

CHAPTER 46—FORFEITURE

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AMENDMENTS

2006—Pub. L. 109-177, title IV, § 406(b)(1)(A), Mar. 9, 2006, 120 Stat. 244, added item 987.

2000—Pub. L. 106-185, §§ 2(b), 7(b), Apr. 25, 2000, 114 Stat. 210, 215, added items 983 and 985.

1992—Pub. L. 102-550, title XV, §§ 1522(b), 1523(b), Oct. 28, 1992, 106 Stat. 4063, 4064, added items 984 and 986.

1988—Pub. L. 100-690, title VII, § 7069, Nov. 18, 1988, 102 Stat. 4405, substituted “forfeiture” for “Forfeiture” in items 981 and 982.

§ 981. Civil forfeiture

(a)(1) The following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 1956, 1957 or 1960 of this title, or any property traceable to such property.

(B) Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation, or any property used to facilitate such an offense, if the offense—

(i) involves trafficking in nuclear, chemical, biological, or radiological weapons technology or material, or the manufacture, importation, sale, or distribution of a controlled substance (as that term is defined for purposes of the Controlled Substances Act), or any other conduct described in section 1956(c)(7)(B);

(ii) would be punishable within the jurisdiction of the foreign nation by death or imprisonment for a term exceeding 1 year; and

(iii) would be punishable under the laws of the United States by imprisonment for a term exceeding 1 year, if the act or activity constituting the offense had occurred within the jurisdiction of the United States.

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section 215, 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 656, 657, 842, 844, 1005, 1006, 1007, 1014, 1028, 1029, 1030, 1032, or 1344 of this title or any offense constituting “specified unlawful activity” (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

(D) Any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, from a violation of—

(i) section 666(a)(1) (relating to Federal program fraud);

(ii) section 1001 (relating to fraud and false statements);

(iii) section 1031 (relating to major fraud against the United States);

(iv) section 1032 (relating to concealment of assets from conservator or receiver of insured financial institution);

(v) section 1341 (relating to mail fraud); or

(vi) section 1343 (relating to wire fraud),

if such violation relates to the sale of assets acquired or held by the the¹ Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution, or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency or the National Credit Union Administration, as conservator or liquidating agent for a financial institution.

(E) With respect to an offense listed in subsection (a)(1)(D) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations or promises, the gross receipts of such an offense shall include all property, real or personal, tangible or intangible, which thereby is obtained, directly or indirectly.

(F) Any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, from a violation of—

(i) section 511 (altering or removing motor vehicle identification numbers);

(ii) section 553 (importing or exporting stolen motor vehicles);

(iii) section 2119 (armed robbery of automobiles);

(iv) section 2312 (transporting stolen motor vehicles in interstate commerce); or

(v) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce).

(G) All assets, foreign or domestic—

(i) of any individual, entity, or organization engaged in planning or perpetrating any any¹ Federal crime of terrorism (as defined in section 2332b(g)(5)) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

(ii) acquired or maintained by any person with the intent and for the purpose of supporting, planning, conducting, or concealing any Federal crime of terrorism (as defined in section 2332b(g)(5))² against the United States, citizens or residents of the United States, or their property;

(iii) derived from, involved in, or used or intended to be used to commit any Federal crime of terrorism (as defined in section 2332b(g)(5)) against the United States, citizens or residents of the United States, or their property; or

(iv) of any individual, entity, or organization engaged in planning or perpetrating any act of international terrorism (as defined in section 2331) against any international orga-

¹ So in original.

² So in original. A second closing parenthesis probably should appear.

nization (as defined in section 209 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4309(b)) or against any foreign Government.³ Where the property sought for forfeiture is located beyond the territorial boundaries of the United States, an act in furtherance of such planning or perpetration must have occurred within the jurisdiction of the United States.

(H) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 2339C of this title.

(2) For purposes of paragraph (1), the term “proceeds” is defined as follows:

(A) In cases involving illegal goods, illegal services, unlawful activities, and tele-marketing and health care fraud schemes, the term “proceeds” means property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

(B) In cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the term “proceeds” means the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. The claimant shall have the burden of proof with respect to the issue of direct costs. The direct costs shall not include any part of the overhead expenses of the entity providing the goods or services, or any part of the income taxes paid by the entity.

(C) In cases involving fraud in the process of obtaining a loan or extension of credit, the court shall allow the claimant a deduction from the forfeiture to the extent that the loan was repaid, or the debt was satisfied, without any financial loss to the victim.

(b)(1) Except as provided in section 985, any property subject to forfeiture to the United States under subsection (a) may be seized by the Attorney General and, in the case of property involved in a violation investigated by the Secretary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

(2) Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, except that a seizure may be made without a warrant if—

(A) a complaint for forfeiture has been filed in the United States district court and the court issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

(B) there is probable cause to believe that the property is subject to forfeiture and—

(i) the seizure is made pursuant to a lawful arrest or search; or

(ii) another exception to the Fourth Amendment warrant requirement would apply; or

(C) the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency.

(3) Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, and may be executed in any district in which the property is found, or transmitted to the central authority of any foreign state for service in accordance with any treaty or other international agreement. Any motion for the return of property seized under this section shall be filed in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(4)(A) If any person is arrested or charged in a foreign country in connection with an offense that would give rise to the forfeiture of property in the United States under this section or under the Controlled Substances Act, the Attorney General may apply to any Federal judge or magistrate judge in the district in which the property is located for an ex parte order restraining the property subject to forfeiture for not more than 30 days, except that the time may be extended for good cause shown at a hearing conducted in the manner provided in rule 43(e) of the Federal Rules of Civil Procedure.

(B) The application for the restraining order shall set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture, and shall contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection.

(c) Property taken or detained under this section shall not be replevable, but shall be deemed to be in the custody of the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of such property under this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C.

³ So in original. Probably should not be capitalized.

1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be. The Attorney General shall have sole responsibility for disposing of petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding.

(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine—

(1) to any other Federal agency;

(2) to any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property;

(3) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency—

(A) to reimburse the agency for payments to claimants or creditors of the institution; and

(B) to reimburse the insurance fund of the agency for losses suffered by the fund as a result of the receivership or liquidation;

(4) in the case of property referred to in subsection (a)(1)(C), upon the order of the appropriate Federal financial institution regulatory agency, to the financial institution as restitution, with the value of the property so transferred to be set off against any amount later recovered by the financial institution as compensatory damages in any State or Federal proceeding;

(5) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency, to the extent of the agency's contribution of resources to, or expenses involved in, the seizure and forfeiture, and the investigation leading directly to the seizure and forfeiture, of such property;

(6) as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity; or

(7) In³ the case of property referred to in subsection (a)(1)(D), to the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or any other Federal financial institution regulatory agency (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act).

The Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may

be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General, the Secretary of the Treasury, or the Postal Service pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General, the Secretary of the Treasury, or the Postal Service may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials. The United States shall not be liable in any action arising out of a transfer under paragraph (3), (4), or (5) of this subsection.

(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(g)(1) Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a related criminal case.

(2) Upon the motion of a claimant, the court shall stay the civil forfeiture proceeding with respect to that claimant if the court determines that—

(A) the claimant is the subject of a related criminal investigation or case;

(B) the claimant has standing to assert a claim in the civil forfeiture proceeding; and

(C) continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case.

(3) With respect to the impact of civil discovery described in paragraphs (1) and (2), the court may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the opposing party to

pursue the civil case. In no case, however, shall the court impose a protective order as an alternative to a stay if the effect of such protective order would be to allow one party to pursue discovery while the other party is substantially unable to do so.

(4) In this subsection, the terms “related criminal case” and “related criminal investigation” mean an actual prosecution or investigation in progress at the time at which the request for the stay, or any subsequent motion to lift the stay is made. In determining whether a criminal case or investigation is “related” to a civil forfeiture proceeding, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the two proceedings, without requiring an identity with respect to any one or more factors.

(5) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(6) Whenever a civil forfeiture proceeding is stayed pursuant to this subsection, the court shall enter any order necessary to preserve the value of the property or to protect the rights of lienholders or other persons with an interest in the property while the stay is in effect.

(7) A determination by the court that the claimant has standing to request a stay pursuant to paragraph (2) shall apply only to this subsection and shall not preclude the Government from objecting to the standing of the claimant by dispositive motion or at the time of trial.

(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(i)(1) Whenever property is civilly or criminally forfeited under this chapter, the Attorney General or the Secretary of the Treasury, as the case may be, may transfer the 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 481(h)⁴ of the Foreign Assistance Act of 1961.

A decision by the Attorney General or the Secretary of the Treasury pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of prop-

erty or proceeds of sale of property under this subsection, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General or the Secretary of the Treasury may, in his discretion, set.

(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including property which is sought as evidence of a crime committed in the foreign country.

(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

(j) For purposes of this section—

(1) the term “Attorney General” means the Attorney General or his delegate; and

(2) the term “Secretary of the Treasury” means the Secretary of the Treasury or his delegate.

