. Any vessel or vehicle so sealed may proceed with such merchandise to the port of destination under such regulations as the Secretary of the Treasury may prescribe.

(June 17, 1930, ch. 497, title IV, §463, 46 Stat. 718.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §463, 42 Stat. 957. That section was superseded by section 463 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, and further provisions requiring the vessel, car, or vehicle sealed to proceed without unnecessary delay to the port of destination and be there inspected, and providing that nothing contained therein should exempt the vessel, car, or vehicle from examinations to prevent frauds, were contained in R.S. §3102, and provisions authorizing and requiring the Secretary of the Treasury to make regulations for sealing vessels, cars, etc., were contained in section 3103, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

§ 1464. Penalties in connection with sealed vessels and vehicles

If the master of such vessel or the person in charge of any such vehicle fails to proceed with reasonable promptness to the port of destination and to deliver such vessel or vehicle to the proper officers of the customs, or fails to proceed in

accordance with such regulations of the Secretary of the Treasury, or unloads such merchandise or any part thereof at other than such port of destination, or disposes of any such merchandise by sale or otherwise, he shall be guilty of a felony and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than five years, or both; and any such vessel or vehicle, with its contents, shall be subject to forfeiture.

(June 17, 1930, ch. 497, title IV, §464, 46 Stat. 718.)

PRIOR PROVISIONS

Provisions somewhat similar to those in this section, with a further provision for seizure of the vessel, car, or vehicle with its contents, and a provision that nothing therein should prevent sales of cargo prior to arrival, to be delivered per manifest and after due inspection, were contained in R.S. §3104, which was superseded in part by act Sept. 21, 1922, ch. 356, title IV, §464, 42 Stat. 957, and was repealed by section 642 thereof. Section 464 of the 1922 act was superseded by section 464 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1465. Repealed. Pub. L. 103-182, title VI, § 690(b)(7), Dec. 8, 1993, 107 Stat. 2223

Section, act June 17, 1930, ch. 497, title IV, §465, 46 Stat. 718, required master of any vessel engaged in certain foreign and coasting trade and conductor of any railway car to file, upon arrival from foreign contiguous country, a list of all supplies or other merchandise purchased in such foreign country.

§ 1466. Equipment and repairs of vessels**(a) Vessels subject to duty; penalties**

The equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country. If the owner or master willfully or knowingly neglects or fails to report, make entry, and pay duties as herein required, or if he makes any false statement in respect of such purchases or repairs without reasonable cause to believe the truth of such statements, or aids or procures the making of any false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, such vessel, or a monetary amount up to the value thereof as determined by the Secretary, to be recovered from the owner, shall be subject to seizure and forfeiture. For the purposes of this section, compensation paid to members of the regular crew of such vessel in connection with the installation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment or part thereof, or of such repairs.

(b) Notice

If the appropriate customs officer has reasonable cause to believe a violation has occurred and determines that further proceedings are warranted, he shall issue to the person con-

cerned a written notice of his intention to issue a penalty claim. Such notice shall—

- (1) describe the circumstances of the alleged violation;
- (2) specify all laws and regulations allegedly violated;
- (3) disclose all the material facts which establish the alleged violation;
- (4) state the estimated loss of lawful duties, if any, and taking into account all of the circumstances, the amount of the proposed penalty; and
- (5) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

(c) Violation

After considering representations, if any, made by the person concerned pursuant to the notice issued under subsection (b) of this section, the appropriate customs officer shall determine whether any violation of subsection (a) of this section, as alleged in the notice, has occurred. If such officer determines that there was no violation, he shall promptly notify, in writing, the person to whom the notice was sent. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under paragraphs (1) through (4) of subsection (b) of this section.

(d) Remission for necessary repairs

If the owner or master of such vessel furnishes good and sufficient evidence that—

- (1) such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination;
- (2) such equipments or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel; or
- (3) such equipments, or parts thereof, or materials, or labor, were used as dunnage for cargo, or for the packing or shoring thereof, or in the erection of temporary bulkheads or other similar devices for the control of bulk cargo, or in the preparation (without permanent repair or alteration) of tanks for the carriage of liquid cargo;

then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license, or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments or parts thereof or materials and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this section, and the duties ac-

curring thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited.

(e) Exclusions for arrivals two or more years after last departure

(1) In the case of any vessel referred to in subsection (a) of this section that arrives in a port of the United States two years or more after its last departure from a port in the United States, the duties imposed by this section shall apply only with respect to—

(A) fish nets and netting, and

(B) other equipments and parts thereof, repair parts and materials purchased, or repairs made, during the first six months after the last departure of such vessel from a port of the United States.

(2) If such vessel is designed and used primarily for transporting passengers or property, paragraph (1) shall not apply if the vessel departed from the United States for the sole purpose of obtaining such equipments, parts, materials, or repairs.

(f) Civil aircraft exception

The duty imposed under subsection (a) of this section shall not apply to the cost of equipments, or any part thereof, purchased, of repair parts or materials used, or of repairs made in a foreign country with respect to a United States civil aircraft, within the meaning of general note 3(c)(iv) of the Harmonized Tariff Schedule of the United States.

(g) Fish net and netting purchases and repairs

The duty imposed by subsection (a) of this section shall not apply to entries on and after October 1, 1979, and before January 1, 1982, of—

- (1) tuna purse seine nets and netting which are equipments or parts thereof,
- (2) repair parts for such nets and netting, or materials used in repairing such nets and netting, or
- (3) the expenses of repairs of such nets and netting,

for any United States documented tuna purse seine vessel of greater than 500 tons carrying capacity or any United States tuna purse seine vessel required to carry a certificate of inclusion under the general permit issued to the American Tunaboat Association pursuant to section 1374 of title 16.

(h) Foreign repair of vessels

The duty imposed by subsection (a) of this section shall not apply to—

- (1) the cost of any equipment, or any part of equipment, purchased for, or the repair parts or materials to be used, or the expense of repairs made in a foreign country with respect to, LASH (Lighter Aboard Ship) barges documented under the laws of the United States and utilized as cargo containers;
- (2) the cost of spare repair parts or materials (other than nets or nettings) which the owner or master of the vessel certifies are intended for use aboard a cargo vessel, documented under the laws of the United States and engaged in the foreign or coasting trade, for installation or use on such vessel, as needed, in

the United States, at sea, or in a foreign country, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part purchased in, or imported from, a foreign country;

(3) the cost of spare parts necessarily installed before the first entry into the United States, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part purchased in, or imported from, a foreign country; or

(4) the cost of equipment, repair parts, and materials that are installed on a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas, in foreign waters, or in a foreign port, and does not involve foreign shipyard repairs by foreign labor.

Declaration and entry shall not be required with respect to the installation, equipment, parts, and materials described in paragraph (4).

(June 17, 1930, ch. 497, title IV, §466, 46 Stat. 719; Pub. L. 91-654, §1, Jan. 5, 1971, 84 Stat. 1944; Pub. L. 95-410, title II, §206, Oct. 3, 1978, 92 Stat. 900; Pub. L. 96-39, title VI, §601(a)(3), July 26, 1979, 93 Stat. 268; Pub. L. 96-467, §14(a)(3)(B), Oct. 17, 1980, 94 Stat. 2225; Pub. L. 96-609, title I, §115(a), Dec. 28, 1980, 94 Stat. 3558; Pub. L. 98-573, title II, §208, Oct. 30, 1984, 98 Stat. 2976; Pub. L. 100-418, title I, §1214(h)(4), Aug. 23, 1988, 102 Stat. 1157; Pub. L. 101-382, title III, §484E(a), Aug. 20, 1990, 104 Stat. 709; Pub. L. 103-465, title I, §112(b), Dec. 8, 1994, 108 Stat. 4825; Pub. L. 108-429, title I, §1554(a), Dec. 3, 2004, 118 Stat. 2578; Pub. L. 109-280, title XIV, §1631(a), Aug. 17, 2006, 120 Stat. 1164.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsecs. (f) and (h)(2), (3), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (a) and (b) of this section were contained respectively in R.S. §§3114 and 3115, as amended, which were formerly classified to sections 257 and 258 of this title prior to repeal by section 3 of Pub. L. 91-654.

AMENDMENTS

2006—Subsec. (h)(4). Pub. L. 109-280 added par. (4) and struck out former par. (4) which read as follows: “the cost of equipment, repair parts, and materials that are installed on a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas.”

2004—Subsec. (h). Pub. L. 108-429 added par. (4) and concluding provisions.

1994—Subsec. (h)(3). Pub. L. 103-465 added par. (3).

1990—Subsec. (h). Pub. L. 101-382 added subsec. (h).

1988—Subsec. (f). Pub. L. 100-418 substituted “general note 3(c)(iv) of the Harmonized Tariff Schedule of the United States” for “headnote 3 to schedule 6, part 6, subpart C of the Tariff Schedules of the United States”.

1984—Subsec. (e). Pub. L. 98-573 designated existing provisions as par. (1), in par. (1) as so designated substituted reference to any vessel referred to in subsec. (a) for reference to any vessel designed and used primarily for purposes other than transporting passengers or property in the foreign or coasting trade, redesignated former cls. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

1980—Subsec. (f). Pub. L. 96-467 substituted “of equipments, or any part thereof, purchased, of repair parts or materials used, or of repairs made in a foreign country with respect to” for “of repair parts, materials, or expenses of repairs in a foreign country upon” and “schedule 6” for “Schedule 6”.

Subsec. (g). Pub. L. 96-609 added subsec. (g).

1979—Subsec. (f). Pub. L. 96-39 added subsec. (f).

1978—Subsec. (a). Pub. L. 95-410, §206(1), incorporated seizure and forfeiture provision formerly a part of first sentence in an inserted second sentence; substituted therein “willfully or knowingly” for “willfully and knowingly” and “such vessel, or a monetary amount up to the value thereof as determined by the Secretary, to be recovered from the owner, shall be subject to seizure and forfeiture” for “such vessel, with her tackle, apparel, and furniture, shall be seized and forfeited”; and authorized the seizure and forfeiture for making false statements in respect of purchases or repairs or aiding or procuring the making of false statements.

Subsecs. (b) to (e). Pub. L. 95-410, §206(2), added subsecs. (b) and (c) and redesignated former subsecs. (b) and (c) as (d) and (e), respectively.

1971—Subsec. (c). Pub. L. 91-654 added subsec. (c).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title XIV, §1631(c), Aug. 17, 2006, 120 Stat. 1165, provided that: “The amendments made by this section [amending this section] apply to vessel equipment, repair parts, and materials installed on or after April 25, 2001.”

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-429, title I, §1554(c), Dec. 3, 2004, 118 Stat. 2578, provided that: “The amendments made by this section [amending this section] apply to vessel equipment, repair parts, and materials installed on or after April 25, 2001.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 116(a) of Pub. L. 103-465, set out as an Effective Date note under section 3521 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 484E(b), (c) of Pub. L. 101-382, as amended by Pub. L. 103-465, title I, §112(a), Dec. 8, 1994, 108 Stat. 4825; Pub. L. 104-295, §27, Oct. 11, 1996, 110 Stat. 3533, provided that:

“(b) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply to—

“(1) any entry made before the date of enactment of this Act [Aug. 20, 1990] that is not liquidated on the date of enactment of this Act,

“(2) any entry made—

“(A) on or after the date of enactment of this Act, and

“(B) on or before December 31, 1992,

“(3) any entry listed in subsection (c) that was made during the period beginning on January 1, 1993, and ending on December 31, 1994, to the extent such entry involves the purchase of equipment, the use of materials, or the expense of repairs in a foreign country for 66 LASH (Lighter Aboard Ship) barges documented under the laws of the United States if—

“(A) such entry was not liquidated on January 1, 1995; and

“(B) such entry, had it been made on or after January 1, 1995, would otherwise be eligible for the ex-

emption provided in section 466(h)(1) of the Tariff Act of 1930 (19 U.S.C. 1466(h)(1)), and
 “(4) any entry made pursuant to section 466(h)(1) or (2) of the Tariff Act of 1930 (19 U.S.C. 1466(h)(1) or (2)), on or after the date of the entry into force of the WTO Agreement with respect to the United States [Jan. 1, 1995].

“(c) ENTRIES.—The entries referred to in subsection (b)(3) are the following:

“(1) NUMBERED ENTRIES.—

Entry Number	Date of Entry
C14-0025455-8	August 18, 1993
C14-0025456-6	August 18, 1993
C14-0025457-4	August 18, 1993
C14-0025473-1	August 27, 1993
C14-0025478-0	September 13, 1993
C14-0025479-8	September 13, 1993
C14-0025480-6	September 13, 1993
C14-0025481-4	September 13, 1993
C14-0025511-8	April 16, 1993
C14-0025533-2	April 30, 1993
C14-0025545-6	May 21, 1993
C14-0025546-4	May 21, 1993
C14-0025547-2	May 21, 1993
C14-0025558-9	June 15, 1993
C14-0025560-5	June 15, 1993
C14-0025574-6	July 21, 1993
C14-0025575-3	July 21, 1993
C14-0025603-3	July 23, 1993
C14-0025604-1	July 23, 1993
C14-0025605-8	July 23, 1993
C14-0025623-1	October 25, 1993
C14-0025624-9	October 25, 1993
C14-0025625-6	October 25, 1993
C14-0025635-5	November 8, 1993
C14-0025636-3	November 8, 1993
C14-0025637-1	November 8, 1993
C14-0025653-8	November 30, 1993
C14-0025654-6	November 30, 1993
C14-0025655-3	November 30, 1993
C14-0025657-9	November 30, 1993
C14-0025679-3	January 3, 1994
C14-0025680-1	January 3, 1994
C14-0025688-4	February 14, 1994
C14-0025689-2	February 14, 1994
C14-0025690-0	February 14, 1994
C14-0025691-8	February 14, 1994
C14-0025692-6	February 14, 1994
C14-0026803-8	January 24, 1994
C14-0026804-6	January 24, 1994
C14-0026805-3	January 24, 1994
C14-0026807-9	January 24, 1994
C14-0026808-7	January 24, 1994
C14-0026809-5	January 24, 1994
C14-0026810-3	January 24, 1994
C14-0026811-1	January 24, 1994
C14-0026826-9	March 10, 1994
C14-0026827-7	March 10, 1994
C14-0026828-5	March 10, 1994
C14-0026829-3	March 10, 1994
C14-0026830-1	March 10, 1994
C14-0026831-9	March 10, 1994
C14-0026832-7	March 10, 1994
C14-0026833-5	March 10, 1994
C14-0026841-8	March 31, 1994
C14-0026843-4	March 31, 1994
C14-0026852-5	May 5, 1994
C14-0026853-3	May 5, 1994
C14-0026854-1	May 5, 1994
C14-0026867-3	May 18, 1994
C14-0026869-9	May 18, 1994
C14-0026874-9	June 8, 1994
C14-0026875-6	June 8, 1994
C14-0026898-8	August 2, 1994
C14-0026899-6	August 2, 1994
C14-0040625-7	October 5, 1994.

“(2) ADDITIONAL ENTRY.—The entry of a 66th LASH barge (No. CG E69), for which no entry number is

available, if, within 60 days after the date of the enactment of this subsection [Oct. 11, 1996], a proper entry is filed with the Customs Service.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100-418, set out as an Effective Date note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 applicable with respect to entries made in connection with arrivals of vessels on or after the 15th day after Oct. 30, 1984, with certain exceptions for vessels transporting passengers or property, see section 214(a), (c)(3) of Pub. L. 98-573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 14(b) of Pub. L. 96-467 provided in part that: “The amendment made by paragraph (3) of subsection (a) [amending this section] shall apply with respect to entries made under section 466 of the Tariff Act of 1930 [this section] on or after January 1, 1980.”

EFFECTIVE DATE OF 1979 AMENDMENT

Section 601(a) of Pub. L. 96-39 provided that the amendment made by that section is effective upon a Presidential proclamation authorized to be made after Sept. 30, 1979, when the conditions under section 2503(b) of this title on acceptance of the Agreement on Trade in Civil Aircraft are fulfilled.

ENTRIES MADE IN CONNECTION WITH ARRIVAL OF VESSELS ON OR AFTER OCTOBER 1, 1979, AND BEFORE DECEMBER 28, 1980

Section 115(b) of Pub. L. 96-609 provided that: “Upon request therefor filed with the customs officer concerned on or before the 90th day after the date of the enactment of this Act [Dec. 28, 1980], the entry of any article to which section 466(a) of the Tariff Act of 1930 [subsec. (a) of this section] applied and—

“(1) that was made on or after October 1, 1979, and before the date of the enactment of this Act; and

“(2) with respect to which there would have been no duty if the amendment made by subsection (a) [adding subsec. (g) of this section] applied to such entry or withdrawal; shall, notwithstanding the provisions of section 514 of the Tariff Act of 1930 [section 1514 of this title] or any other provision of law, be liquidated or reliquidated as though such entry or withdrawal had been made on the date of the enactment of this Act.”

ENTRIES MADE IN CONNECTION WITH ARRIVALS OF VESSELS ON OR AFTER JANUARY 5, 1971; ENTRIES IN CONNECTION WITH THE ARRIVAL OF SHRIMP VESSELS AFTER JANUARY 1, 1969, AND BEFORE JANUARY 5, 1971

Section 2 of Pub. L. 91-654 provided that:

“(a) The amendment made by the first section of this Act [amending this section] shall apply with respect to entries made in connection with arrivals of vessels on or after the date of the enactment of this Act [Jan. 5, 1971].

“(b) Upon request therefor filed with the customs officer concerned on or before the ninetieth day after the date of the enactment of this Act, any entry in connection with the arrival of a vessel used primarily for the catching of shrimp—

“(1) which was made after January 1, 1969, and before the date of the enactment of this Act, and

“(2) with respect to which there would have been no duty if the amendment made by the first section of this Act applied to such entry, shall, notwithstanding the provisions of section 514 of the Tariff Act of 1930 [section 1514 of this title] or any

other provision of law, be liquidated or reliquidated as though such entry had been made on the day after the date of the enactment of this Act.”

§ 1467. Special inspection, examination, and search

Whenever a vessel from a foreign port or place or from a port or place in any Territory or possession of the United States arrives at a port or place in the United States or the Virgin Islands, whether directly or via another port or place in the United States or the Virgin Islands, the appropriate customs officer for such port or place of arrival may, under such regulations as the Secretary of the Treasury may prescribe and for the purpose of assuring compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, cause inspection, examination, and search to be made of the persons, baggage, and merchandise discharged or unladen from such vessel, whether or not any or all such persons, baggage, or merchandise has previously been inspected, examined, or searched by officers of the customs.

(June 17, 1930, ch. 497, title IV, §467, as added June 25, 1938, ch. 679, §11, 52 Stat. 1083; amended Pub. L. 91-271, title III, §301(g), June 2, 1970, 84 Stat. 288.)

AMENDMENTS

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

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

This section effective on the thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as an Effective Date of 1938 Amendment 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(l), 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.

PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

§ 1481. Invoice; contents

(a) In general

All invoices of merchandise to be imported into the United States and any electronic equip-

ment thereof considered acceptable by the Secretary in regulations prescribed under this section shall set forth, in written, electronic, or such other form as the Secretary shall prescribe, the following:

(1) The port of entry to which the merchandise is destined;

(2) The time when, the place where, and the person by whom and the person to whom the merchandise is sold or agreed to be sold, or if to be imported otherwise than in pursuance of a purchase, the place from which shipped, the time when and the person to whom and the person by whom it is shipped;

(3) A detailed description of the merchandise, including the commercial name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;

(4) The quantities in the weights and measures of the country or place from which the merchandise is shipped, or in the weights and measures of the United States;

(5) The purchase price of each item in the currency of the purchase, if the merchandise is shipped in pursuance of a purchase or an agreement to purchase;

(6) If the merchandise is shipped otherwise than in pursuance of a purchase or an agreement to purchase, the value for each item, in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation;

(7) The kind of currency, whether gold, silver, or paper;

(8) All charges upon the merchandise, itemized by name and amount when known to the seller or shipper; or all charges by name (including commissions, insurance, freight, cases, containers, coverings, and cost of packing) included in the invoice prices when the amounts for such charges are unknown to the seller or shipper;

(9) All rebates, drawbacks, and bounties, separately itemized, allowed upon the exportation of the merchandise; and

(10) Any other fact that the Secretary may by regulation require as being necessary to a proper appraisalment, examination and classification of the merchandise.

(b) Shipments not purchased and not shipped by manufacturer

If the merchandise is shipped to a person in the United States by a person other than the manufacturer, otherwise than by purchase, such person shall state on the invoice the time when, the place where, the person from whom such merchandise was purchased, and the price paid therefor in the currency of the purchase, stating whether gold, silver, or paper.

(c) Importer provision of information

Any information required to be set forth on an invoice may alternatively be provided by any of

the parties qualifying as an “importer of record” under section 1484(a)(2)(B) of this title by such means, in such form or manner, and within such time as the Secretary shall by regulation prescribe.

(d) Exceptions by regulations

The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this section as he deems advisable and may allow for the submission or electronic transmission of partial invoices, electronic equivalents of invoices, bills, or other documents or parts thereof, required under this section.

(June 17, 1930, ch. 497, title IV, § 481, 46 Stat. 719; Pub. L. 103-182, title VI, § 636, Dec. 8, 1993, 107 Stat. 2200.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 481, 42 Stat. 958. That section was superseded by section 481 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions as to the weights or measures, and currency, in which invoices should be made out and the contents of invoices, with additional provisions as to invoices of merchandise intended for immediate transportation without appraisal, and a provision as to the signing of the invoice, were contained in R.S. § 2837 and act Oct. 3, 1913, ch. 16, § III, C, 38 Stat. 181 (superceding Customs Administrative Act of June 10, 1890, ch. 407, § 2, 26 Stat. 131, as amended by Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 91), which were superseded by act Sept. 21, 1922, ch. 356, title IV, § 481, 42 Stat. 958, and repealed by sections 642 and 643 thereof.

R.S. §§ 2838, 2853 (as amended by Act June 10, 1880, ch. 190) and 2860, contained provisions concerning invoices and their contents, prior to repeal by Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141.

Act May 27, 1921, ch. 14, § 401, 42 Stat. 16, required invoices to contain, in addition to statements then required by law, such other statements as the Secretary of the Treasury should prescribe, and a statement as to the currency in which made out, and section 402 of that Act required the owner, importer, etc., to set forth on the invoice or statement in form of an invoice, and in the entry, in addition to statements then required by law such statements, under oath if required, as the Secretary might prescribe. These provisions were omitted from the Code as superseded by this section, and section 1485(a) of this title.

Provisions on the subject matter of subdivision (c) of this section were contained in act Oct. 3, 1913, ch. 16, § III, W, 38 Stat. 190, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 481, 42 Stat. 958, and repealed by section 643 thereof.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-182, § 636(1)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: “All invoices of merchandise to be imported into the United States shall set forth—”.

Subsec. (a)(3). Pub. L. 103-182, § 636(1)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;”.

Subsec. (a)(10). Pub. L. 103-182, § 636(1)(C), amended par. (10) generally. Prior to amendment, par. (10) read

as follows: “Any other facts deemed necessary to a proper appraisal, examination, and classification of the merchandise that the Secretary of the Treasury may require.”

Subsec. (c). Pub. L. 103-182, § 636(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “When the merchandise has been purchased in different consular districts for shipment to the United States and is assembled for shipment and embraced in a single invoice which is produced for certification under the provisions of paragraph (2) of subdivision (a) of section 1482 of this title, the invoice shall have attached thereto the original bills or invoices received by the shipper, or extracts therefrom, showing the actual prices paid or to be paid for such merchandise. The consular officer to whom the invoice is so produced for certification may require that any such original bill or invoice be certified by the consular officer for the district in which the merchandise was purchased.”

Subsec. (d). Pub. L. 103-182, § 636(3), inserted before period at end “and may allow for the submission or electronic transmission of partial invoices, electronic equivalents of invoices, bills, or other documents or parts thereof, required under this section”.

§ 1482. Repealed. Pub. L. 103-182, title VI, § 690(b)(8), Dec. 8, 1993, 107 Stat. 2223

Section, acts June 17, 1930, ch. 497, title IV, § 482, 46 Stat. 720; Proc. No. 2695, July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Oct. 25, 1951, ch. 562, § 4(4), 65 Stat. 640; Aug. 8, 1953, ch. 397, § 16(a), 67 Stat. 517; June 2, 1970, Pub. L. 91-271, title III, § 301(h), 84 Stat. 288, set forth requirements for certified invoices including time of certification, declarations, number and destination of copies, and certification by other than an American consulate in remote areas.

§ 1483. Repealed. Pub. L. 97-446, title II, § 201(c), Jan. 12, 1983, 96 Stat. 2349

Section, acts June 17, 1930, ch. 497, title IV, § 483, 46 Stat. 721; Oct. 3, 1978, Pub. L. 95-410, title II, § 207, 92 Stat. 901, provided that for specified purposes the consignee of merchandise be deemed the owner.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97-446, set out as an Effective Date of 1983 Amendment note under section 1484 of this title.

§ 1484. Entry of merchandise

(a) Requirement and time

(1) Except as provided in sections 1490, 1498, 1552, and 1553 of this title, one of the parties qualifying as “importer of record” under paragraph (2)(B), either in person or by an agent authorized by the party in writing, shall, using reasonable care—

(A) make entry therefor by filing with the Bureau of Customs and Border Protection such documentation or, pursuant to an authorized electronic data interchange system, such information as is necessary to enable the Bureau of Customs and Border Protection to determine whether the merchandise may be released from custody of the Bureau of Customs and Border Protection;¹

(B) complete the entry, or substitute 1 or more reconfigured entries on an import activity summary statement, by filing with the Customs Service the declared value, classification and rate of duty applicable to the mer-

¹ So in original. The word “and” probably should appear at end.

chandise, and such other documentation or, pursuant to an electronic data interchange system, such other information as is necessary to enable the Customs Service to—

- (i) properly assess duties on the merchandise,
- (ii) collect accurate statistics with respect to the merchandise, and
- (iii) determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(2)(A) The documentation or information required under paragraph (1) with respect to any imported merchandise shall be filed or transmitted in such manner and within such time periods as the Secretary shall by regulation prescribe. Such regulations shall provide for the filing of import activity summary statements, and permit the filing of reconfigured entries, covering merchandise released under a special delivery permit pursuant to section 1448(b) of this title and entries or warehouse withdrawals made during a calendar month, within such time period as is prescribed in regulations but not to exceed the 20th day following such calendar month. Entries filed under paragraph (1)(A) shall not be liquidated if covered by an import activity summary statement, but instead each reconfigured entry in the import activity summary statement shall be subject to liquidation or reliquidation pursuant to section 1500, 1501, or 1504 of this title.

(B) When an entry of merchandise is made under this section, the required documentation or information shall be filed or electronically transmitted either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 1641 of this title. When a consignee declares on entry that he is the owner or purchaser of merchandise the Customs Service may, without liability, accept the declaration. For the purposes of this chapter, the importer of record must be one of the parties who is eligible to file the documentation or information required by this section.

(C) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the enforcement of laws governing the importation and exportation of merchandise, the facilitation of the commerce of the United States, and the equal treatment of all importers of record of imported merchandise.

(b) Reconciliation

(1) In general

A party may elect to file a reconciliation with regard to such entry elements as are identified by the party pursuant to regulations prescribed by the Secretary. If the party so

elects, the party shall declare that a reconciliation will be filed. The declaration shall be made in such manner as the Secretary shall prescribe and at the time the documentation or information required by subsection (a)(1)(B) of this section or the import activity summary statement is filed with, or transmitted to, the Customs Service, or at such later time as the Customs Service may, in its discretion, permit. The reconciliation shall be filed by the importer of record at such time and in such manner as the Secretary prescribes but not later than 21 months after the date the importer declares his intent to file the reconciliation. In the case of reconciling issues relating to the assessment of antidumping and countervailing duties, the reconciliation shall be filed not later than 90 days after the date the Customs Service advises the importer that the period of review for antidumping or countervailing duty purposes has been completed. Before filing a reconciliation, an importer of record shall post bond or other security pursuant to such regulations as the Secretary may prescribe.

(2) Regulations regarding AD/CV duties

The Secretary shall prescribe, in consultation with the Secretary of Commerce, such regulations as are necessary to adapt the reconciliation process for use in the collection of antidumping and countervailing duties.

(c) Release of merchandise

The Customs Service may permit the entry and release of merchandise from customs custody in accordance with such regulations as the Secretary may prescribe. No officer of the Customs Service shall be liable to any person with respect to the delivery of merchandise released from customs custody in accordance with such regulations.

(d) Signing and contents

(1) Entries shall be signed by the importer of record, or his agent, unless filed pursuant to an electronic data interchange system. If electronically filed, each transmission of data shall be certified by an importer of record or his agent, one of whom shall be resident in the United States for purposes of receiving service of process, as being true and correct to the best of his knowledge and belief, and such transmission shall be binding in the same manner and to the same extent as a signed document. The entry shall set forth such facts in regard to the importation as the Secretary may require and shall be accompanied by such invoices, bills of lading, certificates, and documents, or their electronically submitted equivalents, as are required by regulation.

(2) The Secretary, in prescribing regulations governing the content of entry documentation, shall require that entry documentation contain such information as may be necessary to determine whether the imported merchandise bears an infringing trademark in violation of section 1124 of title 15 or any other applicable law, including a trademark appearing on the goods or packaging.

(e) Production of invoice

The Secretary may provide by regulation for the production of an invoice, parts thereof, or

the electronic equivalents thereof, in such manner and form, and under such terms and conditions, as the Secretary considers necessary.

(f) Statistical enumeration

The Secretary, the Secretary of Commerce, and the United States International Trade Commission shall establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

(g) Statement of cost of production

Under such regulations as the Secretary may prescribe, the Customs Service may require a verified statement from the manufacturer or producer showing the cost of producing the imported merchandise, if the Customs Service considers such verification necessary for the appraisal of such merchandise.

(h) Admissibility of data electronically transmitted

Any entry or other information transmitted by means of an authorized electronic data interchange system shall be admissible in any and all administrative and judicial proceedings as evidence of such entry or information.

(i) Special rule for foreign trade zone operations

(1) In general

Notwithstanding any other provision of law and except as provided in paragraph (3), all merchandise (including merchandise of different classes, types, and categories), withdrawn from a foreign trade zone during any 7-day period, shall, at the option of the operator or user of the zone, be the subject of a single estimated entry or release filed on or before the first day of the 7-day period in which the merchandise is to be withdrawn from the zone. The estimated entry or release shall be treated as a single entry and a single release of merchandise for purposes of section 58c(a)(9)(A) of this title and all fee exclusions and limitations of such section 58c of this title shall apply, including the maximum and minimum fee amounts provided for under subsection (b)(8)(A)(i) of such section. The entry summary for the estimated entry or release shall cover only the merchandise actually withdrawn from the foreign trade zone during the 7-day period.

(2) Other requirements

The Secretary of the Treasury may require that the operator or user of the zone—

(A) use an electronic data interchange approved by the Customs Service—

(i) to file the entries described in paragraph (1); and

(ii) to pay the applicable duties, fees, and taxes with respect to the entries; and

(B) satisfy the Customs Service that accounting, transportation, and other controls over the merchandise are adequate to protect the revenue and meet the requirements of other Federal agencies.

(3) Exception

The provisions of paragraph (1) shall not apply to merchandise the entry of which is prohibited by law or merchandise for which the filing of an entry summary is required before the merchandise is released from customs custody.

(4) Foreign trade zone; zone

In this subsection, the terms “foreign trade zone” and “zone” mean a zone established pursuant to the Act of June 18, 1934, commonly known as the Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(j) Treatment of multiple entries of merchandise as single transaction

In the case of merchandise that is purchased and invoiced as a single entity but—

(1) is shipped in an unassembled or disassembled condition in separate shipments due to the size or nature of the merchandise, or

(2) is shipped in separate shipments due to the inability of the carrier to include all of the merchandise in a single shipment (at the instruction of the carrier),

the Customs Service may, upon application by an importer in advance, treat such separate shipments for entry purposes as a single transaction.

(June 17, 1930, ch. 497, title IV, § 484, 46 Stat. 722; June 25, 1938, ch. 679, § 12, 52 Stat. 1083; Aug. 8, 1953, ch. 397, §§ 3(b), 16(b), (c), 67 Stat. 509, 517; Pub. L. 91-271, title III, § 301(i), June 2, 1970, 84 Stat. 288; Pub. L. 93-618, title VI, § 608(a), Jan. 3, 1975, 88 Stat. 2073; Pub. L. 95-106, § 4, Aug. 17, 1977, 91 Stat. 869; Pub. L. 95-410, title I, § 102(a), Oct. 3, 1978, 92 Stat. 888; Pub. L. 97-446, title II, § 201(d), Jan. 12, 1983, 96 Stat. 2349; Pub. L. 103-182, title VI, § 637(a), Dec. 8, 1993, 107 Stat. 2200; Pub. L. 104-153, § 12, July 2, 1996, 110 Stat. 1389; Pub. L. 104-295, §§ 18(b), 21(e)(6), Oct. 11, 1996, 110 Stat. 3524, 3531; Pub. L. 106-200, title IV, § 410(a), May 18, 2000, 114 Stat. 297; Pub. L. 106-476, title I, § 1460(a), Nov. 9, 2000, 114 Stat. 2171; Pub. L. 108-429, title II, § 2101, Dec. 3, 2004, 118 Stat. 2597; Pub. L. 109-280, title XIV, § 1635(a), Aug. 17, 2006, 120 Stat. 1170.)

REFERENCES IN TEXT

The Foreign Trade Zones Act, referred to in subsec. (i)(4), is act June 18, 1934, ch. 590, 48 Stat. 998, as amended, which is classified generally to chapter 1A (§ 81a et seq.) of this title. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 484, 42 Stat. 960. That section was superseded by section 484 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions requiring entry of goods, and prescribing the manner of making it, the documents to be produced, etc., were contained in R.S. §2785. Provision for entry when the particulars of the merchandise were unknown was made by R.S. §2788. A special provision regarding entry of distilled spirits and wines was contained in R.S. §2794. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

Provisions relating to the production of certified invoices were contained in act Oct. 3, 1913, ch. 16, §III, E, 38 Stat. 182, which reenacted the provisions of the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 92, which amended Customs Administrative Act of June 10, 1890, ch. 407, §4, 26 Stat. 131. Said section III, E, was repealed by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989. Earlier provisions were contained in R.S. §2860, and act June 22, 1874, ch. 391, §§9, 10, and 11, all repealed by act June 10, 1890, ch. 407, §29, 26 Stat. 141.

R.S. §2842 required bond for the production of an invoice duly certified by the oath of the owner or one of them, in the case of merchandise belonging to a resident of the United States absent from the place of entry. R.S. §2852, provided that when merchandise was admitted to entry on invoice, the collector should certify the same, and no other evidence of value should be admitted on the part of the owner, except in corroboration of the entry. R.S. §2859, made special provision for entry of merchandise from countries where there was no United States consul, etc. These sections were all repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

R.S. §§2847 and 2848 authorized the Secretary of the Treasury to admit to entry in certain cases merchandise subject to ad valorem duty, belonging to a person not residing in the United States, not accompanied with an invoice verified and authenticated as required by preceding section. They became inoperative by the repeal of R.S. §§2843, 2845, by the Customs Administrative Act of June 10, 1890, ch. 407, §29, 26 Stat. 141, reenacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 104, and the enactment of provisions for entry of goods without invoice by section 4 of said Customs Administrative Act amended by the Payne-Aldrich Tariff Act, and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, §III, E, and were repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

R.S. §2858, provided that the Secretary of the Treasury, whenever it had become impracticable for the person desiring to make entry of merchandise to produce any invoice thereof, might authorize the entry thereof, and remit forfeitures in such cases, as in other cases under the revenue laws. It was repealed by the Customs Administrative Act of June 10, 1890, ch. 407, §29, 26 Stat. 141, reenacted by the Payne-Aldrich Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 104.

A provision relating to statistical enumeration of merchandise, except that the "accurate statement" was to be a part of the declaration therein provided for, and a further provision making it the duty of the consular officer to whom the invoice should be produced to require the information to be given, were contained in act Oct. 3, 1913, ch. 16, §III, F, 38 Stat. 182, amending the Customs Administrative Act of June 10, 1890, ch. 407, §5, 26 Stat. 132, as previously amended by Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 95. Said section III, F, was repealed by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.

Prior provisions on the subject of subsequent entry of part of merchandise and separate entry of packages contained in packages for delivery to others were contained in act May 1, 1876, ch. 89, §1, 19 Stat. 49, which was repealed by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989; and in act Oct. 3, 1913, ch. 16, §III, F, 38 Stat. 182, amending Customs Administrative Act of June 10, 1890, ch. 407, §5, 26 Stat. 132, as previously amended by Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 95. Said section III, F, was repealed by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.

AMENDMENTS

2006—Subsec. (a)(1)(A). Pub. L. 109-280, §1635(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "make entry therefor by filing with the Customs Service—

"(i) such documentation or, pursuant to an electronic data interchange system, such information as is necessary to enable the Customs Service to determine whether the merchandise may be released from customs custody, and

"(ii) notification whether an import activity summary statement will be filed; and".

Subsec. (a)(2)(A). Pub. L. 109-280, §1635(a)(2), inserted "merchandise released under a special delivery permit pursuant to section 1448(b) of this title and" after "covering" in second sentence.

2004—Subsec. (a)(1)(B). Pub. L. 108-429, §2101(a)(1), inserted ", or substitute 1 or more reconfigured entries on an import activity summary statement," after "entry" in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 108-429, §2101(a)(2), in second sentence, inserted "and permit the filing of reconfigured entries," after "statements," and, at end, inserted "Entries filed under paragraph (1)(A) shall not be liquidated if covered by an import activity summary statement, but instead each reconfigured entry in the import activity summary statement shall be subject to liquidation or reliquidation pursuant to section 1500, 1501, or 1504 of this title."

Subsec. (b)(1). Pub. L. 108-429, §2101(b), substituted "21 months" for "15 months" in fourth sentence.

2000—Subsec. (i). Pub. L. 106-200 added subsec. (i).

Subsec. (j). Pub. L. 106-476 added subsec. (j).

1996—Subsec. (a)(1). Pub. L. 104-295, §21(e)(6), substituted "and 1553" for "1553, and 1336(j)".

Subsec. (b)(1). Pub. L. 104-295, §18(b), substituted "A party may elect to file a reconciliation with regard to such entry elements as are identified by the party pursuant to regulations prescribed by the Secretary. If the party so elects, the party shall declare that a reconciliation will be filed. The declaration shall be made in such manner as the Secretary shall prescribe and at the time the documentation or information required by subsection (a)(1)(B) of this section or the import activity summary statement is filed with, or transmitted to, the Customs Service, or at such later time as the Customs Service may, in its discretion, permit. The reconciliation shall be filed by the importer of record at such time and in such manner as the Secretary prescribes but not later than 15 months after the date the importer declares his intent to file the reconciliation. In the case of reconciling issues relating to the assessment of antidumping and countervailing duties, the reconciliation shall be filed not later than 90 days after the date the Customs Service advises the importer that the period of review for antidumping or countervailing duty purposes has been completed." for "A party that electronically transmits an entry summary or import activity summary statement may at the time of filing such summary or statement notify the Customs Service of his intention to file a reconciliation pursuant to such regulations as the Secretary may prescribe. Such reconciliation must be filed by the importer of record within such time period as is prescribed by regulation but no later than 15 months following the filing of the entry summary or import activity summary statement; except that the prescribed time period for reconciliation issues relating to the assessment of antidumping and countervailing duties shall require filing no later than 90 days after the Customs Service advises the importer that a period of review for antidumping or countervailing duty purposes has been completed."

Subsec. (d). Pub. L. 104-153 designated existing provisions as par. (1) and added par. (2).

1993—Pub. L. 103-182 amended section generally, substituting present provisions for provisions relating to entry of merchandise and providing specifically for requirement and time, production of certified invoice, production of bill of lading, signing and contents of

entry, statistical enumeration, packages included, statement of cost of production, certification of owner by carrier, acceptance of duplicate bill of lading, and release of merchandise from customs custody.

1983—Subsec. (a)(1). Pub. L. 97-446, § 201(d)(1)(A), substituted “one of the parties qualifying as ‘importer of record’ under paragraph (2)(C) of this subsection” for “the consignee of imported merchandise”, and “authorized by him” for “authorized by the consignee”.

Subsec. (a)(2)(C), (D). Pub. L. 97-446, § 201(d)(1)(B), (C), added subpar. (C), redesignated former subpar. (C) as (D), and in subpar. (D) as so redesignated substituted “importers of record” for “consignees” after “treatment of all”.

Subsec. (c). Pub. L. 97-446, § 201(d)(2), substituted “importer of record” for “consignee” before “shall produce”.

Subsec. (d). Pub. L. 97-446, § 201(d)(2), substituted “importer of record” for “consignee” after “signed by the”.

Subsec. (h). Pub. L. 97-446, § 201(d)(3), substituted provision relating to authority of carrier of merchandise bringing it into the port to certify any person to receive the merchandise if the carrier has actual knowledge of the accuracy of the certification, for provision that any person certified by the carrier bringing the merchandise to the port at which entry was to be made to be the owner or consignee of the merchandise, or an agent of such owner or consignee, might make entry thereof, either in person or by an authorized agent, in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 1483 of this title.

Subsec. (i). Pub. L. 97-446, § 201(d)(3), substituted provision authorizing appropriate customs officer to accept a duplicate bill of lading, for provision that any person might, upon the production of a duplicate bill of lading signed or certified to be genuine by the carrier bringing the merchandise to the port at which entry was to be made, make entry for the merchandise in respect to which such bill of lading was issued, in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 1483 of this title, except that such person was to make such entry in his own name.

1978—Subsec. (a). Pub. L. 95-410, § 102(a)(1), incorporated first sentence in introductory text of par. designated (1), added subpars. (A) and (B) and par. (2), and struck out second sentence which required the entry to be made at the customhouse within five days, exclusive of Sundays and holidays, after the entry of the importing vessel or report of the vehicle, or after the arrival at the port of destination in the case of merchandise transported in bond, unless the appropriate customs officer authorized in writing a longer time.

Subsec. (c)(3). Pub. L. 95-410, § 102(a)(2), substituted “subsection” for “subdivision”.

Subsec. (j). Pub. L. 95-410, § 102(a)(3), struck out “The custom officer shall return to the person making entry the bill of lading (if any is produced) with a notation thereon to the effect that entry for such merchandise has been made.”

1977—Subsec. (e). Pub. L. 95-106 substituted “production and programs for achieving international harmonization of trade statistics,” for “production,”.

1975—Subsec. (e). Pub. L. 93-618 substituted “United States International Trade Commission” for “United States Tariff Commission” and inserted references to an enumeration of articles exported from the United States and, in conjunction with statistical programs for domestic production, to the establishment of the comparability thereof with the enumeration of articles.

1970—Subsec. (a). Pub. L. 91-271, § 301(i)(1), substituted reference to appropriate customs officer for reference to collector.

Subsec. (c). Pub. L. 91-271, § 301(i)(2), (3), substituted references to appropriate customs officer or such customs officer for references to collector wherever appearing.

Subsec. (g). Pub. L. 91-271, § 301(i)(4), substituted reference to appropriate customs officer for reference to collector or appraiser.

Subsec. (j). Pub. L. 91-271, § 301(i)(5), (6), substituted references to customs officer or such customs officer for references to collector wherever appearing.

1953—Subsec. (a). Act Aug. 8, 1953, § 16(b), substituted “five days” for “forty-eight hours”.

Subsec. (b). Act Aug. 8, 1953, § 16(c), granted the Secretary of the Treasury discretion to require certified invoices with respect to merchandise entered as he deems advisable and to establish terms under which merchandise may be imported without a certified invoice, in lieu of former provision that all such merchandise should be accompanied by an invoice certified by a United States consulate except in certain enumerated situations, and of the former provision that the Secretary might grant certain other exceptions.

Subsec. (f). Act Aug. 8, 1953, § 3(b), inserted provision relating to acceptance at port of entry designated by consignee or his agent in cases of articles not subject to a quantitative or tariff-rate quota.

1938—Subsec. (f). Act June 25, 1938, inserted provision relating to authorization by the Secretary for inclusion of portions of merchandise in separate entries under such rules and regulations as he may prescribe.

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.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-429 applicable to merchandise entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 3, 2004, see section 2108 of Pub. L. 108-429, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 2000 AMENDMENTS

Amendment by Pub. L. 106-476, except as otherwise provided, applicable with respect to goods entered, or withdrawn from warehouse, for consumption, on or after the 15th day after Nov. 9, 2000, see section 1471 of Pub. L. 106-476, set out as a note under section 58c of this title.

Pub. L. 106-200, title IV, § 410(b), May 18, 2000, 114 Stat. 298, provided that: “The amendment made by this section [amending this section] shall take effect on the date that is 60 days after the date of the enactment of this Act [May 18, 2000].”

EFFECTIVE DATE OF 1983 AMENDMENT

Section 201(g) of Pub. L. 97-446 provided that: “The amendments made by this section [amending the General headnotes of the Tariff Schedules, this section, and sections 1485, 1487, 1494, 1505, and 1557 of this title, and repealing section 1483 of this title] shall apply with respect to merchandise entered on and after the 30th day after the date of the enactment of this Act [Jan. 12, 1983].”

EFFECTIVE DATE OF 1978 AMENDMENT

Section 102(b) of Pub. L. 95-410 provided that: “The amendments made by this section [amending this section] shall take effect 60 days after the date of enactment of this Act [Oct. 3, 1978].”

EFFECTIVE DATE OF 1975 AMENDMENT

Section 608(e) of Pub. L. 93-618 provided that: “The amendment made by subsection (a) [amending this section] insofar as it related to export declarations shall take effect on January 1, 1976.”

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 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 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.

REGULATIONS

Pub. L. 106-476, title I, §1460(b), Nov. 9, 2000, 114 Stat. 2171, provided that: “Not later than 6 months after the date of the enactment of this Act [Nov. 9, 2000], the Secretary of the Treasury shall issue regulations to carry out section 484(j) of the Tariff Act of 1930 [19 U.S.C. 1484(j)], as added by subsection (a).”

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.

REQUIREMENTS RELATING TO DETERMINATION OF TRANSACTION VALUE OF IMPORTED MERCHANDISE

Pub. L. 110-234, title XV, §15422, May 22, 2008, 122 Stat. 1547, and Pub. L. 110-246, §4(a), title XV, §15422, June 18, 2008, 122 Stat. 1664, 2309, provided that:

“(a) REQUIREMENT ON IMPORTERS.—

“(1) IN GENERAL.—Pursuant to sections 484 and 485 of the Tariff Act of 1930 (19 U.S.C. 1484 and 1485), the Commissioner responsible for U.S. Customs and Border Protection shall require each importer of merchandise to provide to U.S. Customs and Border Protection at the time of entry of the merchandise the information described in paragraph (2).

“(2) INFORMATION REQUIRED.—The information referred to in paragraph (1) is a declaration as to whether the transaction value of the imported merchandise is determined on the basis of the price paid by the buyer in the first or earlier sale occurring prior to introduction of the merchandise into the United States.

“(3) EFFECTIVE DATE.—The requirement to provide information under this subsection shall be effective for the 1-year period beginning 90 days after the date of the enactment of this Act [June 18, 2008].

“(b) REPORT TO INTERNATIONAL TRADE COMMISSION.—

“(1) IN GENERAL.—The Commissioner responsible for U.S. Customs and Border Protection shall submit to the United States International Trade Commission on a monthly basis for the 1-year period specified in subsection (a)(3) a report on the information provided by importers under subsection (a)(2) during the preceding month. The report required under this paragraph shall be submitted in a form agreed upon between U.S. Customs and Border Protection and the United States International Trade Commission.

“(2) MATTERS TO BE INCLUDED.—The report required under paragraph (1) shall include—

“(A) the number of importers that declare the transaction value of the imported merchandise is determined on the basis of the method described in subsection (a)(2);

“(B) the tariff classification of such imported merchandise under the Harmonized Tariff Schedule of the United States; and

“(C) the transaction value of such imported merchandise.

“(c) REPORT TO CONGRESS.—

“(1) IN GENERAL.—Not later than 90 days after the submission of the final report under subsection (b), the United States International Trade Commission shall submit to the appropriate congressional committees a report on the information contained in all reports submitted under subsection (b).

“(2) MATTERS TO BE INCLUDED.—The report required under paragraph (1) shall include—

“(A) the aggregate number of importers that declare the transaction value of the imported merchandise is determined on the basis of the method described in subsection (a)(2), including a description of the frequency of the use of such method;

“(B) the tariff classification of such imported merchandise under the Harmonized Tariff Schedule of the United States on an aggregate basis, including an analysis of the tariff classification of such imported merchandise on a sectoral basis;

“(C) the aggregate transaction value of such imported merchandise, including an analysis of the transaction value of such imported merchandise on a sectoral basis; and

“(D) the aggregate transaction value of all merchandise imported into the United States during the 1-year period specified in subsection (a)(3).

“(d) SENSE OF CONGRESS REGARDING PROHIBITION ON PROPOSED INTERPRETATION OF THE TERM ‘SOLD FOR EXPORTATION TO THE UNITED STATES’.—

“(1) IN GENERAL.—It is the sense of Congress that the Commissioner responsible for U.S. Customs and Border Protection should not implement a change to U.S. Customs and Border Protection’s interpretation (as such interpretation is in effect on the date of the enactment of this Act [June 18, 2008]) of the term ‘sold for exportation to the United States’, as described in section 402(b) of the Tariff Act of 1930 (19 U.S.C. 1401a(b)), for purposes of applying the transaction value of the imported merchandise in a series of sales, before January 1, 2011.

