

§ 885. Burden of proof; liabilities**(a) Exemptions and exceptions; presumption in simple possession offenses**

(1) It shall not be necessary for the United States to negative any exemption or exception set forth in this subchapter in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this subchapter, and the burden of going forward with the evidence with respect to any such exemption or exception shall be upon the person claiming its benefit.

(2) In the case of a person charged under section 844(a) of this title with the possession of a controlled substance, any label identifying such substance for purposes of section 353(b)(2) of this title shall be admissible in evidence and shall be prima facie evidence that such substance was obtained pursuant to a valid prescription from a practitioner while acting in the course of his professional practice.

(b) Registration and order forms

In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this subchapter, he shall be presumed not to be the holder of such registration or form, and the burden of going forward with the evidence with respect to such registration or form shall be upon him.

(c) Use of vehicles, vessels, and aircraft

The burden of going forward with the evidence to establish that a vehicle, vessel, or aircraft used in connection with controlled substances in schedule I was used in accordance with the provisions of this subchapter shall be on the persons engaged in such use.

(d) Immunity of Federal, State, local and other officials

Except as provided in sections 2234 and 2235 of title 18, no civil or criminal liability shall be imposed by virtue of this subchapter upon any duly authorized Federal officer lawfully engaged in the enforcement of this subchapter, or upon any duly authorized officer of any State, territory, political subdivision thereof, the District of Columbia, or any possession of the United States, who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.

(Pub. L. 91-513, title II, §515, Oct. 27, 1970, 84 Stat. 1279.)

REFERENCES IN TEXT

Schedule I, referred to in subsec. (c), is set out in section 812(c) of this title.

§ 886. Payments and advances**(a) Payment to informers**

The Attorney General is authorized to pay any person, from funds appropriated for the Drug Enforcement Administration, for information concerning a violation of this subchapter, such sum or sums of money as he may deem appropriate, without reference to any moieties or rewards to which such person may otherwise be entitled by law.

(b) Reimbursement for purchase of controlled substances

Moneys expended from appropriations of the Drug Enforcement Administration for purchase of controlled substances and subsequently recovered shall be reimbursed to the current appropriation for the Administration.¹

(c) Advance of funds for enforcement purposes

The Attorney General is authorized to direct the advance of funds by the Treasury Department in connection with the enforcement of this subchapter.

(d) Drug Pollution Fund

(1) There is established in the Treasury a trust fund to be known as the "Drug Pollution Fund" (hereinafter referred to in this subsection as the "Fund"), consisting of amounts appropriated or credited to such Fund under section 841(b)(6) of this title.

(2) There are hereby appropriated to the Fund amounts equivalent to the fines imposed under section 841(b)(6) of this title.

(3) Amounts in the Fund shall be available, as provided in appropriations Acts, for the purpose of making payments in accordance with paragraph (4) for the clean up of certain pollution resulting from the actions referred to in section 841(b)(6) of this title.

(4)(A) The Secretary of the Treasury, after consultation with the Attorney General, shall make payments under paragraph (3), in such amounts as the Secretary determines appropriate, to the heads of executive agencies or departments that meet the requirements of subparagraph (B).

(B) In order to receive a payment under paragraph (3), the head of an executive agency or department shall submit an application in such form and containing such information as the Secretary of the Treasury shall by regulation require. Such application shall contain a description of the fine imposed under section 841(b)(6) of this title, the circumstances surrounding the imposition of such fine, and the type and severity of pollution that resulted from the actions to which such fine applies.

(5) For purposes of subchapter B of chapter 98 of title 26, the Fund established under this paragraph shall be treated in the same manner as a trust fund established under subchapter A of such chapter.

(Pub. L. 91-513, title II, §516, Oct. 27, 1970, 84 Stat. 1279; Pub. L. 96-132, §16(b), Nov. 30, 1979, 93 Stat. 1049; Pub. L. 100-690, title VI, §6254(i), Nov. 18, 1988, 102 Stat. 4367.)

CODIFICATION

In subsec. (b), "Administration" substituted for "Bureau" as the probable intent of Congress in view of amendment by Pub. L. 96-132, which substituted references to the Drug Enforcement Administration for references to the Bureau of Narcotics and Dangerous Drugs wherever appearing in text.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100-690 added subsec. (d).

¹ See Codification note below.

1979—Subsecs. (a), (b). Pub. L. 96-132 substituted “Drug Enforcement Administration” for “Bureau of Narcotics and Dangerous Drugs”.

