

- (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.)

Editorial Notes

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".

Statutory Notes and Related Subsidiaries

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.

§ 987. Anti-terrorist forfeiture protection

(a) RIGHT TO CONTEST.—An owner of property that is confiscated under any provision of law relating to the confiscation of assets of suspected international terrorists, may contest that confiscation by filing a claim in the manner set forth in the Federal Rules of Civil Procedure (Supplemental Rules for Certain Admiralty and Maritime Claims), and asserting as an affirmative defense that—

- (1) the property is not subject to confiscation under such provision of law; or
- (2) the innocent owner provisions of section 983(d) of title 18, United States Code, apply to the case.

(b) EVIDENCE.—In considering a claim filed under this section, a court may admit evidence that is otherwise inadmissible under the Federal Rules of Evidence, if the court determines that the evidence is reliable, and that compliance with the Federal Rules of Evidence may jeopardize the national security interests of the United States.

(c) CLARIFICATIONS.—

(1) PROTECTION OF RIGHTS.—The exclusion of certain provisions of Federal law from the definition of the term "civil forfeiture statute" in section 983(i) of title 18, United States Code, shall not be construed to deny an owner of property the right to contest the confiscation of assets of suspected international terrorists under—

- (A) subsection (a) of this section;
- (B) the Constitution; or
- (C) subchapter II of chapter 5 of title 5, United States Code (commonly known as the "Administrative Procedure Act").

(2) SAVINGS CLAUSE.—Nothing in this section shall limit or otherwise affect any other remedies that may be available to an owner of property under section 983 of title 18, United States Code, or any other provision of law.

(Added Pub. L. 109-177, title IV, §406(b)(1)(B), Mar. 9, 2006, 120 Stat. 244.)

Editorial Notes

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure. The Supplemental Rules for Certain Admiralty and Maritime Claims, which are set out as part of the Federal Rules of Civil Procedure, were renamed the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

The Federal Rules of Evidence, referred to in subsec. (b), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 107-56, title III, §316(a)-(c), Oct. 26, 2001, 115 Stat. 309, which was set out as a note under section 983 of this title, prior to repeal by Pub. L. 109-177, §406(b)(2).

CHAPTER 47—FRAUD AND FALSE STATEMENTS

- Sec. 1001. Statements or entries generally.
- 1002. Possession of false papers to defraud United States.
- 1003. Demands against the United States.
- 1004. Certification of checks.
- 1005. Bank entries, reports and transactions.
- 1006. Federal credit institution entries, reports and transactions.
- 1007. Federal Deposit Insurance Corporation transactions.
- [1008, 1009. Repealed.]
- 1010. Department of Housing and Urban Development and Federal Housing Administration transactions.