“(2) EXCEPTION.—It is the sense of Congress that beginning on January 1, 2011, the Commissioner responsible for U.S. Customs and Border Protection may propose to change or change U.S. Customs and Border Protection’s interpretation of the term ‘sold for exportation to the United States’, as described in paragraph (1), only if U.S. Customs and Border Protection—

“(A) consults with, and provides notice to, the appropriate congressional committees—

“(i) not less than 180 days prior to proposing a change; and

“(ii) not less than 90 days prior to publishing a change;

“(B) consults with, provides notice to, and takes into consideration views expressed by, the Commercial Operations Advisory Committee—

“(i) not less than 120 days prior to proposing a change; and

“(ii) not less than 60 days prior to publishing a change; and

“(C) receives the explicit approval of the Secretary of the Treasury prior to publishing a change.

“(3) CONSIDERATION OF INTERNATIONAL TRADE COMMISSION REPORT.—It is the sense of Congress that prior to publishing a change to U.S. Customs and Border Protection’s interpretation (as such interpretation is in effect on the date of the enactment of this Act [June 18, 2008]) of the term ‘sold for exportation to the United States’, as described in section 402(b) of the Tariff Act of 1930 (19 U.S.C. 1401a(b)), for purposes of applying the transaction value of the imported merchandise in a series of sales, the Commissioner responsible for U.S. Customs and Border Protection should take into consideration the matters included in the report prepared by the United States International Trade Commission under subsection (c).

“(e) DEFINITIONS.—In this section:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means

the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

“(2) **COMMERCIAL OPERATIONS ADVISORY COMMITTEE.**—The term ‘Commercial Operations Advisory Committee’ means the Advisory Committee established pursuant to section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100-203] (19 U.S.C. 2071 note) or any successor committee.

“(3) **IMPORTER.**—The term ‘importer’ means one of the parties qualifying as an ‘importer of record’ under section 484(a)(2)(B) in the Tariff Act of 1930 (19 U.S.C. 1484(a)(2)(B)).

“(4) **TRANSACTION VALUE OF THE IMPORTED MERCHANDISE.**—The term ‘transaction value of the imported merchandise’ has the meaning described in section 402(b) of the Tariff Act of 1930 (19 U.S.C. 1401a(b)).”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

DRUG PARAPHERNALIA

Pub. L. 101-382, title I, §137, Aug. 20, 1990, 104 Stat. 652, provided that:

“(a) **STATISTICAL ANNOTATIONS.**—The Secretary of the Treasury, the Secretary of Commerce, and the United States International Trade Commission shall take actions under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)) to implement the recommendations of the Commission regarding additional statistical annotations that were made in the report of the Commission on Investigation 332-277.

“(b) **REPORT.**—By no later than the date that is 1 year after the date of enactment of this Act [Aug. 20, 1990], the Commissioner of Customs shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the operational response of the United States Customs Service to the recommendations contained in the report of the United States Trade Commission described in subsection (a). The report submitted by the Commissioner of Customs under this subsection shall address the effectiveness of the United States Customs Service in monitoring and seizing drug paraphernalia, including crack bags, vials, and pipes.”

STUDY OF COMMODITY CLASSIFICATION SYSTEMS

Section 608(b) of Pub. L. 93-618 mandated a joint study by the Secretary of Commerce and the United States International Trade Commission with a view toward development of an enumeration of articles resulting in comparability of import, production, and export data, with the submission of a report to both Houses of Congress and to the President no later than Aug. 1, 1975.

INVESTIGATION BY UNITED STATES INTERNATIONAL TRADE COMMISSION; FORMULATION OF INTERNATIONAL COMMODITY CODE

Section 608(c) of Pub. L. 93-618 authorized an investigation by the United States International Trade Commission to provide the basis for the formulation of an international commodity code (with a report to be submitted to both Houses of Congress and to the President no later than June 1, 1975) and to provide the basis for full and immediate participation by the Trade Commission in the United States contribution to technical work of the Harmonized Systems Committee to assure recognition of the needs of the business community in the development of a harmonized code.

COOPERATION OF GOVERNMENTAL AGENCIES WITH SECRETARY OF COMMERCE AND UNITED STATES INTERNATIONAL TRADE COMMISSION IN STUDIES AND INVESTIGATIONS

Section 608(d) of Pub. L. 93-618 provided that: “The President is requested to direct the appropriate agencies to cooperate fully with the Secretary of Commerce

and the United States International Trade Commission in carrying out their responsibilities under subsections (a) [amending this section], (b), and (c) [see notes set out above].”

§ 1484a. Articles returned from space not to be construed as importation

The return of articles from space shall not be considered an importation, and an entry of such articles shall not be required, if:

(1) such articles were previously launched into space from the customs territory of the United States aboard a spacecraft operated by, or under the control of, United States persons and owned—

- (A) wholly by United States persons, or
- (B) in substantial part by United States persons, or
- (C) by the United States;

(2) such articles were maintained or utilized while in space solely on board such spacecraft or aboard another spacecraft which meets the requirements of paragraph (1)(A) through (C) of this section; and

(3) such articles were returned to the customs territory directly from space aboard such spacecraft or aboard another spacecraft which meets the requirements of paragraph (1)(A) through (C) of this section;

without regard to whether such articles have been advanced in value or improved in condition by any process of manufacture or other means while in space.

(June 17, 1930, ch. 497, title IV, §484a, as added Pub. L. 98-573, title II, §209(a), Oct. 30, 1984, 98 Stat. 2976.)

EFFECTIVE DATE

Section applicable with respect to articles launched into space from the customs territory of the United States on or after Jan. 1, 1985, see section 214(c)(4) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

§ 1484b. Deferral of duty on large yachts imported for sale at United States boat shows

(a) In general

Notwithstanding any other provision of law, any vessel meeting the definition of a large yacht as provided in subsection (b) of this section and which is otherwise dutiable may be imported without the payment of duty if imported with the intention to offer for sale at a boat show in the United States. Payment of duty shall be deferred, in accordance with this section, until such large yacht is sold.

(b) Definition

As used in this section, the term “large yacht” means a vessel that exceeds 79 feet in length, is used primarily for recreation or pleasure, and has been previously sold by a manufacturer or dealer to a retail consumer.

(c) Deferral of duty

At the time of importation of any large yacht, if such large yacht is imported for sale at a boat show in the United States and is otherwise dutiable, duties shall not be assessed and collected if the importer of record—

(1) certifies to the Customs Service that the large yacht is imported pursuant to this section for sale at a boat show in the United States; and

(2) posts a bond, which shall have a duration of 6 months after the date of importation, in an amount equal to twice the amount of duty on the large yacht that would otherwise be imposed under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States.

(d) Procedures upon sale

(1)¹ Deposit of duty

If any large yacht (which has been imported for sale at a boat show in the United States with the deferral of duties as provided in this section) is sold within the 6-month period after importation—

(A) entry shall be completed and duty (calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States and based upon the value of the large yacht at the time of importation) shall be deposited with the Customs Service; and

(B) the bond posted as required by subsection (c)(2) of this section shall be returned to the importer.

(e) Procedures upon expiration of bond period

(1) In general

If the large yacht entered with deferral of duties is neither sold nor exported within the 6-month period after importation—

(A) entry shall be completed and duty (calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States and based upon the value of the large yacht at the time of importation) shall be deposited with the Customs Service; and

(B) the bond posted as required by subsection (c)(2) of this section shall be returned to the importer.

(2) Additional requirements

No extensions of the bond period shall be allowed. Any large yacht exported in compliance with the bond period may not be reentered for purposes of sale at a boat show in the United States (in order to receive duty deferral benefits) for a period of 3 months after such exportation.

(f) Regulations

The Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

(June 17, 1930, ch. 497, title IV, §484b, as added Pub. L. 106-36, title II, §2406(a), June 25, 1999, 113 Stat. 170.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsecs. (c)(2), (d)(1)(A), and (e)(1)(A), is

¹ So in original. No par. (2) has been enacted.

not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

EFFECTIVE DATE

Pub. L. 106-36, title II, §2406(b), June 25, 1999, 113 Stat. 171, provided that: “The amendment made by subsection (a) [enacting this section] shall apply with respect to any large yacht imported into the United States after the date that is 15 days after the date of the enactment of this Act [June 25, 1999].”

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.

§ 1485. Declaration

(a) Requirement; form and contents

Every importer of record making an entry under the provisions of section 1484 of this title shall make and file or transmit electronically therewith, in a form and manner to be prescribed by the Secretary of the Treasury, a declaration under oath, stating—

(1) Whether the merchandise is imported in pursuance of a purchase or an agreement to purchase, or whether it is imported otherwise than in pursuance of a purchase or agreement to purchase;

(2) That the prices set forth in the invoice are true, in the case of merchandise purchased or agreed to be purchased; or in the case of merchandise secured otherwise than by purchase or agreement to purchase, that the statements in such invoice as to value or price are true to the best of his knowledge and belief;

(3) That all other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct; and

(4) That he will produce at once to the appropriate customs officer any invoice, paper, letter, document, or information received showing that any such prices or statements are not true or correct.

(b) Books and periodicals

The Secretary of the Treasury is authorized to prescribe regulations for one declaration in the case of books, magazines, newspapers, and periodicals published and imported in successive parts, numbers, or volumes, and entitled to free entry.

(c) Agents

In the event that an entry is made by an agent under the provisions of section 1484 of this title and such agent is not in possession of such declaration of the importer of record, such agent shall give a bond to produce such declaration.

(d) Liability of importer of record for increased duties

An importer of record shall not be liable for any additional or increased duties if (1) he de-

clares at the time of entry that he is not the actual owner of the merchandise, (2) he furnishes the name and address of such owner, and (3) within ninety days from the date of entry he produces a declaration of such owner conditioned that he will pay all additional and increased duties, under such regulations as the Secretary of the Treasury may prescribe. Such owner shall possess all the rights of an importer of record.

(e) Separate forms for purchase and nonpurchase importations

The Secretary of the Treasury shall prescribe separate forms for the declaration in the case of merchandise which is imported in pursuance of a purchase or agreement to purchase and merchandise which is imported otherwise than in pursuance of a purchase or agreement to purchase.

(f) Deceased or insolvent persons; partnerships and corporations

Whenever such merchandise is consigned to a deceased person, or to an insolvent person who has assigned the same for the benefit of his creditors, the executor or administrator, or the assignee of such person or trustee in a case under title 11, shall be considered as the importer of record; when consigned to a partnership the declaration of one of the partners only shall be required, and when consigned to a corporation such declaration may be made by any officer of such corporation. Whether the importer of record is an individual, a partnership, or a corporation, the declaration may be made by any person who has knowledge of the facts and who is specifically authorized by such individual, a member of such partnership, or an officer of such corporation to make such declaration.

(g) Exported merchandise returned as undeliverable

With respect to any importation of merchandise to which General Headnote 4(e) of the Harmonized Tariff Schedule of the United States applies, any person who gained any benefit from, or met any obligation to, the United States as a result of the prior exportation of such merchandise shall, in accordance with regulations prescribed by the Secretary, within a reasonable time inform the Customs Service of the return of the merchandise.

(June 17, 1930, ch. 497, title IV, § 485, 46 Stat. 724; June 25, 1938, ch. 679, § 13, 52 Stat. 1083; Pub. L. 91-271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 95-598, title III, § 315, Nov. 6, 1978, 92 Stat. 2678; Pub. L. 97-446, title II, § 201(e), Jan. 12, 1983, 96 Stat. 2350; Pub. L. 103-182, title VI, § 657, Dec. 8, 1993, 107 Stat. 2212.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (g), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 485, 42 Stat. 961. That section was superseded by section 485 of

act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions for a declaration to be filed when merchandise was entered by invoice, were contained in the Customs Administrative Act of June 10, 1890, ch. 407, § 5, 26 Stat. 132, as amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 95, and by act Oct. 3, 1913, ch. 16, § III, F, 38 Stat. 182. The sections of the acts of 1890 and 1913, referred to, were repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

R.S. § 2786, requiring entries to be verified by oath, was superseded by the Customs Administrative Act of June 10, 1890, ch. 407, §§ 4, 5, 22, 26 Stat. 131, 132, 140, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 92, 102, and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, § III, E, F, and section IV, S, of that act, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

R.S. § 2841 prescribed the forms of oaths of which one, according to the nature of the case, was required to be administered by the collector at the time of the entry of merchandise by invoice. It was modified by act May 1, 1876, ch. 89, § 2, 19 Stat. 49, and repealed by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141, amended and reenacted by the Payne-Aldrich Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 104, and declarations in lieu of oaths were required to accompany the invoice by section 5 of the Customs Administrative Act, amended by the Payne-Aldrich Act and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, § III, F. All oaths administered by officers of the customs, except as provided in the Customs Administrative Act, were abolished by section 22 thereof amended by section 28 of the Payne-Aldrich Act.

The provisions for the abolition of fees and oaths on entry of goods, made by the Customs Administrative Act of June 10, 1890, ch. 407, § 22, 26 Stat. 140, as amended by the Payne-Aldrich Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 102, were superseded by a proviso annexed to section IV, S, of the Underwood Tariff Act of Oct. 3, 1913, which provided that "nothing in this act shall be construed to permit any oaths to be demanded or fees to be charged except as provided in this act," etc.

Act May 1, 1876, ch. 89, § 2, 19 Stat. 49, modifying the form of oath prescribed by R.S. § 2841, was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

R.S. § 2849, relative to oaths when merchandise belonged in part to a resident of the United States and in part to a non-resident was superseded in part by the Customs Administrative Act of June 10, 1890, ch. 407, §§ 5, 22, 29, 26 Stat. 132, 140, 141, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 92, 102, 104, and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, § III, B-J, and was repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

Prior provisions requiring a bond to be taken when entry was made by an agent, factor, or person other than the owner or ultimate consignee, and prescribing the conditions, etc., of the bond, and the circumstances under which it might be canceled with a proviso authorizing the taking of a general penal bond, were contained in R.S. § 2787, as amended by act Mar. 2, 1905, ch. 1306, 33 Stat. 826, which was repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

Provisions concerning the statement to be presented to the collector when merchandise entered for customs duty had been consigned for sale to a person, agent, partner, or consignee, were contained in act Oct. 3, 1913, ch. 16, § III, J, 38 Stat. 185, which reenacted the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 131, and the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 96, and which was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

A prior provision relative to oaths to invoices when merchandise belonged to estates of deceased persons or of persons insolvent was contained in R.S. § 2846, which was superseded, in part, by the abolition of all oaths administered by officers of the customs, except as provided therein, by the Customs Administrative Act of

June 10, 1890, ch. 407, §22, 26 Stat. 140, and by the repeal, by section 29 of that act, 26 Stat. 141, of R.S. §§2841, 2843, 2845, which required oaths to accompany invoices on entry of merchandise, and the substitution of declarations for such oaths, by sections 3-5 of said act, 26 Stat. 131, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 102, and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, §III, D, F, and §IV, S, 38 Stat. 181.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-182, §657(1), in introductory provisions, inserted “or transmit electronically” after “file” and “and manner” after “form”.

Subsec. (d). Pub. L. 103-182, §657(2), substituted “An importer” for “A importer” and “an importer” for “a importer”.

Subsec. (g). Pub. L. 103-182, §657(3), added subsec. (g). 1983—Subsec. (a). Pub. L. 97-446 substituted “importer of record” for “consignee” before “making an entry”.

Subsec. (c). Pub. L. 97-446 substituted “importer of record” for “consignee” after “declaration of the”.

Subsecs. (d), (f). Pub. L. 97-446 substituted “importer of record” for “consignee” wherever appearing.

1978—Subsec. (f). Pub. L. 95-598 substituted “trustee in a case under title 11” for “receiver or trustee in bankruptcy”.

1970—Subsec. (a). Pub. L. 91-271 substituted reference to appropriate customs officer for reference to collector.

1938—Subsec. (f). Act June 25, 1938, changed the comma to a period after “such declaration may be made by any officer of such corporation”, struck out “or by any other person specifically authorized by any officer of such corporation to make the same” after said comma, and inserted in lieu thereof a new sentence providing that whether the consignee is an individual, a partnership, or a corporation, the declaration may be made by any person having knowledge of the facts and authorized to make such declaration.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-446 applicable with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97-446, set out as a note under section 1484 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

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.

§ 1486. Administration of oaths

(a) Customs officers

The following officers and employees may administer any oaths required or authorized by

law or regulations promulgated thereunder in respect of any matter coming before such officers or employees in the performance of their official duties: (1) Any customs officer appointed by the President; (2) the chief assistant of any such officer, or any officer or employee of the customs field service designated for the purpose by such officer or by the Secretary of the Treasury; and (3) any officer or employee of the United States Customs Service designated for the purpose by the Secretary of the Treasury.

(b) Postmasters

The postmaster or assistant postmaster of the United States at any post office where customs officers are not stationed, is authorized to administer any oaths required to be made to statements in customs documents by importers of merchandise, not exceeding \$100 in value, through the mails.

(c) No compensation

No compensation or fee shall be demanded or accepted for administering any oath under the provisions of this section.

(d) Verification in lieu of oath

The Secretary of the Treasury may by regulation prescribe that any document required by any law administered by the Customs Service to be under oath may be verified by a written declaration in such form as he shall prescribe, such declaration to be in lieu of the oath otherwise required.

(June 17, 1930, ch. 497, title IV, §486, 46 Stat. 725; Aug. 8, 1953, ch. 397, §17, 67 Stat. 517.)

AMENDMENTS

1953—Subsec. (d). Act Aug. 8, 1953, added subsec. (d).

CHANGE OF NAME

“United States Customs Service” substituted in text for “Bureau of Customs” pursuant to Treasury Department Order 165-23, Apr. 4, 1973, eff. Aug. 1, 1973, 38 F.R. 13037. See, also, section 308 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 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 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.

§ 1487. Value in entry; amendment

The importer of record or his agent may, under such regulations as the Secretary of the Treasury may prescribe, at the time entry is made, make in the entry such additions to or deductions from the cost or value given in the invoice as, in his opinion, may raise or lower the same to the value of such merchandise.

(June 17, 1930, ch. 497, title IV, § 487, 46 Stat. 725; Aug. 8, 1953, ch. 397, § 18(a), 67 Stat. 517; Pub. L. 97-446, title II, § 201(e), Jan. 12, 1983, 96 Stat. 2350.)

PRIOR PROVISIONS

Provisions somewhat similar to those in this section were contained in act Oct. 3, 1913, ch. 16, § III, I, 38 Stat. 184, which were substituted for provisions made by the Customs Administrative Act of June 10, 1890, ch. 407, § 7, 26 Stat. 134, as amended by act July 24, 1897, ch. 11, § 32, 30 Stat. 211, and as further amended by the Payne-Adrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 95. Section III of the act of 1913 was superseded by act Sept. 21, 1922, ch. 356, title IV, § 487, 42 Stat. 962, and was repealed by section 643 thereof. Section 487 of the 1922 act was superseded by section 487 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions for addition to the invoice values made by R.S. § 2900, were repealed by section 29 of the Customs Administrative Act.

AMENDMENTS

1983—Pub. L. 97-446 substituted “importer of record” for “consignee” before “or his agent”.

1953—Act Aug. 8, 1953, struck out “or at any time before the invoice or the merchandise has come under the observation of the appraiser for the purpose of appraisal,” after “at the time entry is made.”.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-446 applicable with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97-446, set out as a note under section 1484 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

§ 1488. Repealed. Pub. L. 91-271, title II, § 204(b), June 2, 1970, 84 Stat. 283

Section, act June 17, 1930, ch. 497, title IV, § 488, 46 Stat. 725, authorized a collector to cause the appraisal of entered merchandise.

EFFECTIVE DATE OF REPEAL

For effective date of repeal, see section 203 of Pub. L. 91-271, set out as an Effective Date of 1970 Amendment note under section 1500 of this title.

§ 1489. Repealed. Pub. L. 87-456, title III, § 301(a), May 24, 1962, 76 Stat. 75

Section, acts June 17, 1930, ch. 497, title IV, § 489, 46 Stat. 725; Aug. 8, 1953, ch. 397, § 18(b), 67 Stat. 517, related to entry of antique furniture at designated ports.

EFFECTIVE DATE OF REPEAL

For effective date of repeal, see section 501(a) of Pub. L. 87-456, set out as an Effective Date of Tariff Classification Act of 1962 note preceding section 1202 of this title.

§ 1490. General orders**(a) Incomplete entry**

(1) Whenever—

(A) the entry of any imported merchandise is not made within the time provided by law or by regulation prescribed by the Secretary;

(B) the entry of imported merchandise is incomplete because of failure to pay the estimated duties, fees, or interest;

(C) in the opinion of the Customs Service, the entry of imported merchandise cannot be made for want of proper documents or other cause; or

(D) the Customs Service believes that any merchandise is not correctly and legally invoiced;

the carrier (unless subject to subsection (c) of this section) shall notify the bonded warehouse of such unentered merchandise.

(2) After notification under paragraph (1), the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. The merchandise shall remain in the bonded warehouse until—

(A) entry is made or completed and the proper documents are produced;

(B) the information and data necessary for entry are transmitted to the Customs Service pursuant to an authorized electronic data interchange system; or

(C) a bond is given for the production of documents or the transmittal of data.

(b) Request for possession by Customs

At the request of the consignee of any merchandise, or of the owner or master of the vessel or the person in charge of the vehicle in which the same is imported, any merchandise may be taken possession of by the Customs Service after the expiration of one day after the entry of the vessel or report of the vehicle and may be unladen and held at the risk and expense of the consignee until entry thereof is made.

(c) Government merchandise

Any imported merchandise that—

(1) is described in any of subparagraphs (A) through (D) of subsection (a)(1) of this section; and

(2) is consigned to, or owned by, the United States Government;

shall be stored and disposed of in accordance with such rules and procedures as the Secretary shall by regulation prescribe.

(June 17, 1930, ch. 497, title IV, § 490, 46 Stat. 726; Pub. L. 91-271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 103-182, title VI, § 658, Dec. 8, 1993, 107 Stat. 2212; Pub. L. 104-295, § 21(e)(9), Oct. 11, 1996, 110 Stat. 3531.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 490, 42 Stat. 963. That section was superseded by section 490 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions authorizing the collector to take possession of, or store merchandise were contained in the following sections, all of which were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989:

R.S. §2789, authorizing the collector, when an entry was imperfect, to take the merchandise into his custody until the quantity, quality, or value could be ascertained;

R.S. §2840, providing that when the collector should suspect that merchandise was not invoiced at a sum equal to that for which it had usually been sold, he should take possession and retain the same until its value had been ascertained and the duties paid or secured;

R.S. §2926, providing that merchandise of which incomplete entry had been made, or entry without specification of particulars, should be conveyed to some warehouse or designated by the collector to remain until the particulars, cost or value should have been ascertained, and the duties paid or secured, and a permit for delivery granted;

R.S. §2963, providing that when merchandise had not been entered it should be deposited in a public warehouse, and there remain until an invoice was produced, but that it should not be construed to prohibit sales of merchandise to discharge duties and charges;

R.S. §2964, authorizing the collector to take possession of merchandise, and deposit it in public stores, or other stores to be agreed on, in case of failure or neglect to pay duties, or when the owner, etc., should make entry for warehousing;

R.S. §2965, providing for the storage in a public warehouse, or private bonded warehouse, of unclaimed merchandise required to be taken possession of by collectors, and making provision for payment of charges and expenses;

R.S. §2966, as amended by act June 26, 1884, ch. 121, §24, 23 Stat. 58, providing for the deposit in a bonded warehouse of merchandise imported in vessels, when it should appear by the bills of lading that it was to be delivered immediately after entry of the vessel, or on request, when it did not so appear.

A prior provision authorizing the collector to require a bond for the production of proof to enable the collector to ascertain the class or description of manufacture, or rate of duty to which merchandise was liable, was contained in R.S. §2925, which was also repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS

1996—Subsec. (c)(1). Pub. L. 104-295 substituted “subparagraphs (A) through (D) of subsection (a)(1)” for “paragraphs (1) through (4) of subsection (a)”.

1993—Subsec. (a). Pub. L. 103-182, §658(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Whenever entry of any imported merchandise is not made within the time provided by law or the regulations prescribed by the Secretary of the Treasury, or whenever entry of such merchandise is incomplete because of failure to pay the estimated duties, or whenever, in the opinion of the appropriate customs officer, entry of such merchandise can not be made for want of proper documents or other cause, or whenever the appropriate customs officer believes that any merchandise is not correctly and legally invoiced, he shall take the merchandise into his custody and send it to a bonded warehouse or public store, to be held at the risk and expense of the consignee until entry is made or completed and the proper documents are produced, or a bond given for their production.”

Subsec. (b). Pub. L. 103-182, §658(2), substituted heading for one which read “At request of consignee” and in text substituted “Customs Service” for “appropriate customs officer”.

Subsec. (c). Pub. L. 103-182, §658(3), added subsec. (c). 1970—Pub. L. 91-271 substituted references to appropriate customs officer for references to 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.

§ 1491. Unclaimed merchandise; disposition of forfeited distilled spirits, wines and malt liquor

(a) Appraisal and sale of unclaimed merchandise

Any entered or unentered merchandise (except merchandise entered under section 1557 of this title, but including merchandise entered for transportation in bond or for exportation) which shall remain in a bonded warehouse pursuant to section 1490 of this title for 6 months from the date of importation thereof, without all estimated duties, taxes, fees, interest, storage, or other charges thereon having been paid, shall be considered unclaimed and abandoned to the Government and shall be appraised and sold by the Customs Service at public auction under such regulations as the Secretary of the Treasury shall prescribe. All gunpowder and other explosive substances and merchandise liable to depreciation in value by damage, leakage, or other cause to such extent that the proceeds of sale thereof may be insufficient to pay the duties, taxes, fees, interest, storage, and other charges, if permitted to remain in¹ pursuant to section 1490 of this title in a bonded warehouse for 6 months, may be sold forthwith, under such regulations as the Secretary of the Treasury may prescribe. Merchandise subject to sale hereunder or under section 1559 of this title may be entered or withdrawn for consumption at any time prior to such sale upon payment of all duties, taxes, fees, interest, storage, and other charges, and expenses that may have accrued thereon, but such merchandise after becoming subject to sale may not be exported prior to sale without the payment of such duties, taxes, fees, interest, charges, and expenses nor may it be entered for warehouse. The computation of duties, taxes, interest, and fees for the purposes of this section and sections 1493 and 1559 of this title shall be at the rate or rates applicable at the time the merchandise becomes subject to sale.

(b) Notice of title vesting in United States

At the end of the 6-month period referred to in subsection (a) of this section, the Customs Service may, in lieu of sale of the merchandise, provide notice to all known interested parties that the title to such merchandise shall be considered to vest in the United States free and clear of any liens or encumbrances, on the 30th day after the date of the notice unless, before such 30th day—

(1) the subject merchandise is entered or withdrawn for consumption; and

(2) payment is made of all duties, taxes, fees, transfer and storage charges, and other expenses that may have accrued thereon.

¹ So in original. The word “in” probably should not appear.

(c) Retention, transfer, destruction, or other disposition

If title to any merchandise vests in the United States by operation of subsection (b) of this section, such merchandise may be retained by the Customs Service for official use, transferred to any other Federal agency or to any State or local agency, destroyed, or otherwise disposed of in accordance with such regulations as the Secretary shall prescribe. All transfer and storage charges or expenses accruing on retained or transferred merchandise shall be paid by the receiving agency.

(d) Petition

Whenever any party, having lost a substantial interest in merchandise by virtue of title vesting in the United States under subsection (b) of this section, can establish such title or interest to the satisfaction of the Secretary within 30 days after the day on which title vests in the United States under subsection (b) of this section, or can establish to the satisfaction of the Secretary that the party did not receive notice under subsection (b) of this section, the Secretary may, upon receipt of a timely and proper petition and upon finding that the facts and circumstances warrant, pay such party out of the Treasury of the United States the amount the Secretary believes the party would have received under section 1493 of this title had the merchandise been sold and a proper claim filed. The decision of the Secretary with respect to any such petition is final and conclusive on all parties.

(e) Appraisal and sale or other disposition of forfeited distilled spirits, wines, and malt liquor

All distilled spirits, wines, and malt liquor forfeited to the Government summarily or by order of court, under any provision of law administered by the United States Customs Service, shall be appraised and disposed of by—

(1) delivery to such Government agencies, as in the opinion of the Secretary have a need for such distilled spirits, wines, and malt liquor for medical, scientific, or mechanical purposes, or for any other official purpose for which appropriated funds may be expended by a Government agency;

(2) gifts to such eleemosynary institutions as, in the opinion of the Secretary, have a need for such distilled spirits, wines, and malt liquor for medical purposes;

(3) sale by Customs Service at public auction under such regulations as the Secretary shall prescribe, except that before making any such sale the Secretary shall determine that no Government agency or eleemosynary institution has established a need for such spirits, wines, and malt liquor under paragraph (1) or (2); or

(4) destruction.

(June 17, 1930, ch. 497, title IV, § 491, 46 Stat. 726; June 25, 1938, ch. 679, § 14, 52 Stat. 1083; Pub. L. 91-271, title III, § 301(j), June 2, 1970, 84 Stat. 289; Pub. L. 95-410, title II, § 208, Oct. 3, 1978, 92 Stat. 901; Pub. L. 103-182, title VI, § 659, Dec. 8, 1993, 107 Stat. 2213; Pub. L. 104-295, § 21(e)(8), Oct. 11, 1996, 110 Stat. 3531.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. §§ 2973, 2975 and 2976, all of which were superseded by act Sept. 21, 1922, ch. 356, title IV, § 491, 42 Stat. 963, and repealed by section 642 thereof. Section 491 of the 1922 act was superseded by section 491 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-295 substituted “in a bonded warehouse pursuant to section 1490” for “in a bonded warehouse pursuant to section 1490” and “Customs Service” for “appropriate customs officer”.

1993—Subsec. (a). Pub. L. 103-182, § 659(1), substituted “in a bonded warehouse pursuant to section 1490 of this title for 6 months” for “customs custody for one year”, “estimated duties, taxes, fees, interest, storage,” for “estimated duties and storage”, “duties, taxes, fees, interest, storage, and other charges, if permitted” for “duties, storage, and other charges, if permitted”, “pursuant to section 1490 of this title in a bonded warehouse for 6 months” for “public store or bonded warehouse for a period of one year”, “duties, taxes, fees, interest, storage, and other charges” for “duties, storage, and other charges”, “duties, taxes, fees, interest, charges, and expenses” for “duties, charges, and expenses”, and “computation of duties, taxes, interest, and fees for the purposes” for “computation of duties for the purposes”.

Subsecs. (b) to (d). Pub. L. 103-182, § 659(2), added subsecs. (b) to (d). Former subsec. (b) redesignated (e).

Subsec. (e). Pub. L. 103-182, § 659(2), (3), redesignated subsec. (b) as (e) and substituted “Customs Service” for “appropriate customs officer” in par. (3).

1978—Pub. L. 95-410 amended section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

1970—Pub. L. 91-271 substituted reference to appropriate customs officer for reference to collector, and struck out reference to appraiser of merchandise.

1938—Act June 25, 1938, amended generally so much of this section as preceded “shall be considered unclaimed and abandoned”.

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.

EXTENSION OF ONE-YEAR PERIOD

For extension of one year period prescribed in this section, see Proc. No. 2948, Oct. 12, 1951, 16 F.R. 10589, 65 Stat. c41, set out as a note under section 1318 of this title.

Proc. No. 2599, Nov. 6, 1943, 8 F.R. 15359, 57 Stat. 758, as amended by Proc. No. 2712, Dec. 4, 1946, 11 F.R. 14133, 61 Stat. 1947, was superseded by Proc. No. 2948, Oct. 12, 1951, 16 F.R. 10589, 65 Stat. c41.

§ 1492. Destruction of abandoned or forfeited merchandise

Except as provided in R.S. §3369 (relating to tobacco and snuff), and in section 901 of the Revenue Act of 1926 (relating to distilled spirits), any merchandise abandoned or forfeited to the Government under the preceding or any other provision of the customs laws, which is subject to internal revenue tax and which the Customs Service shall be satisfied will not sell for a sufficient amount to pay such taxes, shall be forthwith destroyed, retained for official use, or otherwise disposed of under regulations to be prescribed by the Secretary of the Treasury, instead of being sold at auction.

(June 17, 1930, ch. 497, title IV, §492, 46 Stat. 727; Pub. L. 91-271, title III, §301(b), June 2, 1970, 84 Stat. 287; Pub. L. 103-182, title VI, §660, Dec. 8, 1993, 107 Stat. 2214.)

REFERENCES IN TEXT

R.S. §3369, referred to in text, is covered by sections 5723(a) and 5753 of Title 26, Internal Revenue Code.

Section 901 of Revenue Act of 1926, referred to in text, is covered by section 5243 of Title 26.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §492, 42 Stat. 963. That section was superseded by section 492 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior to its incorporation into the Code, this section read: "Except as provided in section 3369 of the Revised Statutes, as amended," etc. R.S. §3369, as amended by act Oct. 14, 1921, ch. 107, 42 Stat. 205, related in part to abandoned, condemned or forfeited tobacco, snuff, cigars, or cigarettes, which would not bring a price equal to the internal revenue tax thereon. So far as it related to tobacco and snuff, it was incorporated into the Code as sections 702(a)(1), 803(a)(1), (c), (d), and 890, of Title 26, Internal Revenue Code, and so far as it applied to cigars and cigarettes, it was incorporated into the Code as sections 812(d)(2) and 890, of Title 26.

AMENDMENTS

1993—Pub. L. 103-182 substituted "Customs Service" for "appropriate customs officer" and inserted ", retained for official use, or otherwise disposed of" after "destroyed".

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

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.

§ 1493. Proceeds of sale

The surplus of the proceeds of sales under section 1491 of this title, after the payment of storage charges, expenses, duties, taxes, and fees,

and the satisfaction of any lien for freight, charges, or contribution in general average, shall be deposited in the Treasury of the United States, if claim therefor shall not be filed with the Customs Service within ten days from the date of sale, and the sale of such merchandise shall exonerate the master of any vessel in which the merchandise was imported from all claims of the owner thereof, who shall, nevertheless, on due proof of his interest, be entitled to receive from the Treasury the amount of any surplus of the proceeds of sale.

(June 17, 1930, ch. 497, title IV, §493, 46 Stat. 727; Pub. L. 91-271, title III, §301(e), June 2, 1970, 84 Stat. 288; Pub. L. 103-182, title VI, §661, Dec. 8, 1993, 107 Stat. 2214.)

PRIOR PROVISIONS

Provisions substantially similar in most respects to those in this section, with further provisions concerning the documents to be forwarded by the collector to the Treasury Department, were contained in R.S. §2974, which was superseded and more nearly assimilated to the present section by act Sept. 21, 1922, ch. 356, title IV, §493, 42 Stat. 964, and repealed by section 642 thereof. Section 493 of the 1922 act was superseded by section 493 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1993—Pub. L. 103-182 inserted "taxes, and fees," after "duties," struck out "by the appropriate customs officer" after "shall be deposited", and substituted "the Customs Service" for "such customs officer".

1970—Pub. L. 91-271 substituted references to appropriate customs officer or such customs officer for references to 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.

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 "Refunding proceeds of unclaimed merchandise (Customs) (2x326)" 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.

§ 1494. Expense of weighing and measuring

In all cases in which the invoice or entry does not state the weight, quantity, or measure of the merchandise, the expense of ascertaining the same shall be collected from the importer of record before its release from customs custody.

(June 17, 1930, ch. 497, title IV, § 494, 46 Stat. 727; Pub. L. 97-446, title II, § 201(e), Jan. 12, 1983, 96 Stat. 2350.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 494, 42 Stat. 964. That section was superseded by section 494 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision requiring merchandise to be weighed, gauged or measured at the expense of the owner, agent or consignee, in cases in which the invoice or entry did not contain the weight, quantity or measure was contained in R.S. § 2920, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1983—Pub. L. 97-446 substituted “importer of record” for “consignee” after “collected from the”.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-446 applicable with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97-446, set out as a note under section 1484 of this title.

§ 1495. Partnership bond

When any bond is required by law or regulations to be executed by any partnership for any purpose connected with the transaction of business at any customhouse, the execution of such bond by any member of such partnership shall bind the other partners in like manner and to the same extent as if such other partners had personally joined in the execution, and an action or suit may be instituted on such bond against all partners as if all had executed the same.

(June 17, 1930, ch. 497, title IV, § 495, 46 Stat. 727.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 495, 42 Stat. 964. That section was superseded by section 495 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 they applied to bonds for the payment of duties or for any other purpose connected with the general transaction of business at any customs house, were contained in act June 20, 1876, ch. 136, 19 Stat. 60, as amended by act Aug. 27, 1894, ch. 349, § 70, 28 Stat. 569, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

§ 1496. Examination of baggage

The appropriate customs officer may cause an examination to be made of the baggage of any person arriving in the United States in order to ascertain what articles are contained therein and whether subject to duty, free of duty, or prohibited notwithstanding a declaration and entry therefor has been made.

(June 17, 1930, ch. 497, title IV, § 496, 46 Stat. 727; Pub. L. 91-271, title III, § 301(b), June 2, 1970, 84 Stat. 287.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 496, 42 Stat. 964. That section was superseded by section 496 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 appropriate customs officer for reference to collector.

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.

§ 1496a. Clearance restrictions of individuals returning from abroad; special circumstances; “baggage and effects” defined

Except as otherwise provided by law, no individual returning to the United States from abroad shall be—

(1) entitled to the admission of his or her baggage and effects free of duty without entry; or

(2) entitled to expedited customs examination and clearance of his or her baggage and effects.

Paragraph (2) shall not apply to individuals in special circumstances (including being seriously ill or infirm, having been summoned by news of affliction or disaster, and accompanying the body of a deceased relative). For purposes of this section, the term “baggage and effects” means any article which was in the possession of the individual while abroad and is being imported in connection with his or her arrival and is intended for his or her bona fide personal or household use. Such term does not include any article imported as an accommodation to others or for sale or other commercial use.

(Pub. L. 95-410, title II, § 215, Oct. 3, 1978, 92 Stat. 904.)

CODIFICATION

Section was enacted as part of Customs Procedural Reform and Simplification Act of 1978, and not as part of Tariff Act of 1930 which comprises this chapter.

CLEARANCE PROCEDURES STUDY; REPORT TO CONGRESSIONAL COMMITTEES

Section 216 of Pub. L. 95-410 provided that the Comptroller General, in cooperation with the Customs Service of the Department of the Treasury and the Immigration and Naturalization Service of the Department of Justice, study clearance procedures for individuals entering or reentering the United States, and to report the results of his study and any recommendations for expediting the clearance process to specific committees of the United States Senate and the House of Representatives not later than Sept. 1, 1979.

§ 1497. Penalties for failure to declare

(a) In general

(1) Any article which—

(A) is not included in the declaration and entry as made or transmitted; and

(B) is not mentioned before examination of the baggage begins—

(i) in writing by such person, if written declaration and entry was required, or

(ii) orally, if written declaration and entry was not required;

shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.

(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—

(A) if the article is a controlled substance, either \$500 or an amount equal to 1,000 percent of the value of the article, whichever amount is greater; and

(B) if the article is not a controlled substance, the value of the article.

(b) Value of controlled substances

(1) Notwithstanding any other provision of this chapter, the value of any controlled substance shall, for purposes of this section, be equal to the amount determined by the Secretary in consultation with the Attorney General of the United States, to be equal to the price at which such controlled substance is likely to be illegally sold to the consumer of such controlled substance.

(2) The Secretary and the Attorney General of the United States shall establish a method of determining the price at which each controlled substance is likely to be illegally sold to the consumer of such controlled substance.

(June 17, 1930, ch. 497, title IV, § 497, 46 Stat. 728; Pub. L. 99-570, title III, § 3116, Oct. 27, 1986, 100 Stat. 3207-83; Pub. L. 100-690, title VII, § 7367(a), Nov. 18, 1988, 102 Stat. 4479; Pub. L. 103-182, title VI, § 612, Dec. 8, 1993, 107 Stat. 2170.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 497, 42 Stat. 964. That section was superseded by section 497 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision for forfeiture of any article subject to duty found in baggage, and not mentioned to the collector before whom entry was made, and for a penalty of treble the value of the article, was contained in R.S. § 2802, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Subsec. (a)(1)(A). Pub. L. 103-182, § 612(1), inserted “or transmitted” after “made”.

Subsec. (a)(2)(A). Pub. L. 103-182, § 612(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “if the article is a controlled substance, 1,000 percent of the value of the article; and”.

1988—Subsec. (a)(2)(A). Pub. L. 100-690 substituted “1,000 percent” for “200 percent”.

1986—Pub. L. 99-570 amended section generally. Prior to amendment, section read as follows: “Any article not included in the declaration and entry as made, and, before examination of the baggage was begun, not mentioned in writing by such person, if written declaration and entry was required, or orally if written declaration and entry was not required, shall be subject to forfeiture and such person shall be liable to a penalty equal to the value of such article.”

§ 1498. Entry under regulations

(a) Authorized for certain merchandise

The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of—

(1) Merchandise, when—

(A) the aggregate value of the shipment does not exceed an amount specified by the Secretary by regulation, but not more than \$2,500; or

(B) different commercial facilitation and risk considerations that may vary for different classes or kinds of merchandise or different classes of transactions may dictate;

(2) Products of the United States, when the aggregate value of the shipment does not exceed such amounts as the Secretary may prescribe and the products are imported.

(A) for the purposes of repair or alteration prior to reexportation, or

(B) after having been either rejected or returned by the foreign purchaser to the United States for credit;

(3) Merchandise damaged on the voyage of importation, by fire or through marine casualty or any other cause, without fault on the part of the shipper;

(4) Merchandise recovered from a wrecked or stranded vessel;

(5) Household effects used abroad and personal effects, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;

(6) Articles sent by persons in foreign countries as gifts to persons in the United States;

(7) Articles carried on the person or contained in the baggage of a person arriving in the United States;

(8) Tools of trade of a person arriving in the United States;

(9) Personal effects of citizens of the United States who have died in a foreign country;

(10) Merchandise within the provisions of sections 1465¹ and 1466 of this title (relating to supplies, repairs, and equipment on vessels and railway cars) at the first port of arrival;

(11) Merchandise when in the opinion of the Secretary of the Treasury the value thereof cannot be declared; and

(12) Merchandise within the provisions of paragraph 1631 of section 1201 of this title.

(b) Application of general provisions

The Secretary of the Treasury is authorized to include in such rules and regulations any of the provisions of section 1484 or 1485 of this title (relating, respectively, to entry and to declaration of merchandise generally).

(June 17, 1930, ch. 497, title IV, § 498, 46 Stat. 728; Aug. 8, 1953, ch. 397, § 16(d), (e), 67 Stat. 517; Pub. L. 96-609, title II, § 202, Dec. 28, 1980, 94 Stat. 3561; Pub. L. 98-573, title II, § 206, Oct. 30, 1984, 98 Stat. 2975; Pub. L. 100-418, title I, § 1214(h)(5), Aug. 23, 1988, 102 Stat. 1157; Pub. L. 103-182, title VI, § 662, Dec. 8, 1993, 107 Stat. 2214.)

REFERENCES IN TEXT

Section 1465 of this title, referred to in subsec. (a)(10), was repealed by Pub. L. 103-182, title VI, § 690(b)(7), Dec. 8, 1993, 107 Stat. 2223.

Section 1201 of this title, referred to in subsec. (a)(12), which comprised the free list for articles imported into the United States, was repealed by Pub. L. 87-456, title I, § 101(a), May 24, 1962, 76 Stat. 72, which act also revised the Tariff Schedules of the United States. See notes under section 1202 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 498, 42 Stat. 964. That section was superseded by section 498 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provision for an entry, separate from that of other merchandise, of wearing apparel, personal baggage, and

¹ See References in Text note below.

tools and implements of a mechanical trade, was made by R.S. §2799, which also prescribed the contents of such entry, and of the accompanying oath. R.S. §2800 provided for a bond when the person making entry was not the owner. R.S. §2801 provided for a landing permit, and for an examination of baggage when deemed proper by the collector and naval officer, and for entry of articles not exempt from duty. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103-182, §662(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Merchandise, imported in the mails or otherwise, when the aggregate value of the shipment does not exceed such amount, not greater than \$1,250 as the Secretary of the Treasury shall specify in the regulations, and the specified amount may vary for different classes or kinds of merchandise or different classes of transactions, except that this paragraph does not apply to articles valued in excess of \$250 classified in—

“(A) chapters 50 through 63;

“(B) chapters 39 through 43, 61 through 65, 67 and 95; and

“(C) subchapters III and IV of chapter 99; of the Harmonized Tariff Schedule of the United States, or to any other article for which formal entry is required without regard to value.”

Subsec. (a)(2). Pub. L. 103-182, §662(2), substituted “such amounts as the Secretary may prescribe” for “\$10,000” in introductory provisions.

1988—Subsec. (a)(1). Pub. L. 100-418, substituted “the Harmonized Tariff Schedule of the United States” for “the Tariff Schedules of the United States” in closing provisions, added subpars. (A) to (C), and struck out former subpars. (A) to (C) which read as follows:

“(A) schedule 3,

“(B) parts 1, 4A, 7B, 12A, 12D, and 13B of schedule 7, and

“(C) parts 2 and 3 of the Appendix.”

1984—Subsec. (a)(1). Pub. L. 98-573 substituted “\$1,250” for “\$250” and inserted provision that this paragraph does not apply to articles valued in excess of \$250 classified in schedule 3, parts 1, 4A, 7B, 12A, 12D, and 13B of schedule 7, and parts 2 and 3 of the Appendix, of the Tariff Schedules, or to any other article for which formal entry is required without regard to value.

1980—Subsec. (a). Pub. L. 96-609 added par. (2) and redesignated former pars. (2) to (11) as (3) to (12), respectively.

1953—Subsec. (a)(1). Act Aug. 8, 1953, §16(d), increased valuation figure with respect to informal entries from \$100 to \$250, and inserted provisions with respect to possible variation for different classes or kinds of merchandise and different classes of transactions.

Subsec. (a)(11). Act Aug. 8, 1953, §16(e), substituted “paragraph 1631 of section 1201 of this title” for “sections 472 to 574 of this title”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100-418, set out as an Effective Date note under section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98-573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

CUSTOMS DECLARATIONS; PROXIMITY OF LIVESTOCK

Pub. L. 108-90, title V, §513, Oct. 1, 2003, 117 Stat. 1154, provided that: “For fiscal year 2004 and thereafter,

none of the funds appropriated or otherwise made available to the Department of Homeland Security may be used for the production of customs declarations that do not inquire whether the passenger had been in the proximity of livestock.”

§ 1499. Examination of merchandise

(a) Entry examination

(1) In general

Imported merchandise that is required by law or regulation to be inspected, examined, or appraised shall not be delivered from customs custody (except under such bond or other security as may be prescribed by the Secretary to assure compliance with all applicable laws, regulations, and instructions which the Secretary or the Customs Service is authorized to enforce) until the merchandise has been inspected, appraised, or examined and is reported by the Customs Service to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States.

(2) Examination

The Customs Service—

(A) shall designate the packages or quantities of merchandise covered by any invoice or entry which are to be opened and examined for the purpose of appraisement or otherwise;

(B) shall order such packages or quantities to be sent to such place as is designated by the Secretary by regulation for such purpose;

(C) may require such additional packages or quantities as the Secretary considers necessary for such purpose; and

(D) shall inspect a sufficient number of shipments, and shall examine a sufficient number of entries, to ensure compliance with the laws enforced by the Customs Service.

(3) Unspecified articles

If any package contains any article not specified in the invoice or entry and, in the opinion of the Customs Service, the article was omitted from the invoice or entry—

(A) with fraudulent intent on the part of the seller, shipper, owner, agent, importer of record, or entry filer, the contents of the entire package in which such article is found shall be subject to seizure; or

(B) without fraudulent intent, the value of the article shall be added to the entry and the duties, fees, and taxes thereon paid accordingly.

(4) Deficiency

If a deficiency is found in quantity, weight, or measure in the examination of any package, the person finding the deficiency shall make a report thereof to the Customs Service. The Customs Service shall make allowance for the deficiency in the liquidation of duties.

(5) Information required for release

If an examination is conducted, any information required for release shall be provided, either electronically or in paper form, to the Customs Service at the port of examination.

The absence of such information does not limit the authority of the Customs Service to conduct an examination.

(b) Testing laboratories

(1) Accreditation of private testing laboratories

The Customs Service shall establish and implement a procedure, under regulations promulgated by the Secretary, for accrediting private laboratories within the United States which may be used to perform tests (that would otherwise be performed by Customs Service laboratories) to establish the characteristics, quantities, or composition of imported merchandise. Such regulations—

(A) shall establish the conditions required for the laboratories to receive and maintain accreditation for purposes of this subsection;

(B) shall establish the conditions regarding the suspension and revocation of accreditation, which may include the imposition of a monetary penalty not to exceed \$100,000 and such penalty is in addition to the recovery, from a gauger or laboratory accredited under paragraph (1), of any loss of revenue that may have occurred, but the Customs Service—

(i) may seek to recover lost revenue only in cases where the gauger or laboratory intentionally falsified the analysis or gauging report in collusion with the importer; and

(ii) shall neither assess penalties nor seek to recover lost revenue because of a good faith difference of professional opinion; and

(C) may provide for the imposition of a reasonable charge for accreditation and periodic reaccreditation.

The collection of any charge for accreditation and reaccreditation under this section is not prohibited by section 58c(e)(6) of this title.

(2) Appeal of adverse accreditation decisions

A laboratory applying for accreditation, or that is accredited, under this section may contest any decision or order of the Customs Service denying, suspending, or revoking accreditation, or imposing a monetary penalty, by commencing an action in accordance with chapter 169 of title 28 in the Court of International Trade within 60 days after issuance of the decision or order.

(3) Testing by accredited laboratories

When requested by an importer of record of merchandise, the Customs Service shall authorize the release to the importer of a representative sample of the merchandise for testing, at the expense of the importer, by a laboratory accredited under paragraph (1). The testing results from a laboratory accredited under paragraph (1) that are submitted by an importer of record with respect to merchandise in an entry shall, in the absence of testing results obtained from a Customs Service laboratory, be accepted by the Customs Service if the importer of record certifies that the sample tested was taken from the merchandise in the entry. Nothing in this subsection shall be construed to limit in any way or preclude the

authority of the Customs Service to test or analyze any sample or merchandise independently.

