

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 of 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) [now 2101(12), (13), and (14)] 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 Rule¹ 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.

(4) Venue

Any civil action brought under paragraph (1) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28. Process in such action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

(5) No private right of action

No private right of action is created under this subsection.

(6) Limitation

No civil action may be brought under paragraph (1) against—

(A) the United States;

(B) an Indian Tribe or tribal organization, to the extent such tribe or tribal organization is lawfully carrying out a contract or compact under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 et seq.]; or

(C) any employee of the United States or such Indian tribe or tribal organization, provided such agent or employee is acting in the usual course of business or employment,

and within the scope of the official duties of such agent or employee therewith.

(Pub. L. 91-513, title II, §512, Oct. 27, 1970, 84 Stat. 1278; Pub. L. 110-425, §3(h), Oct. 15, 2008, 122 Stat. 4830.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsecs. (a), (b), and (c)(2)(C), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

This subchapter, referred to in subsecs. (a) and (c)(2)(A), was in the original "this title", meaning title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act". For complete classification of title II to the Code, see second paragraph of Short Title note set out under section 801 of this title and Tables.

This chapter, referred to in subsec. (c)(3), was in the original "this Act", meaning Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1236. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(6)(B), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to chapter 46 (§5301 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 25 and Tables.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-425 added subsec. (c).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-425 effective 180 days after Oct. 15, 2008, except as otherwise provided, see section 3(j) of Pub. L. 110-425, set out as a note under section 802 of this title.

§ 883. Enforcement proceedings

Before any violation of this subchapter is reported by the Administrator of the Drug Enforcement Administration to any United States attorney for institution of a criminal proceeding, the Administrator may require that the person against whom such proceeding is contemplated is given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

(Pub. L. 91-513, title II, §513, Oct. 27, 1970, 84 Stat. 1278; Pub. L. 96-132, §16(c), Nov. 30, 1979, 93 Stat. 1049.)

AMENDMENTS

1979—Pub. L. 96-132 substituted "Administrator of the Drug Enforcement Administration" for "Director of the Bureau of Narcotics and Dangerous Drugs" and "Administrator may" for "Director may".

§ 884. Immunity and privilege

(a) Refusal to testify

Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before a court or grand jury of the United States, involving a violation of this subchapter, and the person presiding over the proceeding communicates to the witness an order issued under this section, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. But no testimony or other information compelled under the order is—

¹ So in original. Probably should be "Rules".