

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-521 effective Oct. 17, 1976, see section 17 of Pub. L. 94-521, set out as a note under section 1 of this title.

## SUBCHAPTER III—PROCEDURE

## § 241. Evidence

When any request for information, made by the Secretary or other authorized officer or employee of the Department of Commerce or bureau or agency thereof, is made by registered or certified mail or telegram, the return receipt therefor or other written receipt thereof shall be prima facie evidence of an official request in any prosecution under such section.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1025; Pub. L. 85-207, § 19, Aug. 28, 1957, 71 Stat. 484; Pub. L. 94-521, § 15(b), Oct. 17, 1976, 90 Stat. 2465.)

## HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§ 74, 84 (Aug. 7, 1916, ch. 274, § 4, 39 Stat. 437; Apr. 2, 1924, ch. 80, § 4, 43 Stat. 32; June 18, 1929, ch. 28, § 21, 46 Stat. 26; June 14, 1938, ch. 358, 52 Stat. 678; July 25, 1947, ch. 331, 61 Stat. 457).

Section consolidates part of section 74 of title 13, U.S.C., 1952 ed., which section related to the collection of cotton statistics, with part of section 84 of such title, which section related to the collection of statistics on oilseeds, nuts and kernels, fats, oils and greases. For remainder of such sections 74 and 84, see Distribution Table.

Section 74 of title 13, U.S.C., 1952 ed., authorized the making of requests for information by registered mail, and provided that, if so made, the registry receipt should be "accepted as evidence of such demand". Section 84 thereof authorized the making of requests by registered mail, or "by telegraph", and provided that, if so made, the "return" receipt therefor should be "prima facie evidence of an official request". The authorizations contained in such sections have been carried into section 224 of this title, and the evidentiary provisions thereof have been carried into this section, and they apply to investigations other than those to which such sections 74 and 84 related. See Revision Note to section 224 of this title.

In this revised section, the language of section 84 of title 13, U.S.C., 1952 ed., was largely followed as probably being the more desirable, but "or other written receipt thereof" was inserted since there is no return receipt with respect to a telegram, and words "in any prosecution under such section" were inserted for the purpose of completeness.

Further, words "Secretary or other authorized officer or employee of the Department of Commerce or bureau or agency thereof" were substituted for references to the Director of the Census, to conform with 1950 Reorganization Plan No. 5, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

Changes were made in phraseology.

## AMENDMENTS

1976—Pub. L. 94-521 struck out "as authorized by section 224 of this title" after "telegram".

1957—Pub. L. 85-207 inserted "or certified" after "registered".

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-521 effective Oct. 17, 1976, see section 17 of Pub. L. 94-521, set out as a note under section 1 of this title.

## CHAPTER 9—COLLECTION AND PUBLICATION OF FOREIGN COMMERCE AND TRADE STATISTICS

Sec.  
301. Collection and publication.

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## AMENDMENTS

2002—Pub. L. 107-228, div. B, title XIV, § 1404(f)(2), Sept. 30, 2002, 116 Stat. 1456, added item 305 and struck out former item 305 "Violations, penalties".

## § 301. Collection and publication

(a) The Secretary is authorized to collect information from all persons exporting from, or importing into, the United States and the noncontiguous areas over which the United States exercises sovereignty, jurisdiction, or control, and from all persons engaged in trade between the United States and such noncontiguous areas and between those areas, or from the owners, or operators of carriers engaged in such foreign commerce or trade, and shall compile and publish such information pertaining to exports, imports, trade, and transportation relating thereto, as he deems necessary or appropriate to enable him to foster, promote, develop, and further the commerce, domestic and foreign, of the United States and for other lawful purposes.

(b) The Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, on quarterly and cumulative bases, statistics on United States imports for consumption and United States exports by country and by product. Statistics on United States imports shall be submitted in accordance with the Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes and general statistical note 1 thereof, in detail as follows:

- (1) net quantity;
- (2) United States customs value;
- (3) purchase price or its equivalent;
- (4) equivalent of arm's length value;
- (5) aggregate cost from port of exportation to United States port of entry;
- (6) a United States port of entry value comprised of (5) plus (4), if applicable, or, if not applicable, (5) plus (3); and
- (7) for transactions where (3) and (4) are equal, the total value of such transactions.