(4) Availability of testing procedure, methodologies, and information

Testing procedures and methodologies used by the Customs Service, and information resulting from any testing conducted by the Customs Service, shall be made available as follows:

(A) Testing procedures and methodologies shall be made available upon request to any person unless the procedures or methodologies are—

(i) proprietary to the holder of a copyright or patent related to such procedures or methodologies, or

(ii) developed by the Customs Service for enforcement purposes.

(B) Information resulting from testing shall be made available upon request to the importer of record and any agent thereof unless the information reveals information which is—

(i) proprietary to the holder of a copyright or patent; or

(ii) developed by the Customs Service for enforcement purposes.

(5) Miscellaneous provisions

For purposes of this subsection—

(A) any reference to a private laboratory includes a reference to a private gauger; and

(B) accreditation of private laboratories extends only to the performance of functions by such laboratories that are within the scope of those responsibilities for determinations of the elements relating to admissibility, quantity, composition, or characteristics of imported merchandise that are vested in, or delegated to, the Customs Service.

(c) Detentions

Except in the case of merchandise with respect to which the determination of admissibility is vested in an agency other than the Customs Service, the following apply:

(1) In general

Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented for customs examination, the Customs Service shall decide whether to release or detain the merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise.

(2) Notice of detention

The Customs Service shall issue a notice to the importer or other party having an interest in detained merchandise no later than 5 days, excluding weekends and holidays, after the decision to detain the merchandise is made. The notice shall advise the importer or other interested party of—

(A) the initiation of the detention;

(B) the specific reason for the detention;

(C) the anticipated length of the detention;

(D) the nature of the tests or inquiries to be conducted; and

(E) the nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention.

(3) Testing results

Upon request by the importer or other party having an interest in detained merchandise, the Customs Service shall provide the party with copies of the results of any testing conducted by the Customs Service on the merchandise and a description of the testing procedures and methodologies (unless such procedures or methodologies are proprietary to the holder of a copyright or patent or were developed by the Customs Service for enforcement purposes). The results and test description shall be in sufficient detail to permit the duplication and analysis of the testing and the results.

(4) Seizure and forfeiture

If otherwise provided by law, detained merchandise may be seized and forfeited.

(5) Effect of failure to make determination

(A) The failure by the Customs Service to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for customs examination, or such longer period if specifically authorized by law, shall be treated as a decision of the Customs Service to exclude the merchandise for purposes of section 1514(a)(4) of this title.

(B) For purposes of section 1581 of title 28, a protest against the decision to exclude the merchandise which has not been allowed or denied in whole or in part before the 30th day after the day on which the protest was filed shall be treated as having been denied on such 30th day.

(C) Notwithstanding section 2639 of title 28, once an action respecting a detention is commenced, unless the Customs Service establishes by a preponderance of the evidence that an admissibility decision has not been reached for good cause, the court shall grant the appropriate relief which may include, but is not limited to, an order to cancel the detention and release the merchandise.

(June 17, 1930, ch. 497, title IV, § 499, 46 Stat. 728; June 25, 1938, ch. 679, §§ 15, 16(a), 52 Stat. 1084; Pub. L. 91-271, title III, § 301(k), June 2, 1970, 84 Stat. 289; Pub. L. 103-182, title VI, § 613(a), Dec. 8, 1993, 107 Stat. 2171.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 499, 42 Stat. 965. That section was superseded by section 499 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision prohibiting delivery of merchandise liable to be inspected or appraised, until it had been inspected or appraised, or until the packages sent to be inspected or appraised, should be found correctly invoiced, and be so reported, with a further provision as to the taking of bonds conditioned for delivery of the merchandise, and the forfeiture of such bonds, was contained in R.S. § 2899.

Provisions substantially similar to those in this section concerning the number of packages to be examined (not including the provision for designation of a less

number by the Secretary of the Treasury) and concerning packages found to contain articles not specified in the invoice, with a further provision for remission of the forfeiture, were contained in R.S. § 2901.

A prior provision, concerning deficiencies somewhat similar to that in this section, was contained in R.S. § 2921.

A special provision concerning the number of packages to be examined and appraised at the port of New York was contained in R.S. § 2939.

A provision concerning returns by weighers, gaugers, and measurers, was contained in R.S. § 2890.

All of the foregoing sections of the Revised Statutes were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Pub. L. 103-182 amended section generally, substituting present provisions for provisions which required imported merchandise to be inspected, examined, appraised, and reported by appropriate customs officer to have been truly and correctly invoiced and found to comply with requirements of laws of the United States prior to release of such merchandise from customs custody.

1970—Pub. L. 91-271 substituted references to appropriate customs officer or such officer for references to collector or appraiser wherever appearing, and struck out references to duties of appraiser.

1938—Act June 25, 1938, amended section generally and among other changes inserted provision relating to invalidity of appraisements made after effective date of Customs Administrative Act of 1938.

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.

EXISTING LABORATORIES

Section § 613(b) of Pub. L. 103-182 provided that: "Accreditation under section 499(b) of the Tariff Act of 1930 [19 U.S.C. 1499(b)] (as added by subsection (a)) is not required for any private laboratory (including any gauger) that was accredited or approved by the Customs Service as of the day before the date of the enactment of this Act [Dec. 8, 1993]; but any such laboratory is subject to reaccreditation under the provisions of such section and the regulations promulgated thereunder."

§ 1500. Appraisal, classification, and liquidation procedure

The Customs Service shall, under rules and regulations prescribed by the Secretary—

- (a) fix the final appraisal of merchandise by ascertaining or estimating the value thereof, under section 1401a of this title, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, other document to the contrary notwithstanding;
- (b) fix the final classification and rate of duty applicable to such merchandise;
- (c) fix the final amount of duty to be paid on such merchandise and determine any increased or additional duties, taxes, and fees due or any excess of duties, taxes, and fees deposited;
- (d) liquidate the entry and reconciliation, if any, of such merchandise; and
- (e) give or transmit, pursuant to an electronic data interchange system, notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall by regulation prescribe.

(June 17, 1930, ch. 497, title IV, § 500, 46 Stat. 729; Aug. 2, 1956, ch. 887, § 4(b), 70 Stat. 948; Pub. L. 91-271, title II, § 204(a), June 2, 1970, 84 Stat. 283; Pub. L. 96-39, title II, § 202(a)(4), July 26, 1979, 93 Stat. 202; Pub. L. 103-182, title VI, § 638, Dec. 8, 1993, 107 Stat. 2203.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 500, 42 Stat. 965. That section was superseded by section 500 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions dealing with the subject matter of subdivision (a) of this section were contained in act Oct. 3, 1913, ch. 16, § III, K, 38 Stat. 185, reenacting without change the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, § 10, 26 Stat. 136, as reenacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 97. A provision somewhat similar to subdivision (a)(5) of this section was contained in section III, M, of the 1913 act, the provisions of which were substituted for provisions of the same nature contained in section 13 of the Customs Administrative Act of June 10, 1890, as amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 99. Said section III of the 1913 act was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

R.S. §§ 2609, 2610, relative to merchant appraisers, were superseded by the provisions relating to appraisers and appraisements in the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 131, and later acts, and were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

R.S. § 2902 prescribed the mode of appraisal of merchandise, prior to repeal by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141.

R.S. § 2911 required appraisers to adopt the value of the best article in a package containing articles wholly or in part of wool or cotton of similar kind but different quality, charged at an average price, and R.S. § 2912 related to appraisal of wool of different qualities when imported in the same bale, bag, or package, and of bales of different qualities when embraced in the same invoice, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

R.S. § 2945 imposed a penalty on any merchant chosen by the collector to make any appraisal required under any act respecting imports and tonnage, who should, after due notice, decline or neglect to assess at

such appraisal. This section was repealed by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141, and was again repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

R.S. § 2946 related to the ascertainment of value at ports where there were no appraisers, prior to repeal by section 642 of the act of Sept. 21, 1922, ch. 356.

A prior provision similar to subdivision (b) was contained in act Oct. 3, 1913, ch. 16, § III, M, 38 Stat. 186, the provisions of which were substitutes for those of the Customs Administrative Act of June 10, 1890, ch. 407, § 13, 26 Stat. 136, as amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 99. Section III, M, was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

An earlier provision on the subject was contained in R.S. § 2929, prior to repeal by Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141.

Somewhat similar to subdivision (d), R.S. § 2943 provided that one of the assistant appraisers at the port of New York should be detailed for the supervision of examination of merchandise damaged on the voyage of importation, and to make examinations and appraisals and to report, etc. It was repealed, with R.S. § 2927, which provided for appraisal of such goods, and other sections, by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141, reenacted and designated as section 28 by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 104.

AMENDMENTS

1993—Pub. L. 103-182, § 638(1), substituted “The Customs Service” for “The appropriate customs officer” in introductory provisions.

Subd. (a). Pub. L. 103-182, § 638(2), substituted “fix the final appraisal of” for “appraise”.

Subd. (b). Pub. L. 103-182, § 638(3), substituted “fix the final” for “ascertain the”.

Subd. (c). Pub. L. 103-182, § 638(4), inserted “final” after “fix the” and “, taxes, and fees” after “duties” in two places.

Subds. (d) and (e). Pub. L. 103-182, § 638(5), amended subs. (d) and (e) generally. Prior to amendment, subs. (d) and (e) read as follows:

“(d) liquidate the entry of such merchandise; and
“(e) give notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall prescribe in such regulations.”

1979—Subd. (a). Pub. L. 96-39 substituted “by ascertaining or estimating the value thereof, under section 1401a of this title, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, or other document” for “in the unit of quantity in which the merchandise is usually bought and sold by ascertaining or estimating the value thereof by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, or other document”.

1970—Pub. L. 91-271 struck out “(a)” preceding first sentence and, in such provisions, as so redesignated, substituted provisions which set forth the customs functions to be performed by the appropriate customs officer for provisions which set forth the customs functions to be performed by the appraiser, and struck out subs. (b) to (f), which allocated specific customs functions to appraisers, assistant and deputy appraisers, and examiners, and authorized the designation of acting appraisers where necessary.

1956—Subd. (f). Act Aug. 2, 1956, struck out “take the oath,” before “perform all the duties” in second sentence, and struck out comma after “perform all duties”.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective July 1, 1980, see section 204(a) of Pub. L. 96-39, set out as a note under section 1401a of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 203 of Pub. L. 91-271 provided that: “Titles II and III of this Act [see Short Title of 1970 Amendment

note set out under section 1654 of this title] shall take effect with respect to articles entered, or withdrawn, from warehouse for consumption, on or after October 1, 1970, and such other articles entered or withdrawn from warehouse for consumption prior to such date, the appraisal of which has not become final before October 1, 1970, and for which an appeal for reappraisal has not been timely filed with the Bureau of Customs [now the United States Customs Service] before October 1, 1970, or with respect to which a protest has not been disallowed in whole or in part before October 1, 1970.”

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(l), 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 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.

§ 1501. Voluntary reliquidations by Customs Service

A liquidation made in accordance with section 1500 or 1504 of this title or any reliquidation thereof made in accordance with this section may be reliquidated in any respect by the Customs Service, notwithstanding the filing of a protest, within ninety days from the date on which notice of the original liquidation is given or transmitted to the importer, his consignee or agent. Notice of such reliquidation shall be given or transmitted in the manner prescribed with respect to original liquidations under section 1500(e) of this title.

(June 17, 1930, ch. 497, title IV, § 501, 46 Stat. 730; June 25, 1938, ch. 679, § 16(b), 52 Stat. 1084; June 25, 1948, ch. 646, §§ 25, 39, 62 Stat. 990, 992; Aug. 8, 1953, ch. 397, § 18(c), 67 Stat. 517; Pub. L. 91-271, title II, § 205, June 2, 1970, 84 Stat. 283; Pub. L. 103-182, title VI, § 639, Dec. 8, 1993, 107 Stat. 2203; Pub. L. 108-429, title II, § 2107, Dec. 3, 2004, 118 Stat. 2598.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 501, 42 Stat. 966. That section was superseded by section 501 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions for appeals to reappraisal and for a further appeal to be assigned to a board of general appraisers, with further provisions as to the fee to be paid, the proceedings on appeal, and the conclusiveness of decisions, were contained in act Oct. 3, 1913, ch. 16, § III, M, 38 Stat. 186, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

The provisions of section III, M, of the 1913 act, were substituted for provisions of the same nature made by the Customs Administrative Act of June 10, 1890, ch. 407, § 13, 26 Stat. 136, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 99.

Provisions similar to some extent to those in section 13 of the Customs Administrative Act of 1890 were contained in R.S. §§ 2929, 2930, prior to repeal by section 29 of that Act.

R.S. § 2950 provided that the certificate of the appraiser should be deemed to be the appraisal. It was superseded by the provisions relating to appraisers made by the Customs Administrative Act of June 10, 1890, ch. 407, § 13, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, and the Underwood Tariff Act of Oct. 3, 1913, ch. 16, § III, M, 38 Stat. 186, and was repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

2004—Pub. L. 108-429 inserted “or 1504” after “section 1500” in first sentence.

1993—Pub. L. 103-182 amended section catchline generally, substituting “Customs Service” for “appropriate customs officer; notice”, and in text substituted “the Customs Service” for “the appropriate customs officer on his own initiative” and inserted “or transmitted” after “given” in two places.

1970—Pub. L. 91-271 struck out “(a)” preceding first sentence and, in such provisions, as so redesignated, substituted provisions authorizing a reliquidation in any respect by the appropriate customs officer on his own initiative for a liquidation made in accordance with section 1500 of this title or any reliquidation thereof made in accordance with this section for provisions setting forth the procedure for an appeal for a reappraisal by the collector or the consignee.

1953—Subsec. (a). Act. Aug. 8, 1953, inserted cl. (3) and “including all determinations entering into the same,” in second sentence, and struck out third sentence which provided that “No such appeal filed by the consignee or his agent shall be deemed valid, unless he has complied with all the provisions of this chapter relating to the entry and appraisal of such merchandise”.

1948—Subsec. (a). Act June 25, 1948, struck out fourth sentence and substituted new fourth sentence, and repealed the fifth, sixth, seventh, and eighth sentences dealing with review by Customs Court of Reappraisements of this material. See section 1582 of Title 28, Judiciary and Judicial Procedure.

Subsecs. (b) and (c), relating to practice and procedure in Customs Court, were repealed by Act June 25, 1948. See sections 2631 to 2637 of Title 28, Judiciary and Judicial Procedure.

1938—Act June 25, 1938, designated paragraphs as subsecs. (a) and (b) and added subsec. (c).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-429 applicable to merchandise entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 3, 2004, see section 2108 of Pub. L. 108-429, set out as a note under section 1401 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 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise spe-

cially 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 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.

§ 1502. Regulations for appraisement and classification

(a) Powers of Secretary of the Treasury

The Secretary of the Treasury shall establish and promulgate such rules and regulations not inconsistent with the law (including regulations establishing procedures for the issuance of binding rulings prior to the entry of the merchandise concerned), and may disseminate such information as may be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon at the various ports of entry. The Secretary may direct any customs officer to go from one port of entry to another for the purpose of appraising or classifying or assisting in appraising or classifying merchandise imported at any port, and may direct any customs officer at any port to review entries of merchandise filed at any other port.

(b) Duties of customs officers

It shall be the duty of all officers of the customs to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws; and in case any difficulty arises as to the true construction or meaning of any part of the revenue laws, the decision of the Secretary shall be binding upon all officers of the customs.

(June 17, 1930, ch. 497, title IV, § 502, 46 Stat. 731; Pub. L. 91-271, title III, § 301(*l*), June 2, 1970, 84 Stat. 289; Pub. L. 96-417, title VI, § 601(3), Oct. 10, 1980, 94 Stat. 1744; Pub. L. 100-449, title IV, § 403(a), Sept. 28, 1988, 102 Stat. 1884; Pub. L. 103-182, title IV, § 412(a), title VI, § 640, Dec. 8, 1993, 107 Stat. 2146, 2203.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 502, 42 Stat. 967. That section was superseded by section 502 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision, authorizing the Secretary of the Treasury to direct appraisers for any collection district, to attend in any other collection district, was contained in R.S. § 2947. Prior provisions requiring the Secretary to establish rules and regulations to secure a

just, faithful, and impartial appraisal, just and proper entries, and to report such rules and regulations to the next session of Congress, were contained in R.S. § 2949. Both of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

Provisions similar to those in subsec. (b) of this section, except that reversal or modification was permitted in concurrence with a judicial decision of a circuit or district court, instead of a final decision of the Board of General Appraisers, were contained in act Mar. 3, 1875, ch. 136, § 2, 18 Stat. 469, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

Provisions almost identical with those in subsec. (c) of this section were contained in R.S. § 2652, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-182, § 640(1), inserted “(including regulations establishing procedures for the issuance of binding rulings prior to the entry of the merchandise concerned)” after “law”, substituted “ports of entry. The Secretary” for “ports of entry, and”, inserted “or classifying” after “appraising” in two places, and substituted “any port, and may direct any customs officer at any port to review entries of merchandise filed at any other port” for “such port”.

Subsec. (b). Pub. L. 103-182, § 640(2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “No ruling or decision once made by the Secretary of the Treasury, giving construction to any law imposing customs duties, shall be reversed or modified adversely to the United States, by the same or a succeeding Secretary, except in concurrence with an opinion of the Attorney General recommending the same, a final decision of the United States Court of International Trade, or a final decision of a binational panel pursuant to article 1904 of the United States-Canada Free-Trade Agreement.”

Pub. L. 103-182, § 412(a), which directed the insertion of “the North American Free Trade Agreement or” before “the United States-Canada Free-Trade Agreement”, could not be executed because the words “the United States-Canada Free-Trade Agreement” did not appear in subsec. (b) subsequent to amendment by Pub. L. 103-182, § 640(2), effective Dec. 8, 1993. See above.

Subsec. (c). Pub. L. 103-182, § 640(2), redesignated subsec. (c) as (b).

1988—Subsec. (b). Pub. L. 100-449 substituted “a final decision of the United States Court of International Trade, or a final decision of a binational panel pursuant to article 1904 of the United States-Canada Free-Trade Agreement” for “or a final decision of the United States Court of International Trade”.

1980—Subsec. (b). Pub. L. 96-417 redesignated the United States Customs Court as the United States Court of International Trade.

1970—Subsec. (a). Pub. L. 91-271 substituted “customs officer” for “appraiser, deputy appraiser, assistant appraiser, or examiner of merchandise”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 412(a) 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], but not applicable to any final determination described in section 1516a(a)(1)(B) or (2)(B)(i), (ii), or (iii) of this title, notice of which is published in the Federal Register before such date, or to a determination described in section 1516a(a)(2)(B)(vi) of this title, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review, that was commenced before such date, see section 416 of Pub. L. 103-182, set out as an Effective Date note under section 3431 of this title.

Amendment by section 640 of Pub. L. 103-182 effective Dec. 8, 1993, see section 692 of Pub. L. 103-182, set out as a note under section 58c of this title.

EFFECTIVE AND TERMINATION DATES OF 1988
AMENDMENT

Amendment by Pub. L. 100-449 effective on date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100-449, set out in a note under section 2112 of this title.

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.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Treasury under subsec. (a) of this section, insofar as subsec. (a) of this section provides authority to issue regulations and disseminate information and insofar as Secretary of the Treasury had responsibility under sections 1303 and 1671 et seq. of this title for functions transferred to Secretary of Commerce by section 5(a)(1)(C) of Reorg. Plan No. 3 of 1979, transferred to Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, §5(a)(1)(F), 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, to be exercised in consultation with Secretary of the Treasury.

Functions of Secretary of the Treasury under subsec. (b) of this section, with respect to functions transferred to Secretary of Commerce in section 1303 and 1671 et seq. of this title by section 5(a)(1)(C) of Reorg. Plan No. 3 of 1979, transferred to Secretary of Commerce pursuant to section 5(a)(1)(F) of Reorg. Plan No. 3 of 1979.

Functions of all 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.

EFFECT OF TERMINATION OF NAFTA COUNTRY STATUS

For provisions relating to effect of termination of NAFTA country status on the provisions of sections 401 to 416 of Pub. L. 103-182, see section 3451 of this title.

§ 1503. Dutiable value

Except as provided in section 1520(c)¹ of this title (relating to reliquidations on the basis of authorized corrections of errors) or section 1562 of this title (relating to withdrawal from manipulating warehouses), the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty or rates based upon or regulated in any manner by the value of the merchandise, shall be the appraised value determined upon liquidation, in accordance with section 1500 of this title or any adjustment thereof made pursuant to section 1501 of this title. *Provided, however,* That if reliquidation is required pursuant to a final judgment or order of the United States Court of International Trade

which includes a reappraisal of imported merchandise, the basis for such assessment shall be the final appraised value determined by such court.

(June 17, 1930, ch. 497, title IV, §503, 46 Stat. 731; Aug. 8, 1953, ch. 397, §18(d), 67 Stat. 518; Pub. L. 91-271, title II, §206, June 2, 1970, 84 Stat. 284; Pub. L. 96-417, title VI, §601(4), Oct. 10, 1980, 94 Stat. 1744.)

REFERENCES IN TEXT

Section 1520(c) of this title, referred to in text, was repealed by Pub. L. 108-429, title II, §2105, Dec. 3, 2004, 118 Stat. 2598.

PRIOR PROVISIONS

Provisions somewhat similar to those in subsecs. (a) and (b) were contained in act Sept. 21, 1922, ch. 356, title IV, §503, 42 Stat. 967. Provisions similar to former subsec. (b) relating to entries pending reappraisal were contained in act Sept. 21, 1922, ch. 356, title IV, §489, 42 Stat. 962. Both of the acts of 1922 were in part superseded by act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A provision for assessment of duty on merchandise of different values when invoiced at an average price, was contained in R.S. §2910, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS

1980—Pub. L. 96-417 redesignated the United States Customs Court as the United States Court of International Trade.

1970—Pub. L. 91-271 substituted provisions that, except as provided in section 1520(c) or 1562 of this title, the basis for the assessment of duties on imported merchandise be the appraised value determined upon liquidation, in accordance with section 1500 of this title or any adjustment thereof pursuant to section 1501 of this title, and be the final appraised value where reliquidation is required pursuant to a final judgment or order of the United States Customs Court, for provisions that, except as provided in section 1562 of this title, the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty be the final appraised value, and provisions that for the purpose of determining the rate of duty assessed upon any merchandise when the rate is based upon or regulated in any manner by the value of the merchandise, the final appraised value, except as provided in section 1562 of this title, be taken as the value of merchandise.

1953—Subsec. (a). Act Aug. 8, 1953, struck out “and in subdivision (b) of this section” after reference to section 1562 of this title, “the entered value or” after “shall be”, and “whichever is higher” at the end.

Subsecs. (b), (c). Act Aug. 8, 1953, redesignated subsec. (c) as (b). Former subsec. (b), which related to entries pending reappraisal, was repealed by act Aug. 8, 1953.

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.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS
PROVISION

Amendment by act Aug. 8, 1953, effective on and after the thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

¹ See References in Text note below.

§ 1503a. Repealed. Aug. 8, 1953, ch. 397, § 18(e), 67 Stat. 518

Section, act July 12, 1932, ch. 473, 47 Stat. 657, related to the construction of former subsection (b) of section 1503 of this title, which was omitted by section 18(d) of act Aug. 8, 1953.

EFFECTIVE DATE OF REPEAL; SAVINGS PROVISION

Repeal effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

§ 1504. Limitation on liquidation

(a) Liquidation

(1) Entries for consumption

Unless an entry of merchandise for consumption is extended under subsection (b) of this section or suspended as required by statute or court order, except as provided in section 1675(a)(3) of this title, an entry of merchandise for consumption not liquidated within 1 year from—

- (A) the date of entry of such merchandise,
- (B) the date of the final withdrawal of all such merchandise covered by a warehouse entry,
- (C) the date of withdrawal from warehouse of such merchandise for consumption if, pursuant to regulations issued under section 1505(a) of this title, duties may be deposited after the filing of any entry or withdrawal from warehouse,
- (D) if a reconciliation is filed, or should have been filed, the date of the filing under section 1484 of this title or the date the reconciliation should have been filed, whichever is earlier; or
- (E)¹ if a reconfigured entry is filed under an import activity summary statement, the date the import activity summary statement is filed or should have been filed, whichever is earlier;

shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted by the importer of record. Notwithstanding section 1500(e) of this title, notice of liquidation need not be given of an entry deemed liquidated.

(2) Entries or claims for drawback

(A) In general

Except as provided in subparagraph (B) or (C), unless an entry or claim for drawback is extended under subsection (b) of this section or suspended as required by statute or court order, an entry or claim for drawback not liquidated within 1 year from the date of entry or claim shall be deemed liquidated at the drawback amount asserted by the claimant or claim. Notwithstanding section 1500(e) of this title, notice of liquidation need not be given of an entry deemed liquidated.

(B) Unliquidated imports

An entry or claim for drawback whose designated or identified import entries have not been liquidated and become final within the

1-year period described in subparagraph (A), or within the 1-year period described in subparagraph (C), shall be deemed liquidated upon the deposit of estimated duties on the unliquidated imported merchandise, and upon the filing with the Customs Service of a written request for the liquidation of the drawback entry or claim. Such a request must include a waiver of any right to payment or refund under other provisions of law. The Secretary of the Treasury shall prescribe any necessary regulations for the purpose of administering this subparagraph.

(C) Exception

An entry or claim for drawback filed before December 3, 2004, the liquidation of which is not final as of December 3, 2004, shall be deemed liquidated on the date that is 1 year after December 3, 2004, at the drawback amount asserted by the claimant at the time of the entry or claim.

(3) Payments or refunds

Payment or refund of duties owed pursuant to paragraph (1) or (2) shall be made to the importer of record or drawback claimant, as the case may be, not later than 90 days after liquidation.

(b) Extension

The Secretary of the Treasury may extend the period in which to liquidate an entry if—

- (1) the information needed for the proper appraisal or classification of the imported or withdrawn merchandise, or for determining the correct drawback amount, or for ensuring compliance with applicable law, is not available to the Customs Service; or
- (2) the importer of record or drawback claimant, as the case may be, requests such extension and shows good cause therefor.

The Secretary shall give notice of an extension under this subsection to the importer of record or drawback claimant, as the case may be, and the surety of such importer of record or drawback claimant. Notice shall be in such form and manner (which may include electronic transmittal) as the Secretary shall by regulation prescribe. Any entry the liquidation of which is extended under this subsection shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted by the importer of record, or the drawback amount asserted by the drawback claimant, at the expiration of 4 years from the applicable date specified in subsection (a) of this section.

(c) Notice of suspension

If the liquidation of any entry is suspended, the Secretary shall by regulation require that notice of the suspension be provided, in such manner as the Secretary considers appropriate, to the importer of record or drawback claimant, as the case may be, and to any authorized agent and surety of such importer of record or drawback claimant.

(d) Removal of suspension

Except as provided in section 1675(a)(3) of this title, when a suspension required by statute or court order is removed, the Customs Service

¹ See 2004 Amendment notes below.

shall liquidate the entry, unless liquidation is extended under subsection (b) of this section, within 6 months after receiving notice of the removal from the Department of Commerce, other agency, or a court with jurisdiction over the entry. Any entry (other than an entry with respect to which liquidation has been extended under subsection (b) of this section) not liquidated by the Customs Service within 6 months after receiving such notice shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted by the importer of record or (in the case of a drawback entry or claim) at the drawback amount asserted by the drawback claimant.

(June 17, 1930, ch. 497, title IV, §504, as added Pub. L. 95-410, title II, §209(a), Oct. 3, 1978, 92 Stat. 902; amended Pub. L. 98-573, title I, §191(d), Oct. 30, 1984, 98 Stat. 2971; Pub. L. 103-182, title VI, §641, Dec. 8, 1993, 107 Stat. 2204; Pub. L. 103-465, title II, §220(c), Dec. 8, 1994, 108 Stat. 4865; Pub. L. 104-295, §3(a)(7), Oct. 11, 1996, 110 Stat. 3516; Pub. L. 108-429, title I, §1563(e), title II, §2102, Dec. 3, 2004, 118 Stat. 2585, 2597.)

PRIOR PROVISIONS

A prior section 1504, act June 17, 1930, ch. 497, title IV, §504, 46 Stat. 732, related to duties on coverings and containers, prior to repeal by Pub. L. 87-456, title III, §301(a), May 24, 1962, 76 Stat. 75, effective, pursuant to section 501(a) of Pub. L. 87-456, with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963.

AMENDMENTS

2004—Pub. L. 108-429, §2102(2), struck out “at the time of entry” after “duties asserted” in subsec. (a)(1) (concluding provisions), after “asserted by the claimant” in subsec. (a)(2)(A), and after “of duty asserted” and “drawback amount asserted” in subsecs. (b) (concluding provisions) and (d).

Subsec. (a). Pub. L. 108-429, §2102(1), which directed striking “or” at end of par. (3), substituting “filed, whichever is earlier; or” for “filed;” in par. (4), and adding par. (5) after par. (4), was executed by striking “or” at end of par. (1)(C), substituting “filed, whichever is earlier; or” for “filed;” in par. (1)(D), and adding the text of par. (5) after par. (1)(D) and editorially redesignating it as par. (1)(E). Pub. L. 108-429, §2102(1), was technically incapable of execution subsequent to the amendments by Pub. L. 108-429, §1563(e)(1). See below.

Pub. L. 108-429, §1563(e)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “Unless an entry is extended under subsection (b) of this section or suspended as required by statute or court order, except as provided in section 1675(a)(3) of this title, an entry of merchandise not liquidated within one year from:

“(1) the date of entry of such merchandise;

“(2) the date of the final withdrawal of all such merchandise covered by a warehouse entry;

“(3) the date of withdrawal from warehouse of such merchandise for consumption where, pursuant to regulations issued under section 1505(a) of this title, duties may be deposited after the filing of an entry or withdrawal from warehouse; or

“(4) if a reconciliation is filed, or should have been filed, the date of the filing under section 1484 of this title or the date the reconciliation should have been filed;

shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer of record. Notwithstanding section 1500(e) of this title, notice of liquidation need not be given of an entry deemed liquidated.”

Subsec. (b). Pub. L. 108-429, §1563(e)(1), added subsec. (b) and struck out heading and text of former subsec.

(b). Text read as follows: “The Secretary may extend the period in which to liquidate an entry if—

“(1) the information needed for the proper appraisal or classification of the merchandise, or for insuring compliance with applicable law, is not available to the Customs Service; or

“(2) the importer of record requests such extension and shows good cause therefor.

The Secretary shall give notice of an extension under this subsection to the importer of record and the surety of such importer of record. Notice shall be in such form and manner (which may include electronic transmittal) as the Secretary shall by regulation prescribe. Any entry the liquidation of which is extended under this subsection shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record at the expiration of 4 years from the applicable date specified in subsection (a) of this section.”

Subsec. (c). Pub. L. 108-429, §1563(e)(2), inserted “or drawback claimant, as the case may be,” after “to the importer of record” and “or drawback claimant” after “of such importer of record”.

Subsec. (d). Pub. L. 108-429, §1563(e)(3), inserted “or (in the case of a drawback entry or claim) at the drawback amount asserted at the time of entry by the drawback claimant” before period at end.

1996—Subsec. (d). Pub. L. 104-295 inserted “, unless liquidation is extended under subsection (b) of this section,” after “shall liquidate the entry” in first sentence, and “(other than an entry with respect to which liquidation has been extended under subsection (b) of this section)” after “Any entry” in second sentence.

1994—Subsec. (a). Pub. L. 103-465, §220(c)(1), inserted “except as provided in section 1675(a)(3) of this title,” before “an entry of merchandise not liquidated” in introductory provisions.

Subsec. (d). Pub. L. 103-465, §220(c)(2), substituted “Except as provided in section 1675(a)(3) of this title, when a suspension” for “When a suspension”.

1993—Subsec. (a). Pub. L. 103-182, §641(1)(A), substituted “Unless an entry is extended under subsection (b) or suspended as required by statute or court order” for “Except as provided in subsection (b) of this section” in introductory provisions.

Subsec. (a)(4). Pub. L. 103-182, §641(1)(B)-(D), added par. (4).

Subsec. (b). Pub. L. 103-182, §641(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The Secretary may extend the period in which to liquidate an entry by giving notice of such extension to the importer of record in such form and manner as the Secretary shall prescribe in regulations, if—

“(1) information needed for the proper appraisal or classification of the merchandise is not available to the appropriate customs officer;

“(2) liquidation is suspended as required by statute or court order; or

“(3) the importer of record requests such extension and shows good cause therefor.”

Subsec. (c). Pub. L. 103-182, §641(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “If the liquidation of any entry is suspended, the Secretary shall, by regulation, require that notice of such suspension be provided to the importer of record concerned and to any authorized agent and surety of such importer of record.”

Subsec. (d). Pub. L. 103-182, §641(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) “Limitation” read as follows: “Any entry of merchandise not liquidated at the expiration of four years from the applicable date specified in subsection (a) of this section, shall be deemed liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record, unless liquidation continues to be suspended as required by statute or court order. When such a suspension of liquidation is removed, the entry shall be liquidated within 90 days therefrom.”

1984—Subsec. (a). Pub. L. 98-573, §191(d)(1), substituted “importer of record” for “importer, his consignee, or agent” in provisions following par. (3).

Subsec. (b). Pub. L. 98-573, §191(d)(2), substituted “importer of record” for “importer, his consignee, or agent” in provisions preceding par. (1), and substituted “importer of record” for “importer, consignee, or his agent” in par. (3).

Subsec. (c). Pub. L. 98-573, §191(d)(3), substituted “importer of record” for “importer or consignee” in two places.

Subsec. (d). Pub. L. 98-573, §191(d)(4), substituted “importer of record” for “importer, his consignee, or agent”.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-429, title I, §1563(g)(2), Dec. 3, 2004, 118 Stat. 2587, provided that: “The amendments made by subsection (e) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 3, 2004], and shall apply to—

“(A) any entry of merchandise for consumption or entry or claim for drawback filed on and after such date of enactment; and

“(B) any entry or claim for drawback filed before such date of enactment if the liquidation of the entry or claim is not final on such date of enactment.”

Amendment by section 2102 of Pub. L. 108-429 applicable to merchandise entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 3, 2004, see section 2103 of Pub. L. 108-429, set out as a note under section 1401 of this title.

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.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103-465, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 applicable with respect to articles entered on or after 15th day after Oct. 30, 1984, see section 195(a) of Pub. L. 98-573, set out as a note under section 1322 of this title.

EFFECTIVE DATE

Section 209(b) of Pub. L. 95-410 provided that: “The amendment made by this section [enacting this section] applies to the entry or withdrawal of merchandise for consumption on or after 180 days after the enactment of this Act [Oct. 3, 1978].”

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.

§ 1505. Payment of duties and fees

(a) Deposit of estimated duties and fees

Unless the entry is subject to a periodic payment referred to in this subsection or the mer-

chandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of entry, or at such later time as the Secretary may prescribe by regulation (but not later than 12 working days after entry or release) the amount of duties and fees estimated to be payable on such merchandise. As soon as a periodic payment module of the Automated Commercial Environment is developed, but no later than October 1, 2004, the Secretary shall promulgate regulations, after testing the module, permitting a participating importer of record to deposit estimated duties and fees for entries of merchandise, other than merchandise entered for warehouse, transportation, or under bond, no later than the 15 working days following the month in which the merchandise is entered or released, whichever comes first.

(b) Collection or refund of duties, fees, and interest due upon liquidation or reliquidation

The Customs Service shall collect any increased or additional duties and fees due, together with interest thereon, or refund any excess moneys deposited, together with interest thereon, as determined on a liquidation or reliquidation. Duties, fees, and interest determined to be due upon liquidation or reliquidation are due 30 days after issuance of the bill for such payment. Refunds of excess moneys deposited, together with interest thereon, shall be paid within 30 days of liquidation or reliquidation.

(c) Interest

Interest assessed due to an underpayment of duties, fees, or interest shall accrue, at a rate determined by the Secretary, from the date the importer of record is required to deposit estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. Interest on excess moneys deposited shall accrue, at a rate determined by the Secretary, from the date the importer of record deposits estimated duties, fees, and interest or, in a case in which a claim is made under section 1520(d) of this title, from the date on which such claim is made, to the date of liquidation or reliquidation of the applicable entry or reconciliation. The Secretary may prescribe an alternative mid-point interest accounting methodology, which may be employed by the importer, based upon aggregate data in lieu of accounting for such interest from each deposit data provided in this subsection.

(d) Delinquency

If duties, fees, and interest determined to be due or refunded are not paid in full within the 30-day period specified in subsection (b) of this section, any unpaid balance shall be considered delinquent and bear interest by 30-day periods, at a rate determined by the Secretary, from the date of liquidation or reliquidation until the full balance is paid. No interest shall accrue during the 30-day period in which payment is actually made.

(June 17, 1930, ch. 497, title IV, §505, 46 Stat. 732; Pub. L. 91-271, title II, §204(c), June 2, 1970, 84 Stat. 283; Pub. L. 95-410, title I, §103, Oct. 3, 1978, 92 Stat. 889; Pub. L. 97-446, title II, §201(e), Jan.

12, 1983, 96 Stat. 2350; Pub. L. 98-573, title II, §210(a), Oct. 30, 1984, 98 Stat. 2977; Pub. L. 103-182, title VI, §642(a), Dec. 8, 1993, 107 Stat. 2205; Pub. L. 104-295, §2(a), Oct. 11, 1996, 110 Stat. 3515; Pub. L. 106-36, title II, §2418(e), June 25, 1999, 113 Stat. 177; Pub. L. 106-476, title I, §1451, Nov. 9, 2000, 114 Stat. 2167; Pub. L. 107-210, div. A, title III, §383, Aug. 6, 2002, 116 Stat. 992; Pub. L. 108-429, title II, §2004(c), Dec. 3, 2004, 118 Stat. 2592.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §504, 42 Stat. 967. That section was superseded by section 505 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision that the collector or person acting as such should ascertain, fix, and liquidate the rate and amount of duties, and the dutiable costs and charges, was contained in act Oct. 3, 1913, ch. 16, §III, M, 38 Stat. 186, the provisions of which were substituted for provisions of the same nature contained in the Customs Administrative Act of June 10, 1890, ch. 407, §13, 26 Stat. 136, as amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 99.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-429, in first sentence, inserted “referred to in this subsection” after “subject to a periodic payment” and substituted “12 working days” for “10 working days” and, in second sentence, substituted “the Secretary shall promulgate regulations, after testing the module, permitting a participating importer of record to deposit estimated duties and fees for entries of merchandise, other than merchandise entered for warehouse, transportation, or under bond, no later than the 15 working days following the month in which the merchandise is entered or released, whichever comes first” for “a participating importer of record, or the importer’s filer, may deposit estimated duties and fees for entries of merchandise no later than the 15th day of the month following the month in which the merchandise is entered or released, whichever comes first”.

2002—Subsec. (a). Pub. L. 107-210 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “Unless merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of making entry, or at such later time as the Secretary may prescribe by regulation, the amount of duties and fees estimated to be payable thereon. Such regulations may provide that estimated duties and fees shall be deposited before or at the time an import activity summary statement is filed. If an import activity summary statement is filed, the estimated duties and fees shall be deposited together with interest, at a rate determined by the Secretary, accruing from the first date of the month the statement is required to be filed until the date such statement is actually filed.”

2000—Subsec. (c). Pub. L. 106-476 substituted “The Secretary may prescribe” for “For the period beginning on October 1, 1998, and ending on the date on which the ‘Revised National Customs Automation Test Regarding Reconciliation’ of the Customs Service is terminated, or October 1, 2000, whichever occurs earlier, the Secretary may prescribe” in last sentence.

1999—Subsec. (c). Pub. L. 106-36 inserted at end “For the period beginning on October 1, 1998, and ending on the date on which the ‘Revised National Customs Automation Test Regarding Reconciliation’ of the Customs Service is terminated, or October 1, 2000, whichever occurs earlier, the Secretary may prescribe an alternative mid-point interest accounting methodology, which may be employed by the importer, based upon aggregate data in lieu of accounting for such interest from each deposit data provided in this subsection.”

1996—Subsec. (c). Pub. L. 104-295 inserted “or, in a case in which a claim is made under section 1520(d) of this title, from the date on which such claim is made,” after “deposits estimated duties, fees, and interest”.

1993—Pub. L. 103-182 amended section generally, substituting provisions relating to deposit, collection or refund of duties, fees, and interest for provisions relating to deposit, collection, or refund of duties and interest.

1984—Subsec. (c). Pub. L. 98-573 added subsec. (c).

1983—Subsec. (a). Pub. L. 97-446 substituted “importer of record” for “consignee” before “shall deposit”.

1978—Subsec. (a). Pub. L. 95-410 authorized deposit of estimated duties to be made as prescribed by regulations after time of making entry but not later than thirty days after date of entry.

1970—Pub. L. 91-271 reorganized existing provisions into subsecs. (a) and (b), and struck out provisions authorizing receipt by a collector of various reports and the performance of certain functions in connection with the liquidation of an entry.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of this title on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107-210, set out as a note preceding section 2271 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-476, except as otherwise provided, applicable with respect to goods entered, or withdrawn from warehouse, for consumption, on or after the 15th day after Nov. 9, 2000, see section 1471 of Pub. L. 106-476, set out as a note under section 58c of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-36 effective 30 days after June 25, 1999, see section 2418(f) of Pub. L. 106-36, set out as a note under section 58c of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2(b) of Pub. L. 104-295 provided that: “The amendment made by subsection (a) [amending this section] shall apply to claims made pursuant to section 520(d) of the Tariff Act of 1930 (19 U.S.C. 1520(d)) on or after June 7, 1996.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective on 30th day after Oct. 30, 1984, see section 214(c)(5)(A) of Pub. L. 98-573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-446 applicable with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97-446, set out as a note under section 1484 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, as modified, set out as a note under section 542 of Title 6.

§ 1506. Allowance for abandonment and damage

Allowance shall be made in the estimation and liquidation of duties under regulations prescribed by the Secretary of the Treasury in the following cases:

(1) Abandonment within thirty days

Where the importer abandons to the United States, within thirty days after entry in the case of merchandise released without an examination, or within thirty days after the release in the case of merchandise sent to the Customs Service for examination, any imported merchandise representing 5 per centum or more of the total value of all the merchandise of the same class or kind entered in the invoice or entry in which the item appears, and delivers, within the applicable thirty-day period, the portion so abandoned to such place as the Customs Service directs unless the Customs Service is satisfied that the merchandise is so far destroyed as to be nondeliverable;

(2) Perishable merchandise, condemned

Where fruit or other perishable merchandise has been condemned at the port of entry, within ten days after landing, by the health officers or other legally constituted authorities, and the consignee, within five days after such condemnation, files, electronically or otherwise, with the Customs Service notice thereof, an invoiced description and the location thereof, and the name of the vessel or vehicle in which imported.

(June 17, 1930, ch. 497, title IV, § 506, 46 Stat. 732; Pub. L. 91-271, title III, § 301(m), June 2, 1970, 84 Stat. 289; Pub. L. 103-182, title VI, § 643, Dec. 8, 1993, 107 Stat. 2205.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, § III, X, 38 Stat. 190, re-enacting the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, § 23, 26 Stat. 140, as amended by Act May 17, 1898, ch. 341, 30 Stat. 417, and further amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 103. Section III of the 1913 act was superseded by act Sept. 21, 1922, ch. 356, title IV, § 505, 42 Stat. 967, and repealed by section 643 thereof. Section 505 of the 1922 act was superseded by section 506 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

R.S. § 2927 provided for the appraisal of articles damaged during the voyage, and for the allowances for such damages in estimating duties, prior to repeal by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141.

R.S. § 2928, providing for appraisement of merchandise taken from any wreck and of damages sustained during the course of the voyage, was superseded by the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, § 23, 26 Stat. 140, and repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Par. (1). Pub. L. 103-182, § 643(1), (2), substituted “merchandise released without an examination” for “merchandise not sent to the appraiser’s stores for examination”, struck out “of the examination packages or quantities of merchandise” after “thirty days after the release”, substituted “merchandise sent to the Customs Service” for “merchandise sent to the appraiser’s stores”, inserted “or entry” after “invoice”, and substituted “such place as the Customs Service” for “such

place as the appropriate customs officer” and “unless the Customs Service” for “unless such customs officer”.

Par. (2). Pub. L. 103-182, § 643(1), (3), inserted “, electronically or otherwise,” after “files” and substituted “the Customs Service notice” for “the appropriate customs officer written notice”.

1970—Par. (1). Pub. L. 91-271, § 301(m)(1), substituted references to appropriate customs officer or such customs officer for references to collector wherever appearing.

Par. (2). Pub. L. 91-271, § 301(m)(2), substituted reference to appropriate customs officer for reference to collector.

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.

§ 1507. Tare and draft**(a) In general**

The Secretary of the Treasury is authorized to prescribe and issue regulations for the ascertainment of tare upon imported merchandise, including the establishment of reasonable and just schedule tares therefor, but (except as otherwise provided in this section) there shall not be any allowance for draft or for impurities, other than excessive moisture and impurities not usually found in or upon such or similar merchandise.

(b) Crude oil and petroleum products

In ascertaining tare on imports of crude oil, and on imports of petroleum products, allowance shall be made for all detectable moisture and impurities present in, or upon, the imported crude oil or petroleum products.

(June 17, 1930, ch. 497, title IV, § 507, 46 Stat. 732; Pub. L. 100-418, title I, § 1902(a), Aug. 23, 1988, 102 Stat. 1312.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 506, 42 Stat. 968. That section was superseded by section 507 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision relative to the allowance of tare, prohibiting any allowance for draught, was contained in R.S. § 2898, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1988—Pub. L. 100-418 designated existing provision as subsec. (a), substituted “(except as otherwise provided in this section) there shall not be” for “in no case shall there be”, and added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1902(b) of Pub. L. 100-418, as amended by Pub. L. 100-647, title IX, § 9001(a)(18), Nov. 10, 1988, 102 Stat.

3808, provided that: “The amendment made by this section [amending this section] shall apply with respect to articles entered, or withdrawn from warehouse for consumption, after October 1, 1988.”

§ 1508. Recordkeeping

(a) Requirements

Any—

(1) owner, importer, consignee, importer of record, entry filer, or other party who—

(A) imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or

(B) knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

(2) agent of any party described in paragraph (1); or

(3) person whose activities require the filing of a declaration or entry, or both;

shall make, keep, and render for examination and inspection records (which for purposes of this section include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data) which—

(A) pertain to any such activity, or to the information contained in the records required by this chapter in connection with any such activity; and

(B) are normally kept in the ordinary course of business.

(b) Exportations to NAFTA countries

(1) Definitions

As used in this subsection—

(A) The term “associated records” means, in regard to an exported good under paragraph (2), records associated with—

(i) the purchase of, cost of, value of, and payment for, the good;

(ii) the purchase of, cost of, value of, and payment for, all material, including indirect materials, used in the production of the good; and

(iii) the production of the good.

For purposes of this subparagraph, the terms “indirect material”, “material”, “preferential tariff treatment”, “used”, and “value” have the respective meanings given them in articles 415 and 514 of the North American Free Trade Agreement.

(B) The term “NAFTA Certificate of Origin” means the certification, established under article 501 of the North American Free Trade Agreement, that a good qualifies as an originating good under such Agreement.

(2) Exports to NAFTA countries

(A) In general

Any person who completes and signs a NAFTA Certificate of Origin for a good for which preferential treatment under the North American Free Trade Agreement is claimed shall make, keep, and render for examination and inspection all records relating to the origin of the good (including the

Certificate or copies thereof) and the associated records.

(B) Claims for certain waivers, reductions, or refunds of duties or for credit against bonds

(i) In general

Any person that claims with respect to an article—

(I) a waiver or reduction of duty under the eleventh paragraph of section 1311 of this title, section 1312(b)(1) or (4) of this title, section 1562(2) of this title, or the proviso preceding the last proviso to section 81c(a) of this title;

(II) a credit against a bond under section 1312(d) of this title; or

(III) a refund, waiver, or reduction of duty under section 1313(n)(2) or (o)(1) of this title;

must disclose to the Customs Service the information described in clause (ii).

(ii) Information required

Within 30 days after making a claim described in clause (i) with respect to an article, the person making the claim must disclose to the Customs Service whether that person has prepared, or has knowledge that another person has prepared, a NAFTA Certificate of Origin for the article. If after such 30-day period the person making the claim either—

(I) prepares a NAFTA Certificate of Origin for the article; or

(II) learns of the existence of such a Certificate for the article;

that person, within 30 days after the occurrence described in subclause (I) or (II), must disclose the occurrence to the Customs Service.

(iii) Action on claim

If the Customs Service determines that a NAFTA Certificate of Origin has been prepared with respect to an article for which a claim described in clause (i) is made, the Customs Service may make such adjustments regarding the previous customs treatment of the article as may be warranted.

(3) Exports under the Canadian agreement

Any person who exports, or who knowingly causes to be exported, any merchandise to Canada during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada shall make, keep, and render for examination and inspection such records (including certifications of origin or copies thereof) which pertain to the exportations.

(c) Period of time

The records required by subsections (a) and (b) of this section shall be kept for such periods of time as the Secretary shall prescribe; except that—

(1) no period of time for the retention of the records required under subsection (a) or (b)(3)

of this section may exceed 5 years from the date of entry, filing of a reconciliation, or exportation, as appropriate;

(2) the period of time for the retention of the records required under subsection (b)(2) of this section shall be at least 5 years from the date of signature of the NAFTA Certificate of Origin; and

(3) records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim.

(d) Limitation

For the purposes of this section and section 1509 of this title, a person ordering merchandise from an importer in a domestic transaction does not knowingly cause merchandise to be imported unless—

(1) the terms and conditions of the importation are controlled by the person placing the order; or

(2) technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with knowledge that they will be used in the manufacture or production of the imported merchandise.

(e) Subsection (b) penalties

(1) Relating to NAFTA exports

Any person who fails to retain records required by paragraph (2) of subsection (b) of this section or the regulations issued to implement that paragraph shall be liable for—

- (A) a civil penalty not to exceed \$10,000; or
- (B) the general recordkeeping penalty that applies under the customs laws;

whichever penalty is higher.

