

U.S. Department of Justice
Washington, D.C.



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Compilation of Selected Federal Asset Forfeiture Statutes

*Revised
Current as of August 1995*

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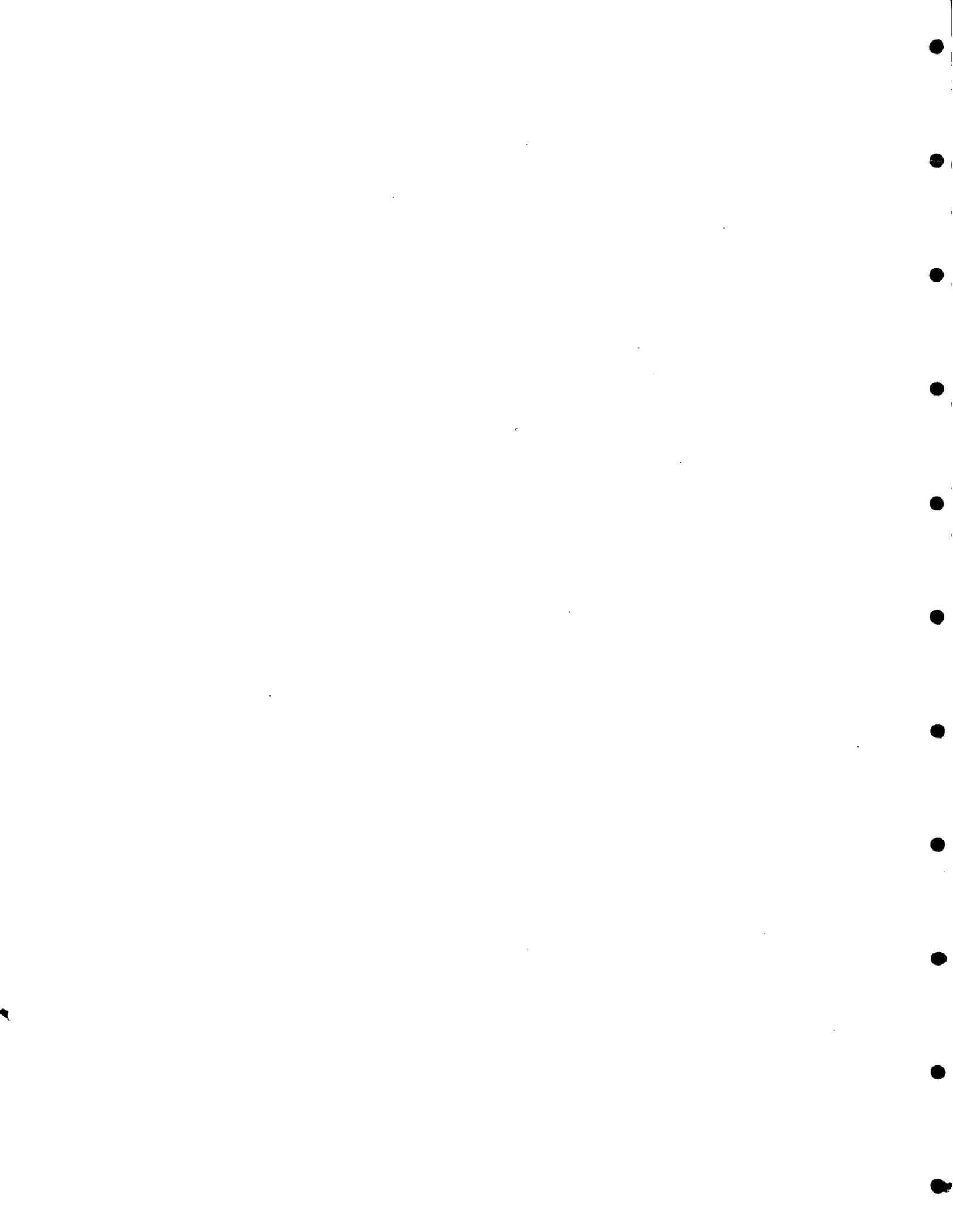
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Compilation of Selected
Federal Asset Forfeiture
Statutes



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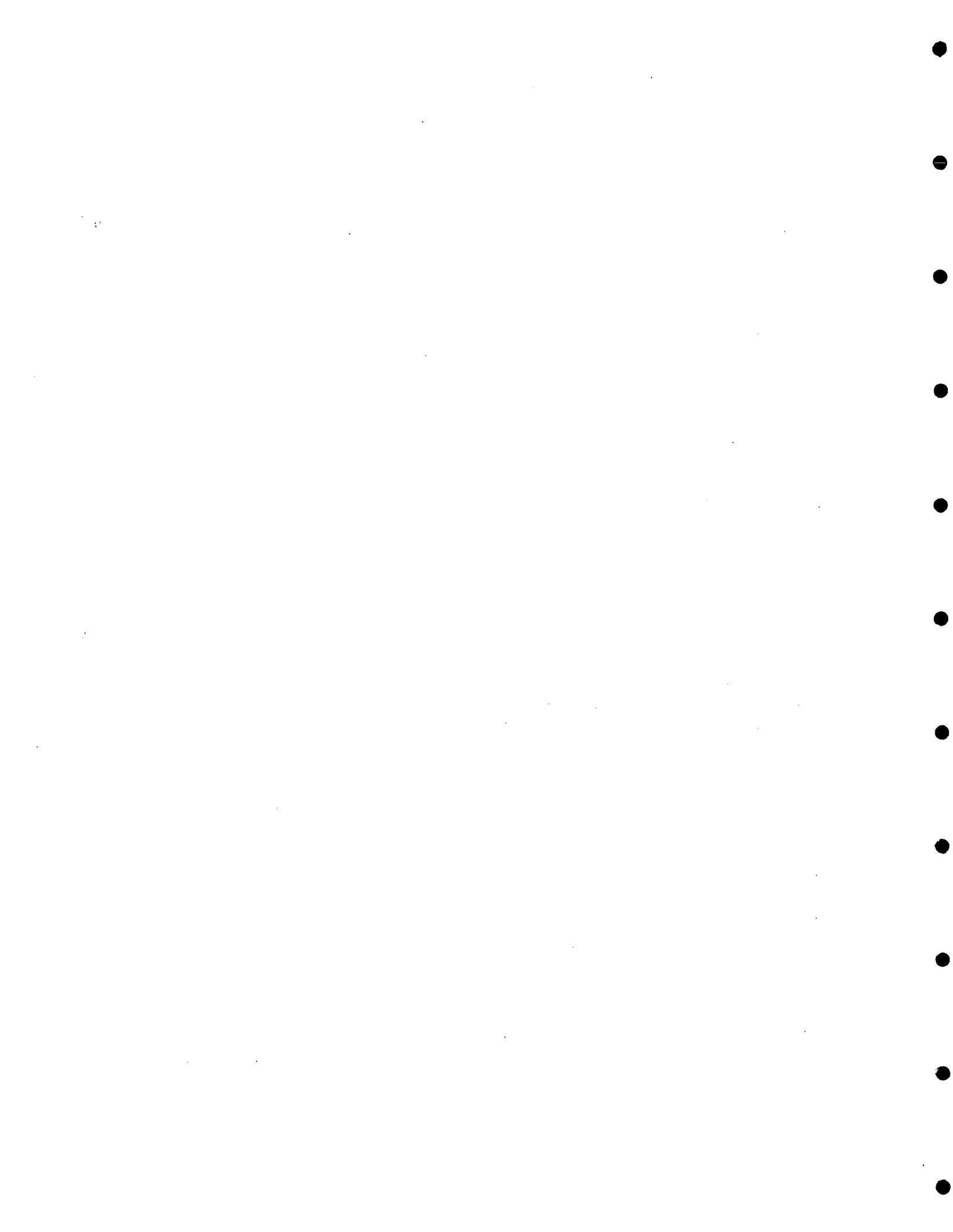
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ACQUISITIONS

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Revised: July 1995



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Automobile Parts

■ **18 U.S.C. § 512 / Forfeiture of certain motor vehicles and motor vehicle parts**

(a) If an identification number for a motor vehicle or motor vehicle part is removed, obliterated, tampered with, or altered, such vehicle or part shall be subject to seizure and forfeiture to the United States unless –

(1) in the case of a motor vehicle part, such part is attached to a motor vehicle and the owner of such motor vehicle does not know that the identification number has been removed, obliterated, tampered with, or altered;

(2) such motor vehicle or part has a replacement identification number that –

(A) is authorized by the Secretary of Transportation under the National Traffic and Motor Vehicle Safety Act of 1966; or

(B) conforms to applicable State law;

(3) such removal, obliteration, tampering, or alteration is caused by collision or fire or is carried out as described in section 511(b) of this title; or

(4) such motor vehicle or part is in the possession or control of a motor vehicle scrap processor who does not know that such identification number was removed, obliterated, tampered with, or altered in any manner other than by collision or fire or as described in section 511(b) of this title.

(b) All provisions of law relating to –

(1) the seizure and condemnation of vessels, vehicles, merchandise, and baggage for violation of customs laws, and procedures for summary and judicial forfeiture applicable to such violations;

(2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such disposition;

(3) the remission or mitigation of such forfeiture; and

(4) the compromise of claims and the award of compensation to informers with respect to such forfeiture;

shall apply to seizures and forfeitures under this section, to the extent that such provisions are not inconsistent with this section. The duties of the collector of customs or any other person

(iv) payments made pursuant to guidelines promulgated by the Attorney General if such payments are necessary and directly related to seizure and forfeiture program expenses for-

(I) the purchase or lease of automatic data processing systems (not less than a majority of which use will be related to such program);

(II) training;

(III) printing;

(IV) the storage, protection, and destruction of controlled substances; and

(V) contracting for services directly related to the identification of forfeitable assets, and the processing of and accounting for forfeitures;

(B) the payment of awards for information or assistance directly relating to violations of the criminal drug laws of the United States or of sections 1956 and 1957 of title 18, sections 5313 and 5324 of title 31, and section 6050I of the Internal Revenue Code of 1986;

(C) at the discretion of the Attorney General, the payment of awards for information or assistance leading to a civil or criminal forfeiture involving any Federal agency participating in the Fund;

(D) the compromise and payment of valid liens and mortgages against property that has been forfeited pursuant to any law enforced or administered by the Department of Justice, subject to the discretion of the Attorney General to determine the validity of any such lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in State real estate law as necessary;

(E) disbursements authorized in connection with remission or mitigation procedures relating to property forfeited under any law enforced or administered by the Department of Justice;

(F) (i) for equipping for law enforcement functions of any Government-owned or leased vessel, vehicle, or aircraft available for official use by any Federal agency participating in the Fund;

(ii) for equipping any vessel, vehicle, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist law enforcement functions if the vessel, vehicle, or aircraft will be used in a joint law enforcement operation with a Federal agency participating in the Fund; and

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(iii) payments for other equipment directly related to seizure or forfeiture, including laboratory equipment, protective equipment, communications equipment, and the operation and maintenance costs of such equipment;

(G) for purchase of evidence of any violation of the Controlled Substances Act, the Controlled Substances Import and Export Act, chapter 96 of title 18, or sections 1956 and 1957 of title 18;

(H) the payment of State and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order; and

(I)¹ payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State or local law enforcement officers that are incurred in a joint law enforcement operation with a Federal law enforcement agency participating in the Fund;

(I)² after all reimbursements and program-related expenses have been met at the end of fiscal year 1989, the Attorney General may transfer deposits from the Fund to the building and facilities account of the Federal prison system for the construction of correctional institutions.

