

believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(4) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(5) in any other situations where a warrant is not constitutionally required.

**(d) Administrative inspection warrants; issuance; execution; probable cause**

Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judge of the United States or of a State court of record, or any United States magistrate judge, may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this subchapter or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this section, the term "probable cause" means a valid public interest in the effective enforcement of this subchapter or regulations thereunder sufficient to justify administrative inspections of the area, premises, building, or conveyance, or contents thereof, in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of an officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate judge and establishing the grounds for issuing the warrant. If the judge or magistrate judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall identify the items or types of property to be seized, if any. The warrant shall be directed to a person authorized under subsection (b)(2) of this section to execute it. The warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified, and, where appropriate, shall direct the seizure of the property specified. The warrant shall direct that it be served during normal business hours. It shall designate the judge or magistrate judge to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing by the United States of a need therefor, the judge or magistrate judge allows additional time in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a writ-

ten inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person making such inventory, and shall be verified by the person executing the warrant. The judge or magistrate judge, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and the applicant for the warrant.

(4) The judge or magistrate judge who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall file them with the clerk of the district court of the United States for the judicial district in which the inspection was made.

(Pub. L. 91-513, title II, § 510, Oct. 27, 1970, 84 Stat. 1274; Pub. L. 101-647, title XXXV, § 3599M, Nov. 29, 1990, 104 Stat. 4932; Pub. L. 101-650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103-200, § 6, Dec. 17, 1993, 107 Stat. 2339.)

AMENDMENTS

1993—Subsec. (a)(2). Pub. L. 103-200, § 6(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "places, including factories, warehouses, or other establishments, and conveyances, where persons registered under section 823 of this title (or exempted from registration under section 822(d) of this title) may lawfully hold, manufacture, or distribute, dispense, administer, or otherwise dispose of controlled substances."

Subsec. (b)(3)(B). Pub. L. 103-200, § 6(2)(A), inserted "listed chemicals," after "unfinished drugs".

Subsec. (b)(3)(C). Pub. L. 103-200, § 6(2)(B), inserted "or listed chemical" after "controlled substance" and "or chemical" after "such substance".

1990—Subsec. (b)(3)(B). Pub. L. 101-647 substituted "paragraph (4)" for "paragraph (5)".

CHANGE OF NAME

"United States magistrate judge" and "magistrate judge" substituted for "United States magistrate" and "magistrate", respectively, wherever appearing in subsec. (d) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-200 effective on date that is 120 days after Dec. 17, 1993, see section 11 of Pub. L. 103-200, set out as a note under section 802 of this title.

**§ 881. Forfeitures**

**(a) Subject property**

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance or listed chemical in violation of this subchapter.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1), (2), or (9).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1), (2), or (9).

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter.

(7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment.

(8) All controlled substances which have been possessed in violation of this subchapter.

(9) All listed chemicals, all drug manufacturing equipment, all tableting machines, all encapsulating machines, and all gelatin capsules, which have been imported, exported, manufactured, possessed, distributed, dispensed, acquired, or intended to be distributed, dispensed, acquired, imported, or exported, in violation of this subchapter or subchapter II of this chapter.

(10) Any drug paraphernalia (as defined in section 863 of this title).

(11) Any firearm (as defined in section 921 of title 18) used or intended to be used to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2) and any proceeds traceable to such property.

#### **(b) Seizure procedures**

Any property subject to forfeiture to the United States under this section may be seized by the Attorney General in the manner set forth in section 981(b) of title 18.

#### **(c) Custody of Attorney General**

Property taken or detained under this section shall not be replevable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General 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) Other laws and proceedings applicable**

The provisions of law relating to the seizure, summary and judicial forfeiture, and condemna-

tion of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of this subchapter, insofar as applicable and not inconsistent with the provisions hereof; 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 subchapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

#### **(e) Disposition of forfeited property**

(1) Whenever property is civilly or criminally forfeited under this subchapter the Attorney General may—

(A) retain the property for official use or, in the manner provided with respect to transfers under section 1616a of title 19, transfer the property to any Federal agency or to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property;

(B) except as provided in paragraph (4), sell, by public sale or any other commercially feasible means, any forfeited property which is not required to be destroyed by law and which is not harmful to the public;

(C) require that the General Services Administration take custody of the property and dispose of it in accordance with law;

(D) forward it to the Bureau of Narcotics and Dangerous Drugs for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General); or

(E) 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—

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

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

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

(2)(A) The proceeds from any sale under subparagraph (B) of paragraph (1) and any moneys forfeited under this subchapter shall be used to pay—

(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and

(ii) awards of up to \$100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement agent.