(2) Relating to Canadian agreement exports

Any person who fails to retain the records required by paragraph (3) of subsection (b) of this section or the regulations issued to implement that paragraph shall be liable for a civil penalty not to exceed \$10,000.

(f) Certificates of Origin for goods exported under the United States-Chile Free Trade Agreement

(1) Definitions

In this subsection:

(A) Records and supporting documents

The term “records and supporting documents” means, with respect to an exported good under paragraph (2), records and documents related to the origin of the good, including—

- (i) the purchase, cost, and value of, and payment for, the good;
- (ii) if applicable, the purchase, cost, and value of, and payment for, all materials, including recovered goods, used in the production of the good; and
- (iii) if applicable, the production of the good in the form in which it was exported.

(B) Chile FTA Certificate of Origin

The term “Chile FTA Certificate of Origin” means the certification, established under article 4.13 of the United States-Chile Free Trade Agreement, that a good qualifies

as an originating good under such Agreement.

(2) Exports to Chile

Any person who completes and issues a Chile FTA Certificate of Origin for a good exported from the United States shall make, keep, and, pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection all records and supporting documents related to the origin of the good (including the Certificate or copies thereof).

(3) Retention period

Records and supporting documents shall be kept by the person who issued a Chile FTA Certificate of Origin for at least 5 years after the date on which the certificate was issued.

(g) Certifications of origin for goods exported under the Dominican Republic-Central America-United States Free Trade Agreement

(1) Definitions

In this subsection:

(A) Records and supporting documents

The term “records and supporting documents” means, with respect to an exported good under paragraph (2), records and documents related to the origin of the good, including—

- (i) the purchase, cost, and value of, and payment for, the good;
- (ii) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and
- (iii) the production of the good in the form in which it was exported.

(B) CAFTA-DR certification of origin

The term “CAFTA-DR certification of origin” means the certification established under article 4.16 of the Dominican Republic-Central America-United States Free Trade Agreement that a good qualifies as an originating good under such Agreement.

(2) Exports to CAFTA-DR countries

Any person who completes and issues a CAFTA-DR certification of origin for a good exported from the United States shall make, keep, and, pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection all records and supporting documents related to the origin of the good (including the certification or copies thereof).

(3) Retention period

Records and supporting documents shall be kept by the person who issued a CAFTA-DR certification of origin for at least 5 years after the date on which the certification was issued.

(h) Certifications of origin for goods exported under the United States-Peru Trade Promotion Agreement

(1) Definitions

In this subsection:

(A) Records and supporting documents

The term “records and supporting documents” means, with respect to an exported

good under paragraph (2), records and documents related to the origin of the good, including—

- (i) the purchase, cost, and value of, and payment for, the good;
- (ii) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and
- (iii) the production of the good in the form in which it was exported.

(B) PTPA certification of origin

The term “PTPA certification of origin” means the certification established under article 4.15 of the United States-Peru Trade Promotion Agreement that a good qualifies as an originating good under such Agreement.

(2) Exports to Peru

Any person who completes and issues a PTPA certification of origin for a good exported from the United States shall make, keep, and, pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection all records and supporting documents related to the origin of the good (including the certification or copies thereof).

(3) Retention period

The person who issues a PTPA certification of origin shall keep the records and supporting documents relating to that certification of origin for a period of at least 5 years after the date on which the certification is issued.

(i) Penalties

Any person who fails to retain records and supporting documents required by subsection (f), (g), or (h) of this section or the regulations issued to implement any such subsection shall be liable for the greater of—

- (1) a civil penalty not to exceed \$10,000; or
- (2) the general record keeping penalty that applies under the customs laws of the United States.

(June 17, 1930, ch. 497, title IV, § 508, as added Pub. L. 95-410, title I, § 104, Oct. 3, 1978, 92 Stat. 889; amended Pub. L. 100-449, title II, § 205(b), Sept. 28, 1988, 102 Stat. 1864; Pub. L. 103-182, title II, § 205(a), title VI, § 614, Dec. 8, 1993, 107 Stat. 2093, 2174; Pub. L. 104-295, § 3(a)(6)(B), Oct. 11, 1996, 110 Stat. 3515; Pub. L. 108-77, title II, §§ 207, 209, Sept. 3, 2003, 117 Stat. 931, 933; Pub. L. 109-53, title II, § 208, Aug. 2, 2005, 119 Stat. 485; Pub. L. 110-138, title II, § 207, Dec. 14, 2007, 121 Stat. 1476.)

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 107(c) of Pub. L. 108-77, see Effective and Termination Dates of 2003 Amendment note below.

PRIOR PROVISIONS

A prior section 1508, acts June 17, 1930, ch. 497, title IV, § 508, 46 Stat. 732; Aug. 8, 1953, ch. 397, § 19, 67 Stat.

518, related to commingling of goods, prior to repeal by Pub. L. 87-456, title III, § 301(a), May 24, 1962, 76 Stat. 75, effective, pursuant to section 501(a) of Pub. L. 87-456, with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963.

AMENDMENTS

2007—Subsec. (h). Pub. L. 110-138, §§ 107(c), 207(2), temporarily added subsec. (h). Former subsec. (h) redesignated (i). See Effective and Termination Dates of 2007 Amendment note below.

Subsec. (i). Pub. L. 110-138, §§ 107(c), 207(1), (3), temporarily redesignated subsec. (h) as (i) and, in introductory provisions, substituted “(f), (g), or (h)” for “(f) or (g)” and “any such subsection” for “either such subsection”. See Effective and Termination Dates of 2007 Amendment note below.

2005—Subsec. (g). Pub. L. 109-53, §§ 107(d), 208(2), temporarily added subsec. (g). Former subsec. (g) redesignated (h). See Effective and Termination Dates of 2005 Amendment note below.

Subsec. (h). Pub. L. 109-53, §§ 107(d), 208(1), (3), temporarily redesignated subsec. (g) as (h) and, in introductory provisions, inserted “or (g)” after “(f)” and substituted “either such subsection” for “that subsection”. See Effective and Termination Dates of 2005 Amendment note below.

2003—Subsec. (b). Pub. L. 108-77, §§ 107(c), 207(1), temporarily substituted “Exportations to NAFTA countries” for “Exportations to free trade countries” in heading. See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (b)(2)(B)(i)(I). Pub. L. 108-77, §§ 107(c), 209, temporarily substituted “the eleventh paragraph of section 1311 of this title” for “the last paragraph of section 1311 of this title” and “the proviso preceding the last proviso to section 81c(a) of this title” for “the last proviso to section 81c(a) of this title”. See Effective and Termination Dates of 2003 Amendment note below.

Subsecs. (f), (g). Pub. L. 108-77, §§ 107(c), 207(2), temporarily added subsecs. (f) and (g). See Effective and Termination Dates of 2003 Amendment note below.

1996—Subsec. (c)(1). Pub. L. 104-295 inserted “, filing of a reconciliation,” after “entry”.

1993—Subsec. (a). Pub. L. 103-182, § 614(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Any owner, importer, consignee, or agent thereof who imports, or who knowingly causes to be imported, any merchandise into the customs territory of the United States shall make, keep, and render for examination and inspection such records (including statements, declarations, and other documents) which—

“(1) pertain to any such importation, or to the information contained in the documents required by this chapter in connection with the entry of merchandise; and

“(2) are normally kept in the ordinary course of business.”

Subsec. (b). Pub. L. 103-182, § 205(a)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Any person who exports, or who knowingly causes to be exported, any merchandise to Canada shall make, keep, and render for examination and inspection such records (including certifications of origin or copies thereof) which pertain to such exportations.”

Subsec. (c). Pub. L. 103-182, § 205(a)(2), amended generally subsec. (c), as amended by Pub. L. 103-182, § 614(2) (see below). Prior to amendment, subsec. (c) read as follows: “The records required by subsections (a) and (b) of this section shall be kept for such period of time, not to exceed 5 years from the date of entry or exportation, as appropriate, as the Secretary shall prescribe; except that records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim.” See Construction of 1993 Amendment note below.

Pub. L. 103-182, § 614(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The records required by subsection (a) and (b) of this sec-

tion shall be kept for such periods of time, not to exceed 5 years from the date of entry, as the Secretary shall prescribe." See Construction of 1993 Amendment note below.

Subsec. (e). Pub. L. 103-182, §205(a)(3), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "Any person who fails to retain records required by subsection (b) of this section or the regulations issued to implement that subsection shall be liable to a civil penalty not to exceed \$10,000."

1988—Subsecs. (b) to (e). Pub. L. 100-449 added subsec. (b), redesignated former subsec. (b) as (c) and inserted "and (b)" after "subsection (a)", redesignated former subsec. (c) as (d), and added subsec. (e).

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 2003 AMENDMENT

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 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(a) 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 AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100-449 effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100-449, set out in a note under section 2112 of this title.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by section 205(a) of Pub. L. 103-182 to be made after amendment by section 614 of Pub. L. 103-182 is executed, see section 212 of Pub. L. 103-182, set out as a note under section 58c 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.

§ 1509. Examination of books and witnesses

(a) Authority

In any investigation or inquiry conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duty, fees and taxes due or duties, fees and taxes which may be due the United States, for determining liability for fines and penalties, or for insuring compliance with the laws of the United States administered by the United States Customs Service, the Secretary (but no delegate of the Secretary below the rank of district director or special agent in charge) may—

(1) examine, or cause to be examined, upon reasonable notice, any record (which for purposes of this section, includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry, except that—

(A) if such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry) it shall be provided to the Customs Service within a reasonable time after demand for its production is made, taking into consideration the number, type, and age of the item demanded; and

(B) if a person of whom demand is made under subparagraph (A) fails to comply with the demand, the person may be subject to penalty under subsection (g) of this section;

(2) summon, upon reasonable notice—

(A) the person who—

(i) imported, or knowingly caused to be imported, merchandise into the customs territory of the United States,

(ii) exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country (as defined in section 3301(4) of this title) or to Canada during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada,

(iii) transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage, or

(iv) filed a declaration, entry, or drawback claim with the Customs Service;

(B) any officer, employee, or agent of any person described in subparagraph (A);

(C) any person having possession, custody or care of records relating to the importation or other activity described in subparagraph (A); or

(D) any other person he may deem proper;

to appear before the appropriate customs officer at the time and place within the customs

territory of the United States specified in the summons (except that no witness may be required to appear at any place more than one hundred miles distant from the place where he was served with the summons), to produce records, as defined in subsection (d)(1)(A) of this section, and to give such testimony, under oath, as may be relevant to such investigation or inquiry; and

(3) take, or cause to be taken, such testimony of the person concerned, under oath, as may be relevant to such investigation or inquiry.

(b) Regulatory audit procedures

(1) In conducting a regulatory audit under this section (which does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone), the Customs Service auditor shall provide the person being audited, in advance of the audit, with a reasonable estimate of the time to be required for the audit. If in the course of an audit it becomes apparent that additional time will be required, the Customs Service auditor shall immediately provide a further estimate of such additional time.

(2) Before commencing an audit, the Customs Service auditor shall inform the party to be audited of his right to an entry conference at which time the purpose will be explained and an estimated termination date set. Upon completion of on-site audit activities, the Customs Service auditor shall schedule a closing conference to explain the preliminary results of the audit.

(3) Except as provided in paragraph (5), if the estimated or actual termination date for an audit passes without the Customs Service auditor providing a closing conference to explain the results of the audit, the person being audited may petition in writing for such a conference to the officer designated pursuant to regulations, who, upon receipt of such a request, shall provide for such a conference to be held within 15 days after the date of receipt.

(4) Except as provided in paragraph (5), the Customs Service auditor shall complete the formal written audit report within 90 days following the closing conference unless the officer designated pursuant to regulations provides written notice to the person being audited of the reason for any delay and the anticipated completion date. After application of any exemption contained in section 552 of title 5, a copy of the formal written audit report shall be sent to the person audited no later than 30 days following completion of the report.

(5) Paragraphs (3) and (4) shall not apply after the Customs Service commences a formal investigation with respect to the issue involved.

(6)(A) If during the course of any audit concluded under this subsection, the Customs Service identifies overpayments of duties or fees or over-declarations of quantities or values that are within the time period and scope of the audit that the Customs Service has defined, then in calculating the loss of revenue or monetary penalties under section 1592 of this title, the Customs Service shall treat the overpayments or over-declarations on finally liquidated entries as an offset to any underpayments or

underdeclarations also identified on finally liquidated entries, if such overpayments or over-declarations were not made by the person being audited for the purpose of violating any provision of law.

(B) Nothing in this paragraph shall be construed to authorize a refund not otherwise authorized under section 1520 of this title.

(c) Service of summons

A summons issued pursuant to this section may be served by any person designated in the summons to serve it. Service upon a natural person may be made by personal delivery of the summons to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the summons to an officer, or managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The certificate of service signed by the person serving the summons is prima facie evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of records, such records shall be described in the summons with reasonable specificity.

(d) Special procedures for third-party summonses

(1) For purposes of this subsection—

(A) The term “records” includes those—

(i) required to be kept under section 1508 of this title; or

(ii) regarding which there is probable cause to believe that they pertain to merchandise the importation of which into the United States is prohibited.

(B) The term “summons” means any summons issued under subsection (a) of this section which requires the production of records or the giving of testimony relating to records. Such term does not mean any summons issued to aid in the collection of the liability of any person against whom an assessment has been made or judgment rendered.

(C) The term “third-party recordkeeper” means—

(i) any customhouse broker, unless such customhouse broker is the importer of record on an entry;

(ii) any attorney; and

(iii) any accountant.

(2) If—

(A) any summons is served on any person who is a third-party recordkeeper; and

(B) the summons requires the production of, or the giving of testimony relating to, any portion of records made or kept of the transactions described in section 1508 of this title of any person (other than the person summoned) who is identified in the description of the records contained in such summons;

then notice of such summons shall be given to any persons so identified within a reasonable time before the day fixed in the summons as the day upon which such records are to be examined or testimony given. Such notice shall be accom-

panied by a copy of the summons which has been served and shall contain directions for staying compliance with the summons under paragraph (5)(B) of this subsection.

(3) Any notice required under paragraph (2) of this subsection shall be sufficient if such notice is served in the manner provided in subsection (b) of this section upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person.

(4) Paragraph (2) of this subsection shall not apply to any summons—

(A) served on the person with respect to whose liability for duties, fees, or taxes the summons is issued, or any officer or employee of such person; or

(B) to determine whether or not records of the transactions described in section 1508 of this title of an identified person have been made or kept.

(5) Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under paragraph (2) of this subsection shall have the right—

(A) to intervene in any proceeding with respect to the enforcement of such summons under section 1510 of this title; and

(B) to stay compliance with the summons if, not later than the day before the day fixed in the summons as the day upon which the records are to be examined or testimony given—

(i) notice in writing is given to the person summoned not to comply with the summons; and

(ii) a copy of such notice not to comply with the summons is mailed by registered or certified mail to such person and to such office as the Secretary may direct in the notice referred to in paragraph (2) of this subsection.

(6) No examination of any records required to be produced under a summons as to which notice is required under paragraph (2) of this subsection may be made—

(A) before the expiration of the period allowed for the notice not to comply under paragraph (5)(B) of this subsection, or

(B) if the requirements of such paragraph (5)(B) have been met, except in accordance with an order issued by a court of competent jurisdiction authorizing examination of such records or with the consent of the person staying compliance.

(7) The provisions of paragraphs (2) and (5) of this subsection shall not apply with respect to any summons if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(e) List of records and information

The Customs Service shall identify and publish a list of the records or entry information that is required to be maintained and produced under subsection (a)(1)(A) of this section.

(f) Recordkeeping compliance program

(1) In general

After consultation with the importing community, the Customs Service shall by regulation establish a recordkeeping compliance program which the parties listed in section 1508(a) of this title may participate in after being certified by the Customs Service under paragraph (2). Participation in the recordkeeping compliance program by recordkeepers is voluntary.

(2) Certification

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

(A) understands the legal requirements for recordkeeping, 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 recordkeeping requirements to those employees who are involved in the preparation, maintenance, and production of required records;

(C) has in place procedures regarding the preparation 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 recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping 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 alternative records or recordkeeping formats other than the original records; and

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

(g) Penalties

(1) "Information" defined

For purposes of this subsection, the term "information" means any record, statement, declaration, document, or electronically stored or transmitted information or data referred to in subsection (a)(1)(A) of this section.

(2) Effects of failure to comply with demand

Except as provided in paragraph (4), if a person fails to comply with a lawful demand for information under subsection (a)(1)(A) of this section the following provisions apply:

(A) If the failure to comply is a result of the willful failure of the person to maintain,

store, or retrieve the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed \$100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less.

(B) If the failure to comply is a result of the negligence of the person in maintaining, storing, or retrieving the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed \$10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.

(C) In addition to any penalty imposed under subparagraph (A) or (B) regarding demanded information, if such information related to the eligibility of merchandise for a column 1 special rate of duty under title I, the entry of such merchandise—

(i) if unliquidated, shall be liquidated at the applicable column 1 general rate of duty; or

(ii) if liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in section 1514 or 1520 of this title, at the applicable column 1 general rate of duty;

except that any liquidation or reliquidation under clause (i) or (ii) shall be at the applicable column 2 rate of duty if the Customs Service demonstrates that the merchandise should be dutiable at such rate.

(3) Avoidance of penalty

No penalty may be assessed under this subsection if the person can show—

(A) that the loss of the demanded information was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;

(B) on the basis of other evidence satisfactory to the Customs Service, that the demand was substantially complied with; or

(C) the information demanded was presented to and retained by the Customs Service at the time of entry or submitted in response to an earlier demand.

(4) Penalties not exclusive

Any penalty imposed under this subsection shall be in addition to any other penalty provided by law except for—

(A) a penalty imposed under section 1592 of this title for a material omission of the demanded information, or

(B) disciplinary action taken under section 1641 of this title.

(5) Remission or mitigation

A penalty imposed under this section may be remitted or mitigated under section 1618 of this title.

(6) Customs summons

Nothing in this subsection shall limit or preclude the Customs Service from issuing, or seeking the enforcement of, a customs summons.

(7) Alternatives to penalties

(A) In general

When a recordkeeper who—

(i) has been certified as a participant in the recordkeeping compliance program under subsection (f) of this section; and

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

does not produce a demanded record or information for a specific release or provide the information by acceptable alternative means, the Customs Service, in the absence of willfulness or repeated violations, shall issue a written notice of the violation to the recordkeeper in lieu of a monetary penalty. Repeated violations by the recordkeeper may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

(B) Contents of notice

A notice of violation issued under subparagraph (A) shall—

(i) state that the recordkeeper has violated the recordkeeping requirements;

(ii) indicate the record or information which was demanded; and

(iii) warn the recordkeeper that future failures to produce demanded records or information may result in the imposition of monetary penalties.

(C) Response to notice

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

(D) Regulations

The Secretary shall promulgate regulations to implement this paragraph. Such regulations may specify the time periods for compliance with a demand for information and provide guidelines which define repeated violations for purposes of this paragraph. Any penalty issued for a recordkeeping violation shall take into account the degree of compliance compared to the total number of importations, the nature of the demanded records and the recordkeeper's cooperation.

(June 17, 1930, ch. 497, title IV, § 509, 46 Stat. 733; June 25, 1948, ch. 646, § 26, 62 Stat. 990; Pub. L. 91-271, title III, § 301(n), June 2, 1970, 84 Stat. 289; Pub. L. 95-410, title I, § 105, Oct. 3, 1978, 92 Stat. 889; Pub. L. 99-570, title III, § 3117, Oct. 27, 1986, 100 Stat. 3207-84; Pub. L. 103-182, title II, § 205(b), title VI, § 615, Dec. 8, 1993, 107 Stat. 2094, 2175; Pub. L. 104-295, § 3(a)(1), (10), Oct. 11, 1996, 110 Stat. 3515, 3516; Pub. L. 107-210, div. A, title III, § 382, Aug. 6, 2002, 116 Stat. 992.)

REFERENCES IN TEXT

Title I, referred to in subsec. (g)(2)(C), means title I of act June 17, 1930, ch. 497, as amended, which contains the Harmonized Tariff Schedule of the United States and which is not set out in the Code. See notes preceding section 1202 of this title and Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

Provisions substantially the same, in most respects, as those in this section, were contained in act Oct. 3,

1913, ch. 16, § III, O, 38 Stat. 188, which substantially reenacted the provisions of Customs Administrative Act of June 10, 1890, ch. 407, § 16, 26 Stat. 138, as renumbered and reenacted without other change by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 100. Section III of the 1913 act was superseded and more closely assimilated to this section by act Sept. 21, 1922, ch. 356, title IV, § 508, 42 Stat. 968, and repealed by section 643 thereof. Section 508 of the 1922 act was superseded by section 509 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions similar to those in this section and section 1510 of this title were made by R.S. §§ 2922–2924, repealed by section 29 of the Customs Administrative Act of 1890, 26 Stat. 141.

AMENDMENTS

2002—Subsec. (b)(6). Pub. L. 107–210 added par. (6).

1996—Subsec. (a)(2). Pub. L. 104–295, § 3(a)(1), substituted “(d)(1)(A)” for “(c)(1)(A)” in concluding provisions.

Subsec. (b)(3), (4). Pub. L. 104–295, § 3(a)(10), substituted “officer designated pursuant to regulations” for “appropriate regional commissioner”.

1993—Subsec. (a). Pub. L. 103–182, § 615(1)(A), substituted “, fees and taxes” for “and taxes” in two places in introductory provisions.

Subsec. (a)(1). Pub. L. 103–182, § 615(1)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “examine, or cause to be examined, upon reasonable notice, any record, statement, declaration or other document, described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry;”.

Subsec. (a)(2)(A). Pub. L. 103–182, § 615(1)(C), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the person who imported, or knowingly caused to be imported, merchandise into the customs territory of the United States.”. See Construction of 1993 Amendment note below.

Subsec. (a)(2)(A)(ii). Pub. L. 103–182, § 205(b), amended generally cl. (ii), as amended by Pub. L. 103–182, § 615(1)(C). Prior to amendment, cl. (ii) read as follows: “exported merchandise, or knowingly caused merchandise to be exported, to Canada.”. See Construction of 1993 Amendment note below.

Subsec. (a)(2)(B), (C). Pub. L. 103–182, § 615(1)(C), amended subpars. (B) and (C) generally. Prior to amendment, subpars. (B) and (C) read as follows:

“(B) any officer, employee, or agent of such person,
“(C) any person having possession, custody, or care of records relating to such importation, or”.

Subsec. (a)(2)(D). Pub. L. 103–182, § 615(1)(D), substituted a semicolon for comma at end.

Subsecs. (b), (c). Pub. L. 103–182, § 615(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 103–182, § 615(2), redesignated subsec. (c) as (d).

Subsec. (d)(1)(A). Pub. L. 103–182, § 615(4)(A), substituted “those” for “statements, declarations, or documents” in introductory provisions.

Subsec. (d)(1)(C)(i). Pub. L. 103–182, § 615(4)(B), inserted “, unless such customhouse broker is the importer of record on an entry” after “broker”.

Subsec. (d)(2)(B). Pub. L. 103–182, § 615(4)(C), (D), substituted “the transactions described in section 1508 of this title” for “the import transactions”.

Subsec. (d)(4)(A). Pub. L. 103–182, § 615(4)(E), inserted “, fees,” after “duties”.

Subsec. (d)(4)(B). Pub. L. 103–182, § 615(4)(C), (D), substituted “the transactions described in section 1508 of this title” for “the import transactions”.

Subsecs. (e) to (g). Pub. L. 103–182, § 615(5), added subsecs. (e) to (g).

1986—Subsec. (a)(2). Pub. L. 99–570, § 3117(1), substituted “as defined in subsection (c)(1)(A) of this section” for “required to be kept under section 1508 of this title” in concluding provisions.

Subsec. (c)(1)(A). Pub. L. 99–570, § 3117(2), amended subpar. (A) generally. Prior to amendment, subpar. (A)

read as follows: “The term ‘records’ includes statements, declarations, or documents required to be kept under section 1508 of this title.”

1978—Pub. L. 95–410 substituted subsec. (a) to (c) provisions for examination of books and witnesses for prior provisions for examination of importer and others, which authorized appropriate customs officers to issue citations for examination under oath of any owner, importer, consignee, agent, or other person upon any material matter or thing respecting any imported merchandise then under consideration or previously imported within one year, in ascertaining the classification or the value thereof or the rate or amount of duty and to require production of any letters, accounts, contracts, invoices, or other documents relating to the merchandise, and the reduction of the testimony to writing, required the testimony to be filed and preserved under Customs Court rules, and authorized consideration of the evidence in subsequent proceedings relating to the merchandise.

1970—Pub. L. 91–271 substituted “Appropriate customs officer” for “Collectors and appraisers”.

1948—Act June 25, 1948, struck out “and judges and divisions of the United States Customs Court” after “Collectors and appraisers” in first sentence.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of this title on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

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.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 205(b) 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 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 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by section 205(b) of Pub. L. 103–182 to be made after amendment by section 615 of Pub. L. 103–182 is executed, see section 212 of Pub. L. 103–182, set out as a note under section 58c 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.

§ 1510. Judicial enforcement

(a) Order of court

If any person summoned under section 1509 of this title does not comply with the summons,

the district court of the United States for any district in which such person is found or resides or is doing business, upon application and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to comply with the summons. Failure to obey such order of the court may be punished by such court as a contempt thereof and such court may assess a monetary penalty.

(b) Sanctions

(1) For so long as any person, after being adjudged guilty of contempt for neglecting or refusing to obey a lawful summons issued under section 1509 of this title and for refusing to obey the order of the court, remains in contempt, the Secretary may—

(A) prohibit that person from importing merchandise into the customs territory of the United States directly or indirectly or for his account, and

(B) instruct the appropriate customs officers to withhold delivery of merchandise imported directly or indirectly by that person or for his account.

(2) If any person remains in contempt for more than one year after the date on which the Secretary issues instructions under paragraph (1)(B) with respect to that person, the appropriate customs officers shall cause all merchandise held in customs custody pursuant to such instructions to be sold at public auction or otherwise disposed of under the customs laws.

(3) The sanctions which may be imposed under paragraphs (1) and (2) are in addition to any punishment which may be imposed by the court for contempt.

(June 17, 1930, ch. 497, title IV, §510, 46 Stat. 733; Pub. L. 91-271, title III, §301(o), June 2, 1970, 84 Stat. 290; Pub. L. 95-410, title I, §106, Oct. 3, 1978, 92 Stat. 891; Pub. L. 103-182, title VI, §616, Dec. 8, 1993, 107 Stat. 2179.)

PRIOR PROVISIONS

Provisions substantially the same as those in this section were contained in act Oct. 3, 1913, ch. 16, §III, P, 38 Stat. 188, which substantially reenacted the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, §17, 26 Stat. 139, as renumbered and reenacted without other change by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §23, 36 Stat. 100. Section III, P, of the 1913 act was superseded by act Sept. 21, 1922, ch. 356, title IV, §509, 42 Stat. 968, and repealed by section 643 thereof. Section 509 of the 1922 act was superseded by section 510 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions similar to those in this section were contained in R.S. §§2923, 2924, prior to repeal by section 29 of the Customs Administrative Act of June 10, 1890, 26 Stat. 141.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-182 inserted before period at end “and such court may assess a monetary penalty”.

1978—Pub. L. 95-410 substituted judicial enforcement provisions covering court order for compliance with administrative summonses and imposition of specified sanctions for prior provisions covering imposition of penalties for refusal to give testimony, including provision for a penalty of not less than \$20 nor more than \$500 for refusing to appear or to produce documents or to subscribe his name to a deposition or refusing to an-

swer interrogatories; deeming the last made appraisal of the merchandise as final where an owner, importer, or consignee failed to comply with the examination provisions; deeming the person falsely swearing on an examination guilty of perjury; and forfeiture of the merchandise where the person was an owner, importer, or consignee, or the recovery of its value from him.

1970—Pub. L. 91-271 substituted references to appropriate customs officer for references to collector or appraiser wherever appearing, and struck out references to divisions of United States Customs Court.

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.

§ 1511. Repealed. Pub. L. 95-410, title I, § 107, Oct. 3, 1978, 92 Stat. 892

Section, acts June 17, 1930, ch. 497, title IV, §511, 46 Stat. 733; June 2, 1970, Pub. L. 91-271, title III, §301(p), 84 Stat. 290, provided for inspection of importer's books. See sections 1508-1510 of this title.

Provisions similar to those in this section were contained in act May 27, 1921, ch. 14, §405, 42 Stat. 18, which was superseded by act Sept. 21, 1922, ch. 356, title IV, §511, 42 Stat. 969. Section 511 of the 1922 act was superseded by section 511 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Earlier provisions for assessment of additional duty for failure or refusal of persons importing merchandise or dealing in imported merchandise to submit their books, records, etc., to inspection, were contained in act Oct. 3, 1913, ch. 16, §III, V, 38 Stat. 190, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.

§ 1512. Deposit of duty receipts

All moneys paid to any customs officer for unascertained duties or for duties paid under protest against the rate or amount of duties charged shall be deposited to the credit of the Treasurer of the United States and shall not be held by the customs officers to await any ascertainment of duties or the result of any litigation in relation to the rate or amount of duties legally chargeable and collectible in any case where money is so paid.

(June 17, 1930, ch. 497, title IV, §512, 46 Stat. 734; Pub. L. 91-271, title III, §301(q), June 2, 1970, 84 Stat. 290.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. §3010, which was superseded by act Sept. 21, 1922, ch. 356, title IV, §512, 42 Stat. 969, and was repealed by section 642 thereof. Section 512 of the 1922 act was superseded by section 512 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 references to customs officers for references to collectors 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.

§ 1513. Customs officer's immunity

No customs officer shall be liable in any way to any person for or on account of—

(1) any ruling or decision regarding the appraisal or the classification of any im-

ported merchandise or regarding the duties, fees, and taxes charged thereon,

(2) the collection of any dues, charges, duties, fees, and taxes on or on account of any imported merchandise, or

(3) any other matter or thing as to which any person might under this chapter be entitled to protest or appeal from the decision of such officer.

(June 17, 1930, ch. 497, title IV, §513, 46 Stat. 734; Pub. L. 91-271, title III, §301(r), June 2, 1970, 84 Stat. 290; Pub. L. 103-182, title VI, §644, Dec. 8, 1993, 107 Stat. 2206.)

PRIOR PROVISIONS

Provisions substantially the same as those in this section, except that they did not specifically refer to rulings or decisions as to appraisement, were contained in act Oct. 3, 1913, ch. 16, §III, Z, 38 Stat. 191, which reenacted without change the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, §25, 26 Stat. 141, as reenacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 103. Section III, Z, of the 1913 act was superseded and more closely assimilated to this section by act Sept. 21, 1922, ch. 356, title IV, §513, 42 Stat. 969, and repealed by section 643 thereof. Section 513 of the 1922 act was superseded by section 513 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1993—Pub. L. 103-182 amended section generally. Prior to amendment, section read as follows: “No customs officer shall be in any way liable to any owner, importer, consignee, or agent or any other person for or on account of any rulings or decisions as to the appraisement or the classification of any imported merchandise or the duties charged thereon, or the collection of any dues, charges, or duties on or on account of said merchandise, or any other matter or thing as to which said owner, importer, consignee, or agent might under this chapter be entitled to protest or appeal from the decision of such officer.”

1970—Pub. L. 91-271 substituted “customs officer” for “collector or other customs officer” and “such officer” for “such collector or other officer”.

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.

§ 1514. Protest against decisions of Customs Service

(a) Finality of decisions; return of papers

Except as provided in subsection (b) of this section, section 1501 of this title (relating to voluntary reliquidations), section 1516 of this title (relating to petitions by domestic interested parties), section 1520 of this title (relating to refunds), and section 6501 of title 26 (but only with respect to taxes imposed under chapters 51 and 52 of such title), any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic transmission, adverse to the importer, in any entry, liquidation, or reliquidation, and, decisions of the Customs Service, including the legality of all orders and findings entering into the same, as to—

- (1) the appraised value of merchandise;
- (2) the classification and rate and amount of duties chargeable;

(3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

(4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 1337 of this title;

(5) the liquidation or reliquidation of an entry, or reconciliation as to the issues contained therein, or any modification thereof, including the liquidation of an entry, pursuant to either section 1500 of this title or section 1504 of this title;

(6) the refusal to pay a claim for drawback;

or

(7) the refusal to reliquidate an entry under subsection (d) of section 1520 of this title;

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28 within the time prescribed by section 2636 of that title. When a judgment or order of the United States Court of International Trade has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the Customs Service, which shall take action accordingly.

(b) Finality of determinations

With respect to determinations made under section 1303¹ of this title or subtitle IV of this chapter which are reviewable under section 1516a of this title, determinations of the Customs Service are final and conclusive upon all persons (including the United States and any officer thereof) unless a civil action contesting a determination listed in section 1516a of this title is commenced in the United States Court of International Trade, or review by a binational panel of a determination to which section 1516a(g)(2) of this title applies is commenced pursuant to section 1516a(g) of this title and article 1904 of the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement.

(c) Form, number, and amendment of protest; filing of protest

(1) A protest of a decision made under subsection (a) of this section shall be filed in writing, or transmitted electronically pursuant to an electronic data interchange system, in accordance with regulations prescribed by the Secretary. A protest must set forth distinctly and specifically—

(A) each decision described in subsection (a) of this section as to which protest is made;

(B) each category of merchandise affected by each decision set forth under paragraph (1);

(C) the nature of each objection and the reasons therefor; and

(D) any other matter required by the Secretary by regulation.

Only one protest may be filed for each entry of merchandise, except that where the entry covers

¹ See References in Text note below.

merchandise of different categories, a separate protest may be filed for each category. In addition, separate protests filed by different authorized persons with respect to any one category of merchandise, or with respect to a determination of origin under section 3332 of this title, that is the subject of a protest are deemed to be part of a single protest. Unless a request for accelerated disposition is filed under section 1515(b) of this title, a protest may be amended, under regulations prescribed by the Secretary, to set forth objections as to a decision or decisions described in subsection (a) of this section which were not the subject of the original protest, in the form and manner prescribed for a protest, any time prior to the expiration of the time in which such protest could have been filed under this section. New grounds in support of objections raised by a valid protest or amendment thereto may be presented for consideration in connection with the review of such protest pursuant to section 1515 of this title at any time prior to the disposition of the protest in accordance with that section.

(2) Except as provided in sections 1485(d) and 1557(b) of this title, protests may be filed with respect to merchandise which is the subject of a decision specified in subsection (a) of this section by—

(A) the importers or consignees shown on the entry papers, or their sureties;

(B) any person paying any charge or exaction;

(C) any person seeking entry or delivery;

(D) any person filing a claim for drawback;

(E) with respect to a determination of origin under section 3332 of this title, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a NAFTA Certificate of Origin covering the merchandise; or

(F) any authorized agent of any of the persons described in clauses (A) through (E).

(3) A protest of a decision, order, or finding described in subsection (a) of this section shall be filed with the Customs Service within 180 days after but not before—

(A) date of liquidation or reliquidation, or

(B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

A protest by a surety which has an unsatisfied legal claim under its bond may be filed within 180 days from the date of mailing of notice of demand for payment against its bond. If another party has not filed a timely protest, the surety's protest shall certify that it is not being filed collusively to extend another authorized person's time to protest as specified in this subsection.

(d) Limitation on protest of reliquidation

The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the Customs Service upon any question not involved in such reliquidation.

(e) Advance notice of certain determinations

Except as provided in subsection (f) of this section, an exporter or producer referred to in subsection (c)(2)(E) of this section shall be provided notice in advance of an adverse determination of

origin under section 3332 of this title. The Secretary may, by regulations, prescribe the time period in which such advance notice shall be issued and authorize the Customs Service to provide in the notice the entry number and any other entry information considered necessary to allow the exporter or producer to exercise the rights provided by this section.

(f) Denial of preferential treatment

If the Customs Service finds indications of a pattern of conduct by an exporter or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 3332 of this title—

(1) the Customs Service, in accordance with regulations issued by the Secretary, may deny preferential tariff treatment to entries of identical goods exported or produced by that person; and

(2) the advance notice requirement in subsection (e) of this section shall not apply to that person;

until the person establishes to the satisfaction of the Customs Service that its representations are in conformity with section 3332 of this title.

(g) Denial of preferential tariff treatment under United States-Chile Free Trade Agreement

If the Bureau of Customs and Border Protection or the Bureau of Immigration and Customs Enforcement finds indications of a pattern of conduct by an importer of false or unsupported representations that goods qualify under the rules of origin set out in section 202 of the United States-Chile Free Trade Agreement Implementation Act, the Bureau of Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may deny preferential tariff treatment under the United States-Chile Free Trade Agreement to entries of identical goods imported by that person until the person establishes to the satisfaction of the Bureau of Customs and Border Protection that representations of that person are in conformity with such section 202.

(h) Denial of preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement

If the Bureau of Customs and Border Protection or the Bureau of Immigration and Customs Enforcement finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 4033 of this title, the Bureau of Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until the Bureau of Customs and Border Protection determines that representations of that person are in conformity with such section 4033 of this title.

(i) Denial of preferential tariff treatment under the United States-Peru Trade Promotion Agreement

If U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement of the

Department of Homeland Security finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin provided for in section 203 of the United States-Peru Trade Promotion Agreement Implementation Act, U.S. Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the United States-Peru Trade Promotion Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until U.S. Customs and Border Protection determines that representations of that person are in conformity with such section 203.

(June 17, 1930, ch. 497, title IV, § 514, 46 Stat. 734; Pub. L. 91-271, title II, § 207, June 2, 1970, 84 Stat. 284; Pub. L. 96-39, title X, § 1001(b)(3), July 26, 1979, 93 Stat. 305; Pub. L. 96-417, title VI, §§ 601(5), 605, Oct. 10, 1980, 94 Stat. 1744; Pub. L. 98-573, title VI, § 612(b)(1), Oct. 30, 1984, 98 Stat. 3034; Pub. L. 99-514, title XVIII, § 1888(4), Oct. 22, 1986, 100 Stat. 2924; Pub. L. 100-449, title IV, § 403(b), Sept. 28, 1988, 102 Stat. 1884; Pub. L. 103-182, title II, § 208, title IV, § 412(a), title VI, § 645, Dec. 8, 1993, 107 Stat. 2097, 2146, 2206; Pub. L. 104-295, § 21(e)(7), Oct. 11, 1996, 110 Stat. 3531; Pub. L. 106-36, title II, § 2408(b), June 25, 1999, 113 Stat. 171; Pub. L. 108-77, title II, § 205(b), Sept. 3, 2003, 117 Stat. 931; Pub. L. 108-429, title II, § 2103, Dec. 3, 2004, 118 Stat. 2597; Pub. L. 109-53, title II, § 206(b), Aug. 2, 2005, 119 Stat. 484; Pub. L. 109-280, title XIV, § 1635(f)(7), Aug. 17, 2006, 120 Stat. 1171; Pub. L. 110-138, title II, § 205(b), Dec. 14, 2007, 121 Stat. 1476; Pub. L. 111-3, title VII, § 702(c)(1), Feb. 4, 2009, 123 Stat. 110.)

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 107(c) of Pub. L. 108-77, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

Section 1303 of this title, referred to in subsec. (b), is defined in section 1677(26) of this title to mean section 1303 as in effect on the day before Jan. 1, 1995.

Section 202 of the United States-Chile Free Trade Agreement Implementation Act, referred to in subsec. (g), is section 202 of Pub. L. 108-77, 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 subsec. (i), is section 203 of Pub. L. 110-138, which is set out in a note under section 3805 of this title.

CODIFICATION

Section was formerly classified to former section 579 of this title subsequent to its classification to section 784 of title 28 prior to the general revision and enactment of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 464, § 1, 62 Stat. 869.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 514, 42

Stat. 969. That section was superseded by section 514 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions that the decision of the collector as to duties, including dutiable costs and charges, and as to all fees and exactions, should be final and conclusive unless a protest was filed within 30 days after ascertainment and liquidation of duties, or within 15 days after payment of fees, charges and exactions, with further provisions as to fees, transmission of the papers to the Board of General Appraisers, etc., were contained in act Oct. 3, 1913, ch. 16, § III, N, 38 Stat. 187, the provisions of which were substituted for provisions of a similar nature in the Customs Administrative Act of June 10, 1890, ch. 407, § 14, 26 Stat. 137, as amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 100. Section III, N, of the 1913 act was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

Provisions relating to decisions of the collector, and appeals therefrom to the Secretary of the Treasury were contained in R.S. §§ 2931, 2932, prior to repeal by section 29 of the Customs Administrative Act, 26 Stat. 141.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111-3, in introductory provisions, substituted “section 1520 of this title (relating to refunds), and section 6501 of title 26 (but only with respect to taxes imposed under chapters 51 and 52 of such title)” for “and section 1520 of this title (relating to refunds)”.

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

2006—Subsec. (c)(3). Pub. L. 109-280 realigned margins of concluding provisions.

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

2004—Subsec. (a). Pub. L. 108-429, § 2103(1)(A), substituted “(relating to refunds), any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic transmission, adverse to the importer, in any entry, liquidation, or reliquidation, and” for “(relating to refunds and errors)” in introductory provisions.

Subsec. (a)(5). Pub. L. 108-429, § 2103(1)(B), inserted “, including the liquidation of an entry, pursuant to either section 1500 of this title or section 1504 of this title” after “thereof”.

Subsec. (a)(7). Pub. L. 108-429, § 2103(1)(C), struck out “(c) or” after “subsection”.

Subsec. (c)(1). Pub. L. 108-429, § 2103(2)(A), which directed substitution of “Unless a request for accelerated disposition is filed under section 1515(b) of this title, a protest may be amended,” for “A protest may be amended,” in the sixth sentence, was executed by making the substitution in the fifth sentence, to reflect the probable intent of Congress.

Subsec. (c)(3). Pub. L. 108-429, § 2103(2)(B)(i), (iii), substituted “180 days” for “ninety days” in introductory provisions and “180 days” for “90 days” in concluding provisions.

Subsec. (c)(3)(A). Pub. L. 108-429, § 2103(2)(B)(ii), substituted “date of” for “notice of”.

2003—Subsec. (g). Pub. L. 108-77, §§ 107(c), 205(b), temporarily added subsec. (g). See Effective and Termination Dates of 2003 Amendment note below.

1999—Subsec. (a)(7). Pub. L. 106-36 substituted “subsection (c) or (d) of section 1520” for “section 1520(c)”.

1996—Subsec. (a). Pub. L. 104-295 substituted “and section 1520 of this title (relating to refunds and errors)” for “section 1520 of this title (relating to refunds and errors), and section 1521 of this title (relating to reliquidations on account of fraud)”.

1993—Pub. L. 103-182, § 645(7), amended section catchline generally.

Subsec. (a). Pub. L. 103-182, § 645(1), in introductory provisions, substituted “Customs Service” for “appropriate customs officer”, in par. (5), inserted “or rec-

conciliation as to the issues contained therein,” after “entry,” in par. (6), substituted “or” for “and” at end, in par. (7), substituted a semicolon for the comma at end, and in concluding provisions, substituted “Customs Service, which” for “appropriate customs officer, who”.

Subsec. (b). Pub. L. 103-182, §645(2), substituted “Customs Service” for “appropriate customs officer”.

Pub. L. 103-182, §412(a), inserted “the North American Free Trade Agreement or” before “the United States-Canada Free-Trade Agreement”.

Subsec. (c)(1). Pub. L. 103-182, §208(1), inserted in fourth sentence “, or with respect to a determination of origin under section 3332 of this title,” after “with respect to any one category of merchandise”. See Construction of 1993 Amendment note below.

Pub. L. 103-182, §645(3), substituted first two sentences, including subpars. (A) to (D), for former first sentence which read as follows: “A protest of a decision under subsection (a) of this section shall be filed in writing with the appropriate customs officer designated in regulations prescribed by the Secretary, setting forth distinctly and specifically each decision described in subsection (a) of this section as to which protest is made; each category of merchandise affected by each such decision as to which protest is made; and the nature of each objection and reasons therefor.” See Construction of 1993 Amendment note below.

Subsec. (c)(2). Pub. L. 103-182, §208(2), added subpar. (E) and redesignated former subpar. (E) as (F) and substituted “clauses (A) through (E)” for “clauses (A) through (D)”. See Construction of 1993 Amendment note below.

Pub. L. 103-182, §645(5), designated last sentence of par. (1) as par. (2). Former par. (2) redesignated (3). See Construction of 1993 Amendment note below.

Subsec. (c)(3). Pub. L. 103-182, §645(4), redesignated par. (2) as (3) and substituted “the Customs Service” for “such customs officer” in introductory provisions.

Subsec. (d). Pub. L. 103-182, §645(6), substituted “Customs Service” for “customs officer”.

Subsecs. (e), (f). Pub. L. 103-182, §208(3), added subsecs. (e) and (f).

1988—Subsec. (b). Pub. L. 100-449 inserted “, or review by a binational panel of a determination to which section 1516a(g)(2) of this title applies is commenced pursuant to section 1516a(g) of this title and article 1904 of the United States-Canada Free-Trade Agreement” before period at end.

1986—Subsec. (a). Pub. L. 99-514 struck out “as defined in section 1677(9)(C), (D), (E), and (F) of this title” after “domestic interested parties”.

1984—Subsec. (a). Pub. L. 98-573 substituted “section 1677(9)(C), (D), (E), and (F) of this title” for “section 1677(9)(C), (D), and (E) of this title” in provisions preceding par. (1).

1980—Subsec. (a). Pub. L. 96-417, §§601(5), 605, redesignated the United States Customs Court as the United States Court of International Trade, inserted in item (4) provision for decisions as to a demand for redelivery to customs custody and the phrase “, except a determination appealable under section 1337 of this title” and substituted provision for contesting denial of a protest in accordance with chapter 169 of title 28 within the time prescribed by section 2636 of that title for provision for such contest in accordance with section 2632 of title 28 within the time prescribed by section 2631 of that title.

Subsec. (b). Pub. L. 96-417, §601(5), redesignated the United States Customs Court as the United States Court of International Trade.

1979—Subsec. (a). Pub. L. 96-39, §1001(b)(3)(A), (B), inserted reference to subsection (b) of this section and substituted “section 1516 of this title (relating to petitions by domestic interested parties as defined in section 1677(9)(C), (D), and (E) of this title)” for “section 1516 of this title (relating to petitions by American manufacturers, producers, and wholesalers)” in provisions preceding par. (1).

Subsec. (b). Pub. L. 96-39, §1001(b)(3)(D), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c)(1). Pub. L. 96-39, §1001(b)(3)(C), (E), redesignated former subsec. (b)(1) as (c)(1) and substituted provisions that, except as provided in sections 1485(d) and 1557(b) of this title, protests may be filed by importers or consignees or their sureties, persons paying a charge or exaction, persons seeking entry or delivery, persons filing a claim for drawback, and authorized agents of such persons for provisions that, except as otherwise provided in section 1557(b) of this title, protests could be filed only by importers, consignees, or the authorized agents of persons paying any charges, or exactions, persons filing claims for drawback, or persons seeking entry or delivery.

Subsec. (c)(2). Pub. L. 96-39, §1001(b)(3)(C), (F), redesignated former subsec. (b)(2) as (c)(2) and inserted provision that a protest by a surety which has an unsatisfied legal claim under its bond may be filed within 90 days from the date of mailing of notice of demand for payment against its bond and that, if another party has not filed a timely protest, the surety’s protest shall certify that it is not being filed collusively to extend another authorized person’s time to protest as specified in this subsection.

Subsec. (d). Pub. L. 96-39, §1001(b)(3)(C), redesignated former subsec. (c) as (d).

1970—Pub. L. 91-271 designated existing provisions as subsec. (a), expanded references to sections excepted from application of this section, substituted decisions of the appropriate customs officer for all decisions of the collector as deemed to be final and conclusive, reorganized the categories of decisions and findings subject to such finality and conclusiveness, and revised the procedures for filing of protests, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided, amendment by Pub. L. 111-3 effective Apr. 1, 2009, see section 3 of Pub. L. 111-3, set out as an Effective Date note under section 1396 of Title 42, The Public Health and Welfare.

Pub. L. 111-3, title VII, §702(c)(2), Feb. 4, 2009, 123 Stat. 110, provided that: “The amendment made by this subsection [amending this section] shall apply to articles imported after the date of the enactment of this Act [Feb. 4, 2009].”

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 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.

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 DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-429 applicable to merchandise entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 3, 2004, see

section 2108 of Pub. L. 108-429, set out as a note under section 1401 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003
AMENDMENT

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 1999 AMENDMENT

Pub. L. 106-36, title II, §2408(c), June 25, 1999, 113 Stat. 171, provided that: "The amendments made by this section [amending this section and section 1520 of this title] apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act [June 25, 1999]."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 208 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.

Amendment by section 412(a) 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], but not applicable to any final determination described in section 1516a(a)(1)(B) or (2)(B)(i), (ii), or (iii) of this title, notice of which is published in the Federal Register before such date, or to a determination described in section 1516a(a)(2)(B)(vi) of this title, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review, that was commenced before such date, see section 416 of Pub. L. 103-182, set out as an Effective Date note under section 3431 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988
AMENDMENT

Amendment by Pub. L. 100-449 effective on date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100-449, set out in a note under section 2112 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of subtitle IV of this chapter, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98-573, as amended, set out as a note under section 1671 of this title.

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 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective Jan. 1, 1980, see sections 1002 and 107 of Pub. L. 96-39, set out as Effective Date notes under sections 1516a and 1671 of this title, respectively.

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.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by section 208 of Pub. L. 103-182 to be made after amendment by section 645 of Pub. L. 103-182 is executed, see section 212 of Pub. L. 103-182, set out as a note under section 58c 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 Secretary of the Treasury under this section insofar as they relate to any protest, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979, set out as a note under section 1516a of this title, transferred to Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, §5(a)(1)(D), 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.