The data for paragraphs (1), (2), (3), (5), and (6) shall be reported separately for nonrelated and related party transactions, and shall also be reported as a total of all transactions.

(c) In submitting any information under subsection (b) with respect to exports, the Secretary shall state separately from the total value of all exports—

- (1)(A) the value of agricultural commodities exported under the Food for Peace Act, as amended; and
- (B) the total amount of all export subsidies paid to exporters by the United States under such Act for the exportation of such commodities; and

<sup>1</sup> So in original. Does not conform to section catchline.

(2) the value of goods exported under the Foreign Assistance Act of 1961.

(d) To assist the Secretary to carry out the provisions of subsections (b) and (c)—

(1) the Secretary of Agriculture shall furnish information to the Secretary concerning the value of agricultural commodities exported under provisions of the Food for Peace Act, as amended, and the total amounts of all export subsidies paid to exporters by the United States under such Act for the exportation of such commodities; and

(2) the Secretary of State shall furnish information to the Secretary concerning the value of goods exported under the provisions of the Foreign Assistance Act of 1961, as amended.

(e) There shall be reported, on monthly and cumulative bases, for each heading or subheading in the Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes, the United States port of entry value (as determined under subsection (b)(6)). There shall be reported, on monthly and cumulative bases, the balance of international trade for the United States reflecting (1) the aggregate value of all United States imports as reported in accordance with the first sentence of this subsection, and (2) the aggregate value of all United States exports. The information required to be reported under this subsection shall be reported in a form that is adjusted for economic inflation or deflation (on a constant dollar basis consistent with the reporting of the National Income and Product Accounts), and in a form that is not so adjusted.

(f) On or before January 1, 1981, and as often thereafter as may be necessary to reflect significant changes in rates, there shall be reported for each heading or subheading in the Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes, the ad valorem or ad valorem equivalent rate of duty which would have been required to be imposed on dutiable imports under that heading or subheading, if the United States customs values of such imports were based on the United States port of entry value (as reported in accordance with the first sentence of subsection (e)) in order to collect the same amount of duties on imports under that heading or subheading as are currently collected.

(g) Shippers' Export Declarations (or any successor document), wherever located, shall be exempt from public disclosure unless the Secretary determines that such exemption would be contrary to the national interest.

(h) The Secretary is authorized to require by regulation the filing of Shippers' Export Declarations under this chapter through an automated and electronic system for the filing of export information established by the Department of the Treasury.

(Added Pub. L. 87-826, §2, Oct. 15, 1962, 76 Stat. 951; amended Pub. L. 93-618, title VI, §609(a), Jan. 3, 1975, 88 Stat. 2074; Pub. L. 96-39, title XI, §1108(a), July 26, 1979, 93 Stat. 313; Pub. L. 96-275, §1, June 17, 1980, 94 Stat. 539; Pub. L. 100-418, title I, §§1214(a)(2), 1931(a), 1932, Aug. 23, 1988, 102 Stat. 1155, 1320; Pub. L. 106-113, div. B, §1000(a)(7) [div. B, title XII, §1252(a)], Nov. 29, 1999, 113 Stat.

1536, 1501A-506; Pub. L. 110-246, title III, §3001(b)(1)(A), (2)(M), June 18, 2008, 122 Stat. 1820.)

#### REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsecs. (b), (e), and (f), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

The Food for Peace Act, referred to in subsecs. (c)(1), (d)(1), is act July 10, 1954, ch. 649, 68 Stat. 454, which is classified generally to chapter 41 (§1691 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of Title 7 and Tables.

The Foreign Assistance Act of 1961, referred to in subsecs. (c)(2), (d)(2), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§2151 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

#### AMENDMENTS

2008—Subsecs. (c)(1)(A), (d)(1). Pub. L. 110-246 substituted "Food for Peace Act" for "Agricultural Trade Development and Assistance Act of 1954".

1999—Subsec. (h). Pub. L. 106-113 added subsec. (h).