REIMBURSEMENT BY DRUG ENFORCEMENT ADMINISTRATION OF EXPENSES INCURRED TO REMEDIATE METHAMPHETAMINE LABORATORIES

Pub. L. 106-310, div. B, title XXXVI, §3672, Oct. 17, 2000, 114 Stat. 1246, provided that:

“(a) REIMBURSEMENT AUTHORIZED.—The Attorney General, acting through the Administrator of the Drug Enforcement Administration, may reimburse States, units of local government, Indian tribal governments, other public entities, and multi-jurisdictional or regional consortia thereof for expenses incurred to clean up and safely dispose of substances associated with clandestine methamphetamine laboratories which may present a danger to public health or the environment.

“(b) ADDITIONAL DEA PERSONNEL.—From amounts appropriated or otherwise made available to carry out this section, the Attorney General may hire not more than five additional Drug Enforcement Administration personnel to administer this section.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Attorney General to carry out this section \$20,000,000 for fiscal year 2001.”

§ 886a. Diversion Control Fee Account

(1) In general

There is established in the general fund of the Treasury a separate account which shall be known as the Diversion Control Fee Account. For fiscal year 1993 and thereafter:

(A) There shall be deposited as offsetting receipts into that account all fees collected by the Drug Enforcement Administration, in excess of \$15,000,000, for the operation of its diversion control program.

(B) Such amounts as are deposited into the Diversion Control Fee Account shall remain available until expended and shall be refunded out of that account by the Secretary of the Treasury, at least on a quarterly basis, to reimburse the Drug Enforcement Administration for expenses incurred in the operation of the diversion control program. Such reimbursements shall be made without distinguishing between expenses related to controlled substance activities and expenses related to chemical activities.

(C) Fees charged by the Drug Enforcement Administration under its diversion control program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program.

(D) The amount required to be refunded from the Diversion Control Fee Account for fiscal year 1994 and thereafter shall be refunded in accordance with estimates made in the budget request of the Attorney General for those fiscal years. Any proposed changes in the amounts designated in said budget requests shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate fifteen days in advance.

(2) Definitions

In this section:

(A) Diversion control program

The term “diversion control program” means the controlled substance and chemical diversion control activities of the Drug Enforcement Administration.

(B) Controlled substance and chemical diversion control activities

The term “controlled substance and chemical diversion control activities” means those activities related to the registration and control of the manufacture, distribution, dispensing, importation, and exportation of controlled substances and listed chemicals.

(Pub. L. 102-395, title I, §111(b), Oct. 6, 1992, 106 Stat. 1843; Pub. L. 105-362, title X, §1001(b), Nov. 10, 1998, 112 Stat. 3291; Pub. L. 108-447, div. B, title VI, §633(a), Dec. 8, 2004, 118 Stat. 2921.)

CODIFICATION

Section was enacted as part of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, and not as part of the Controlled Substances Act which comprises this subchapter.

AMENDMENTS

2004—Pub. L. 108-447, §633(a)(2) to (4), designated existing provisions as par. (1) and inserted heading, substituted “program. Such reimbursements shall be made without distinguishing between expenses related to controlled substance activities and expenses related to chemical activities” for “program” in par. (1)(B), and added par. (2).

Pub. L. 108-447, §633(a)(1), which directed redesignation of pars. (1) to (5) as subpars. (A) to (E) and adjustment of margins, was executed by redesignating pars. (1) to (4) as (A) to (D), respectively, to reflect the probable intent of Congress, because Pub. L. 105-362 struck out par. (5). See 1998 Amendment note below.

1998—Par. (5). Pub. L. 105-362 struck out par. (5) which read as follows: “The Attorney General shall prepare and submit annually to the Congress, statements of financial condition of the account, including the beginning balance, receipts, refunds to appropriations, transfers to the general fund, and the ending balance.”

§ 887. Coordination and consolidation of post-seizure administration

The Attorney General and the Secretary of the Treasury shall take such action as may be necessary to develop and maintain a joint plan to coordinate and consolidate post-seizure administration of property seized under this subchapter, subchapter II of this chapter, or provisions of the customs laws relating to controlled substances.

(Pub. L. 91-513, title II, §517, as added Pub. L. 100-690, title VI, §6078(a), Nov. 18, 1988, 102 Stat. 4325.)

§ 888. Repealed. Pub. L. 106-185, §2(c)(3), Apr. 25, 2000, 114 Stat. 210

Section, Pub. L. 91-513, title II, §518, formerly §511A, as added Pub. L. 100-690, title VI, §6080(a), Nov. 18, 1988, 102 Stat. 4326; renumbered §518, Pub. L. 101-647, title X, §1002(h)(1), Nov. 29, 1990, 104 Stat. 4828, related to expedited procedures for seized conveyances.

Section was classified to section 881-1 of this title prior to renumbering by Pub. L. 101-647.

EFFECTIVE DATE OF REPEAL

Repeal 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.