EFFECT OF TERMINATION OF NAFTA COUNTRY STATUS

For provisions relating to effect of termination of NAFTA country status on the provisions of sections 401 to 416 of Pub. L. 103-182, see section 3451 of this title.

INCONSISTENT DECISIONS OF CUSTOMS OFFICERS

Pub. L. 100-690, title VII, §7361(c), Nov. 18, 1988, 102 Stat. 4474, provided that:

"(1) The Secretary of the Treasury shall prescribe regulations that—

"(A) effect uniformity in—

"(i) decisions described in section 514(a) of the Tariff Act of 1930 (19 U.S.C. 1514(a)) that are made by customs officers with respect to the same, or substantially similar, merchandise, and

"(ii) decisions to conduct intensified inspections or examinations of merchandise at ports of entry, and

"(B) establish procedures that allow individuals described in section 514(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1514(c)(1)), any port authority, and any other interested party (within the meaning of section 516(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1516(a)(2))) to petition the Secretary to obtain such uniformity in an expedited and timely fashion.

"(2) The Secretary of the Treasury shall publish in the Federal Register and submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives the proposed and final form of the regulations prescribed under paragraph (1) and shall receive and consider comments from the public regarding the proposed form of such regulations during the 60-day period beginning on the date the proposed form of such regulations are published in the Federal Register.

"(3) The regulations prescribed under paragraph (1) shall take effect by no later than April 1, 1989.

"(4) By no later than September 1, 1989, the Secretary of the Treasury shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the effectiveness of the regulations prescribed under paragraph (1) and recommendations for permanent legislation addressing uniformity."

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1801-1899A] of Pub. L.

99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1515. Review of protests

(a) Administrative review and modification of decisions

Unless a request for an accelerated disposition of a protest is filed in accordance with subsection (b) of this section the appropriate customs officer, within two years from the date a protest was filed in accordance with section 1514 of this title, shall review the protest and shall allow or deny such protest in whole or in part. Thereafter, any duties, charge, or exaction found to have been assessed or collected in excess shall be remitted or refunded and any drawback found due shall be paid. Upon the request of the protesting party, filed within the time allowed for the filing of a protest under section 1514 of this title, a protest may be subject to further review by another appropriate customs officer, under the circumstances and in the form and manner that may be prescribed by the Secretary in regulations, but subject to the two-year limitation prescribed in the first sentence of this subsection. Within 30 days from the date an application for further review is filed, the appropriate customs officer shall allow or deny the application and, if allowed, the protest shall be forwarded to the customs officer who will be conducting the further review. Notice of the denial of any protest shall be mailed in the form and manner prescribed by the Secretary. Such notice shall include a statement of the reasons for the denial, as well as a statement informing the protesting party of his right to file a civil action contesting the denial of a protest under section 1514 of this title.

(b) Request for accelerated disposition of protest

A request for accelerated disposition of a protest filed in accordance with section 1514 of this title may be mailed by certified or registered mail to the appropriate customs officer any time concurrent with or following the filing of such protest. For purposes of section 1581 of title 28, a protest which has not been allowed or denied in whole or in part within thirty days following the date of mailing by certified or registered mail of a request for accelerated disposition shall be deemed denied on the thirtieth day following mailing of such request.

(c) Request for set aside of denial of further review

If a protesting party believes that an application for further review was erroneously or improperly denied or was denied without authority for such action, it may file with the Commissioner of Customs a written request that the denial of the application for further review be set aside. Such request must be filed within 60 days after the date of the notice of the denial. The Commissioner of Customs may review such request and, based solely on the information before the Customs Service at the time the application for further review was denied, may set aside the denial of the application for further review and void the denial of protest, if appro-

priate. If the Commissioner of Customs fails to act within 60 days after the date of the request, the request shall be considered denied. All denials of protests are effective from the date of original denial for purposes of section 2636 of title 28. If an action is commenced in the Court of International Trade that arises out of a protest or an application for further review, all administrative action pertaining to such protest or application shall terminate and any administrative action taken subsequent to the commencement of the action is null and void.

(d) Voiding denial of protest

If a protest is timely and properly filed, but is denied contrary to proper instructions, the Customs Service may on its own initiative, or pursuant to a written request by the protesting party filed with the appropriate port director within 90 days after the date of the protest denial, void the denial of the protest.

(June 17, 1930, ch. 497, title IV, §515, 46 Stat. 734; Pub. L. 91-271, title II, §208, June 2, 1970, 84 Stat. 285; Pub. L. 96-39, title X, §1001(b)(2), July 26, 1979, 93 Stat. 304; Pub. L. 96-417, title VI, §606, Oct. 10, 1980, 94 Stat. 1745; Pub. L. 103-182, title VI, §617, Dec. 8, 1993, 107 Stat. 2179; Pub. L. 104-295, §3(a)(11), Oct. 11, 1996, 110 Stat. 3516; Pub. L. 106-36, title II, §2407, June 25, 1999, 113 Stat. 171; Pub. L. 108-429, title II, §2104, Dec. 3, 2004, 118 Stat. 2598.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §515, 42 Stat. 970. That section was superseded by section 515 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions for transmission of the invoice, papers, and exhibits to the board of general appraisers in case of protest, and provisions concerning the conclusiveness of its determination, were contained in act Oct. 3, 1913, ch. 16, §III, N, 38 Stat. 187, the provisions of which were substituted for provisions of a similar nature in Customs Administrative Act of June 10, 1890, ch. 407, §14, 26 Stat. 137, as amended by Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 100.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108-429 substituted “concurrent with or” for “after ninety days” in first sentence.

1999—Subsec. (a). Pub. L. 106-36 inserted after third sentence “Within 30 days from the date an application for further review is filed, the appropriate customs officer shall allow or deny the application and, if allowed, the protest shall be forwarded to the customs officer who will be conducting the further review.”

1996—Subsec. (d). Pub. L. 104-295 substituted “port director” for “district director”.

1993—Subsecs. (c) and (d). Pub. L. 103-182 added subsecs. (c) and (d).

1980—Subsec. (b). Pub. L. 96-417 substituted reference to section “1581” for “1582” of title 28.

1979—Subsec. (a). Pub. L. 96-39 required that notice of denial include a statement of reasons for denial, as well as a statement informing protesting party of his right to file a civil action contesting denial of a protest under section 1514 of this title.

1970—Pub. L. 91-271 designating existing provisions as subsec. (a), substituted provisions authorizing review by appropriate customs officer for provisions authorizing review by collector and revised such review procedures, and added subsec. (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-429 applicable to merchandise entered, or withdrawn from warehouse for con-

sumption, on or after the 15th day after Dec. 3, 2004, see section 2108 of Pub. L. 108-429, set out as a note under section 1401 of this title.

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.

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 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective Jan. 1, 1980, see sections 1002 and 107 of Pub. L. 96-39, set out as Effective Date notes under sections 1516a and 1671 of this title, respectively.

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.

Functions of Secretary of the Treasury under this section insofar as they relate to any protest, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979, set out as a note under section 1516a of this title, transferred to Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, §5(a)(1)(D), 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.

REVIEW OF PROTESTS IN IMPORT SURCHARGE CASES

Pub. L. 93-618, title VI, §611, Jan. 3, 1975, 88 Stat. 2075, provided that: "Notwithstanding the provisions of section 515(a) of the Tariff Act of 1930 (19 U.S.C. 1515(a)), in the case of any protest under section 514 of such Act [section 1514 of this title] involving the imposition of an import surcharge in the form of a supplemental duty pursuant to Presidential Proclamation 4074, dated August 17, 1971 [set out as a note preceding section 1202 of this title], the time for review and allowing or denying the protest shall not expire until five years from the date the protest was filed in accordance with such section 514 [section 1514 of this title]."

§ 1516. Petitions by domestic interested parties

(a) Request for classification and rate of duty; petition

(1) The Secretary shall, upon written request by an interested party furnish the classification and the rate of duty imposed upon designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by such interested party. If the interested party believes that the appraised value, the classification, or rate of duty is not correct, it may file a petition with the Secretary setting forth—

(A) a description of the merchandise,

(B) the appraised value, the classification, or the rate of duty that it believes proper, and
(C) the reasons for its belief.

(2) As used in this section, the term "interested party" means a person who is—

(A) a manufacturer, producer, or wholesaler in the United States;

(B) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States; or

(C) a trade or business association a majority of whose members are manufacturers, producers, or wholesalers in the United States,

of goods of the same class or kind as the designated imported merchandise. Such term includes an association, a majority of whose members is composed of persons described in subparagraph (A), (B), or (C).

(3) Any producer of a raw agricultural product who is considered under section 1677(4)(E) of this title to be part of the industry producing a processed agricultural product of the same class or kind as the designated imported merchandise shall, for purposes of this section, be treated as an interested party producing such processed agricultural product.

(b) Determination on petition

If, after receipt and consideration of a petition filed by such an interested party, the Secretary determines that the appraised value, the classification, or rate of duty is not correct, he shall determine the proper appraised value, classification, or rate of duty and shall notify the petitioner of his determination. All such merchandise entered for consumption or withdrawn from warehouse for consumption more than thirty days after the date such notice to the petitioner is published in the weekly Customs Bulletin shall be appraised, classified, or assessed as to the rate of duty in accordance with the Secretary's determination.

(c) Contest by petitioner of appraised value, classification, or rate of duty

If the Secretary determines that the appraised value, classification, or rate of duty with respect to which a petition was filed pursuant to subsection (a) of this section is correct, he shall notify the petitioner. If dissatisfied with the determination of the Secretary, the petitioner may file with the Secretary, not later than thirty days after the date of the notification, notice that it desires to contest the appraised value, classification, or rate of duty. Upon receipt of notice from the petitioner, the Secretary shall cause publication to be made of his determination as to the proper appraised value, classification, or rate of duty and of the petitioner's desire to contest, and shall thereafter furnish the petitioner with such information as to the entries and consignees of such merchandise, entered after the publication of the determination of the Secretary, at such ports of entry designated by the petitioner in his notice of desire to contest, as will enable the petitioner to contest the appraised value, classification, or rate of duty imposed upon such merchandise in the liquidation of one such entry at such port. The Secretary shall direct the appropriate customs

officer at such ports to immediately notify the petitioner by mail when the first of such entries is liquidated.

(d) Appraisal, classification, and liquidation of entries of merchandise covered by published decisions of Secretary

Notwithstanding the filing of an action pursuant to chapter 169 of title 28, merchandise of the character covered by the published decision of the Secretary (when entered for consumption or withdrawn from warehouse for consumption on or before the date of publication of a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit, not in harmony with the published decision of the Secretary) shall be appraised or classified, or both, and the entries liquidated, in accordance with the decision of the Secretary and, except as otherwise provided in this chapter, the final liquidations of these entries shall be conclusive upon all parties.

(e) Consignee or his agent as party in interest before the Court of International Trade

The consignee or his agent shall have the right to appear and to be heard as a party in interest before the United States Court of International Trade.

(f) Appraisal, classification, and assessment of duty of merchandise covered by published decision of Secretary in accordance with final judicial decision of Court of International Trade or Court of Appeals for the Federal Circuit sustaining cause of action in whole or in part; suspension of liquidation of entries; publication

If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit, merchandise of the character covered by the published decision of the Secretary, which is entered for consumption or withdrawn from warehouse for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, shall be subject to appraisal, classification, and assessment of duty in accordance with the final judicial decision in the action, and the liquidation of entries covering the merchandise so entered or withdrawn shall be suspended until final disposition is made of the action, whereupon the entries shall be liquidated, or if necessary, reliquidated in accordance with the final decision. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

(g) Regulations implementing required procedures

Regulations shall be prescribed by the Secretary to implement the procedures required under this section.

(June 17, 1930, ch. 497, title IV, § 516, 46 Stat. 735; June 25, 1938, ch. 679, § 17(a), 52 Stat. 1084; June 25, 1948, ch. 646, § 39, 62 Stat. 992; Pub. L. 91-271, title II, § 209, June 2, 1970, 84 Stat. 286; Pub. L. 93-618, title III, §§ 321(f)(1), 331(b), Jan. 3, 1975, 88 Stat. 2048, 2052; Pub. L. 96-39, title X, § 1001(b)(1),

July 26, 1979, 93 Stat. 303; Pub. L. 96-417, title VI, §§ 601(6), 607, Oct. 10, 1980, 94 Stat. 1744, 1745; Pub. L. 97-164, title I, § 163(a)(1), Apr. 2, 1982, 96 Stat. 49; Pub. L. 99-514, title XVIII, § 1888(5), Oct. 22, 1986, 100 Stat. 2925; Pub. L. 100-418, title I, § 1326(d)(3), Aug. 23, 1988, 102 Stat. 1204.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 516, 42 Stat. 970. That section was superseded by section 516 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Application of subsection (b) of this section to complaints. Section 17(b) of act June 25, 1938, provided that: "(b) The provisions of subsection (b) of section 516 of the Tariff Act of 1930 [this section], as amended by this Act, shall apply only in the case of complaints filed after the effective date of this Act [see section 1653a of this title]. The provisions of subsection (b) of section 516 of the Tariff Act of 1930, as in force prior to the effective date of this Act, shall continue in force with respect to any proceedings commenced by the filing of a complaint thereunder, except that upon the expiration of thirty days after the effective date of this Act, or upon the expiration of thirty days after the date of a decision of the Secretary adverse to the complainant, whichever is the later, any such proceedings in which a protest has not been duly filed shall be deemed to have been terminated unless the complainant shall have filed with the Secretary after the effective date of this Act a notice that he desires to protest the classification of, or rate of duty assessed upon, the merchandise."

AMENDMENTS

1988—Subsec. (a)(3). Pub. L. 100-418 added par. (3).

1986—Subsec. (a)(2). Pub. L. 99-514 inserted "Such term includes an association, a majority of whose members is composed of persons described in subparagraph (A), (B), or (C)."

1982—Subsecs. (d), (f). Pub. L. 97-164 substituted "Court of Appeals for the Federal Circuit" for "Court of Customs and Patent Appeals".

1980—Subsec. (a). Pub. L. 96-417, § 607(a), designated existing provisions as par. (1), redesignated as subpars. (A), (B), and (C), former pars. (1), (2), and (3), struck out "(as defined in section 1677(9)(C), (D), and (E) of this title)" after "interested party", covered in par. (2), and added par. (2).

Subsec. (d). Pub. L. 96-417, §§ 601(6), 607(b), redesignated the United States Customs Court as the United States Court of International Trade and substituted reference to chapter 169 for section 2632 of title 28.

Subsecs. (e), (f). Pub. L. 96-417, § 601(6), redesignated the United States Customs Court as the United States Court of International Trade.

1979—Pub. L. 96-39 completely revised the section to provide an expedited process for judicial review of an appealable determination, expanded the size of the group of parties having standing to obtain review of an appealable determination, and, in the process, revised subsecs. (a), (b), and (c), redesignated former subsecs. (e), (f), (g), and (h) as (d), (e), (f), and (g), and struck out former subsec. (d) relating to the contest of the Secretary's determination that foreign merchandise was not being sold in the United States at less than fair value or that bounty or grant was not being paid.

1975—Subsec. (a). Pub. L. 93-618, § 331(b), inserted provisions relating to additional duty described in section 1303 of this title (to be known as "countervailing duties") and to special duty described in section 161 of this title (to be known as "antidumping duties").

Subsecs. (b), (c). Pub. L. 93-618, § 331(b), inserted provisions relating to countervailing duties and antidumping duties.

Subsecs. (d) to (h). Pub. L. 93-618, § 321(f)(1), added subsec. (d) and redesignated subsecs. (d) to (g) as (e) to (h), respectively.

1970—Subsec. (a). Pub. L. 91-271 substituted provisions requiring the Secretary to furnish to the American manufacturer, producer, or wholesaler the classification, and the rate of duty, if any, imposed upon designated imported merchandise, and provisions authorizing the American manufacturer, etc., to file a protest with the Secretary if the appraised value is too low, the classification is not correct, or the proper rate of duty is not being assessed, for provisions setting forth the procedure for the determination of a protest by an American manufacturer, producer, or wholesaler that the appraised value of any imported merchandise of a class or kind manufactured, produced, or sold at wholesale by him is too low.

Subsec. (b). Pub. L. 91-271 substituted provisions authorizing the Secretary to determine the proper appraised value, classification, or rate of duty of the imported merchandise, and to notify the American manufacturer, producer, or wholesaler of his determination, for provision setting forth the procedure for the determination of a protest by an American manufacturer, producer, or wholesaler that the classification of, and the rate of duty, if any, is not proper.

Subsec. (c). Pub. L. 91-271 substituted provisions setting forth the procedure for the petitioner to contest the decisions of the Secretary with respect to a petition filed pursuant to subsec. (a) of this section, for provisions requiring the collector to mail to the consignee or his agent a copy of every appeal and every protest filed by an American manufacturer, producer, or wholesaler, and authorizing such consignee or his agent to appear and be heard as a party in interest before the Customs Court.

Subsecs. (d) to (g). Pub. L. 91-271 added subsecs. (d) to (g).

1948—Subsec. (b). Act June 25, 1948, repealed last sentence relating to procedure of proceeding over all other cases on Customs Court docket. See sections 2602 and 2638 of Title 28, Judiciary and Judicial Procedure.

Subsec. (c). Act June 25, 1948, repealed last sentence relating to finality of Customs Court's decision. See section 2637 of Title 28.

Subsec. (d). Act June 25, 1948, repealed subsec. (d) relating to inspection of documents. See section 2634 of Title 28.

1938—Subsec. (b). Act June 25, 1938, amended subsec. (b) generally.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 applicable with respect to investigations initiated after Aug. 23, 1988, and to reviews initiated under section 1673e(c) or 1675 of this title after Aug. 23, 1988, see section 1337(b) of Pub. L. 100-418, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

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 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective Jan. 1, 1980, see sections 1002 and 107 of Pub. L. 96-39, set out as Effective Date notes under sections 1516a and 1671 of this title, respectively.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 321(g)(3) of Pub. L. 93-618 provided that: "The amendment made by subsection (f) [amending this section and sections 2631 and 2632 of Title 28, Judiciary and

Judicial Procedure] shall apply with respect to determinations under section 201 of the Antidumping Act, 1921 [section 160 of this title], resulting from questions of dumping raised or presented on or after the date of the enactment of this Act [Jan. 3, 1975]."

Amendment by section 331(b) of Pub. L. 93-618 effective Jan. 3, 1975, see section 331(d)(1) of Pub. L. 93-618, set out as a note under section 1315 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 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

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 Secretary of the Treasury under this section insofar as they relate to any protest, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979, set out as a note under section 1516a of this title, transferred to Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, §5(a)(1)(D), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 11288, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1801-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

APPLICATION OF SUBSECTION (b) TO COMPLAINTS

Section 17(b), (c) of act of June 25, 1938, as amended by act June 16, 1951, ch. 141, §9(b), 65 Stat. 75, provided that:

"(b) The provisions of subsection (b) of section 516 of the Tariff Act of 1930 [this section], as amended by this act, shall apply only in the case of complaints filed after the effective date of this act [see Effective Date of 1938 Amendment note set out under section 1401 of this title]. The provisions of subsection (b) of section 516 of the Tariff Act of 1930, as in force prior to the effective date of this act, shall continue in force with respect to any proceedings commenced by the filing of a complaint thereunder, except that upon the expiration of thirty days after the effective date of this act, or upon the expiration of thirty days after the date of a decision of the Secretary adverse to the complainant, whichever is the later, any such proceedings in which a protest has not been duly filed shall be deemed to have been terminated unless the complainant shall have filed with the Secretary after the effective date of this act a notice that he desires to protest the classification of, or rate of duty assessed upon, the merchandise.

"(c) [Repealed. June 16, 1951, ch. 141, §9(b), 65 Stat. 75.]"

§ 1516a. Judicial review in countervailing duty and antidumping duty proceedings

(a) Review of determination

(1) Review of certain determinations

Within 30 days after the date of publication in the Federal Register of—

(A) a determination by the administering authority, under 1671a(c)¹ or 1673a(c) of this title, not to initiate an investigation,

(B) a determination by the Commission, under section 1675(b) of this title, not to review a determination based upon changed circumstances,

(C) a negative determination by the Commission, under section 1671b(a) or 1673b(a) of this title, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation, or

(D) a final determination by the administering authority or the Commission under section 1675(c)(3) of this title,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) Review of determinations on record

(A) In general

Within thirty days after—

(i) the date of publication in the Federal Register of—

(I) notice of any determination described in clause (ii), (iii), (iv), (v), or (viii) of subparagraph (B),

(II) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B), or

(III) notice of the implementation of any determination described in clause (vii) of subparagraph (B), or

(ii) the date of mailing of a determination described in clause (vi) of subparagraph (B),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(B) Reviewable determinations

The determinations which may be contested under subparagraph (A) are as follows:

(i) Final affirmative determinations by the administering authority and by the

Commission under section 1671d or 1673d of this title, including any negative part of such a determination (other than a part referred to in clause (ii)).

(ii) A final negative determination by the administering authority or the Commission under section 1671d or 1673d of this title, including, at the option of the appellant, any part of a final affirmative determination which specifically excludes any company or product.

(iii) A final determination, other than a determination reviewable under paragraph (1), by the administering authority or the Commission under section 1675 of this title.

(iv) A determination by the administering authority, under section 1671c or 1673c of this title, to suspend an antidumping duty or a countervailing duty investigation, including any final determination resulting from a continued investigation which changes the size of the dumping margin or net countervailable subsidy calculated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.

(v) An injurious effect determination by the Commission under section 1671c(h) or 1673c(h) of this title.

(vi) A determination by the administering authority as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order.

(vii) A determination by the administering authority or the Commission under section 3538 of this title concerning a determination under subtitle IV of this chapter.

(viii) A determination by the Commission under section 1675b(a)(1) of this title.

(3) Exception

Notwithstanding the limitation imposed by paragraph (2)(A)(i)(II) of this subsection, a final affirmative determination by the administering authority under section 1671d or 1673d of this title may be contested by commencing an action, in accordance with the provisions of paragraph (2)(A), within thirty days after the date of publication in the Federal Register of a final negative determination by the Commission under section 1671d or 1673d of this title.

(4) Procedures and fees

The procedures and fees set forth in chapter 169 of title 28 apply to an action under this section.

(5) Time limits in cases involving merchandise from free trade area countries

Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) of this section apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the day specified in whichever of the following subparagraphs applies:

¹ So in original. Probably should be preceded by "section".

(A) For a determination described in paragraph (1)(B) or clause (i), (ii) or (iii) of paragraph (2)(B), the 31st day after the date on which notice of the determination is published in the Federal Register.

(B) For a determination described in clause (vi) of paragraph (2)(B), the 31st day after the date on which the government of the relevant FTA country receives notice of the determination.

(C) For a determination with respect to which binational panel review has commenced in accordance with subsection (g)(8) of this section, the day after the date as of which—

(i) the binational panel has dismissed binational panel review of the determination for lack of jurisdiction, and

(ii) any interested party seeking review of the determination under paragraph (1), (2), or (3) of this subsection has provided timely notice under subsection (g)(3)(B) of this section.

If such an interested party files a summons and complaint under this subsection after dismissal by the binational panel, and if a request for an extraordinary challenge committee is made with respect to the decision by the binational panel to dismiss—

(I) judicial review under this subsection shall be stayed during consideration by the committee of the request, and

(II) the United States Court of International Trade shall dismiss the action if the committee vacates or remands the binational panel decision to dismiss.

(D) For a determination for which review by the United States Court of International Trade is provided for—

(i) under subsection (g)(12)(B) of this section, the day after the date of publication in the Federal Register of notice that article 1904 of the NAFTA has been suspended, or

(ii) under subsection (g)(12)(D) of this section, the day after the date that notice of settlement is published in the Federal Register.

(E) For a determination described in clause (vii) of paragraph (2)(B), the 31st day after the date on which notice of the implementation of the determination is published in the Federal Register.

(b) Standards of review

(1) Remedy

The court shall hold unlawful any determination, finding, or conclusion found—

(A) in an action brought under subparagraph (A), (B), or (C) of subsection (a)(1) of this section, to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

(B)(i) in an action brought under paragraph (2) of subsection (a) of this section, to be unsupported by substantial evidence on the record, or otherwise not in accordance with law, or

(ii) in an action brought under paragraph (1)(D) of subsection (a) of this section, to be

arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(2) Record for review

(A) In general

For the purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

(i) a copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 1677f(a)(3) of this title; and

(ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(B) Confidential or privileged material

The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

(3) Effect of decisions by NAFTA or United States-Canada binational panels

In making a decision in any action brought under subsection (a) of this section, a court of the United States is not bound by, but may take into consideration, a final decision of a binational panel or extraordinary challenge committee convened pursuant to article 1904 of the NAFTA or of the Agreement.

(c) Liquidation of entries

(1) Liquidation in accordance with determination

Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) of this section shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary or the administering authority of a notice of a decision of the United States Court of International Trade, or of the United States Court of Appeals for the Federal Circuit, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

(2) Injunctive relief

In the case of a determination described in paragraph (2) of subsection (a) of this section by the Secretary, the administering authority, or the Commission, the United States Court of International Trade may enjoin the liquidation of some or all entries of merchandise cov-

ered by a determination of the Secretary, the administering authority, or the Commission, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances.

(3) Remand for final disposition

If the final disposition of an action brought under this section is not in harmony with the published determination of the Secretary, the administering authority, or the Commission, the matter shall be remanded to the Secretary, the administering authority, or the Commission, as appropriate, for disposition consistent with the final disposition of the court.

(d) Standing

Any interested party who was a party to the proceeding under section 1303² of this title or subtitle IV of this chapter shall have the right to appear and be heard as a party in interest before the United States Court of International Trade. The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court.

(e) Liquidation in accordance with final decision

If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit—

(1) entries of merchandise of the character covered by the published determination of the Secretary, the administering authority, or the Commission, which is entered, or withdrawn from warehouse, for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, and

(2) entries, the liquidation of which was enjoined under subsection (c)(2) of this section,

shall be liquidated in accordance with the final court decision in the action. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

(f) Definitions

For purposes of this section—

(1) Administering authority

The term “administering authority” means the administering authority described in section 1677(1) of this title.

(2) Commission

The term “Commission” means the United States International Trade Commission.

(3) Interested party

The term “interested party” means any person described in section 1677(9) of this title.

(4) Secretary

The term “Secretary” means the Secretary of the Treasury.

(5) Agreement

The term “Agreement” means the United States-Canada Free-Trade Agreement.

(6) United States Secretary

The term “United States Secretary” means—

(A) the secretary for the United States Section referred to in article 1908 of the NAFTA, and

(B) the secretary of the United States Section provided for in article 1909 of the Agreement.

(7) Relevant FTA Secretary

The term “relevant FTA Secretary” means the Secretary—

(A) referred to in article 1908 of the NAFTA, or

(B) provided for in paragraph 5 of article 1909 of the Agreement,

of the relevant FTA country.

(8) NAFTA

The term “NAFTA” means the North American Free Trade Agreement.

(9) Relevant FTA country

The term “relevant FTA country” means the free trade area country to which an antidumping or countervailing duty proceeding pertains.

(10) Free trade area country

The term “free trade area country” means the following:

(A) Canada for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Canada.

(B) Mexico for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Mexico.

(C) Canada for such time as—

(i) it is not a free trade area country under subparagraph (A); and

(ii) the Agreement is in force with respect to, and the United States applies the Agreement to, Canada.

(g) Review of countervailing duty and antidumping duty determinations involving free trade area country merchandise

(1) “Determination” defined

For purposes of this subsection, the term “determination” means a determination described in—

(A) paragraph (1)(B) of subsection (a) of this section, or

(B) clause (i), (ii), (iii), (vi), or (vii) of paragraph (2)(B) of subsection (a) of this section,

if made in connection with a proceeding regarding a class or kind of free trade area country merchandise, as determined by the administering authority.

(2) Exclusive review of determination by binational panels

If binational panel review of a determination is requested pursuant to article 1904 of the NAFTA or of the Agreement, then, except as provided in paragraphs (3) and (4)—

(A) the determination is not reviewable under subsection (a) of this section, and

(B) no court of the United States has power or jurisdiction to review the deter-

² See References in Text note below.

mination on any question of law or fact by an action in the nature of mandamus or otherwise.

(3) Exception to exclusive binational panel review

(A) In general

A determination is reviewable under subsection (a) of this section if the determination sought to be reviewed is—

(i) a determination as to which neither the United States nor the relevant FTA country requested review by a binational panel pursuant to article 1904 of the NAFTA or of the Agreement,

(ii) a revised determination issued as a direct result of judicial review, commenced pursuant to subsection (a) of this section, if neither the United States nor the relevant FTA country requested review of the original determination,

(iii) a determination issued as a direct result of judicial review that was commenced pursuant to subsection (a) of this section prior to the entry into force of the NAFTA or of the Agreement,

(iv) a determination which a binational panel has determined is not reviewable by the binational panel,

(v) a determination as to which binational panel review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA, or

(vi) a determination as to which extraordinary challenge committee review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA.

(B) Special rule

A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) of this section only if the party seeking to commence review has provided timely notice of its intent to commence such review to—

(i) the United States Secretary and the relevant FTA Secretary;

(ii) all interested parties who were parties to the proceeding in connection with which the matter arises; and

(iii) the administering authority or the Commission, as appropriate.

Such notice is timely provided if the notice is delivered no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) of this section that is applicable to such determination, except that, if the time for requesting binational panel review is suspended under paragraph (8)(A)(ii) of this subsection, any unexpired time for providing notice of intent to commence judicial review shall, during the pendency of any such suspension, also be suspended. Such notice shall contain such information, and be in such form, manner, and style, as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(4) Exception to exclusive binational panel review for constitutional issues

(A) Constitutionality of binational panel review system

An action for declaratory judgment or injunctive relief, or both, regarding a determination on the grounds that any provision of, or amendment made by, the North American Free Trade Agreement Implementation Act implementing the binational dispute settlement system under chapter 19 of the NAFTA, or the United States-Canada Free-Trade Agreement Implementation Act of 1988 implementing the binational panel dispute settlement system under chapter 19 of the Agreement, violates the Constitution may be brought only in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of such action.

(B) Other constitutional review

Review is available under subsection (a) of this section with respect to a determination solely concerning a constitutional issue (other than an issue to which subparagraph (A) applies) arising under any law of the United States as enacted or applied. An action for review under this subparagraph shall be assigned to a 3-judge panel of the United States Court of International Trade.

(C) Commencement of review

Notwithstanding the time limits in subsection (a) of this section, within 30 days after the date of publication in the Federal Register of notice that binational panel review has been completed, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action under subparagraph (A) or (B) by filing an action in accordance with the rules of the court.

(D) Transfer of actions to appropriate court

Whenever an action is filed in a court under subparagraph (A) or (B) and that court finds that the action should have been filed in the other court, the court in which the action was filed shall transfer the action to the other court and the action shall proceed as if it had been filed in the court to which it is transferred on the date upon which it was actually filed in the court from which it is transferred.

(E) Frivolous claims

Frivolous claims brought under subparagraph (A) or (B) are subject to dismissal and sanctions as provided under section 1927 of title 28 and the Federal Rules of Civil Procedure.

(F) Security

(i) Subparagraph (A) actions

The security requirements of rule 65(c) of the Federal Rules of Civil Procedure apply with respect to actions commenced under subparagraph (A).

(ii) Subparagraph (B) actions

No claim shall be heard, and no temporary restraining order or temporary or

permanent injunction shall be issued, under an action commenced under subparagraph (B), unless the party seeking review first files an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense parties affected for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction. If a court upholds the constitutionality of the determination in question in such action, the court shall award to a prevailing party fees and expenses, in addition to any costs incurred by that party, unless the court finds that the position of the other party was substantially justified or that special circumstances make an award unjust.

(G) Panel record

The record of proceedings before the binational panel shall not be considered part of the record for review pursuant to subparagraph (A) or (B).

(H) Appeal to Supreme Court of court orders issued in subparagraph (A) actions

Notwithstanding any other provision of law, any final judgment of the United States Court of Appeals for the District of Columbia Circuit which is issued pursuant to an action brought under subparagraph (A) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under subparagraph (A) may be issued by a single Justice of the Supreme Court.

(5) Liquidation of entries

(A) Application

In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the rules provided in this paragraph shall apply, notwithstanding the provisions of subsection (c) of this section.

(B) General rule

In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, entries of merchandise covered by such determination shall be liquidated in accordance with the determination of the administering authority or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the administering authority of notice of a final decision of a binational panel, or of an extraordinary challenge committee, not in harmony with that determination. Such notice of a decision shall be published within 10 days of the date of the issuance of the panel or committee decision.

(C) Suspension of liquidation

(i) In general

Notwithstanding the provisions of subparagraph (B), in the case of a determina-

tion described in clause (iii) or (vi) of subsection (a)(2)(B) of this section for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the administering authority, upon request of an interested party who was a party to the proceeding in connection with which the matter arises and who is a participant in the binational panel review, shall order the continued suspension of liquidation of those entries of merchandise covered by the determination that are involved in the review pending the final disposition of the review.

(ii) Notice

At the same time as the interested party makes its request to the administering authority under clause (i), that party shall serve a copy of its request on the United States Secretary, the relevant FTA Secretary, and all interested parties who were parties to the proceeding in connection with which the matter arises.

(iii) Application of suspension

If the interested party requesting continued suspension of liquidation under clause (i) is a foreign manufacturer, producer, or exporter, or a United States importer, the continued suspension of liquidation shall apply only to entries of merchandise manufactured, produced, exported, or imported by that particular manufacturer, producer, exporter, or importer. If the interested party requesting the continued suspension of liquidation under clause (i) is an interested party described in subparagraph (C), (D), (E), or (F) of section 1677(9) of this title, the continued suspension of liquidation shall apply only to entries which could be affected by a decision of the binational panel convened under chapter 19 of the NAFTA or of the Agreement.

(iv) Judicial review

Any action taken by the administering authority or the United States Customs Service under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(6) Injunctive relief

Except for cases under paragraph (4)(B), in the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the provisions of subsection (c)(2) of this section shall not apply.

(7) Implementation of international obligations under article 1904 of the NAFTA or the Agreement

(A) Action upon remand

If a determination is referred to a binational panel or extraordinary challenge committee under the NAFTA or the Agreement and the panel or committee makes a deci-

sion remanding the determination to the administering authority or the Commission, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with the decision of the panel or committee. Any action taken by the administering authority or the Commission under this paragraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(B) Application if subparagraph (A) held unconstitutional

In the event that the provisions of subparagraph (A) are held unconstitutional under the provisions of subparagraphs (A) and (H) of paragraph (4), the provisions of this subparagraph shall take effect. In such event, the President is authorized on behalf of the United States to accept, as a whole, the decision of a binational panel or extraordinary challenge committee remanding the determination to the administering authority or the Commission within the period specified by the panel or committee. Upon acceptance by the President of such a decision, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with such decision. Any action taken by the President, the administering authority, or the Commission under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(8) Requests for binational panel review

(A) Interested party requests for binational panel review

(i) General rule

An interested party who was a party to the proceeding in which a determination is made may request binational panel review of such determination by filing a request with the United States Secretary by no later than the date that is 30 days after the date described in subparagraph (A), (B), or (E) of subsection (a)(5) of this section that is applicable to such determination. Receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904(4) of the NAFTA or of the Agreement. Such request shall contain such information and be in such form, manner, and style as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(ii) Suspension of time to request binational panel review under the NAFTA

Notwithstanding clause (i), the time for requesting binational panel review shall be

suspended during the pendency of any stay of binational panel review that is issued pursuant to paragraph 11(a) of article 1905 of the NAFTA.

(B) Service of request for binational panel review

(i) Service by interested party

If a request for binational panel review of a determination is filed under subparagraph (A), the party making the request shall serve a copy, by mail or personal service, on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(ii) Service by United States Secretary

If an interested party to the proceeding requests binational panel review of a determination by filing a request with the relevant FTA Secretary, the United States Secretary shall serve a copy of the request by mail on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(C) Limitation on request for binational panel review

Absent a request by an interested party under subparagraph (A), the United States may not request binational panel review of a determination under article 1904 of the NAFTA or the Agreement.

(9) Representation in panel proceedings

In the case of binational panel proceedings convened under chapter 19 of the NAFTA or of the Agreement, the administering authority and the Commission shall be represented by attorneys who are employees of the administering authority or the Commission, respectively. Interested parties who were parties to the proceeding in connection with which the matter arises shall have the right to appear and be represented by counsel before the binational panel.

(10) Notification of class or kind rulings

In the case of a determination which is described in paragraph (2)(B)(vi) of subsection (a) of this section and which is subject to the provisions of paragraph (2), the administering authority, upon request, shall inform any interested person of the date on which the Government of the relevant FTA country received notice of the determination under paragraph 4 of article 1904 of the NAFTA or the Agreement.

(11) Suspension and termination of suspension of article 1904 of the NAFTA

(A) Suspension of article 1904

If a special committee established under article 1905 of the NAFTA issues an affirmative finding, the Trade Representative may, in accordance with paragraph 8(a) or 9, as appropriate, of article 1905 of the NAFTA, suspend the operation of article 1904 of the NAFTA.

(B) Termination of suspension of article 1904

If a special committee is reconvened and makes an affirmative determination described in paragraph 10(b) of article 1905 of the NAFTA, any suspension of the operation of article 1904 of the NAFTA shall terminate.

(12) Judicial review upon termination of binational panel or committee review under the NAFTA**(A) Notice of suspension or termination of suspension of article 1904**

(i) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) of this section that the operation of article 1904 of the NAFTA has been suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of suspension of article 1904 of the NAFTA.

(ii) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) of this section that the suspension of the operation of article 1904 of the NAFTA is terminated in accordance with paragraph 10 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of termination of suspension of article 1904 of the NAFTA.

(B) Transfer of final determinations for judicial review upon suspension of article 1904

If the operation of article 1904 of the NAFTA is suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA—

(i) upon the request of an authorized person described in subparagraph (C), any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a) of this section; or

(ii) in a case in which—

(I) a binational panel review was completed fewer than 30 days before the suspension, and

(II) extraordinary challenge committee review has not been requested,

upon the request of an authorized person described in subparagraph (C) which is made within 60 days after the completion of the binational panel review, the final determination that was the subject of the binational panel review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a) of this section.

(C) Persons authorized to request transfer of final determinations for judicial review

A request that a final determination be transferred to the Court of International Trade under subparagraph (B) may be made by—

(i) if the United States made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 8(a) of article 1905 of the NAFTA—

(I) the government of the relevant country described in subsection (f)(10)(A) or (B) of this section,

(II) an interested party that was a party to the panel or committee review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired, or

(ii) if a country described in subsection (f)(10)(A) or (B) of this section made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 9 of article 1905 of the NAFTA—

(I) the government of that country,

(II) an interested party that is a person of that country and that was a party to the panel or committee review, or

(III) an interested party that is a person of that country and that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired.

(D) Transfer for judicial review upon settlement

(i) If the Trade Representative achieves a settlement with the government of a country described in subsection (f)(10)(A) or (B) of this section pursuant to paragraph 7 of article 1905 of the NAFTA, and referral for judicial review is among the terms of such settlement, any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall, upon a request described in clause (ii), be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a) of this section.

(ii) A request referred to in clause (i) is a request made by—

(I) the country referred to in clause (i),

(II) an interested party that was a party to the panel or committee review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time for filing notices of appearance in the panel review has not expired.

(June 17, 1930, ch. 497, title IV, §516A, as added Pub. L. 96-39, title X, §1001(a), July 26, 1979, 93 Stat. 300; amended Pub. L. 96-417, title VI, §§601(7), 608, Oct. 10, 1980, 94 Stat. 1744, 1745; Pub. L. 96-542, §2, Dec. 17, 1980, 94 Stat. 3210; Pub. L. 97-164, title I, §163(a)(2), Apr. 2, 1982, 96 Stat. 49;

Pub. L. 98-573, title VI, §623(a), Oct. 30, 1984, 98 Stat. 3040; Pub. L. 99-514, title XVIII, §1888(6), Oct. 22, 1986, 100 Stat. 2925; Pub. L. 100-449, title IV, §401, Sept. 28, 1988, 102 Stat. 1878; Pub. L. 101-382, title I, §134(a)(3), Aug. 20, 1990, 104 Stat. 649; Pub. L. 103-182, title IV, §411, Dec. 8, 1993, 107 Stat. 2140; Pub. L. 103-465, title I, §129(e), title II, §§220(b), 270(a)(1)(N), 271(b), Dec. 8, 1994, 108 Stat. 4838, 4864, 4917, 4921; Pub. L. 104-295, §§20(a)(1), 21(c)(3), 22, Oct. 11, 1996, 110 Stat. 3526, 3530, 3531; Pub. L. 109-432, div. D, title III, §3002, Dec. 20, 2006, 120 Stat. 3173.)

REFERENCES IN TEXT

Section 1303 of this title, referred to in subsec. (d), is defined in section 1677(26) of this title to mean section 1330 as in effect on the day before Jan. 1, 1995.

The North American Free Trade Agreement Implementation Act, referred to in subsec. (g)(4)(A), is Pub. L. 103-182, Dec. 8, 1993, 107 Stat. 2057, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

The United States-Canada Free-Trade Agreement Implementation Act of 1988, referred to in subsec. (g)(4)(A), is Pub. L. 100-449, Sept. 28, 1988, 102 Stat. 1851, which is set out as a note under section 2112 of this title. For complete classification of this Act to the Code, see Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (g)(4)(E), (F), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

In the original, section 1001(a) of Pub. L. 96-39 directed that this section, designated as section 516A, be added to title V of the Tariff Act of 1930, however, since a title V of the Tariff Act of 1930 has not been enacted, this section was added to title IV of the Tariff Act of 1930 to reflect the probable intent of Congress.

AMENDMENTS

2006—Subsec. (g)(1)(B). Pub. L. 109-432 substituted “(vi), or (vii)” for “or (vi)”.

1996—Subsec. (a)(2)(A)(i)(I). Pub. L. 104-295, §20(a)(1), inserted comma after “subparagraph (B)”.

Subsec. (g)(4)(A). Pub. L. 104-295, §22, substituted “Agreement Implementation Act of 1988” for “Implementation Agreement Act of 1988”.

Subsec. (g)(12)(D). Pub. L. 104-295, §21(c)(3), transferred designation “(i)” from heading to before sentence beginning “If the Trade Representative”.

1994—Subsec. (a)(1)(D). Pub. L. 103-465, §220(b)(1), added subpar. (D).

Subsec. (a)(2)(A)(i)(I). Pub. L. 103-465, §271(b)(1), substituted “(v), or (viii)” for “or (v)”.

Pub. L. 103-465, §129(e)(1)(A)(i), struck out “, or” after “(B)”.

Subsec. (a)(2)(A)(i)(III). Pub. L. 103-465, §129(e)(1)(A)(ii), added subcl. (III).

Subsec. (a)(2)(B)(iv). Pub. L. 103-465, §270(a)(1)(N), inserted “countervailable” before “subsidy”.

Subsec. (a)(2)(B)(vii). Pub. L. 103-465, §129(e)(1)(B), added cl. (vii).

Subsec. (a)(2)(B)(viii). Pub. L. 103-465, §271(b)(2), added cl. (viii).

Subsec. (a)(5)(E). Pub. L. 103-465, §129(e)(2), added subpar. (E).

Subsec. (b)(1)(A). Pub. L. 103-465, §220(b)(2)(A), substituted “under subparagraph (A), (B), or (C) of subsection (a)(1) of this section” for “under paragraph (1) of subsection (a) of this section”.

Subsec. (b)(1)(B). Pub. L. 103-465, §220(b)(2)(B), designated existing provisions as cl. (i), substituted “, or” for period at end, and added cl. (ii).

Subsec. (g)(8)(A)(i). Pub. L. 103-465, §129(e)(3), substituted “(A), (B), or (E)” for “(A) or (B)”.

1993—Subsec. (a)(5). Pub. L. 103-182, §411(1), amended par. (5) generally, substituting present provisions for

provisions relating to time limits for commencing review in cases involving Canadian merchandise.

Subsec. (b)(3). Pub. L. 103-182, §411(2), inserted “NAFTA or” after “decisions by” in heading and “of the NAFTA or” after “article 1904” in text.

Subsec. (f)(6), (7). Pub. L. 103-182, §411(3)(A), amended pars. (6) and (7) generally, substituting present provisions for provisions which, in par. (6) defined “United States Secretary” as the secretary provided for in paragraph 4 of article 1909 of the United States-Canada Free-Trade Agreement, and in par. (7), defined “Canadian Secretary” as the secretary provided for in paragraph 5 of article 1909 of the Agreement.

Subsec. (f)(8) to (10). Pub. L. 103-182, §411(3)(B), added pars. (8) to (10).

Subsec. (g). Pub. L. 103-182, §411(4)(A), substituted “free trade area country merchandise” for “Canadian merchandise” in heading.

Subsec. (g)(1). Pub. L. 103-182, §411(4)(B), substituted “free trade area country merchandise” for “Canadian merchandise” in concluding provisions.

Subsec. (g)(2). Pub. L. 103-182, §411(4)(C), inserted “of the NAFTA or” after “article 1904” in introductory provisions.

Subsec. (g)(3)(A). Pub. L. 103-182, §411(4)(D), in cl. (i), substituted “nor the relevant FTA country” for “nor Canada” and inserted “of the NAFTA or” before “of the Agreement”, in cl. (ii), substituted “nor the relevant FTA country” for “nor Canada”, in cl. (iii), inserted “of the NAFTA or” before “of the Agreement” and struck out “or” at end, in cl. (iv), struck out “under paragraph (2)(A)” before “is not reviewable” and substituted a comma for period at end, and added cls. (v) and (vi).

Subsec. (g)(3)(B). Pub. L. 103-182, §411(4)(E), substituted first two sentences for former sentences which read as follows: “A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) of this section only if the party seeking to commence review has provided timely notice of its intent to commence such review to the United States Secretary, the Canadian Secretary, all interested parties who were parties to the proceeding in connection with which the matter arises, and the administering authority or the Commission, as appropriate. Such notice is provided timely if the notice is delivered by no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) of this section that is applicable to such determination.”

Subsec. (g)(4)(A). Pub. L. 103-182, §411(4)(F), inserted “the North American Free Trade Agreement Implementation Act implementing the binational dispute settlement system under chapter 19 of the NAFTA, or” after “or amendment made by”, a comma before “violates”, “only” after “may be brought”, and “, which shall have jurisdiction of such action” after “Circuit” and struck out at end “Any action brought under this subparagraph shall be heard and determined by a 3-judge court in accordance with section 2284 of title 28.”

Subsec. (g)(5). Pub. L. 103-182, §411(4)(G), inserted “of the NAFTA or” after “article 1904” in subpars. (A), (B), and (C)(i), substituted “, the relevant FTA Secretary,” for “, the Canadian Secretary,” in subpar. (C)(ii), and inserted “of the NAFTA or” after “chapter 19” in subpar. (C)(iii).

Subsec. (g)(6). Pub. L. 103-182, §411(4)(H), inserted “of the NAFTA or” after “article 1904”.

Subsec. (g)(7). Pub. L. 103-182, §411(4)(I)(i), inserted “of the NAFTA or the Agreement” in heading.

Subsec. (g)(7)(A). Pub. L. 103-182, §411(4)(I)(ii), (iii), substituted heading for one which read “In general” and inserted “the NAFTA or” before “the Agreement”.

Subsec. (g)(8)(A). Pub. L. 103-182, §411(4)(J), designated existing provisions as cl. (i), inserted cl. heading, realigned margin, inserted “of the NAFTA or” after “article 1904(4)”, and added cl. (ii).

Subsec. (g)(8)(B)(ii). Pub. L. 103-182, §411(4)(K), substituted “relevant FTA Secretary” for “Canadian Secretary”.

Subsec. (g)(8)(C). Pub. L. 103-182, §411(4)(L), substituted “of a determination under article 1904 of the

NAFTA or the Agreement” for “under article 1904 of the Agreement of a determination”.

Subsec. (g)(9). Pub. L. 103-182, §411(4)(M), inserted “of the NAFTA or” after “chapter 19”.

Subsec. (g)(10). Pub. L. 103-182, §411(4)(N), substituted “Government of the relevant FTA country received notice of the determination under paragraph 4 of article 1904 of the NAFTA or the Agreement” for “Government of Canada received notice of the determination under article 1904(4) of the Agreement”.

Subsec. (g)(11), (12). Pub. L. 103-182, §411(4)(O), added pars. (11) and (12).

1990—Subsec. (a)(5)(A). Pub. L. 101-382, §134(a)(3)(A)(i), added subpar. (A) and struck out former subpar. (A) which read as follows: “the date of publication in the Federal Register of—

“(i) notice of any determination described in paragraph (1)(B) or a determination described in clause (ii) or (iii) of paragraph (2)(B), or

“(ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of paragraph (2)(B), or”.

Subsec. (a)(5)(C). Pub. L. 101-382, §134(a)(3)(A)(ii), added subpar. (C).

Subsec. (g)(3)(A)(iv). Pub. L. 101-382, §134(a)(3)(B)(i), added cl. (iv).

Subsec. (g)(3)(B). Pub. L. 101-382, §134(a)(3)(B)(ii), inserted “or (iv)” after “subparagraph (A)(i)”.

1988—Subsec. (a)(5). Pub. L. 100-449, §401(a), added par. (5).

Subsec. (b)(3). Pub. L. 100-449, §401(d), added par. (3).
Subsec. (f)(5) to (7). Pub. L. 100-449, §401(b), added pars. (5) to (7).

Subsec. (g). Pub. L. 100-449, §401(c), added subsec. (g).
1986—Subsec. (a)(3). Pub. L. 99-514 substituted “(2)(A)(i)(II)” for “(2)(A)(ii)”.

1984—Subsec. (a)(1). Pub. L. 98-573, §623(a)(1), amended par. (1) generally, and thereby struck out the designation “(A)” before “Within 30 days”, redesignated former cls. (i) to (iii) as subpars. (A) to (C), respectively, in subpar. (A) as so redesignated struck out references to the Secretary and to section 1303(a)(3) of this title, in subpar. (B) as so redesignated struck out reference to the administering authority and to review of agreements based on changed circumstances, and struck out former subpar. (B), relating to a right of judicial review of certain determinations of the administering authority within 10 days after publication of notice of the determination in the Federal Register.