(k) INTERBANK ACCOUNTS.—

(1) IN GENERAL.—

(A) IN GENERAL.—For the purpose of a forfeiture under this section or under the Controlled Substances Act (21 U.S.C. 801 et seq.), if funds are deposited into an account at a foreign financial institution (as defined in section 984(c)(2)(A) of this title), and that foreign financial institution (as defined in

⁴ See References in Text below.

section 984(c)(2)(A) of this title) has an interbank account in the United States with a covered financial institution (as defined in section 5318(j)(1) of title 31), the funds shall be deemed to have been deposited into the interbank account in the United States, and any restraining order, seizure warrant, or arrest warrant in rem regarding the funds may be served on the covered financial institution, and funds in the interbank account, up to the value of the funds deposited into the account at the foreign financial institution (as defined in section 984(c)(2)(A) of this title), may be restrained, seized, or arrested.

(B) **AUTHORITY TO SUSPEND.**—The Attorney General, in consultation with the Secretary of the Treasury, may suspend or terminate a forfeiture under this section if the Attorney General determines that a conflict of law exists between the laws of the jurisdiction in which the foreign financial institution (as defined in section 984(c)(2)(A) of this title) is located and the laws of the United States with respect to liabilities arising from the restraint, seizure, or arrest of such funds, and that such suspension or termination would be in the interest of justice and would not harm the national interests of the United States.

(2) **NO REQUIREMENT FOR GOVERNMENT TO TRACE FUNDS.**—If a forfeiture action is brought against funds that are restrained, seized, or arrested under paragraph (1), it shall not be necessary for the Government to establish that the funds are directly traceable to the funds that were deposited into the foreign financial institution (as defined in section 984(c)(2)(A) of this title), nor shall it be necessary for the Government to rely on the application of section 984.

(3) **CLAIMS BROUGHT BY OWNER OF THE FUNDS.**—If a forfeiture action is instituted against funds restrained, seized, or arrested under paragraph (1), the owner of the funds deposited into the account at the foreign financial institution (as defined in section 984(c)(2)(A) of this title) may contest the forfeiture by filing a claim under section 983.

(4) **DEFINITIONS.**—For purposes of this subsection, the following definitions shall apply:

(A) **INTERBANK ACCOUNT.**—The term “interbank account” has the same meaning as in section 984(c)(2)(B).

(B) **OWNER.**—

(i) **IN GENERAL.**—Except as provided in clause (ii), the term “owner”—

(I) means the person who was the owner, as that term is defined in section 983(d)(6), of the funds that were deposited into the foreign financial institution (as defined in section 984(c)(2)(A) of this title) at the time such funds were deposited; and

(II) does not include either the foreign financial institution (as defined in section 984(c)(2)(A) of this title) or any financial institution acting as an intermediary in the transfer of the funds into the interbank account.

(ii) **EXCEPTION.**—The foreign financial institution (as defined in section 984(c)(2)(A)

of this title) may be considered the “owner” of the funds (and no other person shall qualify as the owner of such funds) only if—

(I) the basis for the forfeiture action is wrongdoing committed by the foreign financial institution (as defined in section 984(c)(2)(A) of this title); or

(II) the foreign financial institution (as defined in section 984(c)(2)(A) of this title) establishes, by a preponderance of the evidence, that prior to the restraint, seizure, or arrest of the funds, the foreign financial institution (as defined in section 984(c)(2)(A) of this title) had discharged all or part of its obligation to the prior owner of the funds, in which case the foreign financial institution (as defined in section 984(c)(2)(A) of this title) shall be deemed the owner of the funds to the extent of such discharged obligation.

(Added Pub. L. 99-570, title I, §1366(a), Oct. 27, 1986, 100 Stat. 3207-35; amended Pub. L. 100-690, title VI, §§6463(a), (b), 6469(b), 6470(b), (e), (f), 6471(c), Nov. 18, 1988, 102 Stat. 4374, 4377, 4378; Pub. L. 101-73, title IX, §963(a), (b), Aug. 9, 1989, 103 Stat. 504; Pub. L. 101-647, title I, §103, title XXV, §§2508, 2524, 2525(a), title XXXV, §3531, Nov. 29, 1990, 104 Stat. 4791, 4862, 4873, 4874, 4924; Pub. L. 102-393, title VI, §638(d), Oct. 6, 1992, 106 Stat. 1788; Pub. L. 102-519, title I, §104(a), Oct. 25, 1992, 106 Stat. 3385; Pub. L. 102-550, title XV, §§1525(c)(1), 1533, Oct. 28, 1992, 106 Stat. 4065, 4066; Pub. L. 103-322, title XXXIII, §330011(s)(2), Sept. 13, 1994, 108 Stat. 2146; Pub. L. 103-447, title I, §102(b), Nov. 2, 1994, 108 Stat. 4693; Pub. L. 106-185, §§2(c)(1), 5(a), 6, 8(a), 20, Apr. 25, 2000, 114 Stat. 210, 213-215, 224; Pub. L. 107-56, title III, §§319(a), 320, 372(b)(1), 373(b), title VIII, §806, Oct. 26, 2001, 115 Stat. 311, 315, 339, 340, 378; Pub. L. 107-197, title III, §301(d), June 25, 2002, 116 Stat. 728; Pub. L. 107-273, div. B, title IV, §4002(a)(2), Nov. 2, 2002, 116 Stat. 1806; Pub. L. 109-177, title I, §§111, 120, title IV, §§404, 406(a)(3), Mar. 9, 2006, 120 Stat. 209, 221, 244; Pub. L. 111-203, title III, §377(3), July 21, 2010, 124 Stat. 1569.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsecs. (a)(1)(B)(i), (b)(4)(A), and (k)(1)(A), 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.

The Federal Rules of Criminal Procedure, referred to in subsec. (b)(2), (3), are set out in the Appendix to this title.

The Supplemental Rules for Certain Admiralty and Maritime Claims, referred to in subsec. (b)(2)(A), are set out as part of the Federal Rules of Civil Procedure in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Civil Procedure, referred to in subsec. (b)(4)(A), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 3 of the Anti Drug Abuse Act of 1986, referred to in subsec. (e), is section 3 of Pub. L. 99-570, which is set out as a note under section 801 of Title 21, Food and Drugs.

Section 8(e)(7)(D) of the Federal Deposit Insurance Act, referred to in subsec. (e)(7), is classified to section 1818(e)(7)(D) of Title 12, Banks and Banking.

Section 481(h) of the Foreign Assistance Act of 1961, referred to in subsec. (i)(1)(C), was classified to section 2291(h) of Title 22, Foreign Relations and Intercourse, prior to repeal of subsec. (h) by Pub. L. 102-583, § 6(b)(2), Nov. 2, 1992, 106 Stat. 4932. Reference to section 481(h) of the Foreign Assistance Act of 1961 probably should be to section 490(a)(1) of the Act, which is classified to section 2291j(a)(1) of Title 22.

AMENDMENTS

2010—Subsec. (a)(1)(D). Pub. L. 111-203, in concluding provisions, struck out “Resolution Trust Corporation,” after “acquired or held by the” and “or the Office of Thrift Supervision” after “Office of the Comptroller of the Currency”.

2006—Subsec. (a)(1)(B)(i). Pub. L. 109-177, § 111, inserted “trafficking in nuclear, chemical, biological, or radiological weapons technology or material, or” after “involves”.

Subsec. (a)(1)(G)(i). Pub. L. 109-177, § 120(1), which directed amendment of cl. (i) by substituting “any Federal crime of terrorism (as defined in section 2332b(g)(5))” for “act of international or domestic terrorism (as defined in section 2331)”, was executed by making the substitution for “act of domestic or international terrorism (as defined in section 2331)”, to reflect the probable intent of Congress.

Subsec. (a)(1)(G)(ii). Pub. L. 109-177, § 120(2), which directed amendment of cl. (ii) by “striking ‘an act of international or domestic terrorism (as defined in section 2331)’ with ‘any Federal crime of terrorism (as defined in section 2332b(g)(5))’”, was executed by striking “an act of domestic or international terrorism (as defined in section 2331)” and inserting “any Federal crime of terrorism (as defined in section 2332b(g)(5))”, to reflect the probable intent of Congress.

Subsec. (a)(1)(G)(iii). Pub. L. 109-177, § 120(3), which directed amendment of cl. (iii) by substituting “Federal crime of terrorism (as defined in section 2332b(g)(5))” for “act of international or domestic terrorism (as defined in section 2331)”, was executed by making the substitution for “act of domestic or international terrorism (as defined in section 2331)”, to reflect the probable intent of Congress.

Subsec. (a)(1)(G)(iv). Pub. L. 109-177, § 404, added cl. (iv).

Subsec. (k). Pub. L. 109-177, § 406(a)(3), substituted “foreign financial institution (as defined in section 984(c)(2)(A) of this title)” for “foreign bank” wherever appearing.