1988—Subsec. (b). Pub. L. 100-418, §1214(a)(2)(A), substituted "Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes and general statistical note 1 thereof" for "Tariff Schedules of the United States Annotated and general statistical headnote 1 thereof".

Subsec. (e). Pub. L. 100-418, §1932, inserted at end "The information required to be reported under this subsection shall be reported in a form that is adjusted for economic inflation or deflation (on a constant dollar basis consistent with the reporting of the National Income and Product Accounts), and in a form that is not so adjusted."

Pub. L. 100-418, §1931(a), struck out at end "The values and balance of trade required to be reported by this subsection shall be released no later than 48 hours before the release of any other government statistics concerning values of United States imports or United States balance of trade, or statistics from which such values or balance may be derived."

Pub. L. 100-418, §1214(a)(2)(B), substituted "heading or subheading in the Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes" for "item in the Tariff Schedules of the United States Annotated" in first sentence.

Subsec. (f). Pub. L. 100-418, §1214(a)(2)(C), substituted "heading or subheading in the Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes" for "item of the Tariff Schedules of the United States Annotated" and "under that heading or subheading" for "under that item", in two places.

1980—Subsec. (g). Pub. L. 96-275 added subsec. (g).

1979—Subsecs. (e), (f). Pub. L. 96-39 added subsecs. (e) and (f).

1975—Pub. L. 93-618 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-246 effective May 22, 2008, see section 4(b) of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, §1000(a)(7) [div. B, title XII, §1252(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A-506, provided that: "The amendment made by subsection (a) [amending this section] shall take effect 270 days after

the Secretary of Commerce, the Secretary of the Treasury, and the Director of the National Institute of Standards and Technology jointly provide a certification to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives that a secure Automated Export System available through the Internet that is capable of handling the expected volume of information required to be filed under subsection (b) [set out below], plus the anticipated volume from voluntary use of the Automated Export System, has been successfully implemented and tested and is fully functional with respect to reporting all items on the United States Munitions List, including their quantities and destinations.” [The Automated Export System Certification Report was submitted to the Committee on Foreign Relations of the Senate on June 11, 2001, and to the Committee on International Relations of the House of Representatives on May 31, 2001. See 66 F.R. 39006.]

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1214(a)(2) of Pub. L. 100-418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100-418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-275, § 4, June 17, 1980, 94 Stat. 540, provided that:

“(a) Except as provided in subsection (b), this Act, and the amendments made by this Act [amending this section and enacting provisions set out as a note under this section], shall become effective on the later of July 1, 1980, or the date of enactment of this Act [June 17, 1980].

“(b) The amendment made by section 2 [amending section 93 of former Title 46, Shipping] shall become effective on the date which is forty-five days after the date of enactment of this Act [June 17, 1980].”

#### EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96-39, title XI, § 1108(b), July 26, 1979, 93 Stat. 314, provided that: “The amendment made by subsection (a) [amending this section] shall apply to reports made after December 31, 1979.”

#### EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93-618, title VI, § 609(b), Jan. 3, 1975, 88 Stat. 2075, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on January 1, 1975.”

#### EFFECTIVE DATE

Pub. L. 87-826, § 4, Oct. 15, 1962, 76 Stat. 953, provided that: “The provisions of this Act [enacting section 301 et seq. of this title and repealing sections 173, 174, 177, 179, 181, 184 to 187, and 193 of Title 15, Commerce and Trade, sections 92 and 95 of former Title 46, Shipping, and section 1486 of Title 48, Territories and Insular Possessions] shall take effect one hundred and eighty days after approval [Oct. 15, 1962], except that the last sentence of section 337, ‘Fifth’ of the Revised Statutes [section 174 of Title 15], and the requirement for oaths as found in section 4200 of the Revised Statutes [section 92 of former Title 46] shall be repealed effective on the date this Act is approved [Oct. 15, 1962].”

#### REGULATIONS

Pub. L. 106-113, div. B, § 1000(a)(7) [div. B, title XII, § 1252(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-506, provided that:

“(1) IN GENERAL.—The Secretary of Commerce, with the concurrence of the Secretary of State, shall publish regulations in the Federal Register to require that, upon the effective date of those regulations, exporters (or their agents) who are required to file Shippers’ Export Declarations under chapter 9 of title 13, United

States Code, file such Declarations through the Automated Export System with respect to exports of items on the United States Munitions List or the Commerce Control List.