Subsec. (a)(2)(A). Pub. L. 98-573, §623(a)(2), inserted the designation “(i)” before “the date of publication in the Federal Register of”, redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Subsec. (a)(2)(B)(i). Pub. L. 98-573, §623(a)(3), amended cl. (i) generally and thereby struck out provisions referring to final affirmative determinations by the Secretary and by the Commission under section 1303 of this title, and inserted reference to any negative part of decisions under section 1671d or 1673d of this title.

Subsec. (a)(2)(B)(ii). Pub. L. 98-573, §623(a)(3), amended cl. (ii) generally and thereby struck out references to the Secretary and to section 1303 of this title and inserted provision relating to any part of a final affirmative determination which specifically excludes any company or product.

Subsec. (a)(2)(B)(iii). Pub. L. 98-573, §623(a)(3), amended cl. (iii) generally and thereby substituted provisions relating to final determinations by the administering authority or the Commission for provisions relating to determinations by the Secretary, the administering authority, or the Commission.

Subsec. (a)(2)(B)(iv). Pub. L. 98-573, §623(a)(3), amended cl. (iv) generally and thereby inserted provision relating to any final determination resulting from a continued investigation which changes the size of the dumping margin or net subsidy calculated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.

Subsec. (a)(2)(B)(vi). Pub. L. 98-573, §623(a)(3), added cl. (vi).

Subsec. (a)(3), (4). Pub. L. 98-573, §623(a)(4), added par. (3) and redesignated former par. (3) as (4).

1982—Subsecs. (c)(1), (e). Pub. L. 97-164 substituted “Court of Appeals for the Federal Circuit” for “Court of Customs and Patent Appeals”.

1980—Subsec. (a)(1). Pub. L. 96-417, §608(a), inserted subpar. “(A) Thirty-day review” heading; redesignated as cls. (i), (ii), and (iii) of subpar. (A) provisions formerly designated as subpars. (A), (C), and (D) of par. (1); inserted subpar. “(B) Ten-day review” heading and its introductory text; redesignated as cls. (i) and (ii) of subpar. (B) provisions formerly designated as subpars. (B) and (E) of par. (1), thus substituting ten-day for thirty-day review for such clauses; enacted provision respecting commencement of action by an interested party following subpars. (A) and (B), formerly enacted following only par. (1); and redesignated the United States Customs Court as the United States Court of International Trade in the latter provisions.

Subsec. (a)(2)(A). Pub. L. 96-417, §601(7), redesignated the United States Customs Court as the United States Court of International Trade.

Subsec. (a)(3). Pub. L. 96-542 substituted “chapter 169 of title 28” for “subsections (b), (c), and (e) of chapter 169 of title 28”.

Pub. L. 96-417, §608(b), substituted “chapter 169 of title 28” for “section 2632 of title 28”.

Subsec. (c)(1), (2). Pub. L. 96-417, §§601(7), 608(c), redesignated in pars. (1) and (2) the United States Customs Court as the United States Court of International Trade and deleted from par. (2) the criteria to be considered in ruling on an injunction, namely, the party likely to prevail, irreparable harm, public interest, and greater harm.

Subsec. (d). Pub. L. 96-417, §§601(7), 608(d), redesignated the United States Customs Court as the United States Court of International Trade and substituted requirement for notification of “all such interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court” for prior notice requirement to “all interested parties of the filing of an action pursuant to this section”.

Subsec. (e). Pub. L. 96-417, §601(7), redesignated the United States Customs Court as the United States Court of International Trade.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 129(e) of Pub. L. 103-465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 130 of Pub. L. 103-465, set out as an Effective Date note under section 3531 of this title.

Amendment by sections 220(b), 270(a)(1)(N), and 271(b) of Pub. L. 103-465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103-465, set out as a note under section 1671 of this title.

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], but not applicable to any final determination described in section 1516a(a)(1)(B) or (2)(B)(i), (ii), or (iii) of this title, notice of which is published in the Federal Register before such date, or to a determination described in section 1516a(a)(2)(B)(vi) of this title, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review, that was commenced before such date, see section 416 of Pub. L. 103-182, set out as an Effective Date note under section 3431 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988
AMENDMENT

Amendment by Pub. L. 100-449 effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100-449, set out in a note under section 2112 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 applicable with respect to civil actions pending on, or filed on or after, Oct. 30, 1984, see section 626(b)(2) of Pub. L. 98-573, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 3 of Pub. L. 96-542 provided that: "The amendments made by this Act [amending this section and provisions set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure] shall be effective as of November 1, 1980."

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.

EFFECTIVE DATE; TRANSITIONAL RULES

Section 1002 of title X of Pub. L. 96-39 provided that: "(a) EFFECTIVE DATE.—The amendments made by this title [enacting this section and amending sections 1514, 1515, and 1516 of this title and sections 1541, 1582, 2632, 2633, and 2637 of Title 28, Judiciary and Judicial Procedure] shall take effect on that date (hereinafter in this section referred to as the 'effective date') on which title VII of the Tariff Act of 1930 [subtitle IV of this chapter] (as added by title I of this Act) takes effect [Jan. 1, 1980]; and section 515(a) of such Act of 1930 [section 1515(a) of this title] (as amended by section 1001(b)(2)) shall apply with respect to any denial, in whole or in part, of a protest filed under section 514 of such Act of 1930 [section 1514 of this title] on or after the effective date.

"(b) TRANSITIONAL RULES.—

"(1) CERTAIN PROTESTS, PETITIONS, ACTIONS, ETC.—The amendments made by this title [enacting this section and amending sections 1514, 1515, and 1516 of this title and sections 1541, 1582, 2632, 2633, and 2637 of Title 28, Judiciary and Judicial Procedure] shall not apply with respect to—

"(A) any protest, petition, or notice of desire to contest filed before the effective date [Jan. 1, 1980] under section 514, 516(a), or 516(d), respectively, of the Tariff Act of 1930 [section 1514, 1516(a), or 1516(d) of this title];

"(B) any civil action commenced before the effective date [Jan. 1, 1980] under section 2632 of title 28 of the United States Code; or

"(C) any civil action commenced after the effective date [Jan. 1, 1980] under such section 2632 if the protest, petition, or notice of desire to contest (under section 514, 516(a), or 516(d), respectively, of the Tariff Act of 1930) on which such action is based was filed before such effective date.

"(2) LAW TO BE APPLIED FOR PURPOSES OF SUCH ACTIONS.—Notwithstanding the repeal of the Antidumping Act, 1921 [sections 160 to 171 of this title], by section 106(a) of this Act, and the amendment of section 303 of the Tariff Act of 1930 [section 1303 of this title] by section 103 of this Act, the law in effect on the date of any finding or determination contested in a civil action described in subparagraph (A), (B), or (C)

of paragraph (1) shall be applied for purposes of that action.

"(3) CERTAIN COUNTERVAILING AND ANTIDUMPING DUTY ASSESSMENTS.—The amendments made by this title [enacting this section and amending sections 1514, 1515, and 1516 of this title and sections 1541, 1582, 2632, 2633, and 2637 of Title 28, Judiciary and Judicial Procedure] shall apply with respect to the review of the assessment of, or failure to assess, any countervailing duty or antidumping duty on entries subject to a countervailing duty order or antidumping finding if the assessment is made after the effective date. If no assessment of such duty had been made before the effective date that could serve the party seeking review as the basis of a review of the underlying determination, made by the Secretary of the Treasury or the International Trade Commission before the effective date, on which such order, finding, or lack thereof is based, then the underlying determination shall be subject to review in accordance with the law in effect on the day before the effective date.

"(4) CERTAIN COUNTERVAILING AND ANTIDUMPING DUTY DETERMINATIONS.—With respect to any preliminary determination or final determination of the Secretary of the Treasury under section 303 of the Tariff Act of 1930 [section 1303 of this title] or the Antidumping Act, 1921 [sections 160 to 171 of this title], which is treated under section 102 of this Act [set out as a note under section 1671 of this title] as if made under section 703(b), 705(a), 733(b), or 735(a) of the Tariff Act of 1930 [section 1671b(b), 1671d(a), 1673b(b), or 1673d(a) of this title] (as added by title I of this Act) such determinations shall be subject to judicial review in the same manner and to the same extent as if made on the day before the effective date."

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.

EFFECT OF TERMINATION OF NAFTA COUNTRY STATUS

For provisions relating to effect of termination of NAFTA country status on the provisions of sections 401 to 416 of Pub. L. 103-182, see section 3451 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1801-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

ACCEPTANCE BY PRESIDENT OF PANEL AND COMMITTEE
DECISIONS

For acceptance by President of decisions of binational panels and extraordinary challenge committees in event that subsec. (b)(7)(B) of this section takes effect, see section 2 of Ex. Ord. No. 12889, Dec. 27, 1993, 58 F.R. 69681, set out as a note under section 3311 of this title.

For provision that in the event that subsec. (g)(7)(B) of this section takes effect, the President accepts, as a whole, all decisions of binational panels and extraordinary challenge committees, see section 3 of Ex. Ord. No. 12662, Dec. 31, 1988, 54 F.R. 785, set out as a note under section 2112 of this title.

§§ 1517 to 1519. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

Section 1517, act June 17, 1930, ch. 497, title IV, § 517, 46 Stat. 737, related to frivolous protest or appeal. See section 2641 of Title 28, Judiciary and Judicial Procedure.

Section 1518, acts June 10, 1890, ch. 407, § 12, 26 Stat. 136; May 27, 1908, ch. 205, § 3, 35 Stat. 406; Aug. 5, 1909, ch. 6, § 28, 36 Stat. 98; May 28, 1926, ch. 411, § 1, 44 Stat. 669; June 17, 1930, ch. 497, title IV, § 518, 46 Stat. 737, related to the judges of the United States Customs Court: their appointment, salary, retirement, vacancies, and powers; the control of the fiscal affairs and of the clerical force of the court; and the division of the court. See sections 251 to 254, 456, 1581, 2071, 2639, and 2640 of Title 28, Judiciary and Judicial Procedure. Last sentence of section, relating to the transfer of unexpended appropriations for salaries to be available for expenditures for the same purposes, was omitted as executed.

Section 1519, act June 17, 1930, ch. 497, title IV, § 519, 46 Stat. 739, related to publication of Customs Court's decisions. See section 255 of Title 28, Judiciary and Judicial Procedure.

§ 1520. Refunds and errors

(a) Cases in which refunds authorized

The Secretary of the Treasury is authorized to refund duties or other receipts in the following cases:

(1) *Excess deposits.*—Whenever it is ascertained on liquidation or reliquidation of an entry or reconciliation that more money has been deposited or paid as duties than was required by law to be so deposited or paid.

(2) *Fees, charges, and exactions.*—Whenever it is determined in the manner required by law that any fees, charges, or exactions, other than duties and taxes, have been erroneously or excessively collected.

(3) *Fines, penalties, and forfeitures.*—Whenever money has been deposited in the Treasury on account of a fine, penalty, or forfeiture which did not accrue, or which is finally determined to have accrued in an amount less than that so deposited, or which is mitigated to an amount less than that so deposited or is remitted.

(4) *Prior to liquidation.*—Prior to the liquidation of an entry or reconciliation, whenever an importer of record declares or it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid.

(b) Authorization of appropriations

The necessary moneys to make such refunds are authorized to be appropriated annually from the general fund of the Treasury.

(c) Repealed. Pub. L. 108-429, title II, § 2105, Dec. 3, 2004, 118 Stat. 2598

(d) Goods qualifying under free trade agreement rules of origin

Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin set out in section 3332 of this title, section 202 of the United States-Chile Free Trade Agreement Implementation Act, section 4033 of this title, section 202 of the United States-Oman Free Trade Agreement Implementation Act, or

section 203 of the United States-Peru Trade Promotion Agreement Implementation Act for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—

(1) a written declaration that the good qualified under the applicable rules at the time of importation;

(2) copies of all applicable NAFTA Certificates of Origin (as defined in section 1508(b)(1) of this title), or other certificates or certifications of origin, as the case may be; and

(3) such other documentation and information relating to the importation of the goods as the Customs Service may require.

(June 17, 1930, ch. 497, title IV, § 520, 46 Stat. 739; June 26, 1934, ch. 756, § 2, 48 Stat. 1225; June 25, 1938, ch. 679, § 18, 52 Stat. 1086; Aug. 8, 1953, ch. 397, § 20, 67 Stat. 519; Pub. L. 91-271, title II, § 210, June 2, 1970, 84 Stat. 287; Pub. L. 95-410, title II, § 210, Oct. 3, 1978, 92 Stat. 903; Pub. L. 98-573, title II, §§ 210(b), 212(c)(B), formerly § 212(b)(7)(B), Oct. 30, 1984, 98 Stat. 2977, 2984, renumbered Pub. L. 99-514, title XVIII, § 1889(3), Oct. 22, 1986, 100 Stat. 2925; Pub. L. 103-182, title II, § 206, title VI, § 642(b), 646, Dec. 8, 1993, 107 Stat. 2095, 2205, 2207; Pub. L. 106-36, title II, § 2408(a), June 25, 1999, 113 Stat. 171; Pub. L. 108-77, title II, § 206, Sept. 3, 2003, 117 Stat. 931; Pub. L. 108-429, title II, § 2105, Dec. 3, 2004, 118 Stat. 2598; Pub. L. 109-53, title II, § 207, Aug. 2, 2005, 119 Stat. 485; Pub. L. 109-280, title XIV, § 1635(b), Aug. 17, 2006, 120 Stat. 1170; Pub. L. 109-283, title II, § 205, Sept. 26, 2006, 120 Stat. 1203; Pub. L. 110-138, title II, § 206, Dec. 14, 2007, 121 Stat. 1476.)

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(c) of Pub. L. 109-283, see Effective and Termination Dates of 2006 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 107(c) of Pub. L. 108-77, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

Section 202 of the United States-Chile Free Trade Agreement Implementation Act, referred to in subsec. (d), 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-Oman Free Trade Agreement Implementation Act, referred to in subsec. (d), is section 202 of Pub. L. 109-283, 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 subsec. (d), is section 203 of Pub. L. 110-138, which is set out in a note under section 3805 of this title.

CODIFICATION

Act June 26, 1934, effective July 1, 1935, provided for repeal of certain permanent appropriations authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury.

PRIOR PROVISIONS

This section, as originally enacted, contained a paragraph (b) making a permanent appropriation of the

moneys necessary to make refunds. Effective July 1, 1935, paragraph (b) was repealed by act June 26, 1934, ch. 756, § 2, 48 Stat. 1225, such act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury.

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 520, 42 Stat. 973. That section was superseded by section 520 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions somewhat similar to those in subdivisions (1) and (3) of paragraph (a) for refund of moneys paid on account of unascertained or estimated duties or payments on appeal, and for correction of clerical errors within one year, with further provisions making an appropriation and requiring reports to Congress of moneys refunded, were contained in act Oct. 3, 1913, ch. 16, § III, Y, 38 Stat. 191, which reenacted the provisions of Customs Administrative Act June 10, 1890, ch. 407, § 24, 26 Stat. 140, as renumbered and reenacted by Payne-Aldrich Tariff Act of August 5, 1909, ch. 6, § 28, 36 Stat. 103. Said section III, Y, of the 1913 act was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

Provisions concerning the refund of moneys collected as duties in accordance with any decision, etc., of the Secretary of the Treasury, with provisos concerning reliquidations, correction of errors, household effects and other articles exempt from duty, were contained in act March 3, 1875, ch. 136, 18 Stat. 469, which was also repealed by section 643 of the act of Sept. 21, 1922.

R.S. § 3011 (as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, and act Feb. 1, 1888, ch. 4, 25 Stat. 6) and section 3012, relative to actions to recover duties paid under protest, and sections 3012½ and 3013, relative to refunds, were repealed by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141.

Act June 7, 1924, ch. 357, 43 Stat. 660, authorizing the remission of unpaid customs duties on material belonging to the United States and theretofore imported by the War Department, was omitted from the Code as temporary.

AMENDMENTS

2007—Subsec. (d). Pub. L. 110-138, §§107(c), 206, in introductory provisions, temporarily struck out “or” before “section 202 of the United States-Oman” and substituted “, or section 203 of the United States-Peru Trade Promotion Agreement Implementation Act for which” for “for which”. See Effective and Termination Dates of 2007 Amendment note below.

2006—Subsec. (a). Pub. L. 109-280, in par. (1), substituted period for semicolon at end, in par. (2), substituted period for “; and” at end, and, in par. (4), inserted “an importer of record declares or” after “whenever” and struck out “by reason of clerical error” before period at end.

Subsec. (d). Pub. L. 109-283, §§107(c), 205(1), in introductory provisions, temporarily struck out “or” before “section 4033” and substituted “, or section 202 of the United States-Oman Free Trade Agreement Implementation Act for which” for “for which”. See Effective and Termination Dates of 2006 Amendment note below.

Subsec. (d)(3). Pub. L. 109-283, §§107(c), 205(2), temporarily inserted “and information” after “documentation”. See Effective and Termination Dates of 2006 Amendment note below.

2005—Subsec. (d). Pub. L. 109-53, §§107(d), 207, temporarily substituted “, section 202 of the United States-Chile Free Trade Agreement Implementation Act, or section 4033 of this title” for “or section 202 of the United States-Chile Free Trade Agreement Implementation Act” in introductory provisions and inserted “or certifications” after “other certificates” in par. (2). See Effective and Termination Dates of 2005 Amendment note below.

2004—Subsec. (c). Pub. L. 108-429 struck out subsec. (c) which related to reliquidation of entry or reconciliation.

2003—Subsec. (d). Pub. L. 108-77, §§107(c), 206(1), (2), temporarily inserted heading and inserted “or section

202 of the United States-Chile Free Trade Agreement Implementation Act” after “title” in introductory provisions. See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (d)(1). Pub. L. 108-77, §§107(c), 206(3), temporarily substituted “the applicable” for “those”. See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (d)(2). Pub. L. 108-77, §§107(c), 206(4), temporarily inserted “, or other certificates of origin, as the case may be” before semicolon. See Effective and Termination Dates of 2003 Amendment note below.

1999—Subsec. (d). Pub. L. 106-36 inserted “(including any merchandise processing fees)” after “excess duties” in introductory provisions.

1993—Subsec. (a)(1), (4). Pub. L. 103-182, § 646(1), inserted “or reconciliation” after “entry”.

Subsec. (c). Pub. L. 103-182, § 646(2)(A), (B), substituted “Customs Service” for “appropriate customs officer” and inserted “or reconciliation” after “entry” in introductory provisions.

Subsec. (c)(1). Pub. L. 103-182, § 646(2)(A), (C), inserted “, whether or not resulting from or contained in electronic transmission,” before “not amounting to”, and substituted “Customs Service” for “appropriate customs officer”.

Subsec. (d). Pub. L. 103-182, § 206, added subsec. (d). See Construction of 1993 Amendment note below.

Pub. L. 103-182, § 642(b), struck out subsec. (d) which read as follows: “If a determination is made to reliquidate an entry as a result of a protest filed under section 1514 of this title or an application for relief made under subsection (c)(1) of this section, or if reliquidation is ordered by an appropriate court, interest shall be allowed on any amount paid as increased or additional duties under section 1505(c) of this title at the annual rate established pursuant to that section and determined as of the 15th day after the date of liquidation or reliquidation. The interest shall be calculated from the date of payment to the date of (1) the refund, or (2) the filing of a summons under section 2632 of title 28, whichever occurs first.” See Construction of 1993 Amendment note below.

1984—Subsec. (a)(4). Pub. L. 98-573, § 212(b)(7)(B), added par. (4).

Subsec. (d). Pub. L. 98-573, § 210(b), added subsec. (d).

1978—Subsec. (c)(1). Pub. L. 95-410 substituted “appropriate customs officer within one year after the date of liquidation or exaction” for “customs service within one year after the date of entry, or transaction, or within ninety days after liquidation or exaction when the liquidation or exaction is made more than nine months after the date of the entry, or transaction”.

1970—Subsec. (c). Pub. L. 91-271 in introductory material substituted “the appropriate customs officer may, in accordance with regulations prescribed by the Secretary,” for “the Secretary of the Treasury may authorize a collector to”, and in par. (1) struck out “appraisalment” wherever appearing and substituted “ninety” and “nine” for “sixty” and “ten”, respectively.

1953—Subsec. (c)(1). Act Aug. 8, 1953, extended the relief provision to situations involving clerical errors, mistakes of fact, or any other inadvertence not amounting to an error in the construction of a law, in any entry, liquidation, appraisalment or other customs transaction, when such error, mistake or other inadvertence is adverse to the record or established by written evidence.

Subsec. (c)(2). Act Aug. 8, 1953, permitted correction of assessments of duty on household or personal effects which are subject to duty.

1938—Subsecs. (b), (c). Act June 25, 1938, added subsecs. (b) and (c).

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 2006
AMENDMENT

Amendment by Pub. L. 109-283 effective on the date on which the United States-Oman Free Trade Agreement enters into force (Jan. 1, 2009) and to cease to be effective on the date on which the Agreement terminates, see section 107(a), (c) of Pub. L. 109-283, set out in a note under section 3805 of this title.

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.

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 DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-429 applicable to merchandise entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 3, 2004, see section 2108 of Pub. L. 108-429, set out as a note under section 1401 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003
AMENDMENT

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 1999 AMENDMENT

Amendment by Pub. L. 106-36 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after June 25, 1999, see section 2408(c) of Pub. L. 106-36, set out as a note under section 1514 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 206 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 1984 AMENDMENT

Amendment by section 210(b) of Pub. L. 98-573 applicable with respect to determinations made or ordered on or after Oct. 30, 1984, see section 214(c)(5)(B) of Pub. L. 98-573, set out as a note under section 1304 of this title.

Amendment by section 212 of Pub. L. 98-573 effective on close of 180th day after Oct. 30, 1984, see section 214(d) 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 1953 AMENDMENT; SAVINGS
PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 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.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by section 206 of Pub. L. 103-182 to be made after amendment by section 642(b) of Pub. L. 103-182 is executed, see section 212 of Pub. L. 103-182, set out as a note under section 58c 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.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1801-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

AVAILABILITY OF TRANSPORTATION AND STORAGE
FACILITIES FOR MILITARY PURPOSES

Act Sept. 29, 1942, ch. 567, 56 Stat. 761, authorized removal of merchandise in bond or customs custody from transportation and storage facilities needed for military purposes, prior to repeal by act July 25, 1947, ch. 327, §1, 61 Stat. 449.

§ 1521. Repealed. Pub. L. 103-182, title VI, § 618, Dec. 8, 1993, 107 Stat. 2180

Section, acts June 17, 1930, ch. 497, title IV, § 521, 46 Stat. 739; June 2, 1970, Pub. L. 91-271, title III, § 301(b), 84 Stat. 287, provided for reliquidation of entry on account of fraud.

§ 1522. Omitted

CODIFICATION

Section, act June 17, 1930, ch. 497, title IV, § 522, 46 Stat. 739, amended section 372 of former Title 31. See section 5151 of Title 31, Money and Finance.

§ 1523. Examination of accounts

The Secretary of the Treasury or such officer or employee as he shall designate, shall, under regulations and instructions prescribed by the Secretary—

(1) examine the customs officers' accounts of receipts and disbursements of money and receipts and disposition of merchandise; and

(2) verify, to such extent as the Secretary of the Treasury shall direct, assessments of duties and taxes and allowances of drawback.

(June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740; Aug. 8, 1953, ch. 397, § 2(d), 67 Stat. 508; Pub. L. 91-271, title III, § 301(s), June 2, 1970, 84 Stat. 290.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 523, 42 Stat. 974. That section was superseded by section 523 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 officers for reference to collectors.

1953—Act Aug. 8, 1953, amended section generally by eliminating the provision continuing “naval officers of customs” as “Comptrollers of Customs”; by substituting the reference to “The Secretary of the Treasury or such officer or employee as he shall designate” for references to the comptrollers of customs; and, among other changes, substituting the provision that the verification of assessments of duties and allowances of drawbacks should be to such extent as the Secretary of the Treasury directs, for the former provision requiring such verification in all cases.

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 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

§ 1524. Deposit of reimbursable charges

Receipts for any reimbursable charges or expenses which have been paid for out of any appropriation for collecting the revenue from customs shall be deposited as a refund to such appropriation instead of being covered into the Treasury as miscellaneous receipts, as provided by section 527 of this title.

(June 17, 1930, ch. 497, title IV, § 524, 46 Stat. 741; June 25, 1938, ch. 679, § 19(b), 52 Stat. 1087.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 524, 42 Stat. 975. That section was superseded by section 524 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

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

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.

§ 1525. Repealed. Pub. L. 89-762, § 2, Nov. 5, 1966, 80 Stat. 1312

Section, act June 17, 1930, ch. 497, title IV, § 525, 46 Stat. 741, authorized the Secretary of the Treasury to employ not more than ten persons in the District of Columbia who have been detailed from the field force of the Customs Service.

§ 1526. Merchandise bearing American trademark

(a) Importation prohibited

Except as provided in subsection (d) of this section, it shall be unlawful to import into the

United States any merchandise of foreign manufacture if such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trademark owned by a citizen of, or by a corporation or association created or organized within, the United States, and registered in the Patent and Trademark Office by a person domiciled in the United States, under the provisions of sections 81 to 109 of title 15, and if a copy of the certificate of registration of such trademark is filed with the Secretary of the Treasury, in the manner provided in section 106 of said title 15, unless written consent of the owner of such trademark is produced at the time of making entry.

(b) Seizure and forfeiture

Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture for violation of the customs laws.

(c) Injunction and damages

Any person dealing in any such merchandise may be enjoined from dealing therein within the United States or may be required to export or destroy such merchandise or to remove or obliterate such trademark and shall be liable for the same damages and profits provided for wrongful use of a trade-mark, under the provisions of sections 81 to 109 of title 15.

(d) Exemptions; publication in Federal Register; forfeitures; rules and regulations

(1) The trademark provisions of this section and section 1124 of title 15, do not apply to the importation of articles accompanying any person arriving in the United States when such articles are for his personal use and not for sale if (A) such articles are within the limits of types and quantities determined by the Secretary pursuant to paragraph (2) of this subsection, and (B) such person has not been granted an exemption under this subsection within thirty days immediately preceding his arrival.

(2) The Secretary shall determine and publish in the Federal Register lists of the types of articles and the quantities of each which shall be entitled to the exemption provided by this subsection. In determining such quantities of particular types of trade-marked articles, the Secretary shall give such consideration as he deems necessary to the numbers of such articles usually purchased at retail for personal use.

(3) If any article which has been exempted from the restrictions on importation of the trade-mark laws under this subsection is sold within one year after the date of importation, such article, or its value (to be recovered from the importer), is subject to forfeiture. A sale pursuant to a judicial order or in liquidation of the estate of a decedent is not subject to the provisions of this paragraph.

(4) The Secretary may prescribe such rules and regulations as may be necessary to carry out the provisions of this subsection.

(e) Merchandise bearing counterfeit mark; seizure and forfeiture; disposition of seized goods

Any such merchandise bearing a counterfeit mark (within the meaning of section 1127 of title

15) imported into the United States in violation of the provisions of section 1124 of title 15, shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the Secretary has the consent of the trademark owner, the Secretary may obliterate the trademark where feasible and dispose of the goods seized—

(1) by delivery to such Federal, State, and local government agencies as in the opinion of the Secretary have a need for such merchandise,

(2) by gift to such eleemosynary institutions as in the opinion of the Secretary have a need for such merchandise, or

(3) more than 90 days after the date of forfeiture, by sale by the Customs Service at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2).

(f) Civil penalties

(1) Any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized under subsection (e) of this section shall be subject to a civil fine.

(2) For the first such seizure, the fine shall be not more than the value that the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price, determined under regulations promulgated by the Secretary.

(3) For the second seizure and thereafter, the fine shall be not more than twice the value that the merchandise would have had if it were genuine, as determined under regulations promulgated by the Secretary.

(4) The imposition of a fine under this subsection shall be within the discretion of the Customs Service, and shall be in addition to any other civil or criminal penalty or other remedy authorized by law.

(June 17, 1930, ch. 497, title IV, § 526, 46 Stat. 741; Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 95-410, title II, § 211(a), (c), Oct. 3, 1978, 92 Stat. 903; Pub. L. 103-182, title VI, § 663, Dec. 8, 1993, 107 Stat. 2214; Pub. L. 104-153, §§ 9, 10, July 2, 1996, 110 Stat. 1388.)

REFERENCES IN TEXT

Sections 81 to 109 of title 15, referred to in subsecs. (a) and (c), were repealed by act July 5, 1946, ch. 540, § 46(a), 61 Stat. 444. See sections 1051 to 1127, respectively, of Title 15, Commerce and Trade.

Section 106 of title 15, referred to in subsec. (a), was repealed by act July 15, 1946, ch. 540, § 46(a), 60 Stat. 444. See section 1124 of Title 15.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 526, 42 Stat. 975. That section was superseded by section 526 of

act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-153, § 9, inserted “destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the Secretary has the consent of the trademark owner, the Secretary may” after “shall, after forfeiture,” in second sentence, inserted “or” at end of par. (2), substituted period for “, or” at end of par. (3), and struck out par. (4) which read as follows: “if the merchandise is unsafe or a hazard to health, by destruction.”

Subsec. (f). Pub. L. 104-153, § 10, added subsec. (f).

1993—Subsec. (e)(3). Pub. L. 103-182 substituted “90 days” for “1 year” and “the Customs Service” for “appropriate customs officers”.

1978—Subsec. (a). Pub. L. 95-410, § 211(a)(1), substituted “Except as provided in subsection (d) of this section, it” for “It”.

Subsec. (d). Pub. L. 95-410, § 211(a)(2), added subsec. (d).

Subsec. (e). Pub. L. 95-410, § 211(c), added subsec. (e).

CHANGE OF NAME

“Patent and Trademark Office” substituted for “Patent Office” in subsec. (a) pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of Title 35, Patents.

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.

§ 1527. Importation of wild mammals and birds in violation of foreign law

(a) Importation prohibited

If the laws or regulations of any country, dependency, province, or other subdivision of government restrict the taking, killing, possession, or exportation to the United States, of any wild mammal or bird, alive or dead, or restrict the exportation to the United States of any part or product of any wild mammal or bird, whether raw or manufactured, no such mammal or bird, or part or product thereof, shall, after the expiration of ninety days after June 17, 1930, be imported into the United States from such country, dependency, province, or other subdivision of government, directly or indirectly, unless accompanied by a certification of the United States consul, for the consular district in which is located the port or place from which such mammal or bird, or part or product thereof, was exported from such country, dependency, province, or other subdivision of government, that such mammal or bird, or part or product thereof, has not been acquired or exported in violation of the laws or regulations of such country, dependency, province, or other subdivision of government.

(b) Forfeiture

Any mammal or bird, alive or dead, or any part or product thereof, whether raw or manufactured, imported into the United States in violation of the provisions of the preceding subdivi-

sion shall be subject to seizure and forfeiture under the customs laws. Any such article so forfeited may, in the discretion of the Secretary of the Treasury and under such regulations as he may prescribe, be placed with the departments or bureaus of the Federal or State Governments, or with societies or museums, for exhibition or scientific or educational purposes, or destroyed, or (except in the case of heads or horns of wild mammals) sold in the manner provided by law.

(c) Section not to apply in certain cases

The provisions of this section shall not apply in the case of—

(1) Prohibited importations

Articles the importation of which is prohibited under the provisions of this chapter, or of section 42(a) of title 18, or of any other law;

(2) Scientific or educational purposes

Wild mammals or birds, alive or dead, or parts or products thereof, whether raw or manufactured, imported for scientific or educational purposes;

(3) Certain migratory game birds

Migratory game birds (for which an open season is provided by the laws of the United States and any foreign country which is a party to a treaty with the United States, in effect on the date of importation, relating to the protection of such migratory game birds) brought into the United States by bona fide sportsmen returning from hunting trips in such country, if at the time of importation the possession of such birds is not prohibited by the laws of such country or of the United States.

(June 17, 1930, ch. 497, title IV, § 527, 46 Stat. 741.)

CODIFICATION

In subsec. (c)(1), “section 42(a) of title 18” substituted for “section 241 of the Criminal Code [18 U.S.C. 391]” on authority of act June 25, 1948, ch. 645, 62 Stat. 683, the first section of which enacted Title 18, Crimes and Criminal Procedure.

§ 1528. Taxes not to be construed as duties

No tax or other charge imposed by or pursuant to any law of the United States shall be construed to be a customs duty for the purpose of any statute relating to the customs revenue, unless the law imposing such tax or charge designates it as a customs duty or contains a provision to the effect that it shall be treated as a duty imposed under the customs laws. Nothing in this section shall be construed to limit or restrict the jurisdiction of the United States Court of International Trade or the United States Court of Appeals for the Federal Circuit.

(June 17, 1930, ch. 497, title IV, § 528, as added June 25, 1938, ch. 679, § 20, 52 Stat. 1087; amended Pub. L. 96-417, title VI, § 601(8), Oct. 10, 1980, 94 Stat. 1744; Pub. L. 97-164, title I, § 163(a)(3), Apr. 2, 1982, 96 Stat. 49.)

AMENDMENTS

1982—Pub. L. 97-164 substituted “Court of Appeals for the Federal Circuit” for “Court of Customs and Patent Appeals”.

1980—Pub. L. 96-417 redesignated the United States Customs Court as the United States Court of International Trade.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

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

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

§ 1529. Collection of fees on behalf of other agencies

The Customs Service shall be reimbursed from the fees collected for the cost and expense, administrative and otherwise, incurred in collecting any fees on behalf of any government¹ agency for any reason.

(June 17, 1930, ch. 497, title IV, § 529, as added Pub. L. 103-182, title VI, § 669, 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.

PART IV—TRANSPORTATION IN BOND AND WAREHOUSING OF MERCHANDISE

§ 1551. Designation as carrier of bonded merchandise

Under such regulations and subject to such terms and conditions as the Secretary of the Treasury shall prescribe—

(1) any common carrier of merchandise owning or operating a railroad, steamship, or other transportation line or route for the transportation of merchandise in the United States,

(2) any contract carrier authorized to operate as such by any agency of the United States, and

(3) any freight forwarder authorized to operate as such by any agency of the United States,

upon application, may, in the discretion of the Secretary, be designated as a carrier of bonded merchandise for the final release of which from customs custody a permit has not been issued. A private carrier, upon application, may, in the discretion of the Secretary, be designated under the preceding sentence as a carrier of bonded merchandise, subject to such regulations and, in the case of each applicant, to such special terms

¹ So in original. Probably should be capitalized.

and conditions as the Secretary may prescribe to safeguard the revenues of the United States with respect to the transportation of bonded merchandise by such applicant.

(June 17, 1930, ch. 497, title IV, § 551, 46 Stat. 742; Dec. 28, 1945, ch. 605, 59 Stat. 667; Pub. L. 87-598, Aug. 24, 1962, 76 Stat. 400; Pub. L. 87-854, Oct. 23, 1962, 76 Stat. 1130; Pub. L. 90-240, § 3, Jan. 2, 1968, 81 Stat. 776.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 551, 42 Stat. 975. That section was superseded by section 551 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions concerning transportation of merchandise in bond without appraisalment to another port of entry were contained in the Immediate Transportation Act of June 10, 1880, ch. 190, 21 Stat. 173, as amended, section 3 of which required the merchandise to be transported by carriers designated by the Secretary of the Treasury, and required them to give bonds as the Secretary should require. That act was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

AMENDMENTS

1968—Pub. L. 90-240 provided that a private carrier, upon application, could, in the discretion of the Secretary, be designated as a carrier of bonded merchandise, subject to regulations, terms, and conditions prescribed by the Secretary, safeguard the revenues of the United States with respect to the transportation of bonded merchandise by such applicant.

1962—Pub. L. 87-854 included any contract carrier authorized to operate as such by any agency of the United States.

Pub. L. 87-598 substituted "authorized to operate as such by any agency of the United States," for " , as defined in section 1002(5) of title 49."

1945—Act Dec. 28, 1945, substituted "Under such regulations and subject to such terms and conditions as the Secretary of the Treasury shall prescribe, any common carrier of merchandise owning or operating a railroad, steamship, or other transportation line or route for the transportation of merchandise in the United States, or any freight forwarder, as defined in section 1002(5) of title 49, upon application, may, in the discretion of the Secretary" for "Any common carrier of merchandise owning or operating railroad, steamship, or other transportation lines or routes for the transportation of merchandise in the United States, upon application and the filing of a bond in a form and penalty and with such sureties as may be approved by the Secretary of the Treasury, may".

§ 1551a. Bonded cartmen or lightermen

The Secretary of the Treasury be, and he is, authorized, when it appears to him to be in the interest of commerce, and notwithstanding any provision of law or regulation requiring that the transportation of imported merchandise be by a bonded common carrier, to permit such merchandise which has been entered and examined for customs purposes to be transported by bonded cartmen or bonded lightermen between the ports of New York, Newark, and Perth Amboy, which are all included in Customs Collection District Numbered 10 (New York): *Provided*, That this resolution shall not be construed to deprive any of the ports affected of its rights and privileges as a port of entry.

(June 19, 1936, ch. 611, 49 Stat. 1538.)

CODIFICATION

Section was not enacted as part of Tariff Act of 1930 which comprises this chapter.

§ 1552. Entry for immediate transportation

Any merchandise, other than explosives and merchandise the importation of which is prohibited, arriving at a port of entry in the United States may be entered, under such rules and regulations as the Secretary of the Treasury may prescribe, for transportation in bond without appraisalment to any other port of entry designated by the consignee, or his agent, and by such bonded carrier as he designates, there to be entered in accordance with the provisions of this chapter.

(June 17, 1930, ch. 497, title IV, § 552, 46 Stat. 742.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 552, 42 Stat. 975. That section was superseded by section 552 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions for transportation in bond without appraisalment of merchandise with certain exceptions, when imported at certain named ports and destined for certain ports, were contained in act June 10, 1880, ch. 190, § 1 (as amended by act June 14, 1880, ch. 214, and act June 20, 1884, ch. 103) 2, 7, and 9, 21 Stat. 173, 174, 175. Sections 5 (as amended by act July 2, 1884, ch. 142, and act Feb. 23, 1887, ch. 215, and act Feb. 2, 1899, ch. 84) and 6 (as amended by act July 2, 1884, ch. 142), regulated the transportation and transfer of the merchandise. The act of June 10, 1880 was amended by act Feb. 23, 1887, ch. 218, 24 Stat. 414, and its provisions were extended by various acts to ports other than those originally named. The act of June 10, 1880, ch. 190, as amended, and the acts of Feb. 23, 1887, ch. 218, and Feb. 2, 1899, ch. 84, were all repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989, and the various acts extending the provisions of the act of June 10, 1880, thereupon became inoperative.

R.S. §§ 2990-2997, as amended by act Feb. 18, 1875, ch. 80, 18 Stat. 319, and as extended by act Mar. 14, 1876, ch. 23, 19 Stat. 7, and act Aug. 14, 1876, ch. 270, 19 Stat. 139, contained provisions somewhat similar to those of the act of June 10, 1880, ch. 190, and were repealed by section 8 of the 1880 act.

R.S. § 2581, relative to the transshipment of merchandise transported in bond to the port of Brownsville, by Brazos Harbor; R.S. §§ 2816-2831, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 246, 247, and act June 16, 1880, ch. 239, 21 Stat. 283, relative to transportation of merchandise intended to be imported into certain ports of delivery; and R.S. § 2998, prescribing a penalty for breaking or entering any car, etc., containing merchandise transported under sections 2990-2997, or defacing any lock or seal, etc.—were all repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

§ 1553. Entry for transportation and exportation; lottery material from Canada

(a) Any merchandise, other than explosives and merchandise the importation of which is prohibited, shown by the manifest, bill of lading, shipping receipt, or other document to be destined to a foreign country, may be entered for transportation in bond through the United States by a bonded carrier without appraisalment or the payment of duties and exported under such regulations as the Secretary of the Treasury shall prescribe; and any baggage or personal effects not containing merchandise the importation of which is prohibited arriving in the United States destined to a foreign country may, upon the request of the owner or carrier having the same in possession for transpor-

tation, be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duty, under such regulations as the Secretary of the Treasury may prescribe. In places where no bonded common-carrier facilities are reasonably available, such merchandise may be so transported otherwise than by a bonded common carrier under such regulations as the Secretary of the Treasury shall prescribe.

(b) Notwithstanding subsection (a) of this section, the entry for transportation in bond through the United States of any lottery ticket, printed paper that may be used as a lottery ticket, or any advertisement of any lottery, that is printed in Canada, shall be permitted without appraisement or the payment of duties under such regulations as the Secretary of the Treasury may prescribe, except that such regulations shall not permit the transportation of lottery materials in the personal baggage of a traveler.

(June 17, 1930, ch. 497, title IV, § 553, 46 Stat. 742; June 25, 1938, ch. 679, § 21, 52 Stat. 1087; Pub. L. 101-382, title III, § 484H(a), Aug. 20, 1990, 104 Stat. 711.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 553, 42 Stat. 976. That section was superseded by section 553 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision that merchandise destined for a foreign country might be entered and conveyed through the territory of the United States without payment of duties under regulations to be prescribed by the Secretary of the Treasury was contained in R.S. § 3005, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, and act May 21, 1900, ch. 487, § 1, 31 Stat. 181. Res. March 1, 1895, No. 23, 28 Stat. 973, partially suspending the operation of that section, was repealed by act May 21, 1900, ch. 487, § 2, 31 Stat. 181, and the section was itself repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

A provision that baggage or personal effects in transit to a foreign country might be delivered to the collector for retention without payment of duty, or forwarding to the collector of the port of departure, was contained in act Oct. 3, 1913, ch. 16, § III, CC, 38 Stat. 192, which reenacted Customs Administrative Act June 10, 1890, ch. 407, § 28, 26 Stat. 141, as reenacted by Payne-Aldrich Tariff Act Aug. 5, 1909, ch. 6, § 28, 36 Stat. 104. Said section III, CC, of the 1913 act was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

R.S. § 2803, on the same subject, was superseded by section 28 of the Customs Administrative Act of June 10, 1890, and repealed by section 642 of the act of Sept. 21, 1922.

R.S. § 2866, provided for the entry and conveyance in transit, without payment of duties, of merchandise arriving at certain ports in the United States destined for the British possessions in North America, and for conveyance in transit from such possessions for export from said ports, in pursuance of provisions of the treaty with Great Britain of May 8, 1871. It was repealed on the termination of articles 18-25, 30, of that treaty, pursuant to the Joint Resolution of Mar. 3, 1883, No. 22, 22 Stat. 641.

AMENDMENTS

1990—Pub. L. 101-382 designated existing provisions as subsec. (a) and added subsec. (b).

1938—Act June 25, 1938, inserted sentence providing for transportation otherwise than by bonded carrier where no bonded common-carrier facilities are reasonably available.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 484H(b) of Pub. L. 101-382, as amended by Pub. L. 104-295, § 5, Oct. 11, 1996, 110 Stat. 3517, provided that: “The amendments made by this section [amending this section] shall apply with respect to articles entered for transportation in bond on or after the date that is 15 days after the date of enactment of this Act [Aug. 20, 1990].”

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.

§ 1553-1. Report on in-bond cargo

(a) Report

Not later than June 30, 2007, the Commissioner shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Finance of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Homeland Security of the House of Representatives, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Ways and Means of the House of Representatives that includes—

(1) a plan for closing in-bond entries at the port of arrival;

(2) an assessment of the personnel required to ensure 100 percent reconciliation of in-bond entries between the port of arrival and the port of destination or exportation;

(3) an assessment of the status of investigations of overdue in-bond shipments and an evaluation of the resources required to ensure adequate investigation of overdue in-bond shipments;

(4) a plan for tracking in-bond cargo within the Automated Commercial Environment (ACE);

(5) an assessment of whether any particular technologies should be required in the transport of in-bond cargo;

(6) an assessment of whether ports of arrival should require any additional information regarding shipments of in-bond cargo;

(7) an evaluation of the criteria for targeting and examining in-bond cargo; and

(8) an assessment of the feasibility of reducing the transit time for in-bond shipments, including an assessment of the impact of such a change on domestic and international trade.

(b) Definition

In this section, 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, § 553A, as added Pub. L. 109-347, title IV, § 406, Oct. 13, 2006, 120 Stat. 1931.)

CODIFICATION

Another section 553A of act June 17, 1930, is classified to section 1553a of this title.

§ 1553a. Recordkeeping for merchandise transported by pipeline

Merchandise in Customs¹ custody that is transported by pipeline may be accounted for on a quantitative basis, based on the bill of lading, or equivalent document of receipt, issued by the pipeline carrier. Unless the Customs Service has reasonable cause to suspect fraud, the Customs Service may accept the bill of lading, or equivalent document of receipt, issued by the pipeline carrier to the shipper and accepted by the consignee to maintain identity. The shipper, pipeline operator, and consignee shall be subject to the recordkeeping requirements of sections 1508 and 1509 of this title.

(June 17, 1930, ch. 497, title IV, § 553A, as added Pub. L. 103-182, title VI, § 664, Dec. 8, 1993, 107 Stat. 2215.)

CODIFICATION

Another section 553A of act June 17, 1930, is classified to section 1553-1 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.

§ 1554. Transportation through contiguous countries

With the consent of the proper authorities, imported merchandise, in bond or duty-paid, and products and manufactures of the United States may be transported from one port to another in the United States through contiguous countries, under such regulations as the Secretary of the Treasury shall prescribe, unless such transportation is in violation of section 4347 of the Revised Statutes, as amended, section 55102 of title 46, or section 1588 of this title.

(June 17, 1930, ch. 497, title IV, § 554, 46 Stat. 743.)

REFERENCES IN TEXT

Section 4347 of the Revised Statutes, as amended, referred to in text, was not classified to the Code. It was superseded by act Feb. 17, 1898, ch. 26, § 1, 30 Stat. 248, which was classified to section 290 of former Title 46, Shipping, and was subsequently repealed by Pub. L. 109-304, § 19, Oct. 6, 2006, 120 Stat. 1710. Provisions similar to those in section 1 of act Feb. 17, 1898, ch. 26, were also contained in section 27 of act June 5, 1920, ch. 250, 41 Stat. 999, and were classified to section 883 of the former Appendix to Title 46, Shipping. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

CODIFICATION

In text, “section 55102 of title 46” substituted for “section 27 of the Merchant Marine Act, 1920” on authority of Pub. L. 109-304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 55102 of Title 46, Shipping.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 554, 42

Stat. 976. That section was superseded by section 554 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions the same in effect as those in this section, except that they did not contain the provision commencing with the words “unless such transportation,” were contained in R.S. § 3006, which also provided that the merchandise transported should be treated as if transported entirely within the United States. R.S. § 3007 exempted cars and vehicles from the payment of fees for receiving or certifying manifests. Both sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

§ 1555. Bonded warehouses

(a) Designation; preconditions; bonding requirements; supervision

Subject to subsection (b) of this section, buildings or parts of buildings and other enclosures may be designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise entered for warehousing, or taken possession of by the appropriate customs officer, or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting, or cleaning of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as private bonded warehouses, or for the storage of imported merchandise generally and be known as public bonded warehouses. Before any imported merchandise not finally released from customs custody shall be stored in any such premises, the owner or lessee thereof shall give a bond in such sum and with such sureties as may be approved by the Secretary of the Treasury to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. Except as otherwise provided in this chapter, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under supervision of the officer of the customs in charge of the same, at the expense of the owner or proprietor. The compensation of such officer of the customs and other customs employees appointed to supervise the receipt of merchandise into any such warehouse and deliveries therefrom shall be reimbursed to the Government by the proprietor of such warehouse.

(b) Duty-free sales enterprises

(1) Duty-free sales enterprises may sell and deliver for export from the customs territory duty-free merchandise in accordance with this subsection and such regulations as the Secretary may prescribe to carry out this subsection.

(2) A duty-free sales enterprise may be located anywhere within—

(A) the same port of entry, as established under section 1 of the Act of August 24, 1912 (37 Stat. 434), from which a purchaser of duty-free merchandise departs the customs territory; or

¹ So in original. Probably should not be capitalized.

(B) 25 statute miles from the exit point through which the purchaser of duty-free merchandise will depart the customs territory; or

(C) a port of entry, as established under section 1 of the Act of August 24, 1912 (37 Stat. 434), or within 25 statute miles of a staffed port of entry if reasonable assurance can be provided that duty-free merchandise sold by the enterprise will be exported by individuals departing from the customs territory through an international airport located within the customs territory.

(3) Each duty-free sales enterprise—

(A) shall establish procedures to provide reasonable assurance that duty-free merchandise sold by the enterprise will be exported from the customs territory;

(B) if the duty-free sales enterprise is an airport store, shall establish and enforce, in accordance with such regulations as the Secretary may prescribe, restrictions on the sale of duty-free merchandise to any one individual to personal use quantities;

(C) shall display in prominent places within its place of business notices which state clearly that any duty-free merchandise purchased from the enterprise—

(i) has not been subject to any Federal duty or tax,

(ii) if brought back into the customs territory, must be declared and is subject to Federal duty and tax, and

(iii) is subject to the customs laws and regulation of any foreign country to which it is taken;

(D) shall not be required to mark or otherwise place a distinguishing identifier on individual items of merchandise to indicate that the items were sold by a duty-free sales enterprise, unless the Secretary finds a pattern in which such items are being brought back into the customs territory without declaration;

(E) may unpack merchandise into saleable units after it has been entered for warehouse and placed in a duty-free sales enterprise, without requirement of further permits; and

(F) shall deliver duty-free merchandise—

(i) in the case of a duty-free sales enterprise that is an airport store—

(I) to the purchaser (or a family member or companion traveling with the purchaser) in an area that is within the airport and to which access to passengers is restricted to those departing from the customs territory;

(II) to the purchaser (or a family member or companion traveling with the purchaser) at the exit point of a specific departing flight;

(III) by placing the merchandise within the aircraft on which the purchaser will depart for carriage as passenger baggage; or

(IV) if the duty-free sales enterprise has made a good faith effort to effect delivery for exportation through one of the methods described in subclause (I), (II), or (III) but is unable to do so, by any other reasonable method to effect delivery; or

(ii) in the case of a duty-free sales enterprise that is a border store—

(I) at a merchandise storage location at or beyond the exit point; or

(II) at any location approved by the Secretary before the date of enactment of the Omnibus Trade Act of 1987.