Any award paid for information concerning the killing or kidnapping of a Federal drug law enforcement agent, as provided in clause (ii), shall be paid at the discretion of the Attorney General.

(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28, any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A), except that, with respect to forfeitures conducted by the Postal Service, the Postal Service shall deposit in the Postal Service Fund, under section 2003(b)(7) of title 39, such moneys and proceeds.

(3) The Attorney General shall assure that any property transferred to a State or local law enforcement agency under paragraph (1)(A)—

(A) has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based; and

(B) will serve to encourage further cooperation between the recipient State or local agency and Federal law enforcement agencies.

(4)(A) With respect to real property described in subparagraph (B), if the chief executive officer of the State involved submits to the Attorney General a request for purposes of such subparagraph, the authority established in such subparagraph is in lieu of the authority established in paragraph (1)(B).

(B) In the case of property described in paragraph (1)(B) that is civilly or criminally forfeited under this subchapter, if the property is real property that is appropriate for use as a public area reserved for recreational or historic purposes or for the preservation of natural conditions, the Attorney General, upon the request of the chief executive officer of the State in which the property is located, may transfer title to the property to the State, either without charge or for a nominal charge, through a legal instrument providing that—

(i) such use will be the principal use of the property; and

(ii) title to the property reverts to the United States in the event that the property is used otherwise.

**(f) Forfeiture and destruction of schedule I and II substances**

(1) All controlled substances in schedule I or II that are possessed, transferred, sold, or offered for sale in violation of the provisions of this subchapter; all dangerous, toxic, or hazardous raw materials or products subject to forfeiture under subsection (a)(2) of this section; and any equipment or container subject to forfeiture under subsection (a)(2) or (3) of this section which cannot be separated safely from such raw materials or products shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I or II, which are seized or come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the United States.

(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this subchapter; all dangerous, toxic, or hazardous raw materials or products subject to forfeiture under subsection (a)(2) of this section; and any equipment or container subject to forfeiture under subsection (a)(2) or (3) of this section which cannot be separated safely from such raw materials or products under such circumstances as the Attorney General may deem necessary.

**(g) Plants**

(1) All species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this subchapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

(2) The failure, upon demand by the Attorney General or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(3) The Attorney General, or his duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

**(h) Vesting of title in United States**

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.

**(i) Stay of civil forfeiture proceedings**

The provisions of section 981(g) of title 18 regarding the stay of a civil forfeiture proceeding shall apply to forfeitures under this section.

**(j) Venue**

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)<sup>1</sup> Agreement between Attorney General and Postal Service for performance of functions**

The functions of the Attorney General under this section shall be carried out by the Postal Service pursuant to such agreement as may be entered into between the Attorney General and the Postal Service.

(Pub. L. 91-513, title II, §511, Oct. 27, 1970, 84 Stat. 1276; Pub. L. 95-633, title III, §301(a), Nov. 10, 1978, 92 Stat. 3777; Pub. L. 96-132, §14, Nov. 30, 1979, 93 Stat. 1048; Pub. L. 98-473, title II, §§306, 309, 518, Oct. 12, 1984, 98 Stat. 2050, 2051, 2075; Pub.

<sup>1</sup> So in original. No subsec. (k) has been enacted.