Amounts for paying the expenses authorized by subparagraphs (A)(ii), (B), (C), (F), and (G) shall be specified in appropriations Acts and may be used under authorities available to the organization receiving the funds. Amounts for other authorized expenditures and payments from the Fund, including equitable sharing payments, are not required to be specified in appropriations acts. The Attorney General may exempt the procurement of contract services under subparagraph (A) under the fund³ from section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 and following), and other provisions of law as may be necessary to maintain the security and confidentiality of related criminal investigations.

(2) Any award paid from the Fund for information, as provided in paragraph (1)(B) or (C), shall be paid at the discretion of the Attorney General or his delegate, under existing departmental delegation policies for the payment of awards, except that the authority to pay an award of \$250,000 or more shall not be delegated to any person other than the Deputy Attorney General, the Associate Attorney General, the Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement

¹So in original. Two paragraphs (I) were enacted.

²So in original. Two paragraphs (I) were enacted.

³So in original. Probably should be followed by a comma.

Administration. Any award for information pursuant to paragraph (1)(B) shall not exceed \$250,000. Any award for information pursuant to paragraph (1)(C) shall not exceed the lesser of \$250,000 or one-fourth of the amount realized by the United States from the property forfeited.

(3) Any amount under subparagraph (F) of paragraph (1) shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay \$100,000 or more may be delegated only to the respective head of the agency involved.

(4) There shall be deposited in the Fund-

(A) all amounts from the forfeiture of property under any law enforced or administered by the Department of Justice, except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)), or the Postmaster General of the United States pursuant to 39 U.S.C. 2003(b)(7);

(B) all amounts representing the Federal equitable share from the forfeiture of property under any Federal, State, local or foreign law, for any Federal agency participating in the Fund; and

(C) all amounts transferred by the Secretary of the Treasury pursuant to section 9703(g)(4)(A)(ii) of title 31.

(5) Amounts in the Fund, and in any holding accounts associated with the Fund⁴ which are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States and all earnings on such investments shall be deposited in the Fund.

(6) The Attorney General shall transmit to the Congress, not later than 4 months after the end of each fiscal year, detailed reports as follows:

(A) a report on-

(i) the estimated total value of property forfeited under any law enforced or administered by the Department of Justice with respect to which funds were not deposited in the Fund; and

(ii) the estimated total value of all such property transferred to any State or local law enforcement agency;

(B) a report on-

⁴So in original. Probably should be "subparagraph."

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- (i) the Fund's beginning balance;
- (ii) sources of receipts (seized cash, conveyances, and others);
- (iii) liens and mortgages paid and amount of money shared with State and local law enforcement agencies;
- (iv) the net amount realized from the year's operations, amount of seized cash being held as evidence, and the amount of money legally allowed to be carried over to next year;
- (v) any defendant's property, not forfeited at the end of the preceding fiscal year, if the equity in such property is valued at \$1,000,000 or more; and
- (vi) year-end Fund balance;

C) a report for such fiscal year, containing audited financial statements, in the form prescribed by the Attorney General, in consultation with the Comptroller General, including profit and loss information with respect to forfeited property (by category), and financial information on forfeited property transactions (by type of disposition).

The report should also contain all annual audit reports from State and local law enforcement agencies required to be reported to the Attorney General under subparagraph (B) of paragraph (7); and

(D) a report for such fiscal year containing a description of the administrative and contracting expenses paid from the Fund under paragraph (1)(A).

(7) (A) The Fund shall be subject to annual audit by the Comptroller General.

(B) The Attorney General shall require that any State or local law enforcement agency receiving funds conduct an annual audit detailing the uses and expenses to which the funds were dedicated and the amount used for each use or expense and report the results of the audit to the Attorney General.

(8) The provisions of this subsection relating to deposits in the Fund shall apply to all property in the custody of the Department of Justice on or after the effective date of the Comprehensive Forfeiture Act of 1983.

(9) (A) There are authorized to be appropriated such sums as necessary for the purposes described in subparagraphs (A)(iv), (B), (C), (F), (G), and

(H) of paragraph (1).

(B) Subject to subparagraphs (C) and (D), at the end of each of fiscal years 1994, 1995, 1996, and 1997, the Attorney General shall transfer from the Fund not more than \$100,000,000 to the Special Forfeiture Fund established by section 6073 of the Anti-Drug Abuse Act of 1988.

(C) Transfers under subparagraph (B) may be made only from the excess unobligated balance and may not exceed one-half of the excess unobligated balance for any year. In addition, transfers under subparagraph (B) may be made only to the extent that the sum of the transfers in a fiscal year and one-half of the unobligated balance at the beginning of that fiscal year for the Special Forfeiture Fund does not exceed \$100,000,000.

(D) For the purpose of determining amounts available for distribution at year end for any fiscal year, "excess unobligated balance" means the unobligated balance of the Fund generated by that fiscal year's operations, less any amounts that are required to be retained in the Fund to ensure the availability of amounts in the subsequent fiscal year for purposes authorized under paragraph (1).

(E) Subject to the notification procedures contained in section 605 of Public Law 103-121, and after satisfying the transfer requirement in subparagraph (B) above, any excess unobligated balance remaining in the Fund on September 30, 1994 shall be available to the Attorney General, without fiscal year limitation, for any Federal law enforcement, litigative/prosecutive, and correctional activities, or any other authorized purpose of the Department of Justice. Any amounts provided pursuant to this section may be used under authorities available to the organization receiving the funds.

(10) Following the completion of procedures for the forfeiture of property pursuant to any law enforced or administered by the Department, the Attorney General is authorized, at his discretion, to warrant clear title to any subsequent purchaser or transferee of such forfeited property.

(11) The Attorney General shall transfer from the Fund to the Secretary of the Treasury for deposit in the Department of the Treasury Forfeiture Fund amounts appropriate to reflect the degree of participation of the Department of the Treasury law enforcement organizations (described in section 9703(p) of title 31) in the law enforcement effort resulting in the forfeiture pursuant to laws enforced or administered by the Department of Justice.

(12) For purposes of this subsection and notwithstanding section 9703 of title 31 or any other law, property is forfeited pursuant to a law enforced or administered by the Department of Justice if it is forfeited pursuant to-

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(A) a judicial forfeiture proceeding when the underlying seizure was made by an officer of a Federal law enforcement agency participating in the Department of Justice Assets Forfeiture Fund or the property was maintained by the United States Marshals Service; or

(B) a civil administrative forfeiture proceeding conducted by a Department of Justice law enforcement component.

■ ■ ■ ■ ■ ■ ■ ■ ■ ■

■ 31 U.S.C. § 9703 / Treasury Forfeiture Fund

(a) In general. There is established in the Treasury of the United States a fund to be known as the "Department of the Treasury Forfeiture Fund" (referred to in this section as the "Fund"). The Fund shall be available to the Secretary, without fiscal year limitation, with respect to seizures and forfeitures made pursuant to any law (other than section 7301 or 7302 of the Internal Revenue Code of 1986) enforced or administered by the Department of the Treasury or the United States Coast Guard for the following law enforcement purposes:

- (1) (A) Payment of all proper expenses of seizure (including investigative costs incurred by a Department of the Treasury law enforcement organization leading to seizure) or the proceedings of forfeiture and sale, including the expenses of detention, inventory, security, maintenance, advertisement, or disposal of the property, and if condemned by a court and a bond for such costs was not given, the costs as taxed by the court.
- (B) Payment for –
 - (i) contract services;
 - (ii) the employment of outside contractors to operate and manage properties or to provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and
 - (iii) reimbursing any Federal, State, or local agency for any expenditures made to perform the functions described in this subparagraph.
- (C) Awards of compensation to informers under section 619 of the Tariff Act of 1930 (19 U.S.C. § 1619).
- (D) Satisfaction of –
 - (i) liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate Customs officer according to law; and

(ii) subject to the discretion of the Secretary, other valid liens and mortgages against property that has been forfeited pursuant to any law enforced or administered by a Department of the Treasury law enforcement organization. To determine the validity of any such lien or mortgage, the amount of payment to be made, and to carry out the functions described in this subparagraph, the Secretary may employ and compensate attorneys and other personnel skilled in State real estate law.

(E) Payment of amounts authorized by law with respect to remission and mitigation.

(F) Payment of claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)), in the amounts applicable to such claims at the time of seizure.

(G) Equitable sharing payments made to other Federal agencies, State and local law enforcement agencies, and foreign countries pursuant to section 616(c) of the Tariff Act of 1930 (19 U.S.C. 1616a(c)), section 981 of title 18, or subsection (h) of this section, and all costs related thereto.

(H) Payment for services of experts and consultants needed by a Department of the Treasury law enforcement organization to carry out the organization's duties relating to seizure and forfeiture.

(2) At the discretion of the Secretary –

(A) payment of awards for information or assistance leading to a civil or criminal forfeiture involving any Department of the Treasury law enforcement organization participating in the Fund;

(B) purchases of evidence or information by –

(i) a Department of the Treasury law enforcement organization with respect to –

(I) a violation of section 1956 or 1957 of title 18 (relating to money laundering); or

(II) a law, the violation of which may subject property to forfeiture under section 981 or 982 of title 18;

(ii) the United States Customs Service with respect to drug smuggling or a violation of section 542 or 545 of title 18 (relating to fraudulent customs invoices or smuggling);

(iii) the United States Secret Service with respect to a violation of –

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(I) section 1028, 1029, or 1030 or⁵ title 18;

(II) any law of the United States relating to coins, obligations, or securities of the United States or of a foreign government; or

(III) any law of the United States which the United States Secret Service is authorized to enforce relating to fraud or other criminal or unlawful activity in or against any federally insured financial institution, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation;

(iv) the United States Customs Service or the Internal Revenue Service with respect to a violation of chapter 53 of this title (relating to the Bank Secrecy Act); and

(v) the Bureau of Alcohol, Tobacco and Firearms with respect to a violation of –

(I) section 842(h) of title 18;

(II) section 844(d), (e), (f), (g), (h), or (i) of title 18; or

(III) section 924(c) of title 18;

(C) payment of costs for publicizing awards available under section 619 of the Tariff Act of 1930 (19 U.S.C. 1619);

(D) payment for equipment for any vessel, vehicle, or aircraft available for official use by a Department of the Treasury law enforcement organization to enable the vessel, vehicle, or aircraft to assist in law enforcement functions, and for other equipment directly related to seizure or forfeiture, including laboratory equipment, protective equipment, communications equipment, and the operation and maintenance costs of such equipment;

(E) the payment of claims against employees of the Customs Service settled by the Secretary under section 630 of the Tariff Act of 1930;

(F) payment for equipment for any vessel, vehicle, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the vessel, vehicle, or aircraft will be used in joint law enforcement operations with a Department of the Treasury law enforcement organization;

(G) payment of overtime salaries, travel, fuel, training, equipment, and other

⁵So in original. Probably should be "of."

similar costs of State or local law enforcement officers that are incurred in joint law enforcement operations with a Department of the Treasury law enforcement organization;

(H) reimbursement of private persons for expenses incurred by such persons in cooperating with a Department of the Treasury law enforcement organization in investigations and undercover law enforcement operations;

(I) payment for training foreign law enforcement personnel with respect to seizure or forfeiture activities of the Department of the Treasury; and

(J) payment made pursuant to guidelines promulgated by the Secretary, if such payment is necessary and directly related to seizure and forfeiture program expenses for –

(i) the purchase or lease of automatic data processing systems (not less than a majority of which use will be related to such program);

(ii) training;

(iii) printing; and

(iv) contracting for services directly related to –

(I) the identification of forfeitable assets;

(II) the processing of and accounting for forfeitures; and

(III) the storage, maintenance, protection, and destruction of controlled substances.

