

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

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

#### PRIOR PROVISIONS

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 That section was superseded by section 611 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

#### AMENDMENTS

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

#### EFFECTIVE DATE OF 1984 AMENDMENT

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

### § 1612. Seizure; summary sale

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

(b) If the Customs Service determines that the expense of keeping the vessel, vehicle, aircraft,

merchandise, or baggage is disproportionate to the value thereof, the Customs Service may promptly order the destruction or other appropriate disposition of such property under regulations prescribed by the Secretary. No customs officer shall be liable for the destruction or other disposition of property made pursuant to this section.

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

#### PRIOR PROVISIONS

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

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

#### AMENDMENTS

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

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

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

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

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

1978—Pub. L. 95-410 substituted “\$10,000” for “\$2,500” wherever appearing.

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

1954—Act Sept. 1, 1954, substituted “\$2,500” for “\$1,000” wherever appearing.

#### CHANGE OF NAME

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1970 AMENDMENT

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

TRANSFER OF FUNCTIONS

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

**§ 1613. Disposition of proceeds of forfeited property**

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

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

(1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale, and if condemned by a decree of a district court

and a bond for such costs was not given, the costs as taxed by the court;

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

(3) The residue shall be deposited in the general fund of the Treasury of the United States.<sup>1</sup>

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

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

**(c) Treatment of deposits**

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

**(d) Expenses**

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

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

PRIOR PROVISIONS

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

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

<sup>1</sup> See 1984 Amendment note below.