L. 99-570, title I, §§1006(c), 1865, 1992, Oct. 27, 1986, 100 Stat. 3207-7, 3207-54, 3207-59; Pub. L. 99-646, §74, Nov. 10, 1986, 100 Stat. 3618; Pub. L. 100-690, title V, §5105, title VI, §§6059, 6074, 6075, 6077(a), (b), 6253, Nov. 18, 1988, 102 Stat. 4301, 4319, 4323-4325, 4363; Pub. L. 101-189, div. A, title XII, §1215(a), Nov. 29, 1989, 103 Stat. 1569; Pub. L. 101-647, title XX, §§2003, 2004, 2007, 2008, Nov. 29, 1990, 104 Stat. 4855, 4856; Pub. L. 102-239, §2, Dec. 17, 1991, 105 Stat. 1912; Pub. L. 103-447, title I, §102(d), Nov. 2, 1994, 108 Stat. 4693; Pub. L. 104-237, title II, §201(b), Oct. 3, 1996, 110 Stat. 3101; Pub. L. 106-185, §§2(c)(2), 5(b), 8(b), Apr. 25, 2000, 114 Stat. 210, 214, 216; Pub. L. 107-273, div. B, title IV, §4002(e)(3), Nov. 2, 2002, 116 Stat. 1810.)

## REFERENCES IN TEXT

Subchapter II of this chapter, referred to in subsec. (a)(9), was in the original "title III", meaning title III of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of title III, see Tables.

Schedules I and II, referred to in subsecs. (f) and (g), are set out in section 812(c) of this title.

## AMENDMENTS

2002—Subsec. (a)(10). Pub. L. 107-273 substituted "section 863 of this title" for "section 1822 of the Mail Order Drug Paraphernalia Control Act".

2000—Subsec. (a)(4). Pub. L. 106-185, §2(c)(2), struck out before period at end ", except that—

"(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter;

"(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State; and

"(C) no conveyance shall be forfeited under this paragraph to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner".

Subsec. (a)(6). Pub. L. 106-185, §2(c)(2), struck out before period at end ", except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner".

Subsec. (a)(7). Pub. L. 106-185, §2(c)(2), struck out before period at end ", except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner".

Subsec. (b). Pub. L. 106-185, §5(b), inserted heading and amended text of subsec. (b) generally. Prior to amendment, subsec. (b) authorized the Attorney General to seize property under this subchapter upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime claims and to seize it without process in certain described circumstances.

Subsec. (i). Pub. L. 106-185, §8(b), inserted heading and amended text of subsec. (i) generally. Prior to amendment, text read as follows: "The filing of an in-

dictment or information alleging a violation of this subchapter or subchapter II of this chapter, or a violation of State or local law that could have been charged under this subchapter or subchapter II of this chapter, which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding."

1996—Subsec. (a)(2), (6). Pub. L. 104-237, §201(b)(1), inserted "or listed chemical" after "controlled substance".

Subsec. (a)(9). Pub. L. 104-237, §201(b)(2), substituted "possessed, distributed, dispensed, acquired, or intended to be distributed, dispensed, acquired," for "possessed, distributed, or intended to be distributed," and struck out "a felony provision of" after "in violation of".

1994—Subsec. (e)(1)(E)(iii). Pub. L. 103-447 substituted "section 2291j(b) of title 22" for "section 2291(h) of title 22".

1991—Subsec. (e)(1)(B). Pub. L. 102-239, §2(1), substituted "except as provided in paragraph (4), sell" for "sell".

Subsec. (e)(4). Pub. L. 102-239, §2(2), added par. (4).

1990—Subsec. (a)(10). Pub. L. 101-647, §2007, added par. (10).

Subsec. (a)(11). Pub. L. 101-647, §2008, added par. (11).

Subsec. (e)(1)(B). Pub. L. 101-647, §2003, inserted ", by public sale or any other commercially feasible means," after "sell".

Subsec. (f). Pub. L. 101-647, §2004, inserted "; all dangerous, toxic, or hazardous raw materials or products subject to forfeiture under subsection (a)(2) of this section; and any equipment or container subject to forfeiture under subsection (a)(2) or (3) of this section which cannot be separated safely from such raw materials or products" after "this subchapter" in pars. (1) and (2).

1989—Subsec. (e)(3)(B). Pub. L. 101-189 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "is not so transferred to circumvent any requirement of State law that prohibits forfeiture or limits use or disposition of property forfeited to State or local agencies."

1988—Subsec. (a)(3). Pub. L. 100-690, §6059(b), inserted reference to par. (9).

Subsec. (a)(4). Pub. L. 100-690, §§6059(b), 6075, inserted in introductory provisions reference to par. (9) and added subpar. (C).