2002—Subsec. (a)(1)(H). Pub. L. 107-197 added subpar. (H).

Subsec. (d). Pub. L. 107-273 substituted “proceeds from the sale of such property under this section” for “proceeds from the sale of this section”.

2001—Subsec. (a)(1)(A). Pub. L. 107-56, §§ 372(b)(1), 373(b), struck out “of section 5313(a) or 5324(a) of title 31, or” after “transaction or attempted transaction in violation”, substituted “, 1957 or 1960” for “or 1957”, and struck out at end “However, no property shall be seized or forfeited in the case of a violation of section 5313(a) of title 31 by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, or employee thereof.”

Subsec. (a)(1)(B). Pub. L. 107-56, § 320, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense would be punishable by death or imprisonment for a term exceeding one year and which would be punishable under the laws of the United States by imprisonment for a term exceeding one year if such act or activity con-

stituting the offense against the foreign nation had occurred within the jurisdiction of the United States.”

Subsec. (a)(1)(G). Pub. L. 107-56, § 806, added subpar. (G).

Subsec. (k). Pub. L. 107-56, § 319(a), added subsec. (k). 2000—Subsec. (a)(1). Pub. L. 106-185, § 2(c)(1)(A), substituted “The” for “Except as provided in paragraph (2), the” in introductory provisions.

Subsec. (a)(1)(C). Pub. L. 106-185, § 20(a), substituted “or any offense constituting ‘specified unlawful activity’ (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.” for “or a violation of section 1341 or 1343 of such title affecting a financial institution.”

Subsec. (a)(2). Pub. L. 106-185, §§ 2(c)(1)(B), 20(b), added par. (2) and struck out former par. (2) which read as follows: “No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder.”

Subsec. (b). Pub. L. 106-185, § 5(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(b)(1) Any property—

“(A) subject to forfeiture to the United States under subparagraph (A) or (B) of subsection (a)(1) of this section—

“(i) may be seized by the Attorney General; or

“(ii) in the case of property involved in a violation of section 5313(a) or 5324 of title 31, United States Code, or section 1956 or 1957 of this title investigated by the Secretary of the Treasury or the United States Postal Service, may be seized by the Secretary of the Treasury or the Postal Service; and

“(B) subject to forfeiture to the United States under subparagraph (C) of subsection (a)(1) of this section may be seized by the Attorney General, the Secretary of the Treasury, or the Postal Service.

“(2) Property shall be seized under paragraph (1) of this subsection upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

“(A) the seizure is pursuant to a lawful arrest or search; or

“(B) the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure, in which event proceedings under subsection (d) of this section shall be instituted promptly.”

Subsec. (e)(6). Pub. L. 106-185, § 6, added par. (6) and struck out former par. (6) which read as follows: “in the case of property referred to in subsection (a)(1)(C), restore forfeited property to any victim of an offense described in subsection (a)(1)(C); or”.

Subsec. (g). Pub. L. 106-185, § 8(a), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: “The filing of an indictment or information alleging a violation of law, Federal, State, or local, which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding.”

1994—Subsec. (e)(7). Pub. L. 103-322, § 330011(s)(2), amended directory language of Pub. L. 101-647, § 2525(a)(2). See 1990 Amendment note below.

Subsec. (i)(1)(C). Pub. L. 103-447, which directed substitution of “section 490(a)(1) of the Foreign Assistance Act of 1961” for “paragraph (1)(A) of section 481(h) of the Foreign Assistance Act of 1961”, could not be executed because the words “paragraph (1)(A) of” do not appear in text.

1992—Subsec. (a)(1)(A). Pub. L. 102-550, § 1525(c)(1), substituted “5324(a)” for “5324”.

Subsec. (a)(1)(C). Pub. L. 102-393 inserted provisions relating to sections 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 842, 844, 1028, 1029, and 1030 of this title.

Subsec. (a)(1)(F). Pub. L. 102-519 added subpar. (F).

Subsec. (e). Pub. L. 102-550, § 1533, struck out penultimate sentence of concluding provisions which read as follows: "The authority granted to the Secretary of the Treasury and the Postal Service pursuant to this subsection shall apply only to property that has been administratively forfeited."

1990—Subsec. (a)(1)(C). Pub. L. 101-647, § 2524(1), inserted "1032," after "1014," and "or a violation of section 1341 or 1343 of such title affecting a financial institution" before period at end.

Subsec. (a)(1)(D), (E). Pub. L. 101-647, § 2525(a)(1), added subpars. (D) and (E).

Subsec. (b). Pub. L. 101-647, § 2524(2), added par. (1) and par. (2) introductory provisions, redesignated former pars. (1) and (2) as subpars. (A) and (B) of par. (2), and struck out former introductory provisions which read as follows: "Any property subject to forfeiture to the United States under subsection (a)(1)(A) or (a)(1)(B) of this section may be seized by the Attorney General or, with respect to property involved in a violation of section 5313(a) or 5324 of title 31 or of section 1956 or 1957 of this title investigated by the Secretary of the Treasury or the Postal Service may be seized by the Secretary of the Treasury or the Postal Service, in each case upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—"

Subsec. (d). Pub. L. 101-647, § 3531, inserted a period at end.

Subsec. (e)(3), (4). Pub. L. 101-647, § 2524(3), (4), struck out "(if the affected financial institution is in receivership or liquidation)" after "subsection (a)(1)(C)".

Subsec. (e)(6). Pub. L. 101-647, § 2508, added par. (6).

Subsec. (e)(7). Pub. L. 101-647, § 2525(a)(2), as amended by Pub. L. 103-322, § 330011(s)(2), added par. (7).

Subsec. (i). Pub. L. 101-647, § 103(1), struck out introductory provisions which read as follows: "In the case of property subject to forfeiture under subsection (a)(1)(B), the following additional provisions shall, to the extent provided by treaty, apply:"

Subsec. (i)(1). Pub. L. 101-647, § 103(3), substituted first sentence for "Notwithstanding any other provision of law, except section 3 of the Anti Drug Abuse Act of 1986, whenever property is civilly or criminally forfeited under the Controlled Substances Act, the Attorney General may, with the concurrence of the Secretary of State, equitably transfer any conveyance, currency, and any other type of personal property which the Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under the Controlled Substances Act to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. Such property when forfeited pursuant to subsection (a)(1)(B) of this section may also be transferred to a foreign country pursuant to a treaty providing for the transfer of forfeited property to such foreign country."

Pub. L. 101-647, § 103(2), (4), (5), inserted "or the Secretary of the Treasury" after "Attorney General" in two places, realigned margin, and struck out at end "Transfers may be made under this subsection during a fiscal year to a country that is subject to paragraph (1)(A) of section 481(h) of the Foreign Assistance Act of 1961 (relating to restrictions on United States assistance) only if there is a certification in effect with respect to that country for that fiscal year under paragraph (2) of that section."

Subsec. (i)(2) to (5). Pub. L. 101-647, § 103(2), realigned margins.

1989—Subsec. (a)(1)(C). Pub. L. 101-73, § 963(a), added subpar. (C).

Subsec. (e). Pub. L. 101-73, § 963(b), substituted "determine—" for "determine to—" in introductory provisions, inserted "The United States shall not be liable in

any action arising out of a transfer under paragraph (3), (4), or (5) of this subsection." in closing provisions, added pars. (1) to (5), and struck out former pars. (1) and (2) which read as follows:

"(1) any other Federal agency; or

"(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property."

1988—Subsec. (a)(1)(A). Pub. L. 100-690, § 6463(a)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: "Any property, real or personal, which represents the gross receipts a person obtains, directly or indirectly, as a result of a violation of section 1956 or 1957 of this title, or which is traceable to such gross receipts."

Subsec. (a)(1)(B). Pub. L. 100-690, § 6470(b), inserted "real or personal," after "property", substituted "constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from" for "which represents the proceeds of", "such offense would" for "such offense or activity would", and "punishable under the laws of the United States by imprisonment" for "punishable by imprisonment", and inserted "constituting the offense against the foreign nation" after "such act or activity".

Subsec. (a)(1)(C). Pub. L. 100-690, § 6463(a)(2), struck out subpar. (C) which read as follows: "Any coin and currency (or other monetary instrument as the Secretary of the Treasury may prescribe) or any interest in other property, including any deposit in a financial institution, traceable to such coin or currency involved in a transaction or attempted transaction in violation of section 5313(a) or 5324 of title 31 may be seized and forfeited to the United States Government. No property or interest in property shall be seized or forfeited if the violation is by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, officer, or employee thereof."

Subsec. (a)(2). Pub. L. 100-690, § 6470(e), substituted "omission" for "emission".