(b) Limitations. (1) Any payment made under subparagraph (D) or (E) of subsection (a)(1) with respect to a seizure or a forfeiture of property shall not exceed the value of the property at the time of the seizure.

(2) Any payment made under subsection (a)(1)(G) with respect to a seizure or forfeiture of property shall not exceed the value of the property at the time of disposition.

(3) The Secretary may exempt the procurement of contract services under the Fund from section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), and other provisions of law as may be necessary to maintain the security and confidentiality of related criminal investigations.

(4) The Secretary shall assure that any equitable sharing payment made to a State or local law enforcement agency pursuant to subsection (a)(1)(G) and any property transferred to a State or local law enforcement agency pursuant to subsection (h) –

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(A) has a value that bears a reasonable relationship to the degree of participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which forfeiture is based; and

(B) will serve to encourage further cooperation between the recipient State or local agency and Federal law enforcement agencies.

(5) Amounts transferred by the Attorney General pursuant to section 524(c)(1) of title 28, or by the Postmaster General pursuant to section 2003 of title 39, and deposited into the Fund pursuant to subsection (d), shall be available for Federal law enforcement related purposes of the Department of the Treasury law enforcement organizations.

(c) Funds available to United States Coast Guard. (1) The Secretary shall make available to the United States Coast Guard, from funds appropriated under subsection (g)(2) in excess of \$10,000,000 for a fiscal year, an amount equal to the net proceeds in the Fund derived from seizures by the Coast Guard.

(2) Funds made available under this subsection may be used to –

(A) pay for equipment for any vessel, vehicle, or aircraft available for official use by the United States Coast Guard to enable the vessel, vehicle, or aircraft to assist in law enforcement functions;

(B) pay for equipment for any vessel, vehicle, equipment, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the vessel, vehicle, or aircraft will be used in joint law enforcement operations with the United States Coast Guard;

(C) pay for overtime salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in joint law enforcement operations with the United States Coast Guard;

(D) pay for expenses incurred in bringing vessels into compliance with applicable environmental laws prior to disposal by sinking.

(d) Deposits and Credits. (1) With respect to fiscal year 1993, there shall be deposited into or credited to the Fund –

(A) all currency forfeited during fiscal year 1993, and all proceeds from forfeitures during fiscal year 1993, under any law enforced or administered by the United States Customs Service or the United States Coast Guard;

(B) all income from investments made under subsection (e); and

(C) all amounts representing the equitable share of the United States Customs Service or the United States Coast Guard from the forfeiture of property under any Federal, State, local, or foreign law.

(2) With respect to fiscal years beginning after fiscal year 1993, there shall be deposited into or credited to the Fund –

(A) all currency forfeited after fiscal year 1993, and all proceeds from forfeitures after fiscal year 1993, under any law (other than sections 7301 and 7302 of the Internal Revenue Code of 1986) enforced or administered by a Department of the Treasury law enforcement organization or the United States Coast Guard;

(B) all income from investments made under subsection (e); and

(C) all amounts representing the equitable share of a Department of the Treasury law enforcement organization or the United States Coast Guard from the forfeiture of property under any Federal, State, local, or foreign law.

(e) **Investments.** Amounts in the Fund, and in any holding accounts associated with the Fund, which are not currently needed for the purposes of this section may be kept on deposit or invested in obligations of, or guaranteed by, the United States and all earnings on such investments shall be deposited in the Fund.

(f) **Reports to Congress.** The Secretary shall transmit to the Congress, not later than February 1 of each year –

(1) a report on –

(A) the estimated total value of property forfeited with respect to which funds were not deposited in the Fund during the preceding fiscal year –

(i) under any law enforced or administered by the United States Customs Service or the United States Coast Guard, in the case of fiscal year 1993; and

(ii) under any law enforced or administered by the Department of the Treasury law enforcement organizations or the United States Coast Guard, in the case of fiscal years beginning after 1993; and

(B) the estimated total value of all such property transferred to any State or local law enforcement agency; and

(2) a report on –

(A) the balance of the Fund at the beginning of the preceding fiscal year;

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(B) liens and mortgages paid and the amount of money shared with Federal, State, local, and foreign law enforcement agencies during the preceding fiscal year;

(C) the net amount realized from the operations of the Fund during the preceding fiscal year, the amount of seized cash being held as evidence, and the amount of money that has been carried over into the current fiscal year;

(D) any defendant's property, not forfeited at the end of the preceding fiscal year, if the equity in such property is valued at \$1,000,000 or more;

(E) the total dollar value of uncontested seizures of monetary instruments having a value of over \$100,000 which, or the proceeds of which, have not been deposited into the Fund pursuant to subsection (d) within 120 days after seizure, as of the end of the preceding fiscal year;

(F) the balance of the Fund at the end of the preceding fiscal year;

(G) the net amount, if any, of the excess unobligated amounts remaining in the Fund at the end of the preceding fiscal year and available to the Secretary for Federal law enforcement related purposes;

(H) a complete set of audited financial statements (including a balance sheet, income statement, and cash flow analysis) prepared in a manner consistent with the requirements of the Chief Financial Officers Act of 1990 (Public Law 101-576); and

(I) an analysis of income and expenses showing the revenue received or lost –

(i) by property category (such as general property, vehicles, vessels, aircraft, cash, and real property); and

(ii) by type of disposition (such as sale, remission, cancellation, placement into official use, sharing with State and local agencies, and destruction).

The Fund shall be subject to annual financial audits as authorized in the Chief Financial Officers Act of 1990 (Public Law 101-576).

(g) Appropriations. (1) There are hereby appropriated from the Fund such sums as may be necessary to carry out the purposes described in subsection (a)(1).

(2) There are authorized to be appropriated from the Fund to carry out the purposes set forth in subsections (a)(2) and (c) not to exceed –

(A) \$25,000,000 for fiscal year 1993; and

(B) \$50,000,000 for each fiscal year after fiscal year 1993.

- (3) (A) Subject to subparagraphs (B) and (C), in each of fiscal years 1994 and 1995, the Secretary shall transfer from the Fund not more than \$10,000,000 to the Special Forfeiture Fund, established by section 6073 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 1509), for activities authorized under the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3171 et seq.).

(B) Transfers pursuant to subparagraph (A) shall be made only from excess unobligated amounts and only to the extent that, as determined by the Secretary, such transfers will not impair the future availability of amounts for the purposes described in subsection (a).

(C) The Secretary of the Treasury shall reserve an amount not to exceed \$30,000,000 from the unobligated balances remaining in the Customs Forfeiture Fund on September 30, 1992, and such amount shall be transferred to the Fund on October 1, 1992, or, if later, the date that is 15 days after the date of the enactment of this section. Such amount shall be available for any expenses or activities authorized under this section. At the end of fiscal year 1993, and at the end of each fiscal year thereafter, the Secretary shall reserve in the Fund an amount not to exceed \$50,000,000 of the unobligated balances in the Fund, or, if the Secretary determines that a greater amount is necessary for asset specific expenses, an amount equal to not more than 10 percent of the total obligations from the Fund in the preceding fiscal year.

- (4) (A) (i) After reserving any amount authorized by paragraph (3)(C), any unobligated balances remaining in the Fund on September 30, 1993, shall be deposited into the general fund of the Treasury of the United States.

(ii) Beginning in fiscal year 1994, and each fiscal year thereafter, the Secretary shall transfer to the Attorney General an amount agreed upon by the Secretary and the Attorney General (taking into account any amount transferred by the Secretary pursuant to paragraph (3)(A)). The amount transferred under this clause shall reflect the Department of the Treasury's pro rata share of the amount required to be transferred by the Attorney General pursuant to section 524(c)(9)(B) of title 28.

(B) After reserving any amount authorized by paragraph (3)(C) and after transferring any amount authorized by paragraph (3)(A), any unobligated balances remaining in the Fund on September 30, 1994, and on September 30 of each fiscal year thereafter, shall, subject to subparagraph (C), be available to the Secretary, without fiscal year limitation, for transfers pursuant to subparagraph (A)(ii) and for obligation or expenditure in connection with the law enforcement activities of any Federal agency or of a Department of the Treasury law enforcement organization.

(C) Any obligation or expenditure in excess of \$500,000 with respect to an unobligated balance described in subparagraph (B) may not be made by the

Availability of Appropriations

Secretary unless the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of such obligation or expenditure.

(h) Retention or transfer of property. (1) The Secretary may, with respect to any property forfeited under any law (other than section 7301 or 7302 of the Internal Revenue Code of 1986) enforced or administered by the Department of the Treasury –

(A) retain any of the property for official use; or

(B) transfer any of the property to –

(i) any other Federal agency; or

(ii) any State or local law enforcement agency that participated directly or indirectly in the seizure or forfeiture of the property.

(2) The Secretary may transfer any forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer –

(A) is one with which the Secretary of State has agreed;

(B) is authorized in an international agreement between the United States and the foreign country; and

(C) is made to a country which, if applicable, has been certified under section 481(h) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(h)).

(3) Nothing in this section shall affect the authority of the Secretary under section 981 of title 18 or section 616 of the Tariff Act of 1930 (19 U.S.C. 1616a).

(i) Regulations. The Secretary may prescribe such rules and regulations as may be necessary to carry out this section.

(j) Customs forfeiture fund. Notwithstanding any other provision of law –

(1) during any period when forfeited currency and proceeds from forfeitures under any law (other than section 7301 or 7302 of the Internal Revenue Code of 1986) enforced or administered by the Department of the Treasury or the United States Coast Guard, are required to be deposited in the Fund pursuant to this section –

(A) all moneys required to be deposited in the Customs Forfeiture Fund pursuant to section 613A of the Tariff Act of 1930 (19 U.S.C. 1613b) shall instead be deposited in the Fund; and

(B) no deposits or withdrawals may be made to or from the Customs Forfeiture Fund pursuant to section 613A of the Tariff Act of 1930 (19 U.S.C. 1613b); and

(2) any funds in the Customs Forfeiture Fund and any obligations of the Customs Forfeiture Fund on the effective date of the Treasury Forfeiture Act of 1992, shall be transferred to the Fund and all administrative costs of such transfer shall be paid for out of the Fund.

