

(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 offense 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));<sup>1</sup> 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”.

<sup>1</sup> See References in Text note below.

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.

#### § 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 985<sup>1</sup> 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.

<sup>1</sup> See References in Text note below.