(4) If a State or local or other governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free sales enterprise under which merchandise is delivered to or through such facility for exportation, merchandise incident to such operation may not be withdrawn from a bonded warehouse and transferred to or through such facility unless the operator of the duty-free sales enterprise demonstrates to the Secretary that the concession or approval required for the enterprise has been obtained.

(5) This subsection does not prohibit a duty-free sales enterprise from offering for sale and delivering to, or on behalf of, individuals departing from the customs territory merchandise other than duty-free merchandise, except that such other merchandise may not be stored in a bonded warehouse facility other than a bonded facility used for retail sales.

(6)(A) Except as provided in subparagraph (B), merchandise that is purchased in a duty-free sales enterprise is not eligible for exemption from duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States if such merchandise is brought back to the customs territory.

(B) Except in the case of travel involving transit to, from, or through an insular possession of the United States, merchandise described in subparagraph (A) that is purchased by a United States resident shall be eligible for exemption from duty under subheadings 9804.00.65, 9804.00.70, and 9804.00.72 of the Harmonized Tariff Schedule of the United States upon the United States resident's return to the customs territory of the United States, if the resident meets the eligibility requirements for the exemption claimed. Notwithstanding any other provision of law, such merchandise shall be considered to be an article acquired abroad as an incident of the journey from which the resident is returning, for purposes of determining eligibility for any such exemption.

(7) The Secretary shall by regulation establish a separate class of bonded warehouses for duty-free sales enterprises. Regulations issued to carry out this paragraph shall take into account the unique characteristics of the different types of duty-free sales enterprises.

(8) For purposes of this subsection—

(A) The term "airport store" means a duty-free sales enterprise which delivers merchandise to, or on behalf of, individuals departing from the customs territory from an international airport located within the customs territory.

(B) The term "border store" means a duty-free sales enterprise which delivers merchandise to, or on behalf of, individuals departing from the customs territory through a land or water border by a means of conveyance other than an aircraft.

(C) The term “customs territory” means the customs territory of the United States and foreign trade zones.

(D) The term “duty-free sales enterprise” means a person that sells, for use outside the customs territory, duty-free merchandise that is delivered from a bonded warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the customs territory.

(E) The term “duty-free merchandise” means merchandise sold by a duty-free sales enterprise on which neither Federal duty nor Federal tax has been assessed pending exportation from the customs territory.

(F) The term “exit point” means the area in close proximity to an actual exit for departing from the customs territory, including the gate holding area in the case of an airport, but only if there is reasonable assurance that duty-free merchandise delivered in the gate holding area will be exported from the customs territory.

(G) The term “personal use quantities” means quantities that are only suitable for uses other than resale, and includes reasonable quantities for household or family consumption as well as for gifts to others.

(c) International travel merchandise

(1) Definitions

For purposes of this section—

(A) the term “international travel merchandise” means duty-free or domestic merchandise which is placed on board aircraft on international flights for sale to passengers, but which is not merchandise incidental to the operation of a duty-free sales enterprise;

(B) the term “staging area” is an area controlled by the proprietor of a bonded warehouse outside of the physical parameters of the bonded warehouse in which manipulation of international travel merchandise in carts occurs;

(C) the term “duty-free merchandise” means merchandise on which the liability for payment of duty or tax imposed by reason of importation has been deferred pending exportation from the customs territory;

(D) the term “manipulation” means the repackaging, cleaning, sorting, or removal from or placement on carts of international travel merchandise; and

(E) the term “cart” means a portable container holding international travel merchandise on an aircraft for exportation.

(2) Bonded warehouse for international travel merchandise

The Secretary shall by regulation establish a separate class of bonded warehouse for the storage and manipulation of international travel merchandise pending its placement on board aircraft departing for foreign destinations.

(3) Rules for treatment of international travel merchandise and bonded warehouses and staging areas

(A) The proprietor of a bonded warehouse established for the storage and manipulation of international travel merchandise shall give a

bond in such sum and with such sureties as may be approved by the Secretary of the Treasury to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. The warehouse proprietor’s bond shall also secure the manipulation of international travel merchandise in a staging area.

(B) A transfer of liability from the international carrier to the warehouse proprietor occurs when the carrier assigns custody of international travel merchandise to the warehouse proprietor for purposes of entry into warehouse or for manipulation in the staging area.

(C) A transfer of liability from the warehouse proprietor to the international carrier occurs when the bonded warehouse proprietor assigns custody of international travel merchandise to the carrier.

(D) The Secretary is authorized to promulgate regulations to require the proprietor and the international carrier to keep records of the disposition of any cart brought into the United States and all merchandise on such cart.

(June 17, 1930, ch. 497, title IV, §555, 46 Stat. 743; Pub. L. 91-271, title III, §301(b), June 2, 1970, 84 Stat. 287; Pub. L. 98-573, title II, §211, Oct. 30, 1984, 98 Stat. 2977; Pub. L. 100-418, title I, §1908(b), Aug. 23, 1988, 102 Stat. 1315; Pub. L. 101-382, title I, §139(a)(1), Aug. 20, 1990, 104 Stat. 653; Pub. L. 104-295, §29, Oct. 11, 1996, 110 Stat. 3535; Pub. L. 106-36, title II, §2417, June 25, 1999, 113 Stat. 176; Pub. L. 106-476, title I, §1454, Nov. 9, 2000, 114 Stat. 2168.)

REFERENCES IN TEXT

For provisions relating to ports of entry established under section 1 of the Act of August 24, 1912 (37 Stat. 434), referred to in subsec. (b)(2)(A), (C), see Prior Provisions note under section 1 of this title.

The date of enactment of the Omnibus Trade Act of 1987, referred to in subsec. (b)(3)(F)(ii)(II), probably means the date of enactment of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, which was approved Aug. 23, 1988.

The Harmonized Tariff Schedule of the United States, referred to in subsec. (b)(6), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §555, 42 Stat. 976. That section was superseded by section 555 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. §2958, authorizing cellars and vaults of stores for storage of wines and distilled spirits, and yards for storage of coal, etc., to be constituted bonded warehouses; section 2959, authorizing parts of buildings to be bonded for the storage of grain; section 2960, requiring private warehouses to be used solely for the storage of warehoused merchandise, and be approved by the Secretary of the Treasury, and be in charge of a proper officer of the customs, etc.; section 2961 requiring bonds to hold the United States harmless, and providing that imports deposited in warehouses should be at the risk and expense of the owner or importer; section 2968, authorizing the extension of warehouse privileges to the port of Albany; and

section 2988, as amended by act Feb. 27, 1877, ch. 69, §1, 19 Stat. 247, requiring collectors to make reports of merchandise in warehouses. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS

2000—Subsec. (c). Pub. L. 106-476 added subsec. (c).

1999—Subsec. (b)(2)(B), (C). Pub. L. 106-36 substituted “; or” for period at end of subpar. (B) and added subpar. (C).

1996—Subsec. (b)(6). Pub. L. 104-295 designated existing provisions as subpar. (A), substituted “Except as provided in subparagraph (B), merchandise” for “Merchandise”, and added subpar. (B).

1990—Subsec. (b)(6). Pub. L. 101-382, which directed substitution of “subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States” for “subpart A of part 2 of schedule 8 of the Tariff schedules of the United States”, was executed by making the substitution for “subpart A of part 2 of schedule 8 of the Tariff Schedules of the United States” to reflect the probable intent of Congress.

1988—Subsec. (b). Pub. L. 100-418 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “If a State or local governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free sales enterprise under which merchandise is delivered to such facility for exportation, merchandise incident to such operation may not be withdrawn from a bonded warehouse and transferred to such facility unless the operator of the duty-free sales enterprise demonstrates to the Secretary of the Treasury that the concession or approval required for the enterprise has been obtained. For purposes of this subsection, the term ‘duty-free sales enterprise’ means an entity that sells, in less than wholesale quantities, duty-free or tax-free merchandise that is delivered from a bonded warehouse to an airport, seaport, or point of exit from the United States for exportation by, or on behalf of, individuals departing from the United States.”

1984—Pub. L. 98-573 designated existing provisions as subsec. (a), substituted “Subject to subsection (b) of this section, buildings” for “Buildings”, and added subsec. (b).

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

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-476, except as otherwise provided, applicable with respect to goods entered, or withdrawn from warehouse, for consumption, on or after the 15th day after Nov. 9, 2000, see section 1471 of Pub. L. 106-476, set out as a note under section 58c of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1908(c) of Pub. L. 100-418 provided that: “The amendment made by this section [amending this section] shall take effect on the date that is 15 days after the date of enactment of this Act [Aug. 23, 1988].”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) 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.

DUTY-FREE SALES ENTERPRISES; FINDINGS

Section 1908(a) of Pub. L. 100-418 provided that: “The Congress finds that—

“(1) duty-free sales enterprises play a significant role in attracting international passengers to the United States and thereby their operations favorably affect our balance of payments;

“(2) concession fees derived from the operations of authorized duty-free sales enterprises constitute an important source of revenue for the State, local and other governmental authorities that collect such fees;

“(3) there is inadequate statutory and regulatory recognition of, and guidelines for the operation of, duty-free sales enterprises; and

“(4) there is a need to encourage uniformity and consistency of regulation of duty-free sales enterprises.”

§ 1556. Bonded warehouses; regulations for establishing

The Secretary of the Treasury shall from time to time establish such rules and regulations as may be necessary for the establishment of bonded warehouses and to protect the interests of the Government in the conduct, management, and operation of such warehouses and in the withdrawal of and accounting for merchandise deposited therein.

(June 17, 1930, ch. 497, title IV, §556, 46 Stat. 743.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §556, 42 Stat. 976. That section was superseded by section 556 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions on the subject matter of this section were contained in R.S. §2989, as amended by act Feb. 27, 1877, ch. 69, §1, 19 Stat. 247, authorizing the Secretary of the Treasury to establish rules and regulations for the execution of the provisions of that chapter (chapter 7 of Title 34 of the Revised Statutes, The Bond and Warehouse System); and in act June 22, 1874, ch. 391, §24, 18 Stat. 191, authorizing the Secretary to make regulations for the conduct and management of bonded warehouses, general order stores and other depositories, and to revise, alter or revoke regulations or orders, issued by collectors, prohibiting the bonding of warehouses or the establishment of general order stores without his authority and approval, and making it his duty to require warehouses to be located contiguous, or as near as might be, to landing places of vessels. These sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §§642, 643, 42 Stat. 989.

§ 1557. Entry for warehouse

(a) Withdrawal of merchandise; time; payment of charges

(1) Any merchandise subject to duty (including international travel merchandise), with the exception of perishable articles and explosive substances other than firecrackers, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner¹ purchaser, importer, or consignee. Such merchandise may be withdrawn, at any time within 5 years from the date of importation, or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown, for consumption upon payment of the duties and charges accruing thereon at the rate of duty imposed by law upon such merchandise at the date of withdrawal; or may be with-

¹ So in original. Probably should be followed by a comma.

drawn for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without the payment of duties thereon, or for transportation and re-warehousing at another port or elsewhere, or for transfer to another bonded warehouse at the same port; except that—

(A) the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the date of importation or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown; and

(B) turbine fuel may be withdrawn for use under section 1309 of this title without the payment of duty if an amount equal to the quantity of fuel withdrawn is shown to be used within 30 days after the day of withdrawal, but duties (together with interest payable from the date of the withdrawal at the rate of interest established under section 6621 of title 26) shall be deposited by the 40th day after the day of withdrawal on fuel that was withdrawn in excess of the quantity shown to have been so used during such 30-day period.

(2) Merchandise upon which the duties have been paid and which shall have remained continuously in bonded warehouse or otherwise in the custody and under the control of customs officers, may be entered or withdrawn at any time within 5 years after the date of importation, or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown, for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, under such regulations as the Secretary of the Treasury shall prescribe, and upon such entry or withdrawal, and exportation or shipment, the duties thereon shall be refunded.

(b) Transferal of right of withdrawal

The right to withdraw any merchandise entered in accordance with subsection (a) of this section for the purposes specified in such subsection may be transferred upon compliance with regulations prescribed by the Secretary of the Treasury and upon the filing by the transferee of a bond in such amount and containing such conditions as the Secretary of the Treasury shall prescribe. The bond shall include an obligation to pay, with respect to the merchandise the subject of the transfer, all unpaid regular, increased, and additional duties, all unpaid taxes imposed upon or by reason of importation, and all unpaid charges and exactions. Such transfers shall be irrevocable, shall relieve the transferor from all customs liability with respect to obligations assumed by the transferee under the bond herein provided for, and shall confer upon the transferee all rights to the privileges provided for in this section and in sections 1562 and 1563 of this title which were vest-

ed in the transferor prior to the transfer. The transferee shall also have the right to receive all lawful refunds of money paid by him to the United States with respect to the merchandise the subject of the transfer, and shall have the right to file a protest under section 1514 of this title to the same extent that such right would have been available to the transferor. Notice of liquidation shall be given to the transferee in the form and manner prescribed by the Secretary of the Treasury. A transferee may further transfer the right to withdraw merchandise, subject to the provisions of this subsection relating to original transfers.

(c) Destruction of merchandise at request of consignee

Merchandise entered under bond, under any provision of law, may, upon payment of all charges other than duty on the merchandise, be destroyed, at the request and at the expense of the consignee, within the bonded period under customs supervision, in lieu of exportation, and upon such destruction the entry of such merchandise shall be liquidated without payment of duty and any duties collected shall be refunded.

(d) Withdrawal before payment

Merchandise may be withdrawn for consumption without the payment of the duty thereon if the importer of record or transferee is permitted to pay duty at a later time pursuant to regulations prescribed by the Secretary under section 1505 of this title.

(June 17, 1930, ch. 497, title IV, §557, 46 Stat. 744; June 25, 1938, ch. 679, §§2, 22(a), 23(a), 52 Stat. 1077, 1087, 1088; Aug. 8, 1953, ch. 397, §21(a), 67 Stat. 519; June 30, 1955, ch. 258, §2(a) (4), 69 Stat. 242; Pub. L. 91-271, title III, §301(t), June 2, 1970, 84 Stat. 290; Pub. L. 91-685, §1, Jan. 12, 1971, 84 Stat. 2069; Pub. L. 95-410, title I, §108(a), (b)(1), Oct. 3, 1978, 92 Stat. 892; Pub. L. 97-446, title II, §201(f), Jan. 12, 1983, 96 Stat. 2350; Pub. L. 103-182, title VI, §665, Dec. 8, 1993, 107 Stat. 2215; Pub. L. 106-36, title II, §2409, June 25, 1999, 113 Stat. 171; Pub. L. 109-280, title XIV, §1635(c), Aug. 17, 2006, 120 Stat. 1170.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §557, 42 Stat. 977. That section was superseded by section 557 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 the following statutes, all of which were repealed by act Sept. 21, 1922, ch. 356, title IV, §§642, 643, 42 Stat. 989:

Act Oct. 3, 1913, ch. 16, §III, S, 38 Stat. 189, reenacting the provisions of Customs Administrative Act of June 10, 1890, ch. 407, §20, 26 Stat. 140, as amended by act Oct. 1, 1890, ch. 1244, §54, 26 Stat. 624, and act Dec. 15, 1902, ch. 1, 32 Stat. 753, and as reenacted by Payne-Aldrich Tariff Act, Aug. 5, 1909, ch. 6, §28, 36 Stat. 101, and authorizing the withdrawal for consumption of merchandise deposited in any public or private bonded warehouse within three years from date of importation, on payment of duties and charges to which it might be subject at the time of such withdrawal;

Res. Sept. 5, 1916, ch. 441, 39 Stat. 725, extending the time for which merchandise for exportation to Mexico might remain in bonded warehouse;

R.S. §2962, authorizing the deposit of merchandise, with specified exceptions, when duly entered and bond-

ed for warehousing, in any public warehouse owned or leased by the United States, the private warehouse of the importer used exclusively for the storage of the importer's warehoused merchandise, or a warehouse used as a general warehouse for the storage of warehoused merchandise; section 2964, providing that when the owner, etc., should make entry for warehousing, the collector should take possession and deposit the merchandise in the public stores, or in stores to be agreed on, there to be kept at the risk of the owner, importer, etc., and subject to their order, on payment of duties and expenses to be ascertained on entry, and secured by bond with surety; section 2970 (superseded by Customs Administrative Act of June 10, 1890, ch. 407, § 20, 26 Stat. 140), relative to the withdrawal of merchandise; section 2971, authorizing withdrawal for exportation, or transshipment to the Pacific Coast, and providing for exclusion of periods when exportation or transshipment should be prevented in computing the three years; section 2977 relative to return of duties on merchandise upon which duties had been paid; section 3000 authorizing withdrawal and transportation to a bonded warehouse in another district and rewarehousing thereat; section 3001, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, authorizing the Secretary of the Treasury to prescribe the form of bond to be given for transportation under the preceding section, and the time for delivery, and imposing a penalty and providing for forfeiture for failure to transport and deliver within the time limited; sections 3002 and 3003, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, and section 3004, as amended by act Sept. 25, 1890, ch. 917, § 2, 26 Stat. 470, authorizing withdrawal for exportation to Mexico by certain routes, and through certain ports;

R.S. § 2967, which provided that merchandise imported into the port of Louisville, and destined for Jeffersonville, might be landed and warehoused at Jeffersonville, was superseded by the Plan of Reorganization of the Customs Service set out in a note to section 1 of this title, and repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109-280, § 1635(c)(1)(A), inserted “, or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown” after “date of importation” in second sentence of introductory provisions.

Subsec. (a)(1)(A). Pub. L. 109-280, § 1635(c)(1)(B), inserted “or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown” after “date of importation”.

Subsec. (a)(2). Pub. L. 109-280, § 1635(c)(2), inserted “, or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown,” after “date of importation”.

1999—Subsec. (a)(1). Pub. L. 106-36 inserted “(including international travel merchandise)” after “Any merchandise subject to duty” in first sentence of introductory provisions.

1993—Subsec. (a). Pub. L. 103-182 designated first two sentences as par. (1), substituted “; except that—” along with subpars. (A) and (B) for “: *Provided*, That the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the date of importation.”, and designated remaining portion of subsec. (a) as par. (2).

1983—Subsec. (a). Pub. L. 97-446, § 201(f)(1), inserted “purchaser” after “risk of the owner”.

Subsec. (d). Pub. L. 97-446, § 201(f)(2), substituted “importer of record” for “consignee” before “or transferee”.

1978—Subsec. (a). Pub. L. 95-410, § 108(b)(1), substituted “5 years” for “three years” wherever appearing.

Subsec. (d). Pub. L. 95-410, § 108(a), added subsec. (d).
1971—Subsec. (b). Pub. L. 91-685 substituted provisions which granted the transferee the right to file a

protest under section 1514 of this title to the same extent that such right would have been available to the transferor and required notice of liquidation to be given the transferee in the form and manner prescribed by the Secretary of the Treasury for former provisions which denied the transferee the right to file any protest under section 1514 of this title except as to decisions with respect to his rights under subsec. (c) of this section or under section 1562 or 1563 of this title or against a decision as to the rate or amount of duty, tax, charge, or exaction when such rate or amount has been changed by statute or proclamation on or after the date of the transfer, or the right to file an appeal for reappraisal under section 1501 of this title, except when subsequent to the transfer and before a withdrawal for consumption has been deposited for the merchandise, it has been charge changed in condition pursuant to section 1311 or 1562 of this title in a manner which necessitates that it be appraised in its changed condition in order that the correct amount of duties may be assessed, and prohibited any new or separate liquidation, reliquidation, or determination to be made in name of, or on behalf of, a transferee, except with regard to any matter which may arise under subsec. (c) of this section or section 1562 or 1563 of this title when the transferee has invoked either of these sections, and in the case of a statutory or proclaimed change in the rate of duty, tax, charge, or exaction applicable to the merchandise the subject of the transfer and effective on or after the date of the transfer.

1970—Subsec. (b). Pub. L. 91-271 substituted “a protest contesting an appraisement decision in accordance with section 1514 of this title” for “an appeal for reappraisal under section 1501 of this title”.

1955—Subsec. (a). Act June 30, 1955, inserted “Johnston Island” in two places.

1953—Subsec. (b). Act Aug. 8, 1953, provided that all transfers shall be irrevocable; that in the case of each transfer the transferee shall file a bond undertaking to pay all unpaid duties, taxes, charges, and exactions on the merchandise the subject of the transfer; and that a transferee shall have no right to file a protest under section 1514 of this title, or to a separate liquidation in his behalf, unless the rate of duty, tax, charge, or exaction has been changed pursuant to statute or proclamation after the right to withdraw the merchandise was transferred to him.

1938—Act June 25, 1938, amended section generally, and among other changes, inserted “Wake Island, Midway Islands, Kingman Reef” before “or the island of Guam,” and struck out “(or ten months in the case of grain)” wherever appearing.

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.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-446 applicable with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97-446, set out as a note under section 1484 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 108(b)(2) of Pub. L. 95-410 provided that: “For purposes of applying the amendments made by paragraph (1) [amending this section and section 1559 of this title] to merchandise remaining in a bonded warehouse on the date of enactment of this Act [Oct. 3, 1978], any period of time the merchandise was in the bonded warehouse before that date shall be disregarded.”

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2 of Pub. L. 91-685 provided that: “The amendment made by the first section of this Act [amending this section] shall apply with respect to ar-

titles entered for warehousing on or after the date of the enactment of this Act [Jan. 12, 1971].”

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 1955 AMENDMENT

Amendment by act June 30, 1955, effective July 1, 1955, see note set out under section 1401 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT

Section 21(b) of act Aug. 8, 1953, provided that: “Notwithstanding any other provision of this Act [amending this section and sections 258, 1001, 1201, 1304, 1308, 1309, 1313, 1315, 1317, 1321, 1431, 1439, 1440, 1482, 1484, 1486, 1487, 1489, 1498, 1501, 1503, 1508, 1520, 1523, and 1562 of this title, enacting sections 1322 and 1646a of this title, and repealing sections 33 to 35, 39, 42 to 45, 273, 274, 472 to 475, 1320, and 1503a of this title], the foregoing subsection (a) shall be effective with respect to merchandise entered after the date of the enactment of this Act [Aug. 8, 1953] and to merchandise which has been entered before that date and is the subject of a transfer within the purview of section 557(b) of the Tariff Act [subsec. (b) of this section], as amended by this Act, and made after the date of the enactment of this Act.”

EFFECTIVE DATE OF 1938 AMENDMENT

Section 22(b) of act June 25, 1938, provided that: “On and after the effective date of this Act [see note set out under section 1401 of this title], this section [amending this section] shall be effective with respect to merchandise entered for warehouse prior to, as well as after, such date.”

Section 23(b) of act June 25, 1938, provided that: “The amendments made by subsection (a) of this section [amending this section] shall apply in the case of grain imported prior to the effective date of this act [see note set out under section 1401 of this title] which, on such date, has not become abandoned to the Government under section 491 or 559 of the Tariff Act of 1930 [section 1491 or 1559 of this title], and which has remained in the custody of customs officers.”

SAVINGS PROVISION

Savings provision of act Aug. 8, 1953, which amended subsec. (b) of this section, see note set out under section 1304 of this title.

EXTENSION OF THREE-YEAR PERIOD

For extension of three year period prescribed in this section, see Proc. No. 2948, Oct. 12, 1951, 16 F.R. 10589, 65 Stat. c41, set out as a note under section 1318 of this title.

Proc. No. 2599, Nov. 6, 1943, 8 F.R. 15359, 57 Stat. 758, as amended by Proc. No. 2712, Dec. 4, 1946, 11 F.R. 14133, 61 Stat. 1047, superseded by Proc. No. 2948, Oct. 12, 1951, 16 F.R. 10589, 65 Stat. c41.

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 “Debentures or drawbacks, bounties, or allowances (Customs) (2x321)” 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.

§ 1558. No remission or refund after release of merchandise

(a) Exceptions

No remission, abatement, refund, or drawback of estimated or liquidated duty shall be allowed

because of the exportation or destruction of any merchandise after its release from the custody of the Government, except in the following cases:

(1) When articles are exported with respect to which a drawback of duties is expressly provided for by law;

(2) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to a law of the United States and under such regulations as the Secretary of the Treasury may prescribe; and

(3) When articles entered under bond, under any provision of law, are destroyed within the bonded period as provided for in section 1557 of this title, or are destroyed within the bonded period by death, accidental fire, or other casualty, and proof of such destruction is furnished which shall be satisfactory to the Secretary of the Treasury, in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed to have been satisfied.

(b) Payment of duties required notwithstanding export or destruction of articles; exception

When articles are exported or destroyed under customs supervision after once having been released from customs custody, as provided for in subsection (h)¹ of section 1304 of this title, such exportation or destruction shall not exempt such articles from the payment of duties other than the marking duty provided for in such subsection (h).

(June 17, 1930, ch. 497, title IV, § 558, 46 Stat. 744; June 25, 1938, ch. 679, § 24, 52 Stat. 1088; Pub. L. 106-36, title I, § 1001(b)(9), June 25, 1999, 113 Stat. 132.)

REFERENCES IN TEXT

Subsection (h) of section 1304 of this title, referred to in subsec. (b), was redesignated subsection (i) and a new subsection (h) of section 1304 was added by Pub. L. 106-36, title II, § 2423(a), June 25, 1999, 113 Stat. 180.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. § 2978, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, and in R.S. § 3025, both of which were superseded by act Sept. 21, 1922, ch. 356, title IV, § 558, 42 Stat. 977, and were repealed by section 642 thereof. Section 558 of the 1922 act was superseded by section 558 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106-36 substituted “subsection (h)” for “subsection (c)” in two places.

1938—Act June 25, 1938, designated existing provisions as subsecs. (a) and (b).

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.

§ 1559. Warehouse goods deemed abandoned after 5 years

Merchandise upon which any duties or charges are unpaid, remaining in bonded warehouse be-

¹ See References in Text note below.

yond 5 years from the date of importation, or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown, shall be regarded as abandoned to the Government and shall be sold under such regulations as the Secretary of the Treasury shall prescribe, and the proceeds of sale paid into the Treasury, as in the case of unclaimed merchandise covered by section 1493 of this title, subject to the payment to the owner or consignee of such amount, if any, as shall remain after deduction of duties, charges, and expenses. Merchandise upon which all duties and charges have been paid, remaining in bonded warehouse beyond 5 years from the date of importation, or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown, shall be held to be no longer in the custody or control of the officers of the customs.

(June 17, 1930, ch. 497, title IV, § 559, 46 Stat. 744; June 25, 1938, ch. 679, § 23(a), 52 Stat. 1088; Pub. L. 95-410, title I, § 108(b)(1), Oct. 3, 1978, 92 Stat. 892; Pub. L. 109-280, title XIV, § 1635(d), Aug. 17, 2006, 120 Stat. 1170.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 559, 42 Stat. 977. That section was superseded by section 559 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions that goods, remaining in public store or bonded warehouse beyond three years, should be regarded as abandoned and sold, and the proceeds paid into the Treasury, and that the Secretary might pay the proceeds to the owner, etc., after deducting duties, charges and expenses, were contained in R.S. §§ 2971 and 2972, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

2006—Pub. L. 109-280 inserted “, or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown” after “date of importation” in two places.

1978—Pub. L. 95-410 substituted “5 years” for “three years” wherever appearing.

1938—Act June 25, 1938, struck out “(or ten months in the case of grain)” wherever appearing.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Period of time prior to Oct. 3, 1978, disregarded in application of amendment to merchandise in bonded warehouse, see section 108(b)(1) of Pub. L. 95-410, set out as a note under section 1557 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Section 23(b) of act June 25, 1938, provided as follows: “The amendments made by subsection (a) of this section [amending this section] shall apply in the case of grain imported prior to the effective date of this act [see note set out under section 1401 of this title] which, on such date, has not become abandoned to the Government under section 491 or 559 of the Tariff Act of 1930

[section 1491 or 1559 of this title], and which has remained in the custody of customs officers.”

EXTENSION OF THREE-YEAR PERIOD

For extension of three year period prescribed in this section, see Proc. No. 2948, Oct. 12, 1951, 16 F.R. 10589, 65 Stat. c41, set out as a note under section 1318 of this title.

Proc. No. 2599, Nov. 6, 1943, 8 F.R. 15359, 57 Stat. 758, as amended by Proc. No. 2712, Dec. 4, 1946, 11 F.R. 14133, 61 Stat. 1047, was superseded by Proc. No. 2948, Oct. 12, 1951, 16 F.R. 10589, 65 Stat. c41.

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 “Refunding proceeds of unclaimed merchandise (Customs) (2x326)” 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.

§ 1560. Leasing of warehouses

The Secretary of the Treasury may cause to be set aside any available space in a building used as a customhouse for the storage of bonded merchandise or may lease premises for the storage of unclaimed merchandise or other imported merchandise required to be stored by the Government, and set aside a portion of such leased premises for the storage of bonded merchandise: *Provided*, That no part of any premises owned or leased by the Government may be used for the storage of bonded merchandise at any port at which a public bonded warehouse has been established and is in operation. All the premises so leased shall be leased on public account and the storage and other charges shall be deposited and accounted for as customs receipts, and the rates therefor shall not be less than the charges for storage and similar services made at such port of entry by commercial concerns for the storage and handling of merchandise. No officer of the customs shall own, in whole or in part, any bonded warehouse or enter into any contract or agreement for the lease or use of any building to be thereafter erected as a public store or warehouse. No lease of any building to be so used shall be taken for a longer period than three years, nor shall rent for any such premises be paid, in whole or in part, in advance.

(June 17, 1930, ch. 497, title IV, § 560, 46 Stat. 745; Pub. L. 91-271, title III, § 301(u), June 2, 1970, 84 Stat. 290.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 560, 42 Stat. 977. That section was superseded by section 560 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions on the subject matter of this section were contained in R.S. § 2953, providing that nothing therein contained should be construed to prevent the leasing or hiring of buildings for use of appraisers, or for short periods, of stores required for customhouse purposes at the smaller ports; section 2954, authorizing the leasing of warehouses for storage of unclaimed

goods or goods required to be stored; section 2955, prohibiting the leasing of warehouses at ports at which there was any private bonded warehouse, but excepting buildings for use of appraisers, etc.; section 2956, providing that warehouses hired should be on public account, and be appropriated exclusively to receipt of foreign merchandise, subject, as to rates of storage, to regulation by the Secretary of the Treasury; and section 2957, prohibiting leases for more than three years, or the payment of rent in advance. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

A prior provision that no officer of the customs should have any personal ownership of, or interest in, any bonded warehouse or general order store, was contained in act June 22, 1874, ch. 391, § 24, 18 Stat. 191; and a provision prohibiting agreements for the use of any building to be erected was contained in R.S. § 2957. Both of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §§ 642, 643, 42 Stat. 989.

AMENDMENTS

1970—Pub. L. 91-271 substituted “officer of the customs” for “collector or other officer of the customs”.

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.

§ 1561. Public stores

Any premises owned or leased by the Government and used for the storage of merchandise for the final release of which from customs custody a permit has not been issued shall be known as a “public store.”

(June 17, 1930, ch. 497, title IV, § 561, 46 Stat. 745.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 561, 42 Stat. 978. That section was superseded by section 561 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1562. Manipulation in warehouse

Merchandise shall only be withdrawn from a bonded warehouse in such quantity and in such condition as the Secretary of the Treasury shall by regulation prescribe. Upon permission being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom—

(1) without payment of duties for exportation to a NAFTA country, as defined in section 3301(4) of this title, if the merchandise is of a kind described in any of paragraphs (1) through (8) of section 3333(a) of this title;

(2) for exportation to a NAFTA country if the merchandise consists of goods subject to NAFTA drawback, as defined in section 3333(a) of this title, except that—

(A) the merchandise may not be withdrawn from warehouse without assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of withdrawal from the warehouse with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition, and

(B) duty shall be paid on the merchandise before the 61st day after the date of exportation, but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the merchandise, the customs duty may be waived or reduced (subject to section 1508(b)(2)(B) of this title) in an amount that does not exceed the lesser of—

(i) the total amount of customs duties paid or owed on the merchandise on importation into the United States, or

(ii) the total amount of customs duties paid on the merchandise to the NAFTA country;

(3) without payment of duties for exportation to any foreign country other than to Chile, to a NAFTA country, or to Canada when exports to that country are subject to paragraph (4);

(4) without payment of duties for exportation to Canada (if that country ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates), but the exemption from the payment of duties under this paragraph applies only in the case of an exportation during the period such Agreement is in operation of merchandise that—

(A) is only cleaned, sorted, or repacked in a bonded warehouse, or

(B) is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988;

(5) without payment of duties for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam; and

(6)(A) without payment of duties for exportation to Chile, if the merchandise is of a kind described in any of paragraphs (1) through (5) of section 203(a) of the United States-Chile Free Trade Agreement Implementation Act; and

(B) for exportation to Chile if the merchandise consists of goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, except that—

(i) the merchandise may not be withdrawn from warehouse without assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of withdrawal from the warehouse with such additions to, or deductions from, the final appraised value as may be necessary by reason of a change in condition, and

(ii) duty shall be paid on the merchandise before the 61st day after the date of exportation, except that such duties may be waived or reduced by—

(I) 100 percent during the 8-year period beginning on January 1, 2004,

(II) 75 percent during the 1-year period beginning on January 1, 2012,

(III) 50 percent during the 1-year period beginning on January 1, 2013, and

(IV) 25 percent during the 1-year period beginning on January 1, 2014.

Merchandise may be withdrawn from bonded warehouse for consumption, or for exportation to Canada if the duty exemption under paragraph (4) of the preceding sentence does not apply, upon the payment of duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition. The basis for the assessment of duties on such merchandise so withdrawn for consumption shall be the adjusted final appraised value, and if the rate of duty is based upon or regulated in any manner by the value of the merchandise, such rate shall be based upon or regulated by such adjusted final appraised value. The scouring or carbonizing of wool shall not be considered a process of manufacture within the provisions of this section. Under such regulations as the Secretary of the Treasury shall prescribe, imported merchandise which has been entered and which has remained in continuous customs custody may be manipulated in accordance with the provisions of this section under customs supervision and at the risk and expense of the consignee, but elsewhere than in a bonded warehouse, in cases where neither the protection of the revenue nor the proper conduct of customs business requires that such manipulation be done in bonded warehouse.

(June 17, 1930, ch. 497, title IV, § 562, 46 Stat. 745; June 25, 1938, ch. 679, §§ 2, 25, 52 Stat. 1077, 1088; Aug. 8, 1953, ch. 397, § 18(f), 67 Stat. 518; June 30, 1955, ch. 258, § 2(a)(5), 69 Stat. 242; Pub. L. 91-271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 100-449, title II, § 204(c)(4), Sept. 28, 1988, 102 Stat. 1863; Pub. L. 103-182, title II, § 203(b)(4), Dec. 8, 1993, 107 Stat. 2090; Pub. L. 108-77, title II, § 203(b)(4), Sept. 3, 2003, 117 Stat. 928; Pub. L. 109-280, title XIV, § 1635(e), Aug. 17, 2006, 120 Stat. 1170.)

AMENDMENT OF SECTION

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

REFERENCES IN TEXT

Section 204 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, referred to in par. (4)(B), is section 204 of Pub. L. 100-449, which is set out in a note under section 2112 of this title.

Section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, referred to in par. (6), is section 203(a) of Pub. L. 108-77, 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 Sept. 21, 1922, ch. 356, title IV, § 562, 42 Stat. 978. That section was superseded by section 562 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions substantially the same, in effect, as those in this section with respect to the quantity of merchandise which might be withdrawn, were contained in R.S. § 2980, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

2006—Pub. L. 109-280, in introductory provisions, substituted “Merchandise shall only be withdrawn from a bonded warehouse in such quantity and in such condition as the Secretary of the Treasury shall by regulation prescribe. Upon permission” for “Unless by special authority of the Secretary of the Treasury, no merchandise shall be withdrawn from bonded warehouse in less quantity than an entire bale, cask, box, or other package; or, if in bulk, in the entire quantity imported or in a quantity not less than one ton weight. All merchandise so withdrawn shall be withdrawn in the original packages in which imported unless, upon the application of the importer, it appears to be the appropriate customs officer that it is necessary to the safety or preservation of the merchandise to repack or transfer the same; except that upon permission therefor”.

2003—Par. (3). Pub. L. 108-77, §§ 107(c), 203(b)(4)(A), temporarily substituted “to Chile, to a NAFTA country,” for “to a NAFTA country”. See Effective and Termination Dates of 2003 Amendment note below.

Par. (6). Pub. L. 108-77, §§ 107(c), 203(b)(4)(D), temporarily added par. (6). See Effective and Termination Dates of 2003 Amendment note below.

1993—Pub. L. 103-182 substituted “be withdrawn therefrom—” for “be withdrawn therefrom without payment of duties—” in second sentence, substituted “paragraph (4) of the preceding sentence” for “paragraph (1) of the preceding sentence” in third sentence, added pars. (1) to (5), and struck out former pars. (1) to (3) which read as follows:

“(1) for exportation to Canada, but on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, such exemption from the payment of duties applies only in the case of the exportation to Canada of merchandise that—

“(A) is only cleaned, sorted, or repacked in a bonded warehouse, or

“(B) is a drawback eligible good under section 204(a) of such Act of 1988;

“(2) for exportation to any foreign country except Canada; and

“(3) for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam.”

1988—Pub. L. 100-449 substituted the except clause and following sentence for proviso at end of second section which read as follows: “: *Provided*, That upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom for exportation to a foreign country or for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without payment of the duties, or for consumption, upon payment of the duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition.”

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

1955—Act June 30, 1955, inserted “Johnston Island”.

1953—Act Aug. 8, 1953, in third sentence struck out “the entered value or” after “consumption shall be”, “whichever is higher,” after “the adjusted final appraised value,” and “;” but for the purpose of the ascertainment and assessment of additional duties under section 1489 of this chapter adjustments of the final appraised value shall be disregarded” after “such adjusted final appraised value”.

1938—Act June 25, 1938, inserted sentence providing for manipulation of imported merchandise entering and remaining in continuous customs custody in cases

where neither the protection of the revenue nor proper conduct of business requires such manipulation be done in a bonded warehouse, and inserted “Wake Island, Midway Islands, Kingman Reef” before “or the island of Guam”.

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.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

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 1993 AMENDMENT

Amendment by Pub. L. 103-182 applicable (1) with respect to exports from the United States to Canada on Jan. 1, 1996, if Canada is a NAFTA country on that date and after such date for so long as Canada continues to be a NAFTA country and (2) with respect to exports from the United States to Mexico on Jan. 1, 2001, if Mexico is a NAFTA country on that date and after such date for so long as Mexico continues to be a NAFTA country, see section 213(c) of Pub. L. 103-182, set out as an Effective Date note under section 3331 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100-449 effective on date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100-449, set out in a note under section 2112 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 1955 AMENDMENT

Amendment by act June 30, 1955, effective July 1, 1955, see note set out under section 1401 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 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.

§ 1563. Allowance for loss, abandonment of warehouse goods

(a) Abatement or allowance for deterioration, loss or damage to merchandise in customs custody; exception

In no case shall there be any abatement or allowance made in the duties for any injury, deterioration, loss, or damage sustained by any merchandise while remaining in customs custody, except that the Secretary of the Treasury is authorized, upon production of proof satisfactory to him of the loss or theft of any merchandise

while in the appraiser's stores, or of the actual injury or destruction, in whole or in part, of any merchandise by accidental fire or other casualty, while in bonded warehouse, or in the appraiser's stores, or while in transportation under bond, or while in the custody of the officers of the customs, although not in bond, or while within the limits of any port of entry and before having been landed under the supervision of the officers of the customs, to abate or refund, as the case may be, the duties upon such merchandise, in whole or in part, and to pay any such refund out of any moneys in the Treasury not otherwise appropriated, and to cancel any warehouse bond or bonds, or enter satisfaction thereon in whole or in part, as the case may be, but no abatement or refund shall be made in respect of injury or destruction of any merchandise in bonded warehouse occurring after the expiration of three years from the date of importation. The decision of the Secretary of the Treasury as to the abatement or refund of the duties on any such merchandise shall be final and conclusive upon all persons.

The Secretary of the Treasury is authorized to prescribe such regulations as he may deem necessary to carry out the provisions of this subdivision and he may by such regulations limit the time within which proof of loss, theft, injury, or destruction shall be submitted, and may provide for the abatement or refund of duties, as authorized herein, by appropriate customs officers in cases in which the amount of the abatement or refund claimed is less than \$25 and in which the importer has agreed to abide by the decision of the customs officer. The decision of the customs officer in any such case shall be final and conclusive upon all persons.

(b) Abandonment of merchandise to Government; remittance or refund of duties paid

Under such regulations as the Secretary of the Treasury may prescribe and subject to any conditions imposed thereby the consignee may at any time within three years from the date of original importation, abandon to the Government any merchandise in bonded warehouse, whereupon any duties on such merchandise may be remitted or refunded as the case may be, but any merchandise so abandoned shall not be less than an entire package and shall be abandoned in the original package without having been repacked while in a bonded warehouse (other than a bonded manipulating warehouse).

(June 17, 1930, ch. 497, title IV, §563, 46 Stat. 746; June 25, 1938, ch. 679, §23(a), 52 Stat. 1088; Pub. L. 91-271, title III, §301(v), June 2, 1970, 84 Stat. 290.)

CODIFICATION

Provisions of this section authorizing transfer of cases before the United States Customs Court on June 18, 1930, to the Secretary of the Treasury, or to the collector, for consideration and determination, were omitted.

PRIOR PROVISIONS

Prior provisions somewhat similar to those in this section, were contained in R.S. §2983, and section 2984 as amended by act Feb. 27, 1877, ch. 69, §1, 19 Stat. 247, which contained a further provision for cancellation or satisfaction of warehouse bonds. Both of these sections were superseded by act Sept. 21, 1922, ch. 356, title IV,

§563, 42 Stat. 978, and repealed by section 642 thereof. Section 563 of the 1922 act was superseded and enlarged by section 563 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-271 substituted “appropriate customs officers” for “collectors of customs”, and “customs officer” for “collector” wherever appearing.

1938—Act June 25, 1938, struck out “(or ten months in the case of grain)” 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.

EFFECTIVE DATE OF 1938 AMENDMENT

Section 23(b) of act June 25, 1938, provided as follows: “The amendments made by subsection (a) of this section [amending this section] shall apply in the case of grain imported prior to the effective date of this act [see note set out under section 1401 of this title] which, on such date, has not become abandoned to the Government under section 491 or 559 of the Tariff Act of 1930 [section 1491 or 1559 of this title], and which has remained in the custody of customs officers.”

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 “Refunding duties on goods destroyed (Customs) (2x330)” 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.

§ 1564. Liens

Whenever a customs officer shall be notified in writing of the existence of a lien for freight, charges, or contribution in general average upon any imported merchandise sent to the appraiser’s store for examination, entered for warehousing or taken possession of by him, he shall refuse to permit delivery thereof from public store or bonded warehouse until proof shall be produced that the said lien has been satisfied or discharged. The rights of the United States shall not be prejudiced or affected by the filing of such lien, nor shall the United States or its officers be liable for losses or damages consequent upon such refusal to permit delivery. If merchandise, regarding which such notice of lien has been filed, shall be forfeited or abandoned and sold, the freight, charges, or contribution in general average due thereon shall be paid from the proceeds of such sale in the same manner as other lawful charges and expenses are paid therefrom. The provisions of this section shall apply to licensed customs brokers who otherwise possess a lien for the purposes stated above upon the merchandise under the statutes or common law, or by order of any court of competent jurisdiction, of any State.

(June 17, 1930, ch. 497, title IV, §564, 46 Stat. 747; Pub. L. 91-271, title III, §301(w), June 2, 1970, 84 Stat. 290; Pub. L. 98-573, title II, §212(c)(A), formerly §212(b)(7)(A), Oct. 30, 1984, 98 Stat. 2984, re-

numbered Pub. L. 99-514, title XVIII, §1889(3), Oct. 22, 1986, 100 Stat. 2925.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §564, 42 Stat. 978. That section was superseded by section 564 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 were contained in R.S. §2981, as amended by act June 10, 1880, ch. 190, §10, 21 Stat. 175, and act May 21, 1896, ch. 217, 29 Stat. 129, which also required notice to be given the party claiming the lien before delivery of the goods, and provided that possession by officers of the customs should not affect the discharge of the lien. That section was repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS

1984—Pub. L. 98-573 inserted provision making this section applicable to licensed customs brokers who otherwise possess a lien for the purposes stated above upon the merchandise under the statutes or common law, or by order of any court of competent jurisdiction, of any State.

1970—Pub. L. 91-271 substituted reference to customs officer for reference to collector of customs.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective on close of 180th day following Oct. 30, 1984, see section 214(d) 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.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1801-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1565. Cartage

The cartage of merchandise entered for warehousing shall be done by—

- (1) cartmen appointed and licensed by the Customs Service; or
- (2) carriers designated under section 1551 of this title to carry bonded merchandise;

who shall give bond, in a penal sum to be fixed by the Customs Service, for the protection of the Government against any loss of, or damage to, the merchandise while being so carted. The cartage of merchandise designated for examination at the appraiser’s stores and of merchandise taken into custody by the customs officer as unclaimed shall be performed by such persons as may be designated, under contract or otherwise, by the Secretary of the Treasury, and under such regulations for the protection of the owners thereof and of the revenue as the Secretary of the Treasury shall prescribe.

(June 17, 1930, ch. 497, title IV, §565, 46 Stat. 747; Pub. L. 91-271, title III, §301(x), June 2, 1970, 84

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 unloading or transshipment

(a) Penalty for unloading 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 re-

ceived 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 unloading 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 unloading 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) Unloading 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 unloading 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 unloading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if the Customs Service is satisfied that the unloading 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 subsec. (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 pro-

visions 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, subpoena, 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 title¹ 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 cer-

tification 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 Adminis-

trative 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 labeling 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 record-keeping 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(l), 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, unloading, 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; appraisalment

The appropriate customs officer shall determine the domestic value, at the time and place of appraisalment, 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 in-

struments 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(l), 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 spe-

cifically 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 offi-

cers 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 re-

lease 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 merchandise¹ 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 cus-

tom officer original information concern-

(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 thereafter 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 Sec-

retary 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 au-

thorized 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 Customs¹ 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) Any¹ 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).

(2) Licenses for individuals

The Secretary may grant an individual a customs broker's license only if that individual is a citizen of the United States. Before granting the license, the Secretary may require an applicant to show any facts deemed necessary to establish that the applicant is of good moral character and qualified to render valuable service to others in the conduct of customs business. In assessing the qualifications of an applicant, the Secretary may conduct an examination to determine the applicant's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters.

(3) Licenses for corporations, etc.

The Secretary may grant a customs broker's license to any corporation, association, or partnership that is organized or existing under the laws of any of the several States of the United States if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker's license granted under paragraph (2).

(4) Duties

A customs broker shall exercise responsible supervision and control over the customs business that it conducts.

(5) Lapse of license

The failure of a customs broker that is licensed as a corporation, association, or partnership under paragraph (3) to have, for any continuous period of 120 days, at least one officer of the corporation or association, or at least one member of the partnership, validly licensed under paragraph (2) shall, in addition to causing the broker to be subject to any other sanction under this section (including paragraph (6)), result in the revocation by operation of law of its license.

(6) Prohibited acts

Any person who intentionally transacts customs business, other than solely on the behalf of that person, without holding a valid customs broker's license granted to that person under this subsection shall be liable to the United States for a monetary penalty not to exceed \$10,000 for each such transaction as well as for each violation of any other provision of this section. This penalty shall be assessed in the same manner and under the same procedures as the monetary penalties provided for in subsection (d)(2)(A) of this section.

(c) Customs broker's permits**(1) In general**

Each person granted a customs broker's license under subsection (b) of this section shall be issued, in accordance with such regulations as the Secretary shall prescribe, either or both of the following:

(A) A national permit for the conduct of such customs business as the Secretary prescribes by regulation.

(B) A permit for each customs district in which that person conducts customs business and, except as provided in paragraph (2), regularly employs at least 1 individual

who is licensed under subsection (b)(2) of this section to exercise responsible supervision and control over the customs business conducted by that person in that district.

(2) Exception

If a person granted a customs broker's license under subsection (b) of this section can demonstrate to the satisfaction of the Secretary that—

(A) he regularly employs in the region in which that district is located at least one individual who is licensed under subsection (b)(2) of this section, and

(B) that sufficient procedures exist within the company for the person employed in that region to exercise responsible supervision and control over the customs business conducted by that person in that district,

the Secretary may waive the requirement in paragraph (1)(B).

(3) Lapse of permit

The failure of a customs broker granted a permit under paragraph (1) to employ, for any continuous period of 180 days, at least one individual who is licensed under subsection (b)(2) of this section within the district or region (if paragraph (2) applies) for which a permit was issued shall, in addition to causing the broker to be subject to any other sanction under this section (including any in subsection (d) of this section), result in the revocation by operation of law of the permit.

(4) Appointment of subagents

Notwithstanding subsection (c)(1) of this section, upon the implementation by the Secretary under section 1413(b)(2) of this title of the component of the National Customs Automation Program referred to in section 1411(a)(2)(B) of this title, a licensed broker may appoint another licensed broker holding a permit in a customs district to act on its behalf as its subagent in that district if such activity relates to the filing of information that is permitted by law or regulation to be filed electronically. A licensed broker appointing a subagent pursuant to this paragraph shall remain liable for any and all obligations arising under bond and any and all duties, taxes, and fees, as well as any other liabilities imposed by law, and shall be precluded from delegating to a subagent such liability.