(k) Limitation of liability. The United States shall not be liable in any action relating to property transferred under this section or under section 616 of the Tariff Act of 1930 (19 U.S.C. 1616a) if such action is based on an act or omission occurring after the transfer.

(l) Authority to warrant title. Following the completion of procedures for the forfeiture of property pursuant to any law enforced or administered by the Department of the Treasury, the Secretary is authorized, at the Secretary's discretion, to warrant clear title to any subsequent purchaser or transferee of such forfeited property.

(m) Forfeited property. For purposes of this section and notwithstanding section 524(c)(11) of title 28 or any other law –

(1) during fiscal year 1993, property and currency shall be deemed to be forfeited pursuant to a law enforced or administered by the United States Customs Service if it is forfeited pursuant to –

(A) a judicial forfeiture proceeding when the underlying seizure was made by an officer of the United States Customs Service or the property was maintained by the United States Customs Service; or

(B) a civil administrative forfeiture proceeding conducted by the United States Customs Service; and

(2) after fiscal year 1993, property and currency shall be deemed to be forfeited pursuant to a law enforced or administered by a Department of the Treasury law enforcement organization if it is forfeited pursuant to –

(A) a judicial forfeiture proceeding when the underlying seizure was made by an officer of a Department of the Treasury law enforcement organization or the property was maintained by a Department of the Treasury law enforcement organization; or

(B) a civil administrative forfeiture proceeding conducted by a Department of the Treasury law enforcement organization.

(n) Transfers to attorney general and postmaster general. (1) The Secretary shall transfer from the Fund to the Attorney General for deposit in the Department of Justice Assets Forfeiture Fund amounts appropriate to reflect the degree of participation of participating Federal agencies in the law enforcement effort resulting in the forfeiture pursuant to laws enforced or administered by a Department of the Treasury law enforcement organization. For purposes of the preceding sentence, a "participating Federal agency" is an agency that participates in the Department of Justice Assets Forfeiture Fund.

Civil Procedure

(2) The Secretary shall transfer from the Fund to the Postmaster General for deposit in the Postal Service Fund amounts appropriate to reflect the degree of participation of the United States Postal Service in the law enforcement effort resulting in the forfeiture pursuant to laws enforced or administered by a Department of the Treasury law enforcement organization.

(o) **Bureau of Alcohol, Tobacco and Firearms.** (1) Except as provided in paragraph (2) and section 5872(b) of the Internal Revenue Code of 1986, the provisions of law relating to –

(A) the seizure, summary and judicial forfeiture, and condemnation of property for violation of Customs laws,

(B) the remission or mitigation of such forfeiture, and

(C) the compromise of claims,

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any applicable law enforced or administered by the Bureau of Alcohol, Tobacco and Firearms.

(2) For purposes of paragraph (1), duties that are imposed upon a Customs officer or any other person with respect to the seizure and forfeiture of property under the Customs laws of the United States shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or any other person as may be authorized or designated for that purpose by the Secretary.

(p) **Definitions.** For purposes of this section –

(1) **Department of the Treasury Law Enforcement Organization.** The term “Department of the Treasury law enforcement organization” means the United States Customs Service, the United States Secret Service, the Bureau of Alcohol, Tobacco and Firearms, the Internal Revenue Service, the Federal Law Enforcement Training Center, the Financial Crimes Enforcement Network, and any other law enforcement component of the Department of the Treasury so designated by the Secretary.

(2) **Secretary.** The term “Secretary” means the Secretary of the Treasury.

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Civil Procedure

■ 28 U.S.C. § 2461 / Mode of Recovery

(a) Whenever a civil fine, penalty or pecuniary forfeiture is prescribed for the violation of an Act of Congress without specifying the mode of recovery or enforcement thereof, it may be

recovered in a civil action.

(b) Unless otherwise provided by Act of Congress, whenever a forfeiture of property is prescribed as a penalty for violation of an Act of Congress and the seizure takes place on the high seas or on navigable waters within the admiralty and maritime jurisdiction of the United States, such forfeiture may be enforced by libel in admiralty but in cases of seizures on land the forfeiture may be enforced by a proceeding by libel which shall conform as near as may be to proceedings in admiralty.



■ 28 U.S.C. § 2465 / Return of property to claimant; certificate of reasonable cause; liability for wrongful seizure

Upon the entry of judgment for the claimant in any proceeding to condemn or forfeit property seized under any Act of Congress, such property shall be returned forthwith to the claimant or his agent; but if it appears that there was reasonable cause for the seizure, the court shall cause a proper certificate thereof to be entered and the claimant shall not, in such case, be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution.



Copyright Infringement and Remedies

■ 17 U.S.C. § 509 / Seizure and forfeiture

(a) All copies or phonorecords manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in violation of section 506(a), and all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced, and all electronic, mechanical, or other devices for manufacturing, reproducing, or assembling such copies or phonorecords may be seized and forfeited to the United States.

(b) The applicable procedures relating to (i) the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violations of the customs laws contained in title 19, (ii) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof, (iii) the remission or mitigation of such forfeiture, (iv) the compromise of claims, and (v) the award of compensation to informers in respect of such forfeitures, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section; except that such duties as are imposed upon any officer or employee of the Treasury Department or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the provisions of the customs laws contained in title 19 shall be performed with respect to seizure and forfeiture of all articles described in

Counterfeiting and Forgery/Criminal Procedure

subsection (a) by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

Counterfeiting and Forgery

■ 18 U.S.C. § 492 / Forfeiture of counterfeit paraphernalia

All counterfeits of any coins or obligations or other securities of the United States or of any foreign government, or any articles, devices and other things made, possessed, or used in violation of this chapter or of sections 331-333, 335, 336, 642, or 1720, of this title, or any material or apparatus used or fitted or intended to be used, in the making of such counterfeits, articles, devices or things, found in the possession of any person without authority from the Secretary of the Treasury or other proper officer, shall be forfeited to the United States.

Whoever, having the custody or control of any such counterfeits, material, apparatus, articles, devices, or other things, fails or refuses to surrender possession thereof upon request by any authorized agent of the Treasury Department, or other proper officer, shall be fined not more than \$100 or imprisoned not more than one year, or both.

Whenever, except as hereinafter in this section provided, any person interested in any article, device, or other thing, or material or apparatus seized under this section files with the Secretary of the Treasury, before the disposition thereof, a petition for the remission or mitigation of such forfeiture, the Secretary of the Treasury, if he finds that such forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or the mitigation of such forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just.

If the seizure involves offenses other than offenses against the coinage, currency, obligations or securities of the United States or any foreign government, the petition for the remission or mitigation of forfeiture shall be referred to the Attorney General, who may remit or mitigate the forfeiture upon such terms as he deems reasonable and just.

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Criminal Procedure

■ 18 U.S.C. § 3554 / Order of criminal forfeiture

The court, in imposing a sentence on a defendant who has been found guilty of an offense described in section 1962 of this title or in title II or III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 shall order, in addition to the sentence that is

imposed pursuant to the provisions of section 3551, that the defendant forfeit property to the United States in accordance with the provisions of section 1963 of this title or section 413 of the Comprehensive Drug Abuse and Control Act of 1970.

Currency and Monetary Instrument Reports (CMIR)

■ 31 U.S.C. § 5317 / Search and forfeiture of monetary instruments

(a) The Secretary of the Treasury may apply to a court of competent jurisdiction for a search warrant when the Secretary reasonably believes a monetary instrument is being transported and a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement. The Secretary shall include a statement of information in support of the warrant. On a showing of probable cause, the court may issue a search warrant for a designated person or a designated or described place or physical object. This subsection does not affect the authority of the Secretary under another law.

(b) Searches at border. For purposes of ensuring compliance with the requirements of section 5316, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering or departing from the United States.

(c) If a report required under section 5316 with respect to any monetary instrument is not filed (or if filed, contains a material omission or misstatement of fact), the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized and forfeited to the United States Government. Any property, real or personal, involved in a transaction or attempted transaction in violation of section 5324(b), or any property traceable to such property, may be seized and forfeited to the United States Government. A monetary instrument transported by mail or a common carrier, messenger, or bailee is being transported under this subsection from the time the instrument is delivered to the United States Postal Service, common carrier, messenger, or bailee through the time it is delivered to the addressee, intended recipient, or agent of the addressee or intended recipient without being transported further in, or taken out of, the United States.

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Customs Forfeitures

■ 19 U.S.C. § 1595a / Importation offenses

(a) Seizure and forfeiture of transport vehicles. Except as specified in subsection (b) or (c)

Customs Forfeitures

of section 1594 of this title, every vessel, vehicle, animal, aircraft, or other thing used in, to aid in, or to facilitate, by obtaining information or in any other way, the importation, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced, into the United States contrary to law, whether upon such vessel, vehicle, animal, aircraft, or other thing or otherwise, may be seized and forfeited together with its tackle, apparel, furniture, harness, or equipment.

(b) Penalty for aiding unlawful importation. Every person who directs, assists financially or otherwise, or is in any way concerned in any unlawful activity mentioned in the preceding subsection shall be liable to a penalty equal to the value of the article or articles introduced or attempted to be introduced.

(c) Seizure and forfeiture of merchandise. Merchandise which is introduced or attempted to be introduced into the United States contrary to law shall be treated as follows:

(1) The merchandise shall be seized and forfeited if it –

(A) is stolen, smuggled, or clandestinely imported or introduced;

(B) is a controlled substance, as defined in the Controlled Substances Act (21 U.S.C. 801 et seq.), and is not imported in accordance with applicable law; or

(C) is a contraband article, as defined in section 781 of the Appendix to Title 49.

(2) The merchandise may be seized and forfeited if –

(A) its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute;

(B) its importation or entry requires a license, permit or other authorization of an agency of the United States Government and the merchandise is not accompanied by such license, permit, or authorization;

(C) it is merchandise or packaging in which copyright, trademark, or trade name protection violations are involved (including, but not limited to, violations of section 1124, 1125, or 1127 of Title 15, section 506 or 509 of Title 17, or section 2318 or 2320 of Title 18);

(D) it is trade dress merchandise involved in the violation of a court order citing section 1125 of Title 15;

(E) it is merchandise which is marked intentionally in violation of section 1304 of this title; or

(F) it is merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been marked in violation of section 1304 of this title.

(3) If the importation or entry of the merchandise is subject to quantitative restrictions requiring a visa, permit, license, or other similar document, or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement, the merchandise shall be subject to detention in accordance with section 1499 of this title unless the appropriate visa, license, permit, or similar document or stamp is presented to the Customs Service; but if the visa, permit, license, or similar document or stamp which is presented in connection with the importation or entry of the merchandise is counterfeit, the merchandise may be seized and forfeited.