Subsec. (b). Pub. L. 100-690, § 6463(b), which directed amendment of subsec. (b) by substituting "involved in a violation of section 5313(a) or 5324 of title 31 or of section 1956 or 1957 of this title investigated by the Secretary of the Treasury" for "involved in a violation of section 1956 or 1957 of this title investigated by the Secretary of the Treasury, and any property subject to forfeiture under subsection (a)(1)(C) of this section" was executed by substituting the new language for "involved in a violation of section 1956 or 1957 of this title investigated by the Secretary of the Treasury, and any property subject to forfeiture under subsection (a)(1)(C) of this section" in introductory provisions, to reflect the probable intent of Congress.

Pub. L. 100-690, § 6469(b)(1), inserted "or the Postal Service" after "Secretary of the Treasury" in two places in introductory provisions.

Subsec. (b)(2). Pub. L. 100-690, § 6469(b)(2), substituted "the Attorney General, the Secretary of the Treasury, or the Postal Service" for "the Attorney General or the Secretary of the Treasury".

Subsec. (c). Pub. L. 100-690, § 6469(b)(2), substituted "the Attorney General, the Secretary of the Treasury, or the Postal Service" for "the Attorney General or the Secretary of the Treasury" in two places.

Subsec. (d). Pub. L. 100-690, § 6469(b)(2), (3), substituted "the Attorney General, the Secretary of the Treasury, or the Postal Service" for "the Attorney General or the Secretary of the Treasury" and inserted provision that Attorney General have sole responsibility for disposing of petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding.

Subsec. (e). Pub. L. 100-690, § 6469(b)(2), which directed the substitution of "the Attorney General, the Secretary of the Treasury, or the Postal Service" for "the Attorney General or the Secretary of the Treasury"

was executed to reflect the probable intent of Congress by making the substitution in four places without regard as to whether or not the initial article “the” was capitalized.

Pub. L. 100-690, § 6469(b)(4), inserted provision that the authority granted to the Secretary of the Treasury and the Postal Service apply only to property that has been administratively forfeited.

Subsec. (g). Pub. L. 100-690, § 6471(c), inserted “, Federal, State or local,” after “law”.

Subsec. (i)(1). Pub. L. 100-690, § 6470(f), substituted “subsection” for “subchapter” in fourth sentence.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the transfer date, see section 351 of Pub. L. 111-203, set out as a note under section 906 of Title 2, The Congress.

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 1994 AMENDMENT

Section 330011(s)(2) of Pub. L. 103-322 provided that the amendment made by that section is effective as of the date on which section 2525(a)(2) of Pub. L. 101-647 took effect.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-185, § 1(a), Apr. 25, 2000, 114 Stat. 202, provided that: “This Act [enacting sections 983 and 985 of this title and sections 2466 and 2467 of Title 28, Judiciary and Judicial Procedure, amending this section, sections 982 to 984, 986, 2232, 2254, and 3322 of this title, section 1324 of Title 8, Aliens and Nationality, section 1621 of Title 19, Customs Duties, section 881 of Title 21, Food and Drugs, sections 524, 2461, 2465, and 2680 of Title 28, and section 2996f of Title 42, The Public Health and Welfare, repealing section 888 of Title 21, and enacting provisions set out as notes under section 1324 of Title 8, section 2466 of Title 28, and section 3724 of Title 31, Money and Finance] may be cited as the ‘Civil Asset Forfeiture Reform Act of 2000’.”

SHORT TITLE OF 1988 AMENDMENT

Section 6181 of Pub. L. 100-690 provided that: “This subtitle [subtitle E (§§ 6181-6187) of title VI of Pub. L. 100-690, enacting sections 5325 and 5326 of Title 31, Money and Finance, amending sections 1956 and 1957 of this title, sections 1730d, 1829b, 1953, 1955, 3403, 3412, 3413, 3417, and 3420 of Title 12, Banks and Banking, and sections 5312, 5318, and 5321 of Title 31] may be cited as the ‘Money Laundering Prosecution Improvements Act of 1988’.”

SHORT TITLE OF 1986 AMENDMENT

Section 1351 of Pub. L. 99-570 provided that: “This subtitle [subtitle H (§§ 1351-1367) of title I of Pub. L. 99-570, enacting this section, sections 982, 1956, and 1957 of this title and section 5324 of Title 31, Money and Finance, amending sections 1952, 1961, and 2516 of this title, sections 1464, 1730, 1786, 1817, 1818, 3403, and 3413 of Title 12, Banks and Banking, and sections 5312, 5316 to 5318, 5321, and 5322 of Title 31, and enacting provisions set out as notes under this section, sections 1464 and 1730 of Title 12, and sections 5315 to 5317, 5321, and 5324 of Title 31] may be cited as the ‘Money Laundering Control Act of 1986’.”

SEVERABILITY

Section 1367 of Pub. L. 99-570 provided that: “If any provision of this subtitle [see Short Title of 1986 Amendment note above] or any amendment made by this Act [see Short Title of 1986 Amendment note set out under section 801 of Title 21, Food and Drugs], or

the application thereof to any person or circumstances is held invalid, the provisions of every other part, and their application, shall not be affected thereby.”

§ 982. Criminal forfeiture

(a)(1) The court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.

(2) The court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate—

(A) section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of this title, affecting a financial institution, or

(B) section 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 842, 844, 1028, 1029, or 1030 of this title,

shall order that the person forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.

(3) The court, in imposing a sentence on a person convicted of an offense under—

(A) section 666(a)(1) (relating to Federal program fraud);

(B) section 1001 (relating to fraud and false statements);

(C) section 1031 (relating to major fraud against the United States);

(D) section 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of insured financial institution);

(E) section 1341 (relating to mail fraud); or

(F) section 1343 (relating to wire fraud),

involving the sale of assets acquired or held by the¹ Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency, or the National Credit Union Administration, as conservator or liquidating agent for a financial institution, shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, as a result of such violation.

(4) With respect to an offense listed in subsection (a)(3) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations, or promises, the gross receipts of such an offense shall include any property, real or personal, tangible or intangible, which is obtained, directly or indirectly, as a result of such offense.

(5) The court, in imposing sentence on a person convicted of a violation or conspiracy to violate—

(A) section 511 (altering or removing motor vehicle identification numbers);

(B) section 553 (importing or exporting stolen motor vehicles);

¹ So in original.

(C) section 2119 (armed robbery of automobiles);

(D) section 2312 (transporting stolen motor vehicles in interstate commerce); or

(E) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce);

shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, as a result of such violation.

(6)(A) The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, section 274(a), 274A(a)(1), or 274A(a)(2) of the Immigration and Nationality Act or section 555, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of this title, or a violation of, or conspiracy to violate, section 1028 of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States, regardless of any provision of State law—

(i) any conveyance, including any vessel, vehicle, or aircraft used in the commission of the offense of which the person is convicted; and

(ii) any property real or personal—

(I) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of the offense of which the person is convicted; or

(II) that is used to facilitate, or is intended to be used to facilitate, the commission of the offense of which the person is convicted.

(B) The court, in imposing sentence on a person described in subparagraph (A), shall order that the person forfeit to the United States all property described in that subparagraph.

(7) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

(8) The court, in sentencing a defendant convicted of an offense under section 1028, 1029, 1341, 1342, 1343, or 1344, or of a conspiracy to commit such an offense, if the offense involves telemarketing (as that term is defined in section 2325), shall order that the defendant forfeit to the United States any real or personal property—

(A) used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and

(B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.

(b)(1) The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).

(2) The substitution of assets provisions of subsection 413(p) shall not be used to order a de-

fendant to forfeit assets in place of the actual property laundered where such defendant acted merely as an intermediary who handled but did not retain the property in the course of the money laundering offense unless the defendant, in committing the offense or offenses giving rise to the forfeiture, conducted three or more separate transactions involving a total of \$100,000 or more in any twelve month period.

(Added Pub. L. 99-570, title I, § 1366(a), Oct. 27, 1986, 100 Stat. 3207-39; amended Pub. L. 100-690, title VI, §§ 6463(c), 6464, Nov. 18, 1988, 102 Stat. 4374, 4375; Pub. L. 101-73, title IX, § 963(c), Aug. 9, 1989, 103 Stat. 504; Pub. L. 101-647, title XIV, §§ 1401, 1403, title XXV, § 2525(b), Nov. 29, 1990, 104 Stat. 4835, 4874; Pub. L. 102-393, title VI, § 638(e), Oct. 6, 1992, 106 Stat. 1788; Pub. L. 102-519, title I, § 104(b), Oct. 25, 1992, 106 Stat. 3385; Pub. L. 102-550, title XV, § 1512(c), Oct. 28, 1992, 106 Stat. 4058; Pub. L. 103-322, title XXXIII, § 330011(s)(1), Sept. 13, 1994, 108 Stat. 2145; Pub. L. 104-191, title II, § 249(a), (b), Aug. 21, 1996, 110 Stat. 2020; Pub. L. 104-208, div. C, title II, § 217, Sept. 30, 1996, 110 Stat. 3009-573; Pub. L. 105-184, § 2, June 23, 1998, 112 Stat. 520; Pub. L. 105-318, § 6(a), Oct. 30, 1998, 112 Stat. 3010; Pub. L. 106-185, § 18(b), Apr. 25, 2000, 114 Stat. 223; Pub. L. 107-56, title III, § 372(b)(2), Oct. 26, 2001, 115 Stat. 339; Pub. L. 107-273, div. B, title IV, § 4002(b)(10), Nov. 2, 2002, 116 Stat. 1808; Pub. L. 109-295, title V, § 551(c), Oct. 4, 2006, 120 Stat. 1390; Pub. L. 110-161, div. E, title V, § 553(b), Dec. 26, 2007, 121 Stat. 2082; Pub. L. 111-203, title III, § 377(4), July 21, 2010, 124 Stat. 1569.)