Subsec. (a)(7). Pub. L. 100-690, §5105, inserted "(including any leasehold interest)" after "interest".

Subsec. (a)(9). Pub. L. 100-690, §6059(a), added par. (9).

Subsec. (e)(1)(A). Pub. L. 100-690, §6077(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "retain the property for official use or transfer the custody or ownership of any forfeited property to any Federal, State, or local agency pursuant to section 1616a of title 19;"

Subsec. (e)(1)(E). Pub. L. 100-690, §6074, added subpar. (E).

Subsec. (e)(2)(B). Pub. L. 100-690, §6253(b), provided for deposit of moneys and proceeds in Postal Service Fund in cases of forfeitures conducted by Postal Service.

Subsec. (e)(3). Pub. L. 100-690, §6077(a), added par. (3).

Subsec. (l). Pub. L. 100-690, §6253(a), added subsec. (l).

1986—Subsec. (b). Pub. L. 99-570, §1865(1)-(3), and Pub. L. 99-646, §74(1)-(3), in making identical amendments in introductory provision and par. (4), struck out "or criminal" after "subject to civil" and inserted paragraph permitting the Government to request issuance of a warrant authorizing seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

Subsec. (e). Pub. L. 99-570, §1992, designated existing provisions as par. (1) and former pars. (1) to (4) as subpars. (A) to (D), respectively, and added par. (2) in lieu of former concluding provisions which read as follows: "The Attorney General shall ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State or local law enforce-

ment 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 pursuant to paragraph (1) shall not be subject to review. The proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs. The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28 any amounts of such moneys and proceeds remaining after payment of such expenses."

Subsec. (f). Pub. L. 99-570, § 1006(c), which directed the amendment of section 511 of the "Comprehensive Drug Abuse Prevention Act of 1978" was executed to this section which is section 511 of the Comprehensive Drug Abuse Prevention Act of 1970, as the probable intent of Congress, by designating existing provisions as par. (1), inserting "or II" in two places, and adding par. (2).

Subsec. (i). Pub. L. 99-570, § 1865(b) and Pub. L. 99-646, § 74(b), made identical amendments, inserting ", or a violation of State or local law that could have been charged under this subchapter or subchapter II of this chapter."

1984—Subsec. (a)(7). Pub. L. 98-473, § 306(a), added par. (7).

Subsec. (a)(8). Pub. L. 98-473, § 518, added par. (8).

Subsec. (b). Pub. L. 98-473, § 306(b)(1), inserted "civil or criminal" after "property subject to".

Subsec. (b)(4). Pub. L. 98-473, § 306(b)(2), substituted "is subject to civil or criminal forfeiture under" for "has been used or is intended to be used in violation of".

Subsec. (c). Pub. L. 98-473, § 306(c)(1), in provisions preceding par. (1), inserted "any of" after "seized under".

Subsec. (c)(3). Pub. L. 98-473, § 306(c)(2), inserted ", if practicable," after "remove it".

Subsec. (d). Pub. L. 98-473, § 306(d), inserted "any of" after "incurred, under".

Subsec. (e). Pub. L. 98-473, §§ 306(e), 309, inserted "civilly or criminally" after "Whenever property is" and in provisions preceding par. (1), inserted provisions relating to transfer of custody or ownership of forfeited property in par. (1), substituted "and dispose of it" for "and remove it for disposition" in par. (3), and, in provisions following par. (4), inserted sentence requiring the Attorney General to ensure equitable transfer of any forfeited property, and substituted "accordance with section 524(c) of title 28" for "the general fund of the United States Treasury".

Subsecs. (h) to (j). Pub. L. 98-473, § 306(f), added subsecs. (h) to (j).

1979—Subsec. (d). Pub. L. 96-132 substituted "The provisions" for "All provisions" and struck out "and the award of compensation to informers in respect of such forfeitures" after "compromise of claims".

1978—Subsec. (a)(6). Pub. L. 95-633, § 301(1), added par. (6).

Subsec. (e). Pub. L. 95-633, § 301(a)(2), (3), struck out of cl. (2) provisions relating to use of proceeds of sale and inserted last sentence relating to the forwarding by the Attorney General of money and proceeds remaining after payment of expenses.