(4) If the merchandise is imported or introduced contrary to a provision of law which governs the classification or value of merchandise and there are no issues as to the admissibility of the merchandise into the United States, it shall not be seized except in accordance with section 1592 of this title.

(5) In any case where the seizure and forfeiture of merchandise are required or authorized by this section, the Secretary may –

(A) remit the forfeiture under section 1618 of this title, or

(B) permit the exportation of the merchandise, unless its release would adversely affect health, safety, or conservation or be in contravention of a bilateral or multilateral agreement or treaty.

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■ 19 U.S.C. § 1602 / Seizure; report to customs officer

It shall be the duty of any officer, agent, or other person authorized by law to make seizures of merchandise or baggage subject to seizure for violation of the customs laws, to report every such seizure immediately to the appropriate customs officer for the district in which such violation occurred, and to turn over and deliver to such customs officer any vessel, vehicle, aircraft, merchandise, or baggage seized by him, and to report immediately to such customs officer every violation of the customs laws.

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■ 19 U.S.C. § 1603 / Seizure; warrants and reports

(a) Process for search warrant. Any property which is subject to forfeiture to the United States for violation of the customs laws and which is not subject to search and seizure in accordance with the provisions of section 1595 of this title, may be seized by the appropriate

Customs Forfeitures

officer or person upon process issued in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure. This authority is in addition to any seizure authority otherwise provided by law.

(b) Customs officer's reports. Whenever a seizure of merchandise for violation of the customs laws is made, or a violation of the customs laws is discovered, and legal proceedings by the United States attorney in connection with such seizure or discovery are required, it shall be the duty of the appropriate customs officer to report promptly such seizure or violation to the United States attorney for the district in which such violation has occurred, or in which such seizure was made, and to include in such report a statement of all the facts and circumstances of the case within his knowledge, with the names of the witnesses and a citation to the statute or statutes believed to have been violated, and on which reliance may be had for forfeiture or conviction.

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■ 19 U.S.C. § 1604 / Seizure; prosecution

It shall be the duty of the Attorney General of the United States immediately to inquire into the facts of cases reported to him by customs officers and the laws applicable thereto, and if it appears probable that any fine, penalty, or forfeiture has been incurred by reason of such violation, for the recovery of which the institution of proceedings in the United States district court or the Court of International Trade is necessary, forthwith to cause the proper proceedings to be commenced and prosecuted, without delay, for the recovery of such fine, penalty, or forfeiture in such case provided, unless upon inquiry and examination, the Attorney General decides that such proceedings can not probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case he shall report the facts to the Secretary of the Treasury for his direction in the premises.

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■ 19 U.S.C. § 1605 / Seizure; custody; storage

All vessels, vehicles, aircraft, merchandise, and baggage seized under the provisions of the customs laws, or laws relating to the navigation, registering, enrolling or licensing, or entry or clearance, of vessels, unless otherwise provided by law, shall be placed and remain in the custody of the appropriate customs officer for the district in which the seizure was made to await disposition according to law.

Pending such disposition, the property shall be stored in such place as, in the customs officer's opinion, is most convenient and appropriate with due regard to the expense involved, whether or not the place of storage is within the judicial district or the customs collection district in which the property was seized; and storage of the property outside the judicial district or customs collection district in which it was seized shall in no way affect the jurisdiction of the court which would otherwise have jurisdiction over such property.

■ **19 U.S.C. § 1606 / Seizure; appraisalment**

The appropriate customs officer shall determine the domestic value, at the time and place of appraisalment, of any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws.



■ **19 U.S.C. § 1607 / Seizure; value \$500,000 or less**

(a) Prohibited articles; transporting conveyances. If –

(1) the value of such seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed \$500,000;

(2) such seized merchandise is merchandise the importation of which is prohibited;

(3) such seized vessel, vehicle, or aircraft was used to import, export, transport, or store any controlled substance; or

(4) such seized merchandise is any monetary instrument within the meaning of section 5312(a)(3) of Title 31;

the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

(b) “Controlled substance” defined. As used in this section, the term “controlled substance” has the meaning given that term in section 802 of Title 21.

(c) Report to Congress. The Commissioner of Customs shall submit to the Congress, by no later than February 1 of each fiscal year, a report on the total dollar value of uncontested seizures of monetary instruments having a value of over \$100,000 which, or the proceeds of which, have not been deposited into the Customs Forfeiture Fund under section 1613b of this title within 120 days of seizure, as of the end of the previous fiscal year.



■ **19 U.S.C. § 1608 / Seizure; claims; judicial condemnation**

Any person claiming such vessel, vehicle, aircraft, merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure file with the appropriate customs officer a claim stating his interest therein. Upon the filing of such claim, and the giving of a bond to the United States in the penal sum of \$5,000 or 10 percent of the

Customs Forfeitures

value of the claimed property, whichever is lower, but not less than \$250, with sureties to be approved by such customs officer, conditioned that in case of condemnation of the articles so claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, such customs officer shall transmit such claim and bond, with a duplicate list and description of the articles seized, to the United States attorney for the district in which seizure was made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law.

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■ 19 U.S.C. § 1609 / Seizure; summary forfeiture and sale

(a) In general. If no such claim is filed or bond given within the twenty days hereinbefore specified, the appropriate customs officer shall declare the vessel, vehicle, aircraft, merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold or otherwise dispose of the same according to law, and shall deposit the proceeds of sale, after deducting the expenses described in section 1613 of this title, into the Customs Forfeiture Fund.

(b) Effect. A declaration of forfeiture under this section shall have the same force and effect as a final decree and order of forfeiture in a judicial forfeiture proceeding in a district court of the United States. Title shall be deemed to vest in the United States free and clear of any liens or encumbrances (except for first preferred ship mortgages pursuant to section 961 of Title 46, Appendix or any corresponding revision, consolidation, and enactment of such subsection in Title 46) from the date of the act for which the forfeiture was incurred. Officials of the various States, insular possessions, territories, and commonwealths of the United States shall, upon application of the appropriate customs officer accompanied by a certified copy of the declaration of forfeiture, remove any recorded liens or encumbrances which apply to such property and issue or reissue the necessary certificates of title, registration certificates, or similar documents to the United States or to any transferee of the United States.

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■ 19 U.S.C. § 1610 / Seizure; judicial forfeiture proceedings

If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title, the appropriate customs officer shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.

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■ 19 U.S.C. § 1611 / Seizure; sale unlawful

If the sale of any vessel, vehicle, aircraft, merchandise, or baggage forfeited under the customs laws in the district in which seizure thereof was made be prohibited by the laws of the State in

which such district is located, or if a sale may be made more advantageously in any other district, the Secretary of the Treasury may order such vessel, vehicle, aircraft, merchandise, or baggage to be transferred for sale in any customs district in which the sale thereof may be permitted. Upon the request of the Secretary of the Treasury, any court may, in proceedings for the forfeiture of any vessel, vehicle, aircraft, merchandise, or baggage under the customs laws, provide in its decree of forfeiture that the vessel, vehicle, aircraft, merchandise, or baggage, so forfeited, shall be delivered to the Secretary of the Treasury for disposition in accordance with the provisions of this section. If the Secretary of the Treasury is satisfied that the proceeds of any sale will not be sufficient to pay the cost thereof, he may order a destruction by the customs officers: *Provided*, That any merchandise forfeited under the customs laws, the sale or use of which is prohibited under any law of the United States or of any State, may, in the discretion of the Secretary of the Treasury, be destroyed, or remanufactured into an article that is not prohibited, the resulting article to be disposed of to the profit of the United States only.



■ 19 U.S.C. § 1612 / Seizure; summary sale

(a) Property subject to sale; procedure. Whenever it appears to the Customs Service that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and such vessel, vehicle, aircraft, merchandise, or baggage is subject to section 1607 of this title, and such vessel, vehicle, aircraft, merchandise, or baggage has not been delivered under bond, the Customs Service shall proceed forthwith to advertise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title, the Customs Service shall forthwith transmit its report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, aircraft, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the Customs Service or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, aircraft, merchandise, or baggage so sold would have been subject to such claim.

(b) Destruction or other appropriate disposition; absence of liability. If the Customs Service determines that the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, the Customs Service may promptly order the destruction or other appropriate disposition of such property under regulations prescribed by the Secretary. No customs officer shall be liable for the destruction or other disposition of property made pursuant to this section.



■ **19 U.S.C. § 1613 / Disposition of proceeds of forfeited property**

(a) Application for remission of forfeiture and restoration of proceeds of sale; disposition of proceeds when no application has been made. Except as provided in subsection (b) of this section, any person claiming any vessel, vehicle, aircraft, merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this chapter, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or to the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. If no application for such remission or restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs, the proceeds of sale shall be disposed of as follows:

- (1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale, and if condemned by a decree of a district court and a bond for such costs was not given, the costs as taxed by the court;
- (2) For the satisfaction of liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and
- (3) The residue shall be deposited in the general fund of the Treasury of the United States.

(b) Disposition of proceeds in excess of penalty assessed under section 1592. If merchandise is forfeited under section 1592 of this title, any proceeds from the sale thereof in excess of the monetary penalty finally assessed thereunder and the expenses and costs described in subsection (a)(1) and (2) of this section or subsection (a)(1), (a)(3), or (a)(4) of section 1613b of this title incurred in such sale shall be returned to the person against whom the penalty was assessed.

(c) Treatment of deposits. If property is seized by the Secretary under law enforced or administered by the Customs Service, or otherwise acquired under section 1605 of this title, and relief from the forfeiture is granted by the Secretary, or his designee, upon terms requiring the deposit or retention of a monetary amount in lieu of the forfeiture, the amount recovered shall be treated in the same manner as the proceeds of sale of a forfeited item.

(d) Expenses. If any judicial or administrative proceeding to forfeit property under any law enforced or administered by the Customs Service or the Coast Guard, the seizure, storage, and other expenses related to the forfeiture that are incurred by the Customs Service or the Coast Guard after the seizure, but before the institution of, or during, the proceedings, shall be a priority claim in the same manner as the court costs and the expenses of the Federal marshal.



■ **19 U.S.C. § 1613b / Customs Forfeiture Fund**

(a) In general. (1) There is established in the Treasury of the United States a fund to be known as the "Customs Forfeiture Fund" (hereafter in this section referred to as the "Fund"), which shall be available to the United States Customs Service, subject to appropriation, with respect to seizures and forfeitures by the United States Customs Service and the United States Coast Guard under any law enforced or administered by those agencies for payment, or for reimbursement to the appropriation from which payment was made, for –

(A) all proper expenses of the seizure (including investigative costs incurred by the United States Customs Service leading to seizures) or the proceedings of forfeiture and sale, including, but not limited to, the expenses of inventory, security, and maintenance of custody of the property, advertisement and sale of the property, and if condemned by the court and a bond for such costs was not given, the costs as taxed by the court;

(B) awards of compensation to informers under section 1619 of this title;

(C) satisfaction of –

(i) liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law, and

(ii) other liens against forfeited property;

(D) amounts authorized by law with respect to remission and mitigation;

(E) claims of parties in interest to property disposed of under section 1612(b) of this title, in the amounts applicable to such claims at the time of seizure; and

(F) equitable sharing payments made to other Federal agencies, State and local law enforcement agencies, and foreign countries under the authority of section 1616a(c) of this title or section 981 of Title 18.