REFERENCES IN TEXT

Sections 274 and 274A of the Immigration and Nationality Act, referred to in subsec. (a)(6)(A), are classified to sections 1324 and 1324a, respectively, of Title 8, Aliens and Nationality.

AMENDMENTS

2010—Subsec. (a)(3). Pub. L. 111-203, in concluding provisions, struck out “Resolution Trust Corporation,” after “acquired or held by the” and “or the Office of Thrift Supervision” after “Office of the Comptroller of the Currency”.

2007—Subsec. (a)(6)(A). Pub. L. 110-161 substituted “555” for “554” in introductory provisions.

2006—Subsec. (a)(6)(A). Pub. L. 109-295 inserted “554,” before “1425,” in introductory provisions.

2002—Subsec. (a)(8). Pub. L. 107-273 substituted “court” for “Court”.

2001—Subsec. (a)(1). Pub. L. 107-56 struck out “of section 5313(a), 5316, or 5324 of title 31, or” before “of section 1956, 1957, or 1960 of this title” and struck out at end “However, no property shall be seized or forfeited in the case of a violation of section 5313(a) of title 31 by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, or employee thereof.”

2000—Subsec. (a)(6). Pub. L. 106-185, § 18(b)(2), (3), designated concluding provisions of subpar. (A) as subpar. (B), substituted “The court, in imposing sentence on a person described in subparagraph (A)” for “The court, in imposing sentence on such person” and “that subparagraph” for “this subparagraph”, and struck out former subpar. (B), which read as follows: “The criminal forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related administrative or judicial proceeding, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsections (a) and (d) of such section 413.”

Subsec. (a)(6)(A). Pub. L. 106-185, §18(b)(1)(A), inserted “section 274(a), 274A(a)(1), or 274A(a)(2) of the Immigration and Nationality Act or” after “a person convicted of a violation of, or conspiracy to violate,” in introductory provisions.

Subsec. (a)(6)(A)(i). Pub. L. 106-185, §18(b)(1)(B), substituted “the offense of which the person is convicted” for “a violation of, or a conspiracy to violate, subsection (a)”.

Subsec. (a)(6)(A)(ii)(I), (II). Pub. L. 106-185, §18(b)(1)(C), substituted “the offense of which the person is convicted” for “a violation of, or a conspiracy to violate, subsection (a), section 274A(a)(1) or 274A(a)(2) of the Immigration and Nationality Act, or section 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of this title”.

1998—Subsec. (a)(6), (7). Pub. L. 105-184, §2(1)(A), which directed the amendment of subsec. (a) “by redesignating the second paragraph designated as paragraph (6) as paragraph (7)”, was executed by redesignating par. (6), relating to forfeitures for Federal health care offenses, as (7), to reflect the probable intent of Congress.

Subsec. (a)(8). Pub. L. 105-184, §2(1)(B), added par. (8).

Subsec. (b)(1). Pub. L. 105-318 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed—

“(A) in the case of a forfeiture under subsection (a)(1), (a)(6), or (a)(8) of this section, by subsections (c) and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853); and

“(B) in the case of a forfeiture under subsection (a)(2) of this section, by subsections (b), (c), (e), and (g) through (p) of section 413 of such Act.”

Subsec. (b)(1)(A). Pub. L. 105-184, §2(2), substituted “(a)(1), (a)(6), or (a)(8)” for “(a)(1) or (a)(6)”.

1996—Subsec. (a)(6). Pub. L. 104-208 added par. (6) relating to criminal forfeiture for passport and visa related offenses.

Pub. L. 104-191, §249(a), added par. (6) relating to forfeitures for Federal health care offenses.

Subsec. (b)(1)(A). Pub. L. 104-191, §249(b), inserted “or (a)(6)” after “(a)(1)”.

1994—Subsec. (a)(1). Pub. L. 103-322, §330011(s)(1), amended directory language of Pub. L. 101-647, §1401. See 1990 Amendment note below.

1992—Subsec. (a)(1). Pub. L. 102-550 substituted “, 1957, or 1960” for “or 1957”.

Subsec. (a)(2). Pub. L. 102-393 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate, section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of this title, affecting a financial institution, shall order that the person forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.”

Subsec. (a)(5). Pub. L. 102-519 added par. (5).

1990—Subsec. (a)(1). Pub. L. 101-647, §1401, as amended by Pub. L. 103-322, §330011(s)(1), inserted “, 5316,” after “5313(a)”, the first place appearing.

Subsec. (a)(3), (4). Pub. L. 101-647, §2525(b), added pars. (3) and (4).

Subsec. (b)(2). Pub. L. 101-647, §1403, inserted before period at end “unless the defendant, in committing the offense or offenses giving rise to the forfeiture, conducted three or more separate transactions involving a total of \$100,000 or more in any twelve month period”.

1989—Subsec. (a). Pub. L. 101-73, §963(c)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 101-73, §963(c)(2), struck out “The provisions of subsections 413(c) and (e) through (p) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(c) and (e)-(p)) shall apply to property subject to forfeiture under this section, to any seizure or disposition thereof, and to any administra-

tive or judicial proceeding in relation thereto, if not inconsistent with this section. However, the”, added par. (1), and inserted “(2) The” before “substitution of assets”.

1988—Subsec. (a). Pub. L. 100-690, §6463(c), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The court, in imposing sentence on a person convicted of an offense under section 1956 or 1957 of this title shall order that the person forfeit to the United States any property, real or personal, which represents the gross receipts the person obtained, directly or indirectly, as a result of such offense, or which is traceable to such gross receipts.”

Subsec. (b). Pub. L. 100-690, §6464, substituted “(p)” for “(o)” in two places and inserted at end “However, the substitution of assets provisions of subsection 413(p) not be used to order a defendant to forfeit assets in place of the actual property laundered where such defendant acted merely as an intermediary who handled but did not retain the property in the course of the money laundering offense.”

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the transfer date, see section 351 of Pub. L. 111-203, set out as a note under section 906 of Title 2, The Congress.

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 1994 AMENDMENT

Section 330011(s)(1) of Pub. L. 103-322 provided that the amendment made by that section is effective as of the date on which section 1401 of Pub. L. 101-647 took effect.

§ 983. General rules for civil forfeiture proceedings

(a) NOTICE; CLAIM; COMPLAINT.—

(1)(A)(i) Except as provided in clauses (ii) through (v), in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the Government is required to send written notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than 60 days after the date of the seizure.

(ii) No notice is required if, before the 60-day period expires, the Government files a civil judicial forfeiture action against the property and provides notice of that action as required by law.

(iii) If, before the 60-day period expires, the Government does not file a civil judicial forfeiture action, but does obtain a criminal indictment containing an allegation that the property is subject to forfeiture, the Government shall either—

(I) send notice within the 60 days and continue the nonjudicial civil forfeiture proceeding under this section; or

(II) terminate the nonjudicial civil forfeiture proceeding, and take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute.

(iv) In a case in which the property is seized by a State or local law enforcement agency and turned over to a Federal law enforcement

agency for the purpose of forfeiture under Federal law, notice shall be sent not more than 90 days after the date of seizure by the State or local law enforcement agency.

(v) If the identity or interest of a party is not determined until after the seizure or turnover but is determined before a declaration of forfeiture is entered, notice shall be sent to such interested party not later than 60 days after the determination by the Government of the identity of the party or the party's interest.

(B) A supervisory official in the headquarters office of the seizing agency may extend the period for sending notice under subparagraph (A) for a period not to exceed 30 days (which period may not be further extended except by a court), if the official determines that the conditions in subparagraph (D) are present.

(C) Upon motion by the Government, a court may extend the period for sending notice under subparagraph (A) for a period not to exceed 60 days, which period may be further extended by the court for 60-day periods, as necessary, if the court determines, based on a written certification of a supervisory official in the headquarters office of the seizing agency, that the conditions in subparagraph (D) are present.

(D) The period for sending notice under this paragraph may be extended only if there is reason to believe that notice may have an adverse result, including—

- (i) endangering the life or physical safety of an individual;
- (ii) flight from prosecution;
- (iii) destruction of or tampering with evidence;
- (iv) intimidation of potential witnesses; or
- (v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(E) Each of the Federal seizing agencies conducting nonjudicial forfeitures under this section shall report periodically to the Committees on the Judiciary of the House of Representatives and the Senate the number of occasions when an extension of time is granted under subparagraph (B).