“(2) ELEMENTS OF THE REGULATIONS.—The regulations referred to in paragraph (1) shall include at a minimum—

“(A) provision by the Department of Commerce for the establishment of on-line assistance services to be available for those individuals who must use the Automated Export System;

“(B) provision by the Department of Commerce for ensuring that an individual who is required to use the Automated Export System is able to print out from the System a validated record of the individual’s submission, including the date of the submission and a serial number or other unique identifier, where appropriate, for the export transaction; and

“(C) a requirement that the Department of Commerce print out and maintain on file a paper copy or other acceptable back-up record of the individual’s submission at a location selected by the Secretary of Commerce.”

#### IMPROVEMENTS TO THE AUTOMATED EXPORT SYSTEM

Pub. L. 107-228, div. B, title XIV, § 1404(a)-(c), Sept. 30, 2002, 116 Stat. 1454, provided that:

“(a) CONTRIBUTION TO THE AUTOMATED EXPORT SYSTEM.—Of the amount provided under section 1402 of this Act [116 Stat. 1453], \$250,000 is authorized to be available for the purpose of—

“(1) providing the Department [of State] with full access to the Automated Export System;

“(2) ensuring that the system is modified to meet the needs of the Department [of State], if such modifications are consistent with the needs of other United States Government agencies; and

“(3) providing operational support.

“(b) MANDATORY FILING.—The Secretary of Commerce, with the concurrence of the Secretary of State and the Secretary of [the] Treasury, shall publish regulations in the Federal Register to require, upon the effective date of those regulations, that all persons who are required to file export information under chapter 9 of title 13, United States Code, file such information through the Automated Export System.

“(c) REQUIREMENT FOR INFORMATION SHARING.—The Secretary [of State] shall conclude an information-sharing arrangement with the heads of the United States Customs Service and the Census Bureau—

“(1) to allow the Department [of State] to access information on controlled exports made through the United States Postal Service; and

“(2) to adjust the Automated Export System to parallel information currently collected by the Department.”

[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. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 of Title 6.]

#### VOLUMETRIC INDEX

Pub. L. 100-418, title I, § 1931(b), Aug. 23, 1988, 102 Stat. 1320, required the Director of the Census to conduct a study, to be reported to Congress by one year after Aug. 23, 1988, to determine the feasibility of developing and publishing an index that measures the real volume of merchandise trade on a monthly basis, which would

be reported simultaneously with the balance of merchandise trade for the United States.

#### CONGRESSIONAL ACCESS TO INFORMATION

Pub. L. 96-275, § 3, June 17, 1980, 94 Stat. 540, provided that: "Nothing in this Act [enacting subsec. (g) of this section, amending section 93 of former Title 46, Shipping, and enacting provisions set out as notes under this section] shall be construed as authorizing the withholding of information from Congress."

#### DEFINITIONS

Pub. L. 106-113, div. B, § 1000(a)(7) [div. B, title XII, subtitle E, § 1256], Nov. 29, 1999, 113 Stat. 1536, 1501A-507, provided that: "In this subtitle [amending this section and enacting provisions set out as notes above]:

"(1) AUTOMATED EXPORT SYSTEM.—The term 'Automated Export System' means the automated and electronic system for filing export information established under chapter 9 of title 13, United States Code, on June 19, 1995 (60 Federal Register 32040).

"(2) COMMERCE CONTROL LIST.—The term 'Commerce Control List' has the meaning given the term in section 774.1 of title 15, Code of Federal Regulations.

"(3) SHIPPERS' EXPORT DECLARATION.—The term 'Shippers' Export Declaration' means the export information filed under chapter 9 of title 13, United States Code, as described in part 30 of title 15, Code of Federal Regulations.

"(4) UNITED STATES MUNITIONS LIST.—The term 'United States Munitions List' means the list of items controlled under section 38 of the Arms Export Control Act (22 U.S.C. 2778)."