(2) (A) Any payment made under subparagraph (C) or (D) of paragraph (1) with respect to a seizure or a forfeiture of property shall not exceed the value of the property at the time of the seizure.

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(B) Any payment made under subparagraph (F) of paragraph (1) with respect to a seizure or forfeiture of property shall not exceed the value of the property at the time of disposition.

(3) In addition to the purposes described in paragraph (1), the Fund shall be available for –

(A) purchases by the United States Customs Service of evidence of –

(i) smuggling of controlled substances, and

(ii) violations of the currency and foreign transaction reporting requirements of chapter 51 of Title 31, if there is a substantial probability that the violations of these requirements are related to the smuggling of controlled substances;

(B) equipment for any vessel, vehicle, or aircraft available for official use by the United States Customs Service to enable the vessel, vehicle, or aircraft to assist in law enforcement functions;

(C) the reimbursement, at the discretion of the Secretary, of private persons for expenses incurred by such persons in cooperating with the United States Customs Service in investigations and undercover law enforcement operations;

(D) publication of the availability of awards under section 1619 of this title;

(E) equipment for any vessel, vehicle, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the conveyance will be used in joint law enforcement operations with the United States Customs Service; and

(F) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in joint law enforcement operations with the United States Customs Service.

(b) United States Coast Guard. The Commissioner of Customs shall make available to the United States Coast Guard, from funds appropriated under subsection (f)(2) of this section in excess of \$10,000,000 for a fiscal year, proceeds in the Fund derived from seizures by the Coast Guard. Funds made available under this subsection may be used for –

(1) equipment for any vessel, vehicle, or aircraft available for official use by the United States Coast Guard to enable the vessel, vehicle, or aircraft to assist in law enforcement functions;

(2) equipment for any vessel, vehicle, equipment, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the conveyance will be used in joint law enforcement operations with the United States Coast Guard;

(3) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in joint law enforcement operations with the United States Coast Guard; and

(4) expenses incurred in bringing vessels into compliance with applicable environmental laws prior to disposal by sinking.

(c) Deposits. There shall be deposited into the Fund all forfeited currency and proceeds from forfeiture under any law enforced or administered by the United States Customs Service or the United States Coast Guard and all income from investments made under subsection (d) of this section.

(d) Investment. Amounts in the Fund which are not currently needed for the purposes of this section shall be invested in obligations of, or guaranteed by, the United States.

(e) Annual reports; audits. (1) The Commissioner of Customs shall transmit to the Congress, by no later than February 1 of each fiscal year the following detailed reports:

(A) a report on –

(i) the estimated total value of property forfeited under any law enforced or administered by the United States Customs Service or the United States Coast Guard with respect to which funds were not deposited in the Fund during the previous fiscal year, and

(ii) the estimated total value of all such property transferred to any State or local law enforcement agency;

(B) a report on –

(i) the balance of the Fund at the beginning of the preceding fiscal year;

(ii) liens and mortgages paid and amount of money shared with State and local law enforcement agencies during the previous fiscal year;

(iii) the net amount realized from the operations of the Fund during the previous fiscal year, the amount of seized cash being held as evidence, and the amount of money that has been carried over to the current fiscal year;

(iv) any defendant's equity in property valued at \$1,000,000 or more;

(v) the balance of the Fund at the end of the previous fiscal year; and

(C) a report containing, for the previous fiscal year –

(i) a complete set of audited financial statements (including a balance

sheet, income, statement, and cash flow analysis) prepared in a manner consistent with the requirements of the Comptroller General, and

(ii) an analysis of income and expenses showing the revenue received or lost –

(I) by property category (general property, vehicles, vessels, aircraft, cash, and real property) and

(II) by type of disposition (sales, remissions, cancellations, placed into official use, sharing with State and local agencies, and destructions).

(2) The Fund shall be subject to annual financial audits conducted by the Comptroller General of the United States.

(f) Authorization of appropriations. (1) There are hereby appropriated from the Fund such sums as may be necessary to carry out the purposes set forth in subsection (a)(1) of this section.

(2) (A) Subject to subparagraph (B), there are authorized to be appropriated from the Fund not to exceed \$20,000,000 for each fiscal year to carry out the purposes set forth in subsections (a)(3) and (b) for such fiscal year.

(B) Of the amount authorized to be appropriated under subparagraph (A), not to exceed the following, shall be available to carry out the purposes set forth in subsection (a)(3):

(i) \$14,855,000 for fiscal year 1991.

(ii) \$15,598,000 for fiscal year 1992.

(3) At the end of each fiscal year, any unobligated amount in excess of \$15,000,000 remaining in the Fund shall be deposited into the general fund of the Treasury of the United States.



■ **19 U.S.C. § 1614 / Release of seized property**

If any person claiming an interest in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this chapter offers to pay the value of such vessel, vehicle, aircraft, merchandise, or baggage, as determined under section 1606 of this title, and it appears that such person has in fact a substantial interest therein, the appropriate customs officer may, subject to the approval of the Secretary of the Treasury if under the customs laws, or the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if under the navigation laws, accept such offer and release the vessel, vehicle, aircraft, merchandise, or

baggage seized upon the payment of such value thereof, which shall be distributed in the order provided in section 1613 of this title.



■ **19 U.S.C. § 1615 / Burden of proof in forfeiture proceedings**

In all suits or actions (other than those arising under section 1592 of this title) brought for the forfeiture of any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, aircraft, merchandise, or baggage, because of violation of any such law, the burden of proof shall be upon the defendant: *Provided*, That probable cause shall be first shown for the institution of such suit or action, to be judged of by the court, subject to the following rules of proof:

- (1) The testimony or deposition of the officer of the customs who has boarded or required to come to a stop or seized a vessel, vehicle, or aircraft, or has arrested a person, shall be prima facie evidence of the place where the act in question occurred.
- (2) Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise, shall be prima facie evidence of the foreign origin of such merchandise.
- (3) The fact that a vessel of any description is found, or discovered to have been, in the vicinity of any hovering vessel and under any circumstances indicating contact or communication therewith, whether by proceeding to or from such vessel, or by coming to in the vicinity of such vessel, or by delivering to or receiving from such vessel any merchandise, person, or communication, or by any other means effecting contact or communication therewith, shall be prima facie evidence that the vessel in question has visited such hovering vessel.



■ **19 U.S.C. § 1616a / Transfer of forfeited property**

(a) **State proceedings.** The Secretary of the Treasury may discontinue forfeiture proceedings under this chapter in favor of forfeiture under State law. If a complaint for forfeiture is filed under this chapter, the Attorney General may seek dismissal of the complaint in favor of forfeiture under State law.

(b) **Transfer of seized property; notice.** If forfeiture proceedings are discontinued or dismissed under this section –

- (1) the United States may transfer the seized property to the appropriate State or local official; and

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(2) notice of the discontinuance or dismissal shall be provided to all known interested parties.

(c) Retention or transfer of forfeited property. (1) The Secretary of the Treasury may apply property forfeited under this chapter in accordance with subparagraph (A) or (B), or both:

(A) Retain any of the property for official use.

(B) Transfer any of the property to –

(i) any other Federal agency;

(ii) any State or local law enforcement agency that participated directly or indirectly in the seizure or forfeiture of the property; or

(iii) the Civil Air Patrol.

(2) The Secretary may transfer any forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer –

(A) has been agreed to by the Secretary of State;

(B) is authorized in an international agreement between the United States and the foreign country; and

(C) is made to a country which, if applicable, has been certified under section 2291j of Title 22.

(3) Aircraft may be transferred to the Civil Air Patrol under paragraph (1)(B)(iii) in support of air search and rescue and other emergency services and, pursuant to a memorandum of understanding entered into with a Federal agency, illegal drug traffic surveillance. Jet-powered aircraft may not be transferred to the Civil Air Patrol under the authority of paragraph (1)(B)(iii).

(d) Liability of United States after transfer. The United States shall not be liable in any action relating to property transferred under this section if such action is based on an act or omission occurring after the transfer.

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■ 19 U.S.C. § 1617 / Compromise of government claims by Secretary of Treasury

Upon a report by a customs officer, United States attorney, or any special attorney, having charge of any claim arising under the customs laws, showing the facts upon which such claim

is based, the probabilities of a recovery and the terms upon which the same may be compromised, the Secretary of the Treasury is authorized to compromise such claim, if such action shall be recommended by the General Counsel for the Department of the Treasury.



■ **19 U.S.C. § 1618 / Remission or mitigation of penalties**

Whenever any person interested in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if under the navigation laws, before the sale of such vessel, vehicle, aircraft, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs officer to take testimony upon such petition: Provided, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.



■ **19 U.S.C. § 1619 / Award of compensation to informers**

(a) In general. If –

(1) any person who is not an employee or officer of the United States –

(A) detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws and reports such detection and seizure to a customs officer, or

(B) furnishes to a United States attorney, the Secretary of the Treasury, or any customs officer original information concerning –

(i) any fraud upon the customs revenue, or

(ii) any violation of the customs laws or the navigation laws which is being, or has been, perpetrated or contemplated by any other person;
and

■ **19 U.S.C. § 1621 / Limitation of actions**

No suit or action to recover any duty under section 1592(d), 1593a(d) of this title, or any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered; except that –

(1) in the case of an alleged violation of section 1592 or 1593a of this title, no suit or action (including a suit or action for restoration of lawful duties under subsection (d) of such sections) may be instituted unless commenced within 5 years after the date of the alleged violation or, if such violation arises out of fraud, within 5 years after the date of discovery of fraud, and

(2) the time of the absence from the United States of the person subject to the penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within the 5-year period of limitation.



■ **22 U.S.C. § 401 / Exportation offenses**

(a) **Seizure and forfeiture of materials and carriers.** Whenever an attempt is made to export or ship from or take out of the United States any arms or munitions of war or other articles in violation of law, or whenever it is known or there shall be probable cause to believe that any arms or munitions of war or other articles are intended to be or are being or have been exported or removed from the United States in violation of law, the Secretary of the Treasury, or any person duly authorized for the purpose by the President, may seize and detain such arms or munitions of war or other articles and may seize and detain any vessel, vehicle, or aircraft containing the same or which has been or is being used in exporting or attempting to export such arms or munitions of war or other articles. All arms or munitions of war and other articles, vessels, vehicles, and aircraft seized pursuant to this subsection shall be forfeited.

(b) **Applicability of laws relating to seizure, forfeiture, and condemnation.** All provisions of law relating to seizure, summary and judicial forfeiture and condemnation for violation of the customs laws, the disposition of the property forfeited or condemned or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Awards of compensation to informers under this section may be paid only out of funds specifically appropriated therefor.