(F) If the Government does not send notice of a seizure of property in accordance with subparagraph (A) to the person from whom the property was seized, and no extension of time is granted, the Government shall return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. The Government shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess.

(2)(A) Any person claiming property seized in a nonjudicial civil forfeiture proceeding under a civil forfeiture statute may file a claim with the appropriate official after the seizure.

(B) A claim under subparagraph (A) may be filed not later than the deadline set forth in a personal notice letter (which deadline may be not earlier than 35 days after the date the letter is mailed), except that if that letter is not

received, then a claim may be filed not later than 30 days after the date of final publication of notice of seizure.

(C) A claim shall—

- (i) identify the specific property being claimed;
- (ii) state the claimant's interest in such property; and
- (iii) be made under oath, subject to penalty of perjury.

(D) A claim need not be made in any particular form. Each Federal agency conducting nonjudicial forfeitures under this section shall make claim forms generally available on request, which forms shall be written in easily understandable language.

(E) Any person may make a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

(3)(A) Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

(B) If the Government does not—

- (i) file a complaint for forfeiture or return the property, in accordance with subparagraph (A); or
- (ii) before the time for filing a complaint has expired—

(I) obtain a criminal indictment containing an allegation that the property is subject to forfeiture; and

(II) take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute,

the Government shall promptly release the property pursuant to regulations promulgated by the Attorney General, and may not take any further action to effect the civil forfeiture of such property in connection with the underlying offense.

(C) In lieu of, or in addition to, filing a civil forfeiture complaint, the Government may include a forfeiture allegation in a criminal indictment. If criminal forfeiture is the only forfeiture proceeding commenced by the Government, the Government's right to continued possession of the property shall be governed by the applicable criminal forfeiture statute.

(D) No complaint may be dismissed on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property.

(4)(A) In any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except

that such claim may be filed not later than 30 days after the date of service of the Government's complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

(B) A person asserting an interest in seized property, in accordance with subparagraph (A), shall file an answer to the Government's complaint for forfeiture not later than 20 days after the date of the filing of the claim.

(b) REPRESENTATION.—

(1)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

(B) In determining whether to authorize counsel to represent a person under subparagraph (A), the court shall take into account such factors as—

- (i) the person's standing to contest the forfeiture; and
- (ii) whether the claim appears to be made in good faith.

(2)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the property subject to forfeiture is real property that is being used by the person as a primary residence, the court, at the request of the person, shall insure that the person is represented by an attorney for the Legal Services Corporation with respect to the claim.

(B)(i) At appropriate times during a representation under subparagraph (A), the Legal Services Corporation shall submit a statement of reasonable attorney fees and costs to the court.

(ii) The court shall enter a judgment in favor of the Legal Services Corporation for reasonable attorney fees and costs submitted pursuant to clause (i) and treat such judgment as payable under section 2465 of title 28, United States Code, regardless of the outcome of the case.

(3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.

(c) BURDEN OF PROOF.—In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property—

- (1) the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture;
- (2) the Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that property is subject to forfeiture; and
- (3) if the Government's theory of forfeiture is that the property was used to commit or fa-

cilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.

(d) INNOCENT OWNER DEFENSE.—

(1) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.

(2)(A) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term "innocent owner" means an owner who—

- (i) did not know of the conduct giving rise to forfeiture; or
- (ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

(B)(i) For the purposes of this paragraph, ways in which a person may show that such person did all that reasonably could be expected may include demonstrating that such person, to the extent permitted by law—

- (I) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and
- (II) in a timely fashion revoked or made a good faith attempt to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

(ii) A person is not required by this subparagraph to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

(3)(A) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term "innocent owner" means a person who, at the time that person acquired the interest in the property—

- (i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and
- (ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.

(B) An otherwise valid claim under subparagraph (A) shall not be denied on the ground that the claimant gave nothing of value in exchange for the property if—

- (i) the property is the primary residence of the claimant;
- (ii) depriving the claimant of the property would deprive the claimant of the means to maintain reasonable shelter in the community for the claimant and all dependents residing with the claimant;
- (iii) the property is not, and is not traceable to, the proceeds of any criminal offense; and
- (iv) the claimant acquired his or her interest in the property through marriage, di-

voiced, or legal separation, or the claimant was the spouse or legal dependent of a person whose death resulted in the transfer of the property to the claimant through inheritance or probate,

except that the court shall limit the value of any real property interest for which innocent ownership is recognized under this subparagraph to the value necessary to maintain reasonable shelter in the community for such claimant and all dependents residing with the claimant.

(4) Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.

(5) If the court determines, in accordance with this section, that an innocent owner has a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court may enter an appropriate order—

(A) severing the property;

(B) transferring the property to the Government with a provision that the Government compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or

(C) permitting the innocent owner to retain the property subject to a lien in favor of the Government to the extent of the forfeitable interest in the property.

(6) In this subsection, the term “owner”—

(A) means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest; and

(B) does not include—

(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

(iii) a nominee who exercises no dominion or control over the property.

(e) MOTION TO SET ASIDE FORFEITURE.—

(1) Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person's interest in the property, which motion shall be granted if—

(A) the Government knew, or reasonably should have known, of the moving party's interest and failed to take reasonable steps to provide such party with notice; and

(B) the moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim.

(2)(A) Notwithstanding the expiration of any applicable statute of limitations, if the court grants a motion under paragraph (1), the court shall set aside the declaration of forfeiture as to the interest of the moving party without

prejudice to the right of the Government to commence a subsequent forfeiture proceeding as to the interest of the moving party.

(B) Any proceeding described in subparagraph (A) shall be commenced—

(i) if nonjudicial, within 60 days of the entry of the order granting the motion; or

(ii) if judicial, within 6 months of the entry of the order granting the motion.

(3) A motion under paragraph (1) may be filed not later than 5 years after the date of final publication of notice of seizure of the property.

(4) If, at the time a motion made under paragraph (1) is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government may institute proceedings against a substitute sum of money equal to the value of the moving party's interest in the property at the time the property was disposed of.

(5) A motion filed under this subsection shall be the exclusive remedy for seeking to set aside a declaration of forfeiture under a civil forfeiture statute.

(f) RELEASE OF SEIZED PROPERTY.—

(1) A claimant under subsection (a) is entitled to immediate release of seized property if—

(A) the claimant has a possessory interest in the property;

(B) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

(C) the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;

(D) the claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

(E) none of the conditions set forth in paragraph (8) applies.

(2) A claimant seeking release of property under this subsection must request possession of the property from the appropriate official, and the request must set forth the basis on which the requirements of paragraph (1) are met.

(3)(A) If not later than 15 days after the date of a request under paragraph (2) the property has not been released, the claimant may file a petition in the district court in which the complaint has been filed or, if no complaint has been filed, in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(B) The petition described in subparagraph (A) shall set forth—

(i) the basis on which the requirements of paragraph (1) are met; and

(ii) the steps the claimant has taken to secure release of the property from the appropriate official.

(4) If the Government establishes that the claimant's claim is frivolous, the court shall deny the petition. In responding to a petition under this subsection on other grounds, the Government may in appropriate cases submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(5) The court shall render a decision on a petition filed under paragraph (3) not later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.

(6) If—

(A) a petition is filed under paragraph (3); and

(B) the claimant demonstrates that the requirements of paragraph (1) have been met, the district court shall order that the property be returned to the claimant, pending completion of proceedings by the Government to obtain forfeiture of the property.

(7) If the court grants a petition under paragraph (3)—

(A) the court may enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including—

(i) permitting the inspection, photographing, and inventory of the property;

(ii) fixing a bond in accordance with rule E(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and

(iii) requiring the claimant to obtain or maintain insurance on the subject property; and

(B) the Government may place a lien against the property or file a *lis pendens* to ensure that the property is not transferred to another person.

(8) This subsection shall not apply if the seized property—

(A) is contraband, currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;

(B) is to be used as evidence of a violation of the law;

(C) by reason of design or other characteristic, is particularly suited for use in illegal activities; or

(D) is likely to be used to commit additional criminal acts if returned to the claimant.

(g) PROPORTIONALITY.—

(1) The claimant under subsection (a)(4) may petition the court to determine whether the forfeiture was constitutionally excessive.

(2) In making this determination, the court shall compare the forfeiture to the gravity of the offense giving rise to the forfeiture.

(3) The claimant shall have the burden of establishing that the forfeiture is grossly disproportionate by a preponderance of the evi-

dence at a hearing conducted by the court without a jury.

(4) If the court finds that the forfeiture is grossly disproportionate to the offense it shall reduce or eliminate the forfeiture as necessary to avoid a violation of the Excessive Fines Clause of the Eighth Amendment of the Constitution.