### § 302. Rules, regulations, and orders

The Secretary may make such rules, regulations, and orders as he deems necessary or appropriate to carry out the provisions of this chapter. Any rules, regulations, or orders issued pursuant to this authority may be established in such form or manner, may contain such classifications or differentiations, and may provide for such adjustments and reasonable exceptions as in the judgment of the Secretary are necessary or proper to effectuate the purpose of this chapter, or to prevent circumvention or evasion of any rule, regulation, or order issued hereunder. The Secretary may also provide by rule or regulation, for such confidentiality, publication, or disclosure, of information collected hereunder as he may deem necessary or appropriate in the public interest. Rules, regulations, and orders, or amendments thereto shall have the concurrence of the Secretary of the Treasury prior to promulgation.

(Added Pub. L. 87-826, § 2, Oct. 15, 1962, 76 Stat. 951.)

### § 303. Secretary of Treasury functions

To assist the Secretary to carry out the provisions of this chapter, the Secretary of the Treasury shall collect information in the form and manner prescribed by the regulations issued pursuant to this chapter from persons engaged in foreign commerce or trade and from the owners or operators of carriers.

(Added Pub. L. 87-826, § 2, Oct. 15, 1962, 76 Stat. 951; amended Pub. L. 107-228, div. B, title XIV, § 1404(d), Sept. 30, 2002, 116 Stat. 1454.)

#### AMENDMENTS

2002—Pub. L. 107-228 struck out "other than by mail," after "foreign commerce or trade".

### § 304. Filing export information, delayed filings, penalties for failure to file

(a) The information or reports in connection with the exportation or transportation of cargo required to be filed by carriers with the Secretary of the Treasury under any rule, regulation, or order issued pursuant to this chapter may be filed after the departure of such carrier from the port or place of exportation or transportation, whether such departing carrier is destined directly to a foreign port or place or to a noncontiguous area, or proceeds by way of other ports or places of the United States, provided that a bond in an approved form in a penal sum of \$10,000 is filed with the Secretary of the Treasury. The Secretary of Commerce may, by a rule, regulation, or order issued in conformity herewith, prescribe a maximum period after such departure during which the required information or reports may be filed. In the event any such information or report is not filed within such prescribed period, a penalty not to exceed \$1,000 for each day's delinquency beyond the prescribed period, but not more than \$10,000 per violation shall be exacted. Civil suit may be instituted in the name of the United States against the principal and surety for the recovery of any penalties that may accrue and be exacted in accordance with the terms of the bond.

(b) Any person, other than a person described in subsection (a), required to submit export information, shall file such information in accordance with any rule, regulation, or order issued pursuant to this chapter. In the event any such information or reports are not filed within such prescribed period, the Secretary of Commerce (and officers of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed \$1,000 for each day's delinquency beyond the prescribed period, but not more than \$10,000 per violation.

(c) The Secretary may remit or mitigate any penalty incurred for violations of this section and regulations issued pursuant thereto if, in his opinion, they were incurred without willful negligence or fraud, or other circumstances justify a remission or mitigation.

(Added Pub. L. 87-826, § 2, Oct. 15, 1962, 76 Stat. 952; amended Pub. L. 107-228, div. B, title XIV, § 1404(e), Sept. 30, 2002, 116 Stat. 1454.)

#### AMENDMENTS

2002—Subsec. (a). Pub. L. 107-228, § 1404(e)(1), substituted "a penal sum of \$10,000" for "the penal sum of \$1,000" in first sentence and "a penalty not to exceed \$1,000 for each day's delinquency beyond the prescribed period, but not more than \$10,000 per violation" for "a penalty not to exceed \$100 for each day's delinquency beyond the prescribed period, but not more than \$1,000," in third sentence.

Subsecs. (b), (c). Pub. L. 107-228, § 1404(e)(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

### § 305. Penalties for unlawful export information activities

(a) CRIMINAL PENALTIES.—

(1) FAILURE TO FILE; SUBMISSION OF FALSE OR MISLEADING INFORMATION.—Any person who knowingly fails to file or knowingly submits false or misleading export information through the Shippers Export Declaration