(c) **Disposition of forfeited materials.** Arms and munitions of war forfeited under subsection (b) of this section shall be delivered to the Secretary of Defense for such use or

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disposition as he may deem in the public interest, or, in the event that the Secretary of Defense refuses to accept such arms and munitions of war, they shall be sold or otherwise disposed of as prescribed under existing law in the case of forfeitures for violation of the customs laws.

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Drug Abuse Prevention and Control

■ 21 U.S.C. § 853 / Criminal forfeitures

(a) Property subject to criminal forfeiture. Any person convicted of a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law –

- (1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;
- (2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and
- (3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 848 of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter or subchapter II of this chapter, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Meaning of term "property." Property subject to criminal forfeiture under this section includes –

- (1) real property, including things growing on, affixed to, and found in land; and
- (2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) Third party transfers. All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to

subsection (n) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d) Rebuttable presumption. There is a rebuttable presumption at trial that any property of a person convicted of a felony under this subchapter or subchapter II of this chapter is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that –

(1) such property was acquired by such person during the period of the violation of this subchapter or subchapter II of this chapter or within a reasonable time after such period; and

(2) there was no likely source for such property other than the violation of this subchapter or subchapter II of this chapter.

(e) Protective orders. (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section –

(A) upon the filing of an indictment or information charging a violation of this subchapter or subchapter II of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that –

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an

information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(f) Warrant of seizure. The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (e) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

(g) Execution. Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

(h) Disposition of property. Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

(i) Authority of the Attorney General. With respect to property ordered forfeited under this section, the Attorney General is authorized to –

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this subchapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, in accordance with the provisions of section 881(e) of this title, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(j) Applicability of civil forfeiture provisions. Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 881(d) of this title shall apply to a criminal forfeiture under this section.

(k) Bar on intervention. Except as provided in subsection (n) of this section, no party claiming an interest in property subject to forfeiture under this section may –

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this subchapter; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(l) Jurisdiction to enter orders. The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(m) Depositions. In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(n) Third party interests. (1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that –

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(o) Construction. The provisions of this section shall be liberally construed to effectuate its remedial purposes.

(p) Forfeiture of substitute property. If any of the property described in subsection (a) of this section, as a result of any act or omission of the defendant –

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).



■ **21 U.S.C. § 881 / Civil forfeitures**

(a) Property subject. The following shall be subject to forfeiture to the United States and no property right shall exist in them:

- (1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.
- (2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this subchapter.
- (3) All property which is used, or intended for use, as a container for property described in paragraph (1), (2), or (9).
- (4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1), (2), or (9), except that –

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter;

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State; and

(C) no conveyance shall be forfeited under this paragraph to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(8) All controlled substances which have been possessed in violation of this subchapter.

(9) All listed chemicals, all drug manufacturing equipment, all tableting machines, all encapsulating machines, and all gelatin capsules, which have been imported, exported, manufactured, possessed, distributed, or intended to be distributed, imported, or exported, in violation of a felony provision of this subchapter or subchapter II of this chapter.

(10) Any drug paraphernalia (as defined in section 857 of this title).

(11) Any firearm (as defined in section 921 of Title 18) used or intended to be used to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2) and any proceeds traceable to such property.

(b) Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims; issuance of warrant authorizing seizure. Any property subject to civil forfeiture to the United States under this subchapter may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when –

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the United States in a criminal injunction or forfeiture proceeding under this subchapter;

(3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the Attorney General has probable cause to believe that the property is subject to civil forfeiture under this subchapter.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly. The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

(c) Custody of Attorney General. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General may –

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) Other laws and proceedings applicable. The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or

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mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of this subchapter, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this subchapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

(e) Disposition of forfeited property. (1) Whenever property is civilly or criminally forfeited under this subchapter the Attorney General may –

(A) retain the property for official use or, in the manner provided with respect to transfers under section 1616a of Title 19, transfer the property to any Federal agency or to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property;

(B) except as provided in paragraph (4), sell, by public sale or any other commercially feasible means, any forfeited property which is not required to be destroyed by law and which is not harmful to the public;

(C) require that the General Services Administration take custody of the property and dispose of it in accordance with law;

(D) forward it to the Drug Enforcement Administration for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General); or

(E) transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer –

(i) has been agreed to by the Secretary of State;

(ii) is authorized in an international agreement between the United States and the foreign country; and

(iii) is made to a country which, if applicable, has been certified under section 2291j of Title 22.

(2) (A) The proceeds from any sale under subparagraph (B) of paragraph (1) and any moneys forfeited under this title shall be used to pay –

(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and

(ii) awards of up to \$100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement agent.

Any award paid for information concerning the killing or kidnapping of a Federal drug law enforcement agent, as provided in clause (ii), shall be paid at the discretion of the Attorney General.

(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of Title 28, any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A), except that, with respect to forfeitures conducted by the Postal Service, the Postal Service shall deposit in the Postal Service Fund, under section 2003(b)(7) of Title 29, such moneys and proceeds.

(3) The Attorney General shall assure that any property transferred to a State or local law enforcement agency under paragraph (1)(A) –

(A) has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based; and

(B) will serve to encourage further cooperation between the recipient State or local agency and Federal law enforcement agencies.

(4) (A) With respect to real property described in subparagraph (B), if the chief executive officer of the State involved submits to the Attorney General a request for purposes of such subparagraph, the authority established in such subparagraph is in lieu of the authority established in paragraph (1)(B).

(B) In the case of property described in paragraph (1)(B) that is civilly or criminally forfeited under this subchapter, if the property is real property that is appropriate for use as a public area reserved for recreational or historic purposes or for the preservation of natural conditions, the Attorney General, upon the request of the chief executive officer of the State in which the property is located, may transfer title to the property to the State, either without charge or for a nominal charge, through a legal instrument providing that –

(i) such use will be the principle use of the property; and

(ii) title to the property reverts to the United States in the event that the property is used otherwise.

(f) **Forfeiture and destruction of schedule I or II substances.** (1) All controlled substances in schedule I or II that are possessed, transferred, sold, or offered for sale in

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violation of the provisions of this subchapter; all dangerous, toxic, or hazardous raw materials or products subject to forfeiture under subsection (a)(2) of this section; and any equipment or container subject to forfeiture under subsection (a)(2) or (3) of this section which cannot be separated safely from such raw materials or products shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I or II, which are seized or come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the United States.

(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this subchapter; all dangerous, toxic, or hazardous raw materials or products subject to forfeiture under subsection (a)(2) of this section; and any equipment or container subject to forfeiture under subsection (a)(2) or (3) of this section which cannot be separated safely from such raw materials or products under such circumstances as the Attorney General may deem necessary.

(g) Plants. (1) All species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this subchapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

(2) The failure, upon demand by the Attorney General or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(3) The Attorney General, or his duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

(h) Vesting of title in United States. All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(i) Stay of civil forfeiture proceedings. The filing of an indictment or information alleging a violation of this subchapter or subchapter II of this chapter, or a violation of State or local law that could have been charged under this subchapter or subchapter II of this chapter which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

(j) Venue. In addition to the venue provided for in section 1395 of Title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

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sentence, the court shall order the return of the conveyance to the owner and the forfeiture may not take place.

(d) Bond for release of conveyance. Any owner of a conveyance seized for a drug-related offense may obtain release of the conveyance by providing security in the form of a bond to the Attorney General in an amount equal to the value of the conveyance unless the Attorney General determines the conveyance should be retained (1) as contraband, (2) as evidence of a violation of law, or (3) because, by reason of design or other characteristic, the conveyance is particularly suited for use in illegal activities.

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Espionage

■ 18 U.S.C. § 793 / Gathering, transmitting or losing defense information

(a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, research laboratory or station or other place connected with the national defense owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers, departments, or agencies, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, stored, or are the subject of research or development, under any contract or agreement with the United States, or any department or agency thereof, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which prohibited place the President has determined would be prejudicial to the national defense; or

(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or

having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter; or

(d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense,

(1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or

(2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer –

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(h) (1) Any person convicted of a violation of this section shall forfeit to the United States, irrespective of any provision of State law, any property constituting, or derived from,

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any proceeds the person obtained, directly or indirectly, from any foreign government, or any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, as the result of such violation.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

(3) The provisions of subsections (b), (c), and (e) through (o) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)-(o)) shall apply to –

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not consistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

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■ 18 U.S.C. § 794 / Gathering or delivering defense information to aid foreign government

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life.

(b) Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or

measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(d) (1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law –

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation, and

(B) any of the person's property used, or intended to be used in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

(3) The provisions of subsections (b), (c) and (e) through (o) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (b), (c), and (e)-(o)) shall apply to –

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

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Gambling

■ 15 U.S.C. § 1177 / Civil forfeiture of coins and currency in confiscated gambling devices

Any gambling device transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the provisions of this chapter shall be seized and forfeited to the United States. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as applicable and not inconsistent with the provisions hereof: *Provided*, That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of gambling devices under this chapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

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■ 18 U.S.C. § 1955 / Prohibition of illegal gambling businesses

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than \$20,000 or imprisoned not more than five years, or both.

(b) As used in this section –

(1) “illegal gambling business” means a gambling business which –

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.

(2) “gambling” includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or

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numbers games, or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of \$2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1986, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

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Grand Jury

■ 18 U.S.C. § 3322 / Use of grand jury information in forfeiture proceedings

(a) A person who is privy to grand jury information concerning a banking law violation —

- (1) received in the course of duty as an attorney for the government; or
- (2) disclosed under rule 6(e)(3)(A)(ii) of the Federal Rules of Criminal Procedure;

may disclose that information to an attorney for the government for use in enforcing section 951 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 or for use in connection with civil forfeiture under section 981 of this title 18, United States Code, of

property described in section 981(a)(1)(C) of such title.

(b) (1) Upon motion of an attorney for the government, a court may direct disclosure of matters occurring before a grand jury during an investigation of a banking law violation to identified personnel of a financial institution regulatory agency –

(A) for use in relation to any matter within the jurisdiction of such regulatory agency; or

(B) to assist an attorney for the government to whom matters have been disclosed under subsection (a).

(2) A court may issue an order under paragraph (1) upon a finding of a substantial need.

(c) A person to whom matter has been disclosed under this section shall not use such matter other than for the purpose for which such disclosure was authorized.

(d) As used in this section –

(1) the term “banking law violation” means a violation of, or a conspiracy to violate –

(A) section 215, 656, 657, 1005, 1006, 1007, 1014, or 1344; or

(B) section 1341 or 1343 affecting a financial institution;

(2) the term “attorney for the government” has the meaning given such term in the Federal Rules of Criminal Procedure; and

(3) the term “grand jury information” means matters occurring before a grand jury other than the deliberations of the grand jury or the vote of any grand juror.