(h) CIVIL FINE.—

(1) In any civil forfeiture proceeding under a civil forfeiture statute in which the Government prevails, if the court finds that the claimant's assertion of an interest in the property was frivolous, the court may impose a civil fine on the claimant of an amount equal to 10 percent of the value of the forfeited property, but in no event shall the fine be less than \$250 or greater than \$5,000.

(2) Any civil fine imposed under this subsection shall not preclude the court from imposing sanctions under rule 11 of the Federal Rules of Civil Procedure.

(3) In addition to the limitations of section 1915 of title 28, United States Code, in no event shall a prisoner file a claim under a civil forfeiture statute or appeal a judgment in a civil action or proceeding based on a civil forfeiture statute if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous or malicious, unless the prisoner shows extraordinary and exceptional circumstances.

(i) CIVIL FORFEITURE STATUTE DEFINED.—In this section, the term “civil forfeiture statute”—

(1) means any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense; and

(2) does not include—

(A) the Tariff Act of 1930 or any other provision of law codified in title 19;

(B) the Internal Revenue Code of 1986;

(C) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);

(D) the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.) or the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 et seq.); or

(E) section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).

(j) RESTRAINING ORDERS; PROTECTIVE ORDERS.—

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, custodians, appraisers, accountants, or trustees, or take any other action to seize, secure, maintain, or preserve the availability of property subject to civil forfeiture—

(A) upon the filing of a civil forfeiture complaint alleging that the property with respect to which the order is sought is subject to civil forfeiture; or

(B) prior to the filing of such a complaint, if, after notice to persons appearing to have

an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(2) An order entered pursuant to paragraph (1)(B) shall be effective for not more than 90 days, unless extended by the court for good cause shown, or unless a complaint described in paragraph (1)(A) has been filed.

(3) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when a complaint has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought is subject to civil forfeiture and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 14 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(4) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(Added and amended Pub. L. 106-185, §§2(a), 9, Apr. 25, 2000, 114 Stat. 202, 216; Pub. L. 106-561, §3(a), Dec. 21, 2000, 114 Stat. 2791; Pub. L. 107-56, title III, §316(d), Oct. 26, 2001, 115 Stat. 310; Pub. L. 111-16, §3(1), May 7, 2009, 123 Stat. 1607.)

REFERENCES IN TEXT

The Supplemental Rules for Certain Admiralty and Maritime Claims, referred to in subsecs. (a)(3)(A), (4)(A) and (f)(7)(A)(ii), are set out as part of the Federal Rules of Civil Procedure in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Civil Procedure, referred to in subsec. (h)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Tariff Act of 1930, referred to in subsec. (i)(2)(A), is act June 17, 1930, ch. 497, 46 Stat. 590, which is classified generally to chapter 4 (§1202 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (i)(2)(B), is classified generally to Title 26, Internal Revenue Code.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (i)(2)(C), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Trading with the Enemy Act, referred to in subsec. (i)(2)(D), is act Oct. 6, 1917, ch. 106, 40 Stat. 411,

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.

The International Emergency Economic Powers Act, referred to in (i)(2)(D), is title II of Pub. L. 95-223, Dec. 28, 1977, 91 Stat. 1626, 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.

The Federal Rules of Evidence, referred to in subsec. (j)(4), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2009—Subsec. (j)(3). Pub. L. 111-16 substituted “14 days” for “10 days”.

2001—Subsec. (i)(2)(D). Pub. L. 107-56 inserted “or the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 et seq.)” before semicolon.

2000—Subsec. (a)(2)(C)(ii). Pub. L. 106-561 struck out “(and provide customary documentary evidence of such interest if available) and state that the claim is not frivolous” after “such property”.

Subsec. (j). Pub. L. 106-185, §9, added subsec. (j).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-16 effective Dec. 1, 2009, see section 7 of Pub. L. 111-16, set out as a note under section 109 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-561, §3(b), Dec. 21, 2000, 114 Stat. 2791, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 2(a) of Public Law 106-185.”

EFFECTIVE DATE

Section 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 an Effective Date of 2000 Amendment note under section 1324 of Title 8, Aliens and Nationality.

ANTI-TERRORIST FORFEITURE PROTECTION

Pub. L. 107-56, title III, §316(a)–(c), Oct. 26, 2001, 115 Stat. 309, which provided the procedure for an owner of property that had been confiscated under any provision of law relating to the confiscation of assets of suspected international terrorists to contest such confiscation, was repealed and restated as section 987 of this title by Pub. L. 109-177, title IV, §406(b)(1)(B), (2), Mar. 9, 2006, 120 Stat. 244, 245.

§ 984. Civil forfeiture of fungible property

(a)(1) In any forfeiture action in rem in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution (as defined in section 20 of this title), or precious metals—

(A) it shall not be necessary for the Government to identify the specific property involved in the offense that is the basis for the forfeiture; and

(B) it shall not be a defense that the property involved in such an offense has been removed and replaced by identical property.

(2) Except as provided in subsection (b), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

(b) No action pursuant to this section to forfeit property not traceable directly to the of-

fense that is the basis for the forfeiture may be commenced more than 1 year from the date of the offense.

(c)(1) Subsection (a) does not apply to an action against funds held by a financial institution in an interbank account unless the account holder knowingly engaged in the offense that is the basis for the forfeiture.

(2) In this subsection—

(A) the term “financial institution” includes a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(7)));¹ and

(B) the term “interbank account” means an account held by one financial institution at another financial institution primarily for the purpose of facilitating customer transactions.

(d) Nothing in this section may be construed to limit the ability of the Government to forfeit property under any provision of law if the property involved in the offense giving rise to the forfeiture or property traceable thereto is available for forfeiture.

(Added Pub. L. 102-550, title XV, § 1522(a), Oct. 28, 1992, 106 Stat. 4063; amended Pub. L. 103-325, title IV, § 411(c)(2)(E), Sept. 23, 1994, 108 Stat. 2253; Pub. L. 106-185, § 13(a), Apr. 25, 2000, 114 Stat. 218.)

REFERENCES IN TEXT

Section 1(b)(7) of the International Banking Act of 1978, referred to in subsec. (c)(2)(A), is classified to section 3101(7) of Title 12, Banks and Banking.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-185, § 13(a)(1), (2), redesignated subsec. (b) as (a), substituted “or precious metals” for “or other fungible property” in introductory provisions of par. (1) and “subsection (b)” for “subsection (c)” in par. (2), and struck out former subsec. (a) which read as follows: “This section shall apply to any action for forfeiture brought by the Government in connection with any offense under section 1956, 1957, or 1960 of this title or section 5322 or 5324 of title 31, United States Code.”

Subsec. (b). Pub. L. 106-185, § 13(a)(1), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 106-185, § 13(a)(1), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(1). Pub. L. 106-185, § 13(a)(3)(A), added par. (1) and struck out former par. (1) which read as follows: “No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be taken against funds held by a financial institution in an interbank account, unless the financial institution holding the account knowingly engaged in the offense.”

Subsec. (c)(2). Pub. L. 106-185, § 13(a)(3)(B), substituted “In this subsection—” for “As used in this section, the term”, added subpar. (A), and inserted “(B) the term” before “‘interbank account’ means”.

Subsec. (d). Pub. L. 106-185, § 13(a)(4), added subsec. (d). Former subsec. (d) redesignated (c).

1994—Subsec. (a). Pub. L. 103-325 substituted “section 5322 or 5324 of title 31” for “section 5322 of title 31”.

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.

¹ See References in Text note below.

§ 985. Civil forfeiture of real property

(a) Notwithstanding any other provision of law, all civil forfeitures of real property and interests in real property shall proceed as judicial forfeitures.

(b)(1) Except as provided in this section—

(A) real property that is the subject of a civil forfeiture action shall not be seized before entry of an order of forfeiture; and

(B) the owners or occupants of the real property shall not be evicted from, or otherwise deprived of the use and enjoyment of, real property that is the subject of a pending forfeiture action.

(2) The filing of a *lis pendens* and the execution of a writ of entry for the purpose of conducting an inspection and inventory of the property shall not be considered a seizure under this subsection.

(c)(1) The Government shall initiate a civil forfeiture action against real property by—

(A) filing a complaint for forfeiture;

(B) posting a notice of the complaint on the property; and

(C) serving notice on the property owner, along with a copy of the complaint.

(2) If the property owner cannot be served with the notice under paragraph (1) because the owner—

(A) is a fugitive;

(B) resides outside the United States and efforts at service pursuant to rule 4 of the Federal Rules of Civil Procedure are unavailing; or

(C) cannot be located despite the exercise of due diligence,

constructive service may be made in accordance with the laws of the State in which the property is located.

(3) If real property has been posted in accordance with this subsection, it shall not be necessary for the court to issue an arrest warrant in rem, or to take any other action to establish in rem jurisdiction over the property.

