

native programs, and for taking corrective action when notified by the Customs Service for violations or problems regarding such program.

(f) Alternatives to penalties

(1) In general

When a party that—

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

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

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

(2) Contents of notice

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

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

(B) explain the nature of the violation; and

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

(3) Response to notice

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

(g) Repetitive violations

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

(A) 2d violation

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

(B) 3rd violation

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

(C) 4th and subsequent violations

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

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

(h) Regulation

The Secretary shall promulgate regulations and guidelines to implement this section. Such regulations shall specify that for purposes of

subsections (c) and (g), a repeat negligent violation involving the same issue shall be treated as a repetitive violation for a maximum period of 3 years.

(i) Court of International Trade proceedings

Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

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

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence; and

(3) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of providing evidence that the act or omission did not occur as a result of negligence.

(June 17, 1930, ch. 497, title IV, §593A, as added Pub. L. 103-182, title VI, §622(a), Dec. 8, 1993, 107 Stat. 2181; amended Pub. L. 108-429, title I, §1563(f), Dec. 3, 2004, 118 Stat. 2587.)

AMENDMENTS

2004—Subsec. (h). Pub. L. 108-429 substituted “subsections (c) and (g)” for “subsection (g)”.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-429 effective Dec. 3, 2004, and applicable to drawback entries filed on or after Dec. 3, 2004, and to those filed before Dec. 3, 2004, if liquidation of the drawback entry is not final on Dec. 3, 2004, see section 1563(g)(1) of Pub. L. 108-429, set out as a note under section 1313 of this title.

EFFECTIVE DATE

Pub. L. 103-182, title VI, §622(b), Dec. 8, 1993, 107 Stat. 2186, provided that: “The amendment made by subsection (a) [enacting this section] applies to drawback claims filed on and after the nationwide operational implementation of an automated drawback selectivity program by the Customs Service. The Customs Service shall publish notice of this date in the Customs Bulletin.”

TRANSFER OF FUNCTIONS

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

§ 1594. Seizure of conveyances

(a) In general

Whenever—

(1) any vessel, vehicle, or aircraft; or

(2) the owner or operator, or the master, pilot, conductor, driver, or other person in charge of a vessel, vehicle, or aircraft;

is subject to a penalty for violation of the customs laws, the conveyance involved shall be held for the payment of such penalty and may be

seized and forfeited and sold in accordance with the customs laws. The proceeds of sale, if any, in excess of the assessed penalty and expenses of seizing, maintaining, and selling the property shall be held for the account of any interested party.

(b) Exceptions

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to seizure and forfeiture under the customs laws for violations relating to merchandise contained—

(A) on the person;

(B) in baggage belonging to and accompanying a passenger being lawfully transported on such conveyance; or

(C) in the cargo of the conveyance if the cargo is listed on the manifest and marks, numbers, weights and quantities of the outer packages or containers agree with the manifest;

unless the owner or operator, or the master, pilot, conductor, driver or other person in charge participated in, or had knowledge of, the violation, or was grossly negligent in preventing or discovering the violation.

(2) Except as provided in paragraph (1) or subsection (c), no vessel, vehicle, or aircraft is subject to forfeiture to the extent of an interest of an owner for a drug-related offense established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.

(c) Prohibited merchandise on conveyance

If any merchandise the importation of which is prohibited is found to be, or to have been—

(1) on board a conveyance used as a common carrier in the transaction of business as a common carrier in one or more packages or containers—

(A) that are not manifested (or not shown on bills of lading or airway bills); or

(B) whose marks, numbers, weight or quantities disagree with the manifest (or with the bills of lading or airway bills); or

(2) concealed in or on such a conveyance, but not in the cargo;

the conveyance may be seized, and after investigation, forfeited unless it is established that neither the owner or operator, master, pilot, nor any other employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence could have known, that such merchandise was on board.

(d) Definitions

For purposes of this section—

(1) The term “owner or operator” includes—

(A) a lessee or person operating a conveyance under a rental agreement or charter party; and

(B) the officers and directors of a corporation;

(C) station managers and similar supervisory ground personnel employed by airlines;

(D) one or more partners of a partnership;

(E) representatives of the owner or operator in charge of the passenger or cargo operations at a particular location; and

(F) and other persons with similar responsibilities.

(2) The term “master” and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported in the conveyance.

(e) Costs and expenses of seizure

When a common carrier has been seized in accordance with the provisions of subsection (c) and it is subsequently determined that a violation of such subsection occurred but that the vessel will be released, the conveyance is liable for the costs and expenses of the seizure and detention.

(June 17, 1930, ch. 497, title IV, §594, 46 Stat. 751; Pub. L. 99-570, title III, §3121, Oct. 27, 1986, 100 Stat. 3207-86; Pub. L. 100-690, title VI, §6076(b), Nov. 18, 1988, 102 Stat. 4324.)

PRIOR PROVISIONS

Provisions substantially similar to subsec. (a) of this section, so far as it relates to vessels, except that they referred to the “revenue laws,” instead of the “customs laws,” were contained in R.S. §3088. Provisions substantially similar to subsec. (b), so far as it relates to vessels, were contained in act Feb. 8, 1881, ch. 34, 21 Stat. 322. Provisions similar to subsec. (b), except that they applied to railway cars, engines, other vehicles, and teams, and referred to the owner, superintendent, or agent of the owner in charge, instead of the “conductor, driver,” etc., were contained in R.S. §3063. All of these sections were superseded and more closely assimilated to this section by act Sept. 21, 1922, ch. 356, title IV, §594, 42 Stat. 982, and repealed by sections 642 and 643 thereof. Section 594 of the 1922 act was superseded by section 594 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-690 designated existing provisions as par. (1), redesignated former pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, and added par. (2).

1986—Pub. L. 99-570 amended section generally. Prior to amendment, section catchline read “Libel of vessels and vehicles” and text read as follows: “Whenever a vessel or vehicle, or the owner or master, conductor, driver, or other person in charge thereof, has become subject to a penalty for violation of the customs-revenue laws of the United States, such vessel or vehicle shall be held for the payment of such penalty and may be seized and proceeded against summarily by libel to recover the same: *Provided*, That no vessel or vehicle used by any person as a common carrier in the transaction of business as such common carrier shall be so held or subject to seizure or forfeiture under the customs laws, unless it shall appear that the owner or master of such vessel or the conductor, driver, or other person in charge of such vehicle was at the time of the alleged illegal act a consenting party or privy thereto.”

§ 1595. Searches and seizures

(a) Warrant

(1) If any officer or person authorized to make searches and seizures has probable cause to believe that—

(A) any merchandise upon which the duties have not been paid, or which has been otherwise brought into the United States unlawfully;

(B) any property which is subject to forfeiture under any provision of law enforced or ad-