(d) Disciplinary proceedings**(1) General rule**

The Secretary may impose a monetary penalty in all cases with the exception of the infractions described in clause (iii) of subparagraph (B) of this subsection, or revoke or suspend a license or permit of any customs broker, if it is shown that the broker—

(A) has made or caused to be made in any application for any license or permit under this section, or report filed with the Customs Service, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which was required to be stated therein;

(B) has been convicted at any time after the filing of an application for license under subsection (b) of this section of any felony or misdemeanor which the Secretary finds—

- (i) involved the importation or exportation of merchandise;
- (ii) arose out of the conduct of its customs business; or
- (iii) involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(C) has violated any provision of any law enforced by the Customs Service or the rules or regulations issued under any such provision;

(D) has counseled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by the Customs Service, or the rules or regulations issued under any such provision;

(E) has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of such employment from the Secretary; or

(F) has, in the course of its customs business, with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client.

(2) Procedures

(A) Monetary penalty

Unless action has been taken under subparagraph (B), the appropriate customs officer shall serve notice in writing upon any customs broker to show cause why the broker should not be subject to a monetary penalty not to exceed \$30,000 in total for a violation or violations of this section. The notice shall advise the customs broker of the allegations or complaints against him and shall explain that the broker has a right to respond to the allegations or complaints in writing within 30 days of the date of the notice. Before imposing a monetary penalty, the customs officer shall consider the allegations or complaints and any timely response made by the customs broker and issue a written decision. A customs broker against whom a monetary penalty has been issued under this section shall have a reasonable opportunity under section 1618 of this title to make representations seeking remission or mitigation of the monetary penalty. Following the conclusion of any proceeding under section 1618 of this title, the appropriate customs officer shall provide to the customs broker a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(B) Revocation or suspension

The Customs Service may, for good and sufficient reason, serve notice in writing upon any customs broker to show cause why a license or permit issued under this section should not be revoked or suspended. The notice shall be in the form of a statement specifically setting forth the grounds of the

complaint, and shall allow the customs broker 30 days to respond. If no response is filed, or the Customs Service determines that the revocation or suspension is still warranted, it shall notify the customs broker in writing of a hearing to be held within 30 days, or at a later date if the broker requests an extension and shows good cause therefor, before an administrative law judge appointed pursuant to section 3105 of title 5 who shall serve as the hearing officer. If the customs broker waives the hearing, or the broker or his designated representative fails to appear at the appointed time and place, the hearing officer shall make findings and recommendations based on the record submitted by the parties. At the hearing, the customs broker may be represented by counsel, and all proceedings, including the proof of the charges and the response thereto shall be presented with testimony taken under oath and the right of cross-examination accorded to both parties. A transcript of the hearing shall be made and a copy will be provided to the Customs Service and the customs broker; which shall thereafter be provided reasonable opportunity to file a post-hearing brief. Following the conclusion of the hearing, the hearing officer shall transmit promptly the record of the hearing along with the findings of fact and recommendations to the Secretary for decision. The Secretary will issue a written decision, based solely on the record, setting forth the findings of fact and the reasons for the decision. Such decision may provide for the sanction contained in the notice to show cause or any lesser sanction authorized by this subsection, including a monetary penalty not to exceed \$30,000, than was contained in the notice to show cause.

(3) Settlement and compromise

The Secretary may settle and compromise any disciplinary proceeding which has been instituted under this subsection according to the terms and conditions agreed to by the parties, including but not limited to the reduction of any proposed suspension or revocation to a monetary penalty.

(4) Limitation of actions

Notwithstanding section 1621 of this title, no proceeding under this subsection or subsection (b)(6) of this section shall be commenced unless such proceeding is instituted by the appropriate service of written notice within 5 years from the date the alleged violation was committed; except that if the alleged violation consists of fraud, the 5-year period of limitation shall commence running from the time such alleged violation was discovered.

(e) Judicial appeal

(1) In general

A customs broker, applicant, or other person directly affected may appeal any decision of the Secretary denying or revoking a license or permit under subsection (b) or (c) of this section, or revoking or suspending a license or permit or imposing a monetary penalty in lieu thereof under subsection (d)(2)(B) of this sec-

tion, by filing in the Court of International Trade, within 60 days after the issuance of the decision or order, a written petition requesting that the decision or order be modified or set aside in whole or in part. A copy of the petition shall be transmitted promptly by the clerk of the court to the Secretary or his designee. In cases involving revocation or suspension of a license or permit or imposition of a monetary penalty in lieu thereof under subsection (d)(2)(B) of this section, after receipt of the petition, the Secretary shall file in court the record upon which the decision or order complained of was entered, as provided in section 2635(d) of title 28.

(2) Consideration of objections

The court shall not consider any objection to the decision or order of the Secretary, or to the introduction of evidence or testimony, unless that objection was raised before the hearing officer in suspension or revocation proceedings unless there were reasonable grounds for failure to do so.

(3) Conclusiveness of findings

The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) Additional evidence

If any party applies to the court for leave to present additional evidence and the court is satisfied that the additional evidence is material and that reasonable grounds existed for the failure to present the evidence in the proceedings before the hearing officer, the court may order the additional evidence to be taken before the hearing officer and to be presented in a manner and upon the terms and conditions prescribed by the court. The Secretary may modify the findings of facts on the basis of the additional evidence presented. The Secretary shall then file with the court any new or modified findings of fact which shall be conclusive if supported by substantial evidence, together with a recommendation, if any, for the modification or setting aside of the original decision or order.

(5) Effect of proceedings

The commencement of proceedings under this subsection shall, unless specifically ordered by the court, operate as a stay of the decision of the Secretary except in the case of a denial of a license or permit.

(6) Failure to appeal

If an appeal is not filed within the time limits specified in this section, the decision by the Secretary shall be final and conclusive. In the case of a monetary penalty imposed under subsection (d)(2)(B) of this section, if the amount is not tendered within 60 days after the decision becomes final, the license shall automatically be suspended until payment is made to the Customs Service.

(f) Regulations by the Secretary

The Secretary may prescribe such rules and regulations relating to the customs business of customs brokers as the Secretary considers necessary to protect importers and the revenue of

the United States, and to carry out the provisions of this section, including rules and regulations governing the licensing of or issuance of permits to customs brokers, the keeping of books, accounts, and records by customs brokers, and documents and correspondence, and the furnishing by customs brokers of any other information relating to their customs business to any duly accredited officer or employee of the Customs Service. The Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business. For purposes of this subsection or any other provision of this chapter pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium. Pursuant to such regulations as the Secretary shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker's business system.

(g) Triennial reports by customs brokers

(1) In general

On February 1, 1985, and on February 1 of each third year thereafter, each person who is licensed under subsection (b) of this section shall file with the Secretary of the Treasury a report as to—

- (A) whether such person is actively engaged in business as a customs broker; and
- (B) the name under, and the address at, which such business is being transacted.

(2) Suspension and revocation

If a person licensed under subsection (b) of this section fails to file the required report by March 1 of the reporting year, the license is suspended, and may be thereafter revoked subject to the following procedures:

- (A) The Secretary shall transmit written notice of suspension to the licensee no later than March 31 of the reporting year.
- (B) If the licensee files the required report within 60 days of receipt of the Secretary's notice, the license shall be reinstated.
- (C) In the event the required report is not filed within the 60-day period, the license shall be revoked without prejudice to the filing of an application for a new license.

(h) Fees and charges

The Secretary may prescribe reasonable fees and charges to defray the costs of the Customs Service in carrying out the provisions of this section, including, but not limited to, a fee for licenses issued under subsection (b) of this section and fees for any test administered by him or under his direction; except that no separate fees shall be imposed to defray the costs of an individual audit or of individual disciplinary proceedings of any nature.

(June 17, 1930, ch. 497, title IV, § 641, 46 Stat. 759; Aug. 26, 1935, ch. 689, §§ 3–5, 49 Stat. 864, 865; Pub. L. 85–791, § 8, Aug. 28, 1958, 72 Stat. 945; Pub. L. 91–271, title III, § 301(jj), June 2, 1970, 84 Stat. 291; Pub. L. 95–410, title I, § 113, Oct. 3, 1978, 92 Stat.

898; Pub. L. 96-417, title VI, § 611, Oct. 10, 1980, 94 Stat. 1746; Pub. L. 98-573, title II, § 212(a), Oct. 30, 1984, 98 Stat. 2978; Pub. L. 99-514, title XVIII, § 1888(8), Oct. 22, 1986, 100 Stat. 2925; Pub. L. 103-182, title VI, § 648, Dec. 8, 1993, 107 Stat. 2207; Pub. L. 104-295, § 21(e)(11), Oct. 11, 1996, 110 Stat. 3531; Pub. L. 105-258, title III, § 302(b), Oct. 14, 1998, 112 Stat. 1916.)

PRIOR PROVISIONS

This section relates to the same subject matter as act June 10, 1910, ch. 283, §§ 1-5, 36 Stat. 464, 465 (incorporated into the Code as former sections 415 to 419 of this title); and those sections were expressly repealed by paragraph (e) of this section which read as follows: "(e) Licenses under Act of June 10, 1910.—The Act entitled 'An Act to license customhouse brokers,' approved June 10, 1910, is hereby repealed, except that any license issued under such Act shall continue in force and effect, subject to suspension and revocation in the same manner and upon the same conditions as licenses issued pursuant to subdivision (a) of this section."

Act June 10, 1910, ch. 283, § 1, 36 Stat. 464, prior to its incorporation into the Code, referred to the collector or chief officer of the customs "at any port of entry or delivery." Ports of delivery, not specifically mentioned as ports of entry, were abolished in the reorganization of the customs service by the President (see notes to section 1 of this title).

Act June 10, 1910, ch. 283, § 3, 36 Stat. 465, prior to its incorporation into the Code, referred to the United States Circuit Court instead of the District Court. Section 291 of the act of Mar. 3, 1911, provided that any reference, in any law not embraced in that act, to the Circuit Courts, or any power or duty conferred upon them, should be deemed to refer to, and to confer such power and duty upon, the District Courts.

AMENDMENTS

1998—Subsec. (i). Pub. L. 105-258 struck out subsec. (i) which prohibited conference or group of two or more ocean common carriers from denying any member the right to take independent action on any level of compensation paid to an ocean freight forwarder who was also a customs broker, and from agreeing to limit payment to such a forwarder to less than 1.25 percent of aggregate of tariff rates and charges, and set out provisions relating to administration of provisions, remedies for violations, and definitions.

1996—Subsec. (d)(2)(B). Pub. L. 104-295 substituted "the findings of fact" for "his findings of fact" in penultimate sentence.

1993—Subsec. (a)(2). Pub. L. 103-182, § 648(1), inserted at end "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."

Subsec. (c)(1). Pub. L. 103-182, § 648(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Each person granted a customs broker's license under subsection (b) of this section shall—

"(A) be issued a permit, in accordance with regulations prescribed under this section, for each customs district in which that person conducts customs business; and

"(B) except as provided in paragraph (2), regularly employ in each customs district for which a permit is so issued at least one individual who is licensed under subsection (b)(2) of this section to exercise responsible supervision and control over the customs business conducted by that person in that district."

Subsec. (c)(4). Pub. L. 103-182, § 648(3), added par. (4).

Subsec. (d)(2)(B). Pub. L. 103-182, § 648(4), in first sentence, substituted "Customs Service" for "appropriate

customs officer", in third sentence, substituted "Customs Service" for "appropriate customs officer", "it shall notify" for "he shall notify", and "30" for "15", in sixth sentence, substituted "the Customs Service and the customs broker; which" for "the appropriate customs officer and the customs broker; they", in the seventh sentence, substituted "the findings of fact" for "his findings of fact", and in the eighth sentence, substituted "for the decision" for "for his decision".

Subsec. (f). Pub. L. 103-182, § 648(5), substituted "Customs Service. The Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business. For purposes of this subsection or any other provision of this Act pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium. Pursuant to such regulations as the Secretary shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker's business system." for "United States Customs Service."

1986—Subsec. (i). Pub. L. 99-514 added subsec. (i).

1984—Pub. L. 98-573 amended section generally, substituting provisions relating to customs broker's licenses and permits for provisions relating to licensing of customhouse brokers.

1980—Subsec. (b). Pub. L. 96-417, in second par., substituted in second sentence "filing, in the Court of International Trade" for "filing, in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia" and struck out penultimate sentence which read as follows: "The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Secretary of the Treasury shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in 1254 of title 28."

1978—Subsec. (e). Pub. L. 95-410 added subsec. (e).

1970—Subsec. (b). Pub. L. 91-271 substituted references to appropriate officer of the customs for references to collector or chief officer of customs wherever appearing.

1958—Subsec. (b). Pub. L. 85-791 in third sentence of second par., substituted "transmitted by the clerk of the court to" for "served upon", struck out "upon" before "any officer", "certify and" before "file in the court", "a transcript of" before "the record upon" and inserted "as provided in section 2112 of title 28", and in fourth sentence of second par., substituted "petition" for "transcript".

1935—Subsec. (a). Act Aug. 26, 1935, § 3, substituted "(c)" for "(e)" in last sentence.

Subsecs. (b) to (d). Act Aug. 26, 1935, § 4, amended subsecs. (b) to (d) generally.

Subsec. (e). Act Aug. 26, 1935, § 5, repealed subsec. (e) which related to licenses under the act of June 10, 1910.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-258, § 2, Oct. 14, 1998, 112 Stat. 1902, provided that: "Except as otherwise expressly provided in this Act [see Tables for classification], this Act and the amendments made by this Act take effect May 1, 1999."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective on close of 180th day following Oct. 30, 1984, with certain exceptions, except that subsec. (c)(1)(B), (2) of this section shall take effect three years after Oct. 30, 1984, see section 214(d) of Pub. L. 98-573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-417 applicable with respect to civil actions commenced on or after Nov. 1, 1980, see

section 701(b)(2) 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.

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(l), 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.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1801-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1642. Omitted

CODIFICATION

In compliance with a request from the President on July 2, 1932, the survey authorized by this section, act June 17, 1930, ch. 497, title IV, § 642, 46 Stat. 760, was made and submitted to the President on February 28, 1933. See Tariff Commission Reports, No. 70, Second Series.

§ 1643. Application of customs reorganization act

The rights, privileges, powers, and duties vested in or imposed upon the Secretary of the Treasury by this chapter shall be subject to the provisions of subdivision (a) of section 2073 of this title.

(June 17, 1930, ch. 497, title IV, § 643, 46 Stat. 761.)

REFERENCES IN TEXT

Subdivision (a) of section 2073 of this title, referred to in text, was repealed by act Sept. 3, 1954, ch. 1263, § 10, 68 Stat. 1229.

§ 1644. Application of section 1644a(b)(1) of this title and section 1518(d) of title 33

(a) The authority vested by section 1644a(b)(1) of this title in the Secretary of the Treasury, by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of customs, and of the laws and regulations relating to the entry and clearance of vessels, shall extend to the application in like manner of any of the provisions of this chapter, or of the Anti-Smuggling Act of 1935 [19 U.S.C. 1701 et seq.], or of any regulations promulgated hereunder.

(b) For purposes of section 1518(d) of title 33, the term “customs laws administered by the Secretary of the Treasury” shall mean this chapter and any other provisions of law classified to this title.

(June 17, 1930, ch. 497, title IV, § 644, 46 Stat. 761; Pub. L. 96-467, § 21(2), (3), Oct. 17, 1980, 94 Stat. 2228; Pub. L. 98-473, title II, § 322, Oct. 12, 1984, 98 Stat. 2056.)

REFERENCES IN TEXT

The Anti-Smuggling Act of 1935, referred to in subsec. (a), probably means the Anti-Smuggling Act which 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.

CODIFICATION

In subsec. (a), “section 1644a(b)(1) of this title” substituted for “section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. 1509)” 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

1984—Subsec. (a). Pub. L. 98-473 substituted reference to section 1509 of title 49, Appendix, for reference to section 177 of former title 49, struck out reference to the Commissioner of Customs, and inserted reference to the Anti-Smuggling Act of 1935.

Subsec. (b). Pub. L. 98-473 reenacted subsec. (b) without change.

1980—Pub. L. 96-467 designated existing provisions as subsec. (a) and added subsec. (b).

§ 1644a. Ports of entry

(a) Definitions

The definitions in section 40102(a) of title 49 apply to this section.

(b) Secretary of the Treasury

(1) The Secretary of the Treasury may—

(A) designate ports of entry in the United States for civil aircraft arriving in the United States from a place outside the United States and property transported on that aircraft;

(B) detail to ports of entry officers and employees of the United States Customs Service the Secretary considers necessary;

(C) give an officer or employee of the United States Government stationed at a port of entry (with the consent of the head of the department, agency, or instrumentality of the Government with jurisdiction over the officer or employee) duties and powers of officers or employees of the Customs Service;

(D) by regulation, apply to civil air navigation the laws and regulations on carrying out the customs laws, to the extent and under conditions the Secretary considers necessary; and

(E) by regulation, apply to civil aircraft the laws and regulations on entry and clearance of vessels, to the extent and under conditions the Secretary considers necessary.

(2) A person violating a customs regulation prescribed under paragraph (1)(A)–(D) of this subsection or a public health or customs law or regulation made applicable to aircraft by a regulation under paragraph (1)(A)–(D) is liable to the Government for a civil penalty of \$5,000 for each violation. An aircraft involved in the violation may be seized and forfeited under the customs laws. The Secretary of the Treasury may remit or mitigate a penalty and forfeiture under this paragraph.

(3) A person violating a regulation made applicable under paragraph (1)(E) of this subsection

or an immigration regulation prescribed under paragraph (1)(E) is liable to the Government for a civil penalty of \$5,000 for each violation. The Secretary of the Treasury or the Attorney General may remit or mitigate a penalty under this paragraph.

(4) In addition to any other penalty, when a controlled substance described in section 1584 of this title is found on, or to have been unloaded from, an aircraft to which this subsection applies, the owner of, or individual commanding, the aircraft is liable to the Government for the penalties provided in section 1584 of this title for each violation unless the owner or individual, by a preponderance of the evidence, demonstrates that the owner or individual did not know, and by exercising the highest degree of care and diligence, could not have known, that a controlled substance was on the aircraft.

(5) If a violation under this subsection is by the owner or operator of, or individual commanding, the aircraft, the aircraft is subject to a lien for the penalty.

(c) Secretary of Agriculture

(1) The Secretary of Agriculture by regulation may apply laws and regulations on animal and plant quarantine (including laws and regulations on importing, exporting, transporting, and quarantining animals, plants, animal and plant products, insects, bacterial and fungus cultures, viruses, and serums) to civil air navigation to the extent and under conditions the Secretary considers necessary.

(2) A person violating a law or regulation made applicable under paragraph (1) of this subsection is liable for the penalties provided under that law or regulation.

(d) Remission and mitigation of penalties

A decision to remit or mitigate a civil penalty under this section is final. When libel proceedings are pending during a proceeding to remit or mitigate a penalty, the appropriate Secretary shall notify the Attorney General of the remission or mitigation proceeding.

(e) Summary seizure of aircraft

(1) An aircraft subject to a lien under this section may be seized summarily by and placed in the custody of a person authorized by regulations of the appropriate Secretary or the Attorney General. A report of the case shall be sent to the Attorney General. The Attorney General shall bring promptly a civil action in rem to enforce the lien or notify the appropriate Secretary that the action will not be brought.

(2) An aircraft seized under this section shall be released from custody when—

(A) the civil penalty or amount not remitted or mitigated is paid;

(B) the aircraft is seized under process of a court in a civil action in rem to enforce the lien;

(C) the Attorney General gives notice that a civil action will not be brought under paragraph (1) of this subsection; or

(D) a bond is deposited with the appropriate Secretary or the Attorney General in an amount and with a surety the appropriate Secretary or the Attorney General prescribes, conditioned on payment of the penalty or amount not remitted or mitigated.

(f) Collection of civil penalties

A civil penalty under this section may be collected by bringing a civil action against the person subject to the penalty, a civil action in rem against an aircraft subject to a lien for a penalty, or both. The action shall conform as nearly as practicable to a civil action in admiralty, regardless of the place an aircraft in a civil action in rem is seized. However, a party may demand a trial by jury of an issue of fact if the value of the matter in controversy is more than \$20. An issue of fact tried by jury may be reexamined only under common law rules.

(g) Authorization of appropriations

Necessary amounts may be appropriated to allow the head of a department, agency, or instrumentality of the Government to acquire space at a public airport (as defined in section 47102 of title 49) when the head decides the space is necessary to carry out inspections, clearance, collection of taxes or duties, or a similar responsibility of the head, related to transporting passengers or property in air commerce. The head must consult with the Secretary of Transportation before making a decision on space.

(Pub. L. 103-272, §2, July 5, 1994, 108 Stat. 1358.)

CODIFICATION

Section was not enacted as part of the Tariff Act of 1930 which comprises this chapter.

Section is based on sections 1474 and 1509(b)-(e) of former Title 49, Transportation, which were repealed and restated as this section by Pub. L. 103-272, §§2, 7(b), July 5, 1994, 108 Stat. 1358, 1379.

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.

§ 1645. Transportation and interment of remains of deceased employees in foreign countries; travel or shipping expenses incurred on foreign ships

(a) Transfers in foreign countries

The expense of transporting the remains of customs officers and employees who die while in or in transit to foreign countries in the discharge of their official duties, to their former homes in this country for interment, and the ordinary and necessary expenses for such interment, at their posts of duty or at home, are authorized to be paid upon the written order of the Secretary of the Treasury. The expenses authorized by this subdivision shall be paid from the appropriation for the collection of the revenue from customs.

(b) Transportation on foreign ships

Notwithstanding the provisions of section 601 of the Merchant Marine Act, 1928, or of any other law, any allowance, within the limitations prescribed by law, for travel or shipping expenses incurred on a foreign ship by any officer

or employee of the Bureau of Customs or the Customs Service, shall be credited if the Secretary of the Treasury certifies to the Comptroller General that transportation on such foreign ship was necessary to protect the revenue.

(June 17, 1930, ch. 497, title IV, § 645(a), (c), 46 Stat. 761; Aug. 2, 1946, ch. 744, § 2, 60 Stat. 807.)

REFERENCES IN TEXT

Section 601 of the Merchant Marine Act, 1928, referred to in subsec. (b), was classified to section 891r of former Title 46, Shipping, and was repealed by the Merchant Marine Act, 1936 (approved June 29, 1936, ch. 858, § 903(c), 49 Stat. 2016), but was reenacted in substance by section 901 of that Act, which was classified to section 1241 of the former Appendix to Title 46, Shipping. Section 901 of the Merchant Marine Act, 1936 was subsequently repealed and restated in sections 55302, 55303, and 55305 of Title 46, Shipping, by Pub. L. 109-304, §§ 8(c), 19, Oct. 6, 2006, 120 Stat. 1586, 1710. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

CODIFICATION

Section is comprised of subssecs. (a) and (c) of section 645 of act June 17, 1930. Subsec. (b) of section 645 repealed in part section 48 of this title.

AMENDMENTS

1946—Subsec. (a). Act Aug. 2, 1946, eff. Nov. 1, 1946, repealed first sentence relating to traveling expenses of transferred employees. See section 5729 of Title 5, Government Organization and Employees.

CHANGE OF NAME

Bureau of Customs redesignated United States Customs Service by Treasury Department Order 165-23, Apr. 4, 1973, eff. Aug. 1, 1973, 38 F.R. 13037. See, also, section 308 of Title 31, Money and Finance.

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 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 those 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. Bureau of Customs and Customs Service, referred to in text, were under Department of the Treasury.

§ 1646. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

Section, act June 17, 1930, ch. 497, title IV, § 646, 46 Stat. 762, related to tenure and retirement of judges of United States Court of Customs and Patent Appeals. See sections 213, 371, and 372 of Title 28, Judiciary and Judicial Procedure.

§ 1646a. Supervision by customs officers

Wherever in this chapter any action or thing is required to be done or maintained under the

supervision of customs officers, such supervision may be directed and continuous or by occasional verification as may be required by regulations of the Secretary of the Treasury, or, in the absence of such regulations for a particular case, as the principal customs officer concerned shall direct.

(June 17, 1930, ch. 497, title IV, § 646, as added Aug. 8, 1953, ch. 397, § 22, 67 Stat. 520.)

EFFECTIVE DATE

Section effective on and after thirtieth day following Aug. 8, 1953, see Effective Date of 1953 Amendments note set out under section 1304 of this title.

§ 1646b. Random customs inspections for stolen automobiles being exported

The Commissioner of Customs shall direct customs officers to conduct at random inspections of automobiles, and of shipping containers that may contain automobiles that are being exported, for purposes of determining whether such automobiles were stolen.

(June 17, 1930, ch. 497, title IV, § 646A, as added Pub. L. 102-519, title IV, § 401, Oct. 25, 1992, 106 Stat. 3400.)

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.

PILOT STUDY AUTHORIZING UTILITY OF NONDESTRUCTIVE EXAMINATION SYSTEM

Section 402 of Pub. L. 102-519 provided that: “The Secretary of the Treasury, acting through the Commissioner of Customs, shall conduct a pilot study of the utility of a nondestructive examination system to be used for inspection of containers that may contain automobiles leaving the country for the purpose of determining whether such automobiles have been stolen.”

§ 1646c. Export reporting requirement

The Commissioner of Customs shall require all persons or entities exporting used automobiles, including automobiles exported for personal use, by air or ship to provide to the Customs Service, at least 72 hours before the export, the vehicle identification number of each such automobile and proof of ownership of such automobile. The Commissioner shall establish specific criteria for randomly selecting used automobiles scheduled to be exported, consistent with the risk of stolen automobiles being exported and shall check the vehicle identification number of each automobile selected pursuant to such criteria against the information in the National Crime Information Center to determine whether such automobile has been reported stolen. At the request of the Director of the Federal Bureau of Investigation, the Commissioner shall make available to the Director all vehicle identification numbers obtained under this section.

(June 17, 1930, ch. 497, title IV, § 646B, as added Pub. L. 102-519, title IV, § 401, Oct. 25, 1992, 106 Stat. 3400.)

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.

§ 1647. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

Section, act June 17, 1930, ch. 497, title IV, § 647, 46 Stat. 762, which repealed that part of section 195 of act Mar. 3, 1911, ch. 231, that read as follows: “in any case in which there is drawn in question the construction of the Constitution of the United States, or any part thereof, or of any treaty made pursuant thereto, or in any other case when the Attorney General of the United States shall, before the decision of the Court of Customs Appeals is rendered, file with the court a certificate to the effect that the case is of such importance as to render expedient its review by the Supreme Court,” was repealed by act June 25, 1948, which repealed section 195 of act Mar. 3, 1911, ch. 231.

§ 1648. Uncertified checks, United States notes, and national bank notes receivable for customs duties

Customs officers may receive uncertified checks, United States notes, and circulating notes of national banking associations in payment of duties on imports, during such time and under such rules and regulations as the Secretary of the Treasury shall prescribe; but if a check so received is not paid the person by whom such check has been tendered shall remain liable for the payment of the duties and for all legal penalties and additions to the same extent as if such check had not been tendered.

(June 17, 1930, ch. 497, title IV, § 648, 46 Stat. 762; Pub. L. 91-271, title III, § 301(kk), June 2, 1970, 84 Stat. 291.)

AMENDMENTS

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

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.

§ 1649. Change in designation of customs attachés

On and after June 17, 1930, customs attachés shall be known as “Treasury attachés.”

(June 17, 1930, ch. 497, title IV, § 649, 46 Stat. 762.)

§ 1650. Transferred

CODIFICATION

Section, act June 17, 1930, ch. 497, title IV, § 650, 46 Stat. 762, is set out as a part of section 2072 of this title.

§ 1651. Repeals

(a) Specific repeals

The following Acts and parts of Acts are repealed, subject to the limitations provided in subdivision (c) of this section:

(1) The Tariff Act of 1922, except that the repeal of sections 304 and 482 (relating to marking of imported articles and to certified invoices, respectively) shall take effect sixty days after the enactment of this chapter;

(2) Section 16 of the Act entitled “An Act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes”, approved June 26, 1884, as amended (relating to supplies for certain vessels);

(3) The Joint Resolution entitled “Joint Resolution Authorizing certain customs officials to administer oaths”, approved April 2, 1928; and

(4) Section 2804 of the Revised Statutes, as amended (relating to limitations on importation packages of cigars).

(b) General repeal

All Acts and parts of Acts inconsistent with the provisions of this chapter are repealed.

(c) Rights and liabilities under acts repealed or modified

The repeal of existing laws or modifications or reenactments thereof embraced in this chapter shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil or criminal case prior to such repeal, modifications, or reenactments, but all liabilities under such laws shall continue and may be enforced in the same manner as if such repeal, modifications, or reenactments had not been made. All offenses committed and all penalties, under any statute embraced in, or changed, modified, or repealed by this chapter, may be prosecuted and punished in the same manner and with the same effect as if this chapter had not been passed. No Acts of limitation now in force, whether applicable to civil causes and proceedings, or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in, modified, changed, or repealed by this chapter shall be affected thereby so far as they affect any suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to June 18, 1930, which may be commenced and prosecuted within the same time and with the same effect as if this chapter had not been passed.

(d) Certain acts not affected

Nothing in this chapter shall be construed to amend or repeal any of the following provisions of law:

(1) Section 60501 or 60502 of title 46;

(2) Subsection 2 of paragraph N of Section IV of such Act of October 3, 1913, ch. 16 (relating to the manufacture of alcohol for denaturization only);

(3) Section 296 of title 5 (providing for an Assistant Attorney General in charge of customs matters);

(4) The Act entitled “An Act relating to the use or disposal of vessels or vehicles forfeited to the United States for violation of the customs laws or the National Prohibition Act, and for other purposes”, approved March 3, 1925; nor

(5) The Antidumping Act, 1921 [19 U.S.C. 160 et seq.].

(June 17, 1930, ch. 497, title IV, § 651, 46 Stat. 762.)

REFERENCES IN TEXT

The Tariff Act of 1922, referred to in subsec. (a)(1), is act Sept. 21, 1922, ch. 356, 42 Stat. 858, as amended. For complete classification of this act to the Code, see Tables. Section 304 of that act was classified, prior to its repeal, to sections 132 and 133 of this title, and section 482 of that act was classified, prior to its repeal, to sections 334 to 337, 342, and 343 of this title.

Section 16 of the act approved June 26, 1884, referred to in subsec. (a)(2), is section 16 of act June 26, 1884, ch. 121, 23 Stat. 57, and was classified, prior to its repeal, to section 145 of this title. See section 1309 of this title.

Section 2804 of the Revised Statutes, referred to in subsec. (a)(4), was classified, prior to its repeal, to section 192 of this title.

Subsection 2 of paragraph N of Section IV of act of October 3, 1913, ch. 16, referred to in subsec. (d)(2), which appears at 38 Stat. 199 and which was classified to sections 487 and 488 of former Title 26, Internal Revenue, was repealed by act Feb. 10, 1939, ch. 2, § 4, 53 Stat. 1, which enacted the Internal Revenue Code of 1939.

Section 296 of title 5, referred to in subsec. (d)(3), was repealed in the general revision of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 636. The office of the Assistant Attorney General in charge of customs matters was abolished by Reorg. Plan No. 4 of 1953, § 2, eff. June 20, 1953.

Act of March 3, 1925, referred to in subsec. (d)(4), was repealed by act Aug. 27, 1935, ch. 740, § 308, 49 Stat. 880.

The Antidumping Act, 1921, referred to in subsec. (d)(5), is act May 27, 1921, ch. 14, title II, 42 Stat. 11, as amended, which was classified generally to sections 160 to 171 of this title, and was repealed by Pub. L. 96-39, title I, § 106(a), July 26, 1979, 93 Stat. 193.

CODIFICATION

In subsec. (d)(1), “Section 60501 or 60502 of title 46” substituted for “Subsections 1, 2, and 3 of paragraph J of Section IV of the Act entitled ‘An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,’ approved October 3, 1913 (relating to restrictions on importations in foreign vessels or through contiguous countries), as modified by the Act of March 4, 1915, chapter 171” on authority of Pub. L. 109-304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted sections 60501 and 60502 of Title 46, Shipping.

PRIOR PROVISIONS

Provisions similar to those in subd. (c) of this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 641, 42 Stat. 989. That section was superseded by section 651 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1652. Separability

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(June 17, 1930, ch. 497, title IV, § 652, 46 Stat. 763.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 645, 42 Stat. 990. That section was superseded by section 652 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

CUSTOMS PROCEDURAL REFORM AND SIMPLIFICATION ACT OF 1978

Pub. L. 95-410, title IV, § 401, Oct. 3, 1978, 92 Stat. 905, provided that: “If any provision of this Act [see Short

Title of 1978 Amendment note set out under section 1654 of this title], or the application thereof to any person or circumstances, is held invalid, the remainder of the provisions of this Act and the application of such provisions to other persons or circumstances shall not be affected thereby.”

§ 1653. Effective date of chapter

Except as otherwise provided, this chapter shall take effect on June 18, 1930.

(June 17, 1930, ch. 497, title IV, § 653, 46 Stat. 763.)

§ 1653a. Transferred

CODIFICATION

Section, act June 25, 1938, ch. 679, § 37, 52 Stat. 1094, related to the effective date of the Customs Administrative Act of 1938, and is set out as a note under section 1401 of this title.

Section was not part of Tariff Act of 1930 which constitutes this chapter.

§ 1654. Short title

This chapter may be cited as the “Tariff Act of 1930.”

(June 17, 1930, ch. 497, title IV, § 654, 46 Stat. 763.)

SHORT TITLE OF 2008 AMENDMENT

Act June 17, 1930, ch. 497, title VIII, § 801(a), as added Pub. L. 110-246, title III, § 3301(a), June 18, 2008, 122 Stat. 1844, provided that: “This title [enacting subtitle VI of this chapter] may be cited as the ‘Softwood Lumber Act of 2008.’”

[Another section 801 of act June 17, 1930, is classified to section 1681 of this title.]

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109-280, title XIV, § 1401(a), Aug. 17, 2006, 120 Stat. 1110, provided that: “This title [amending sections 58c, 1466, 1484, 1514, 1520, 1557, 1559, 1562, 1629, 2155, 2317, 2401, 3807, and 4034 of this title, enacting provisions set out as notes under sections 1466 and 1675 of this title, and amending provisions set out as a note under section 7101 of Title 7, Agriculture] may be cited as the ‘Miscellaneous Trade and Technical Corrections Act of 2006.’”

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-429, § 1, Dec. 3, 2004, 118 Stat. 2434, provided that: “This Act [amending sections 58c, 1313, 1330, 1337, 1401, 1466, 1484, 1501, 1504, 1505, 1514, 1515, 1520, 1583, 1593a, 1629, 2155, 2171, 2271, 2272, 2298, 2318, 2346, 2395, 2401e, 2414, 2415, 2451, 2451a, 2463, 2703, 3203, 3721, 3802, 3803, 3805, and 3813 of this title, section 70b of Title 15, Commerce and Trade, and sections 5382 and 6103 of Title 26, Internal Revenue Code, repealing section 72 of Title 15, enacting provisions set out as notes under sections 1313, 1401, 1466, 1504, 1629, 2155, 2434, 2463, 2703, 3203, 3701, and 3721 of this title, section 7101 of Title 7, Agriculture, sections 70b and 72 of Title 15, and section 5382 of Title 26, amending provisions set out as notes under sections 2401, 2465, 3701, and 3805 of this title and section 7101 of Title 7, and repealing provisions set out as a note under section 1629 of this title] may be cited as the ‘Miscellaneous Trade and Technical Corrections Act of 2004.’”

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-210, div. A, title III, § 301, Aug. 6, 2002, 116 Stat. 972, provided that: “This Act [probably means ‘This title’], enacting sections 1431a and 1583 of this title, amending sections 58c, 482, 1318, 1330, 1411, 1505, 1509, 2075, and 2171 of this title, and enacting provisions set out as notes under sections 58c, 482, 1583, 1625, 2071, 2075, and 2082 of this title] may be cited as the ‘Customs Border Security Act of 2002.’”

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106-476, §1, Nov. 9, 2000, 114 Stat. 2101, provided that: "This Act [enacting subtitle V of this chapter and section 1308 of this title, amending sections 58c, 1313, 1433, 1434, 1441, 1484, 1505, and 1555 of this title, section 5314 of Title 5, Government Organization and Employees, section 69 of Title 15, Commerce and Trade, and sections 5704, 5754, and 5761 of Title 26, Internal Revenue Code, and section 91 of Title 46, Appendix, Shipping, and enacting provisions set out as notes under this section and sections 58c, 1308, 1313, 1484, 1681, and 2434 of this title, sections 1, 5704, and 5761 of Title 26, and section 1113 of Title 31, Money and Finance] may be cited as the 'Tariff Suspension and Trade Act of 2000'."

Pub. L. 106-476, title I, §1441, Nov. 9, 2000, 114 Stat. 2163, provided that: "This chapter [chapter 3 (§§1441-1443) of subtitle B of title I of Pub. L. 106-476, enacting section 1308 of this title, amending section 69 of Title 15, Commerce and Trade, and enacting provisions set out as notes under section 1308 of this title], may be cited as the 'Dog and Cat Protection Act of 2000'."

Pub. L. 106-387, §1(a) [title X, §1001], Oct. 28, 2000, 114 Stat. 1549, 1549A-72, provided that: "This title [enacting section 1675c of this title and provisions set out as notes under section 1675c of this title] may be cited as the 'Continued Dumping and Subsidy Offset Act of 2000'."

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106-36, §1(a), June 25, 1999, 113 Stat. 127, provided that: "This Act [enacting section 1484b of this title, amending sections 58c, 81c, 81i, 1304, 1313, 1411, 1441, 1505, 1514, 1515, 1520, 1555, 1557, 1558, 1584, 1592, 1631, 1675, 2171, 2194, 2293, 2436, 2463, 2492, 2494, and 2495 of this title, sections 620 and 620c of Title 16, Conservation, sections 262n-2, 286gg, 1978, and 5712 of Title 22, Foreign Relations and Intercourse, sections 351, 357, 358, 362, 368, 584, and 1031 of Title 26, Internal Revenue Code, section 891e of Title 33, Navigation and Navigable Waters, sections 2296b, 2296b-6, and 6374 of Title 42, The Public Health and Welfare, and section 50103 of Title 49, Transportation, repealing sections 1708 and 2441 of this title, and enacting provisions set out as notes under sections 58c, 1304, 1313, 1484b, 1514, and 2434 of this title and section 351 of Title 26] may be cited as the 'Miscellaneous Trade and Technical Corrections Act of 1999'."

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-258, §1, Oct. 14, 1998, 112 Stat. 1902, provided that: "This Act [see Tables for classification] may be cited as the 'Ocean Shipping Reform Act of 1998'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-295, §1(a), Oct. 11, 1996, 110 Stat. 3514, provided that: "This Act [amending sections 58c, 81c, 293, 294, 1304, 1313, 1321, 1337, 1401, 1413, 1431, 1436, 1441, 1484, 1490, 1491, 1504, 1505, 1508, 1509, 1514, 1515, 1516a, 1555, 1592, 1592a, 1625, 1631, 1641, 1671a, 1671b, 1671d, 1673a, 1673d, 1673f, 1675b, 1677, 1677-1, 1677n, 2171, 2192, 2252, 2411, 2414, 2416, 2462, 2514, 2515, 2518, 2532, 2541, 2543 to 2547, 2552, 2553, 2561, 2571, 2573, 2578a, 2707, 2905, 3007, 3010, 3332, 3358, 3381, 3432, 3437, 3451, 3552, 3571, 3572, 3591, 3592, and 3602 of this title, section 1854 of Title 7, Agriculture, section 104A of Title 17, Copyrights, and section 154 of Title 35, Patents, repealing sections 1707 and 2440 of this title, enacting provisions set out as notes under sections 58c, 81c, 1304, 1321, 1505, and 2462 of this title, and amending provisions set out as notes under sections 1466, 1553, and 2465 of this title] may be cited as the 'Miscellaneous Trade and Technical Corrections Act of 1996'."

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-570, title III, subtitle B, §3101, Oct. 27, 1986, 100 Stat. 3207-79, provided that: "This subtitle [subtitle B (§§3101-3161) of title III of Pub. L. 99-570, enacting

sections 1590, 1628, 1629, and 2081 of this title, amending sections 507, 1401, 1433, 1436, 1454, 1459, 1497, 1509, 1584 to 1586, 1594 to 1595a, 1613, 1613b, 1619, and 1622 of this title, section 959 of Title 21, Food and Drugs, section 5316 of Title 31, Money and Finance, and section 12109 of Title 46, Shipping, repealing section 1460 of this title, and enacting provisions set out as a note under section 1613b of this title] may be cited as the 'Customs Enforcement Act of 1986'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-573, §1, Oct. 30, 1984, 98 Stat. 2948, provided in part that this Act (see Tables for classification) may be cited as the "Trade and Tariff Act of 1984".

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-410, §1, Oct. 3, 1978, 92 Stat. 888, provided: "That this Act [enacting sections 58a, 1496a, 1504, 1508, 1625, and 2075 of this title, amending sections 467, 1202, 1315, 1321, 1466, 1483, 1484, 1491, 1505, 1509, 1510, 1520, 1526, 1557, 1559, 1584, 1592, 1599, 1603, 1607, 1610, 1612, 1613, 1615, 1621, and 1641 of this title, section 1124 of Title 15, Commerce and Trade, and section 883 of Title 46, Appendix, Shipping, repealing sections 58 and 1511 of this title and sections 329, 330, and 333 of former Title 46, and enacting provisions set out as notes under sections 1202, 1434, 1496a, 1504, 1557, 1592, and 1652 of this title] may be cited as the 'Customs Procedural Reform and Simplification Act of 1978'."

SHORT TITLE OF 1970 AMENDMENT

Section 201 of Pub. L. 91-271, June 2, 1970, 84 Stat. 282, provided that: "Titles II and III of this Act [amending sections 2, 6, 31, 32, 58, 66, 81c, 151, 161, 167 to 169, 261, 267, 282, 293, 341, 528, 1305, 1311, 1315, 1401, 1402, 1432, 1434, 1435b, 1438, 1441, 1443 to 1451, 1452 to 1455, 1457, 1467, 1482, 1484, 1485, 1490 to 1493, 1496, 1499 to 1503, 1505, 1506, 1509 to 1516, 1520, 1521, 1523, 1555, 1557, 1560, 1562 to 1565, 1584, 1586, 1595, 1602 to 1610, 1612 to 1614, 1617, 1618, 1623, 1641, and 1648 of this title, repealing sections 5, 5a, 7 to 11, 36, 37, 51, 63, and 1488 of this title, and enacting provisions set out as notes under this section] may be cited as 'The Customs Administrative Act of 1970'."

SHORT TITLE OF 1966 AMENDMENT

Section 1(a) of Pub. L. 89-651, Oct. 14, 1966, 80 Stat. 897, provided: "That this Act [enacting section 1544 of Title 28, Judiciary and Judicial Procedure, amending Schedules 2, 7, and 8 of the Tariff Schedules of the United States and section 2602 of Title 28, and enacting provisions set out as a note preceding section 1202 and under section 1981 of this title] may be cited as the 'Educational, Scientific, and Cultural Materials Importation Act of 1966'."

SHORT TITLE OF 1965 AMENDMENT

Section 1(a) of Pub. L. 89-241, Oct. 7, 1965, 79 Stat. 933, provided: "That this Act [amending section 1202 of this title and Schedules 1 to 8 and Appendix to Schedules, and enacting provisions set out as notes preceding section 1202 and under section 1981 of this title] may be cited as the 'Tariff Schedules Technical Amendments Act of 1965'."

Section 1(c) of Pub. L. 89-241, Oct. 7, 1965, 79 Stat. 933, provided that: "Title I of the Tariff Act of 1930 [subtitle I of this chapter], as in effect on or after August 31, 1963, may be cited as the 'Tariff Schedules of the United States'."

SHORT TITLE OF 1962 AMENDMENT

Section 1 of Pub. L. 87-456, May 24, 1962, 76 Stat. 72, provided: "That this Act [amending section 1312 of this title, section 1856 of Title 7, Agriculture, section 41 of Title 21, Food and Drugs, sections 4501 and 6418 of Title 26, Internal Revenue Code, section 474 of former Title 40, Public Buildings, Property, and Works, and section 2201 of Title 42, The Public Health and Welfare, repealing sections 193 to 195, 196a, 420, 1301a, 1308, 1367, 1489,

1504, and 1508 of this title and section 2383 of Title 10, Armed Forces, and enacting provisions set out as notes preceding section 1202 of this title and under section 1861 of this title and section 4501 of Title 26] may be cited as the ‘Tariff Classification Act of 1962.’”

SHORT TITLE OF 1958 AMENDMENT

Section 1 of Pub. L. 85-686, Aug. 20, 1958, 72 Stat. 673, provided: “That this Act [enacting section 1335 of this title, amending sections 1333, 1336, 1337, 1351, 1352a, 1360, and 1364 of this title, and enacting provisions set out as notes under sections 1351 and 1352 of this title] may be cited as the ‘Trade Agreements Extension Act of 1958.’”

SHORT TITLE OF 1956 AMENDMENT

Section 1 of act Aug. 2, 1956, ch. 887, 70 Stat. 943, provided: “That this Act [enacting section 1401a of this title, amending sections 1001, 1402, 1500, and 1583 of this title, and section 372 of former Title 31, Money and Finance, repealing sections 12 to 18, 21, 24, 26 to 28, 30, 40, 53 to 57, 59, 61, 62, 67, 376, 379, 390, 494, 526, 541, 542, 549, and 579 of this title, and section 711 of former Title 31, and enacting provisions set out as notes under sections 2, 160, 1351, 1401a, and 1402 of this title] may be cited as the ‘Customs Simplification Act of 1956.’”

SHORT TITLE OF 1955 AMENDMENT

Section 1 of act June 21, 1955, ch. 169, 69 Stat. 162, provided: “That this Act [amending sections 1351, 1352, 1352a, 1363, and 1364 of this title] may be cited as the ‘Trade Agreements Extension Act of 1955.’”

SHORT TITLE OF 1954 AMENDMENT

Section 1 of act Sept. 1, 1954, ch. 1213, 68 Stat. 1136, provided: “That this Act [enacting sections 1301a and 1595a of this title, amending sections 161, 1001, 1201, 1441, 1451, 1581, 1605, 1607, 1610, 1612 of this title, section 545 of Title 18, Crimes and Criminal Procedure, section 91 of Title 46, Appendix, Shipping, sections 1421e, 1644 of Title 48, Territories and Insular Possessions, and enacting provisions set out as notes under sections 160 and 1332 of this title] may be cited as the ‘Customs Simplification Act of 1954.’”

SHORT TITLE OF 1953 AMENDMENTS

Section 1 of act Aug. 8, 1953, ch. 397, 67 Stat. 507, provided in part: “That this Act [amending sections 268, 1001, 1201, 1304, 1308, 1309, 1313, 1315, 1317, 1321, 1431, 1439, 1440, 1482, 1484, 1486, 1487, 1489, 1498, 1501, 1503, 1508, 1520, 1523, 1557, and 1562 of this title, enacting sections 1322 and 1646a of this title, and repealing sections 33-35, 39, 42-45, 273, 274, 472-475, 1320, and 1503a of this title] may be cited as the ‘Customs Simplification Act of 1953.’”

Section 1 of act Aug. 7, 1953, ch. 348, 67 Stat. 472, provided: “That this Act [amending sections 1330, 1352, and 1364 of this title, section 624 of Title 7, Agriculture, and provisions set out as notes under sections 1351, 1364, and section 1366 of this title] may be cited as the ‘Trade Agreements Extension Act of 1953.’”

SHORT TITLE OF 1951 AMENDMENT

Section 1 of act June 16, 1951, ch. 141, 65 Stat. 72, provided: “That this Act [enacting sections 1360 to 1367 of this title, amending sections 1352 and 1354 of this title, provisions set out as a note under section 1516 of this title, and section 624 of Title 7, Agriculture] may be cited as the ‘Trade Agreements Extension Act of 1951.’”

SHORT TITLE OF 1949 AMENDMENT

Section 1 of act Sept. 26, 1949, ch. 585, 63 Stat. 697, provided: “That this Act [amending sections 1351, 1352, and 1354 of this title and repealing sections 1357 to 1359 of this title] may be cited as the ‘Trade Agreements Extension Act of 1949.’”

SHORT TITLE OF 1938 AMENDMENT

Section 1 of act June 25, 1938, ch. 679, 52 Stat. 1077, provided: “That this Act [enacting sections 1321, 1467,

1528 of this title, amending sections 1001, 1201, 1304, 1308, 1309, 1315, 1317, 1401, 1402, 1451, 1459, 1460, 1484, 1485, 1491, 1499, 1501, 1516, 1520, 1524, 1553, 1557 to 1559, 1562, 1563, 1603, 1607, 1609, 1613, 1623, 1709 of this title, and section 331 of former Title 46, Shipping, and enacting provisions set out as a note under section 1516 of this title] may be cited as the ‘Customs Administrative Act of 1938.’”

SUBTITLE IV—COUNTERVAILING AND
ANTIDUMPING DUTIES

PART I—IMPOSITION OF COUNTERVAILING DUTIES
CODIFICATION

The designations “SUBTITLE IV” and “PART I” were in the original “TITLE VII” and “Subtitle A” respectively, and were editorially changed in order to conform the numbering format of this subtitle to the usages employed in the codification of the remainder of the Tariff Act of 1930 as originally enacted.

§ 1671. Countervailing duties imposed

(a) General rule

If—

(1) the administering authority determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States, and

(2) in the case of merchandise imported from a Subsidies Agreement country, the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation,

then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net countervailable subsidy. For purposes of this subsection and section 1671d(b)(1) of this title, a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

(b) Subsidies Agreement country

For purposes of this subtitle, the term “Subsidies Agreement country” means—

(1) a WTO member country,

(2) a country which the President has determined has assumed obligations with respect to the United States which are substantially equivalent to the obligations under the Subsidies Agreement, or

(3) a country with respect to which the President determines that—

(A) there is an agreement in effect between the United States and that country which—

(i) was in force on December 8, 1994, and

(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States, and