(d)(1) Real property may be seized prior to the entry of an order of forfeiture if—

(A) the Government notifies the court that it intends to seize the property before trial; and

(B) the court—

(i) issues a notice of application for warrant, causes the notice to be served on the property owner and posted on the property, and conducts a hearing in which the property owner has a meaningful opportunity to be heard; or

(ii) makes an *ex parte* determination that there is probable cause for the forfeiture and that there are exigent circumstances that permit the Government to seize the property without prior notice and an opportunity for the property owner to be heard.

(2) For purposes of paragraph (1)(B)(ii), to establish exigent circumstances, the Government shall show that less restrictive measures such as a *lis pendens*, restraining order, or bond would not suffice to protect the Government's interests in preventing the sale, destruction, or continued unlawful use of the real property.

(e) If the court authorizes a seizure of real property under subsection (d)(1)(B)(ii), it shall conduct a prompt post-seizure hearing during which the property owner shall have an opportunity to contest the basis for the seizure.

(f) This section—

(1) applies only to civil forfeitures of real property and interests in real property;

(2) does not apply to forfeitures of the proceeds of the sale of such property or interests, or of money or other assets intended to be used to acquire such property or interests; and

(3) shall not affect the authority of the court to enter a restraining order relating to real property.

(Added Pub. L. 106-185, §7(a), Apr. 25, 2000, 114 Stat. 214.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (c)(2)(B), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section 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 an Effective Date of 2000 Amendment note under section 1324 of Title 8, Aliens and Nationality.

§ 986. Subpoenas for bank records

(a) At any time after the commencement of any action for forfeiture in rem brought by the United States under section 1956, 1957, or 1960 of this title, section 5322 or 5324 of title 31, United States Code, or the Controlled Substances Act, any party may request the Clerk of the Court in the district in which the proceeding is pending to issue a subpoena duces tecum to any financial institution, as defined in section 5312(a) of title 31, United States Code, to produce books, records and any other documents at any place designated by the requesting party. All parties to the proceeding shall be notified of the issuance of any such subpoena. The procedures and limitations set forth in section 985¹ of this title shall apply to subpoenas issued under this section.

(b) Service of a subpoena issued pursuant to this section shall be by certified mail. Records produced in response to such a subpoena may be produced in person or by mail, common carrier, or such other method as may be agreed upon by the party requesting the subpoena and the custodian of records. The party requesting the subpoena may require the custodian of records to submit an affidavit certifying the authenticity and completeness of the records and explaining the omission of any record called for in the subpoena.

(c) Nothing in this section shall preclude any party from pursuing any form of discovery pursuant to the Federal Rules of Civil Procedure.

(d) ACCESS TO RECORDS IN BANK SECRECY JURISDICTIONS.—

(1) IN GENERAL.—In any civil forfeiture case, or in any ancillary proceeding in any criminal forfeiture case governed by section 413(n) of the Controlled Substances Act (21 U.S.C. 853(n)), in which—

(A) financial records located in a foreign country may be material—

(i) to any claim or to the ability of the Government to respond to such claim; or

(ii) in a civil forfeiture case, to the ability of the Government to establish the forfeitability of the property; and

(B) it is within the capacity of the claimant to waive the claimant's rights under applicable financial secrecy laws, or to obtain the records so that such records can be made available notwithstanding such secrecy laws,

the refusal of the claimant to provide the records in response to a discovery request or to take the action necessary otherwise to make the records available shall be grounds for judicial sanctions, up to and including dismissal of the claim with prejudice.

(2) PRIVILEGE.—This subsection shall not affect the right of the claimant to refuse production on the basis of any privilege guaranteed by the Constitution of the United States or any other provision of Federal law.

(Added Pub. L. 102-550, title XV, §1523(a), Oct. 28, 1992, 106 Stat. 4063; amended Pub. L. 103-325, title IV, §411(c)(2)(E), Sept. 23, 1994, 108 Stat. 2253; Pub. L. 106-185, §17, Apr. 25, 2000, 114 Stat. 221.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (a), 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.

Section 985 of this title, referred to in subsec. (a), was enacted by Pub. L. 106-185, and relates to civil forfeitures of real property and not to procedures and limitations for subpoenas. The reference to section 985 was included in this section when it was enacted by Pub. L. 102-550, but at that time there was no section 985 of this title.

The Federal Rules of Civil Procedure, referred to in subsec. (c), are set out in Title 28, Appendix, Judiciary and Judicial Procedure.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106-185 added subsec. (d).

1994—Subsec. (a). Pub. L. 103-325 substituted “section 5322 or 5324 of title 31” for “section 5322 of title 31”.

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.

§ 987. Anti-terrorist forfeiture protection

(a) RIGHT TO CONTEST.—An owner of property that is confiscated under any provision of law relating to the confiscation of assets of suspected international terrorists, may contest that confiscation by filing a claim in the manner set forth in the Federal Rules of Civil Procedure (Supplemental Rules for Certain Admiralty and Maritime Claims), and asserting as an affirmative defense that—

(1) the property is not subject to confiscation under such provision of law; or

¹ See References in Text note below.

(2) the innocent owner provisions of section 983(d) of title 18, United States Code, apply to the case.

(b) EVIDENCE.—In considering a claim filed under this section, a court may admit evidence that is otherwise inadmissible under the Federal Rules of Evidence, if the court determines that the evidence is reliable, and that compliance with the Federal Rules of Evidence may jeopardize the national security interests of the United States.

(c) CLARIFICATIONS.—

(1) PROTECTION OF RIGHTS.—The exclusion of certain provisions of Federal law from the definition of the term “civil forfeiture statute” in section 983(i) of title 18, United States Code, shall not be construed to deny an owner of property the right to contest the confiscation of assets of suspected international terrorists under—

(A) subsection (a) of this section;

(B) the Constitution; or

(C) subchapter II of chapter 5 of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(2) SAVINGS CLAUSE.—Nothing in this section shall limit or otherwise affect any other remedies that may be available to an owner of property under section 983 of title 18, United States Code, or any other provision of law.

(Added Pub. L. 109-177, title IV, §406(b)(1)(B), Mar. 9, 2006, 120 Stat. 244.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Evidence, referred to in subsec. (b), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 107-56, title III, §316(a)–(c), Oct. 26, 2001, 115 Stat. 309, which was set out as a note under section 983 of this title, prior to repeal by Pub. L. 109-177, §406(b)(2).

CHAPTER 47—FRAUD AND FALSE STATEMENTS

Sec.	
1001.	Statements or entries generally.
1002.	Possession of false papers to defraud United States.
1003.	Demands against the United States.
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1005.	Bank entries, reports and transactions.
1006.	Federal credit institution entries, reports and transactions.
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1010.	Department of Housing and Urban Development and Federal Housing Administration transactions.
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Sec.	
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1028.	Fraud and related activity in connection with identification documents and information. ¹
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1030.	Fraud and related activity in connection with computers.
1031.	Major fraud against the United States.
1032.	Concealment of assets from conservator, receiver, or liquidating agent of financial institution. ²
1033.	Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce.
1034.	Civil penalties and injunctions for violations of section 1033.
1035.	False statements relating to health care matters.
1036.	Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport or seaport.
1037.	Fraud and related activity in connection with electronic mail.
1038.	False information and hoaxes.
1039.	Fraud and related activity in connection with obtaining confidential phone records information of a covered entity.
1040.	Fraud in connection with major disaster or emergency benefits.

AMENDMENTS

2008—Pub. L. 110-179, §2(b), Jan. 7, 2008, 121 Stat. 2557, added item 1040.

2007—Pub. L. 109-476, §3(b), Jan. 12, 2007, 120 Stat. 3571, added item 1039.

2006—Pub. L. 109-177, title III, §302(b), Mar. 9, 2006, 120 Stat. 233, inserted “or seaport” at end of item 1036.

2004—Pub. L. 108-458, title VI, §6702(b), Dec. 17, 2004, 118 Stat. 3766, added item 1038.

Pub. L. 108-275, §2(b), July 15, 2004, 118 Stat. 832, added item 1028A.

2003—Pub. L. 108-187, §4(a)(2), Dec. 16, 2003, 117 Stat. 2705, added item 1037.

2000—Pub. L. 106-547, §2(b), Dec. 19, 2000, 114 Stat. 2739, added item 1036.

1998—Pub. L. 105-318, §3(h)(2), Oct. 30, 1998, 112 Stat. 3009, inserted “and information” at end of item 1028.

1996—Pub. L. 104-294, title VI, §601(f)(8), Oct. 11, 1996, 110 Stat. 3500, substituted “veteran's facilities” for “veterans' facilities” in item 1024.

Pub. L. 104-191, title II, §244(b), Aug. 21, 1996, 110 Stat. 2017, added item 1035.

1994—Pub. L. 103-322, title XXXII, §320603(b), Sept. 13, 1994, 108 Stat. 2118, added items 1033 and 1034.

¹Section catchline amended by Pub. L. 108-21 without corresponding amendment of chapter analysis.

²Section catchline amended by Pub. L. 111-203 without corresponding amendment of chapter analysis.