#### 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 1989 AMENDMENT

Pub. L. 101-189, div. A, title XII, § 1215(b), Nov. 29, 1989, 103 Stat. 1569, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as of October 1, 1989."

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 6059 of Pub. L. 100-690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub. L. 100-690, set out as a note under section 802 of this title.

Pub. L. 100-690, title VI, § 6077(c), Nov. 18, 1988, 102 Stat. 4325, as amended by Pub. L. 101-162, title II, § 208, Nov. 21, 1989, 103 Stat. 1005, provided that: "Section 551(e)(3)(B) of the Controlled Substances Act [probably means section 511(e)(3)(B) of the Controlled Substances Act, 21 U.S.C. 881(e)(3)(B)], as enacted by subsection (a), shall apply with respect to fiscal years beginning after September 30, 1991."

#### TRANSFER OF FUNCTIONS

Bureau of Narcotics and Dangerous Drugs, including office of Director thereof, in Department of Justice abolished by Reorg. Plan No. 2 of 1973, eff. July 1, 1973, 38 F.R. 15932, 87 Stat. 1091, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 2 of 1973 also created in Department of Justice a single, comprehensive agency for enforcement of drug laws to be known as Drug Enforcement Administration, empowered Attorney General to authorize performance by officers, employees, and agencies of Department of functions transferred to him, and directed Attorney General to coordinate all drug law enforcement functions to assure maximum cooperation between Drug Enforcement Administration, Federal Bureau of Investigation, and other units of Department of Justice involved in drug law enforcement.

#### CONSTRUCTIVE SEIZURE PROCEDURES

Pub. L. 101-225, title II, § 210, Dec. 12, 1989, 103 Stat. 1913, provided that: "Not later than 6 months after the date of enactment of this Act [Dec. 12, 1989], the Secretary of Transportation and the Secretary of the Treasury, in order to avoid the devastating economic effects on innocent owners of seizures of their vessels, shall develop a procedure for constructive seizure of vessels of the United States engaged in commercial service as defined in section 2101 of title 46, United States Code, that are suspected of being used for committing violations of law involving personal use quantities of controlled substances."

#### REGULATIONS FOR EXPEDITED ADMINISTRATIVE FORFEITURE PROCEDURES

Pub. L. 100-690, title VI, § 6079, Nov. 18, 1988, 102 Stat. 4325, provided that:

"(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Nov. 18, 1988], the Attorney General and the Secretary of the Treasury shall consult, and after providing a 30-day public comment period, shall prescribe regulations for expedited administrative procedures for seizures under section 511(a)(4), (6), and (7) of the Controlled Substances Act (21 U.S.C. 881(a)(4), (6), and (7)); section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)); and section 2 of the Act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. App. 782 [now 49 U.S.C. 80303]) for violations involving the possession of personal use quantities of a controlled substance.

"(b) SPECIFICATIONS.—The regulations prescribed pursuant to subsection (a) shall—

"(1) minimize the adverse impact caused by prolonged detention, and

"(2) provide for a final administrative determination of the case within 21 days of seizure, or provide a procedure by which the defendant can obtain release of the property pending a final determination of the case. Such regulations shall provide that the appropriate agency official rendering a final determination shall immediately return the property if the following conditions are established:

"(A) the owner or interested party did not know or consent to the violation;

"(B) the owner establishes a valid, good faith interest in the seized property as owner or otherwise; and

“(C)(1) the owner establishes that the owner at no time had any knowledge or reason to believe that the property in which the owner claims an interest was being or would be used in a violation of the law; and

“(2) if the owner at any time had, or should have had, knowledge or reason to believe that the property in which the owner claims an interest was being or would be used in a violation of the law, that the owner did what reasonably could be expected to prevent the violation.

An owner shall not have the seized property returned under this subsection if the owner had not acted in a normal and customary manner to ascertain how the property would be used.

“(c) NOTICE.—At the time of seizure or upon issuance of a summons to appear under subsection (d), the officer making the seizure shall furnish to any person in possession of the conveyance a written notice specifying the procedures under this section. At the earliest practicable opportunity after determining ownership of the seized conveyance, the head of the department or agency that seizes the conveyance shall furnish a written notice to the owner and other interested parties (including lienholders) of the legal and factual basis of the seizure.

“(d) SUMMONS IN LIEU OF SEIZURE OF COMMERCIAL FISHING INDUSTRY VESSELS.—Not later than 90 days after the enactment of this Act [Nov. 18, 1988], the Attorney General, the Secretary of the Treasury, and the Secretary of Transportation shall prescribe joint regulations, after a public comment period of at least 30 days, providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel as defined in section 2101(11a), (11b), and (11c) of title 46, United States Code, for violations involving the possession of personal use quantities of a controlled substance. These regulations shall apply when the violation is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call, or is actively engaged in fishing operations. The authority provided under this section shall not affect existing authority to arrest an individual for drug-related offenses or to release that individual into the custody of the vessel’s master. Upon answering a summons to appear, the procedures set forth in subsections (a), (b), and (c) of this section shall apply. The jurisdiction of the district court for any forfeiture incurred shall not be affected by the use of a summons under this section.

“(e) PERSONAL USE QUANTITIES OF A CONTROLLED SUBSTANCE.—For the purposes of this section, personal use quantities of a controlled substance shall not include sweepings or other evidence of non-personal use amounts.”

## §§ 881–1, 881a. Transferred

### CODIFICATION

Section 881–1, Pub. L. 91–513, title II, §511A, as added Pub. L. 100–690, title VI, §6080(a), Nov. 18, 1988, 102 Stat. 4326, which related to expedited procedures for seized conveyances, was renumbered §518 of Pub. L. 91–513 by Pub. L. 101–647, title X, §1002(h)(1), Nov. 29, 1990, 104 Stat. 4828, transferred to section 888 of this title and subsequently repealed.

Section 881a, Pub. L. 99–198, title XVII, §1764, Dec. 23, 1985, 99 Stat. 1652, which related to production control of controlled substances, was renumbered section 519 of the Controlled Substances Act by Pub. L. 101–647, title X, §1002(h)(2), Nov. 29, 1990, 104 Stat. 4828, and is classified to section 889 of this title.

## § 882. Injunctions

### (a) Jurisdiction

The district courts of the United States and all courts exercising general jurisdiction in the territories and possessions of the United States

shall have jurisdiction in proceedings in accordance with the Federal Rules of Civil Procedure to enjoin violations of this subchapter.

### (b) Jury trial

In case of an alleged violation of an injunction or restraining order issued under this section, trial shall, upon demand of the accused, be by a jury in accordance with the Federal Rules of Civil Procedure.

### (c) State cause of action pertaining to online pharmacies

#### (1) In general

In any case in which the State has reason to believe that an interest of the residents of that State has been or is being threatened or adversely affected by the action of a person, entity, or Internet site that violates the provisions of section 823(f), 829(e), or 831 of this title, the State may bring a civil action on behalf of such residents in a district court of the United States with appropriate jurisdiction—

(A) to enjoin the conduct which violates this section;

(B) to enforce compliance with this section;

(C) to obtain damages, restitution, or other compensation, including civil penalties under section 842(b) of this title; and

(D) to obtain such other legal or equitable relief as the court may find appropriate.

#### (2) Service; intervention

(A) Prior to filing a complaint under paragraph (1), the State shall serve a copy of the complaint upon the Attorney General and upon the United States Attorney for the judicial district in which the complaint is to be filed. In any case where such prior service is not feasible, the State shall serve the complaint on the Attorney General and the appropriate United States Attorney on the same day that the State’s complaint is filed in Federal district court of the United States. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or any other proceedings under this subchapter or any other laws of the United States.

(B) Upon receiving notice respecting a civil action pursuant to this section, the United States shall have the right to intervene in such action and, upon so intervening, to be heard on all matters arising therein, and to file petitions for appeal.

(C) Service of a State’s complaint on the United States as required in this paragraph shall be made in accord with the requirements of rule 4(i)(1) of the Federal Rule<sup>1</sup> of Civil Procedure.

#### (3) Powers conferred by State law

For purposes of bringing any civil action under paragraph (1), nothing in this chapter shall prevent an attorney general of a State from exercising the powers conferred on the attorney general of a State by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary or other evidence.

<sup>1</sup> So in original. Probably should be “Rules”.