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Immigration

■ **8 U.S.C. § 1324(b) / Seizure and forfeiture of conveyances; exceptions; officers and authorized persons; disposition of forfeited conveyances; suits and actions**

(b) (1) Any conveyance, including any vessel, vehicle, or aircraft, which has been or is being used in the commission of a violation of subsection (a) of this section shall be seized and subject to forfeiture, except that –

(A) no conveyance used by any person as a common carrier in the transaction of

business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to the illegal act; and

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State.

(2) Any conveyance subject to seizure under this section may be seized without warrant if there is probable cause to believe the conveyance has been or is being used in a violation of subsection (a) of this section and circumstances exist where a warrant is not constitutionally required.

(3) All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for the violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof, except that duties imposed on customs officers or other persons regarding the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General.

(4) Whenever a conveyance is forfeited under this section the Attorney General may –

(A) retain the conveyance for official use;

(B) sell the conveyance, in which case the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs;

(C) require that the General Services Administration, or the Maritime Administration if appropriate under 484(i) of Title 40, take custody of the conveyance and remove it for disposition in accordance with law; or

(D) dispose of the conveyance in accordance with the terms and conditions of any petition of remission or mitigation of forfeiture granted by the Attorney General.

(5) In all suits or actions brought for the forfeiture of any conveyance seized under this section, where the conveyance is claimed by any person, the burden of proof shall lie upon such claimant, except that probable cause shall be first shown for the institution

of such suit or action. In determining whether probable cause exists, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(B) Official records of the Service or of the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

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Internal Revenue Code

■ **26 U.S.C. § 7302 / Property used in violation of internal revenue laws**

It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal revenue laws, or of any other law. The seizure and forfeiture of any property under the provisions of this section and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal revenue laws.

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Jurisdiction and Venue

■ 26 U.S.C. § 7303 / Other property subject to forfeiture

There may be seized and forfeited to the United States the following:

(1) Counterfeit stamps. Every stamp involved in the offense described in section 7208 (relating to counterfeit, reused, cancelled, etc., stamps), and the vellum, parchment, document, paper, package, or article upon which such stamp was placed or impressed in connection with such offense.

(2) False stamping of packages. Any container involved in the offense described in section 7271 (relating to disposal of stamped packages), and of the contents of such container.

(3) Fraudulent bonds, permits, and entries. All property to which any false or fraudulent instrument involved in the offense described in section 7207 relates.

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Jurisdiction and Venue

■ 28 U.S.C. § 1355 / Subject matter jurisdiction; *in rem* jurisdiction

(a) The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

(b) (1) A forfeiture action or proceeding may be brought in –

(A) the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred, or

(B) any other district where venue for the forfeiture action or proceeding is specifically provided for in section 1395 of this title or any other statute.

(2) Whenever property subject to forfeiture under the laws of the United States is located in a foreign country, or has been detained or seized pursuant to legal process or competent authority of a foreign government, an action or proceeding for forfeiture may be brought as provided in paragraph (1), or in the United States District court for the District of Columbia.

(c) In any case in which a final order disposing of property in a civil forfeiture action or proceeding is appealed, removal of the property by the prevailing party shall not deprive the court of jurisdiction. Upon motion of the appealing party, the district court or the court of appeals shall issue any order necessary to preserve the right of the appealing party to the full value of the property at issue, including a stay of the judgment of the district court pending appeal or requiring the prevailing party to post an appeal bond.

(d) Any court with jurisdiction over a forfeiture action pursuant to subsection (b) may issue and cause to be served in any other district such process as may be required to bring before the court the property that is the subject of the forfeiture action.



■ **28 U.S.C. § 1395 / Venue**

(a) A civil proceeding for the recovery of a pecuniary fine, penalty or forfeiture may be prosecuted in the district where it accrues or the defendant is found.

(b) A civil proceeding for the forfeiture of property may be prosecuted in any district where such property is found.

(c) A civil proceeding for the forfeiture of property seized outside any judicial district may be prosecuted in any district into which the property is brought.

(d) A proceeding in admiralty for the enforcement of fines, penalties and forfeitures against a vessel may be brought in any district in which the vessel is arrested.

(e) Any proceeding for the forfeiture of a vessel or cargo entering a port of entry closed by the President in pursuance of law, or of goods and chattels coming from a State or section declared by proclamation of the President to be in insurrection, or of any vessel or vehicle conveying persons or property to or from such State or section or belonging in whole or in part to a resident thereof, may be prosecuted in any district into which the property is taken and in which the proceeding is instituted.



Money Laundering, FIRREA, and Other Crimes

■ **18 U.S.C. § 981 / Civil forfeiture**

(a) (1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 5313(a) or 5324(a) of title 31, or of section 1956 or 1957 of this title, or any property traceable to such property. However, no property shall be seized or forfeited in the case of a violation of section 5313(a) of title 31 by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, or employee thereof.

(B) Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense would be punishable by death or imprisonment for a term exceeding one year and which would be punishable under the laws of the United States by imprisonment for a term exceeding one year if such act or activity constituting the offense against the foreign nation had occurred within the jurisdiction of the United States.

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section 215, 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 656, 657, 842, 844, 1005, 1006, 1007, 1014, 1028, 1029, 1030, 1032, or 1344 of this title or a violation of section 1341 or 1343 of such title affecting a financial institution.

(D) Any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, from a violation of –

(i) section 666(a)(1) (relating to Federal program fraud);

(ii) section 1001 (relating to fraud and false statements);

(iii) section 1031 (relating to major fraud against the United States);

(iv) section 1032 (relating to concealment of assets from conservator or receiver of insured financial institution);

(v) section 1341 (relating to mail fraud); or

(vi) section 1343 (relating to wire fraud),

if such violation relates to the sale of assets acquired or held by the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution, or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision or the National Credit Union Administration, as conservator or liquidating agent for a financial institution.

(E) With respect to an offense listed in subsection (a)(1)(D) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations or promises, the gross receipts of such an offense shall include all property, real or personal, tangible or intangible, which thereby is obtained, directly or indirectly.

(F) Any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, from a violation of –

(i) section 511 (altering or removing motor vehicle identification numbers);

(ii) section 553 (importing or exporting stolen motor vehicles);

(iii) section 2119 (armed robbery of automobiles);

(iv) section 2312 (transporting stolen motor vehicles in interstate commerce); or

(v) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce).

(2) No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder.

(b) (1) Any property –

(A) subject to forfeiture to the United States under subparagraph (A) or (B) of subsection (a)(1) of this section –

(i) may be seized by the Attorney General; or

(ii) in the case of property involved in a violation of section 5313(a) or 5324 of title 31, United States Code, or section 1956 or 1957 of this title investigated by the Secretary of the Treasury or the United States Postal Service, may be seized by the Secretary of the Treasury or the Postal Service; and

(B) subject to forfeiture to the United States under subparagraph (C) of subsection (a)(1) of this section may be seized by the Attorney General, the Secretary of the Treasury, or the Postal Service.

(2) Property shall be seized under paragraph (1) of this subsection upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when –

(A) the seizure is pursuant to a lawful arrest or search; or

(B) the Attorney General, the Secretary of the Treasury, or the Postal Service as the case may be, has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure, in which event proceedings under subsection (d) of this section shall be instituted promptly.

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(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, the Secretary of the Treasury, or the Postal Service as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General, the Secretary of the Treasury, or the Postal Service as the case may be, may –

- (1) place the property under seal;
- (2) remove the property to a place designated by him; or
- (3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, the Secretary of the Treasury, or the Postal Service as the case may be. The Attorney General shall have sole responsibility for disposing of petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding.

(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General, the Secretary of the Treasury, or the Postal Service as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine –

- (1) to any other Federal agency;
- (2) to any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property;
- (3) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency –
 - (A) to reimburse the agency for payments to claimants or creditors of the institution; and
 - (B) to reimburse the insurance fund of the agency for losses suffered by the fund as a result of the receivership or liquidation;

(4) in the case of property referred to in subsection (a)(1)(C), upon the order of the appropriate Federal financial institution regulatory agency, to the financial institution as restitution, with the value of the property so transferred to be set off against any amount later recovered by the financial institution as compensatory damages in any State or Federal proceeding;

(5) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency, to the extent of the agency's contribution of resources to, or expenses involved in, the seizure and forfeiture, and the investigation leading directly to the seizure and forfeiture, of such property;

(6) in the case of property referred to in subsection (a)(1)(C), restore forfeited property to any victim of an offense described in subsection (a)(1)(C); or

(7) In the case of property referred to in subsection (a)(1)(D), to the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or any other Federal financial institution regulatory agency (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act).

The Attorney General, the Secretary of the Treasury, or the Postal Service as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General, the Secretary of the Treasury, or the Postal Service pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General, the Secretary of the Treasury, or the Postal Service may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials. The United States shall not be liable in any action arising out of a transfer under paragraph (3), (4), or (5) of this subsection.

(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(g) The filing of an indictment or information alleging a violation of law, Federal, State or local, which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding.

(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(i) (1) Whenever property is civilly or criminally forfeited under this chapter, the Attorney General or the Secretary of the Treasury, as the case may be, may transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer –

(A) has been agreed to by the Secretary of State;

(B) is authorized in an international agreement between the United States and the foreign country; and

(C) is made to a country which, if applicable, has been certified under section 490 of the Foreign Assistance Act of 1961. A decision by the Attorney General or the Secretary of the Treasury pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subsection, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General or the Secretary of the Treasury may, in his discretion, set.

(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including property which is sought as evidence of a crime committed in the foreign country.

(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign

judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

(j) For purposes of this section –

(1) the term “Attorney General” means the Attorney General or his delegate; and

(2) the term “Secretary of the Treasury” means the Secretary of the Treasury or his delegate.

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■ **18 U.S.C. § 982 / Criminal forfeiture**

(a) (1) The court, in imposing sentence on a person convicted of an offense in violation of section 5313(a), 5316 or 5324 of title 31, or of section 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property. However, no property shall be seized or forfeited in the case of a violation of section 5313(a) of title 31 by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, or employee thereof.

(2) The court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate –

(A) section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of this title, affecting a financial institution, or

(B) section 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 842, 844, 1028, 1029, or 1030 of this title,

shall order that the person forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.

(3) The court, in imposing a sentence on a person convicted of an offense under –

(A) section 666(a)(1) (relating to Federal program fraud);

(B) section 1001 (relating to fraud and false statements);

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(C) section 1031 (relating to major fraud against the United States);

(D) section 1032 (relating to concealment of assets from conservator, receiver or liquidating agent of insured financial institution);

(E) section 1341 (relating to mail fraud); or

(F) section 1343 (relating to wire fraud),

involving the sale of assets acquired or held by the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision, or the National Credit Union Administration, as conservator or liquidating agent for a financial institution, shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, as a result of such violation.

(4) With respect to an offense listed in subsection (a)(3) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations, or promises, the gross receipts of such an offense shall include any property, real or personal, tangible or intangible, which is obtained, directly or indirectly, as a result of such offense.

(5) The court, in imposing sentence on a person convicted of a violation or conspiracy to violate —

(A) section 511 (altering or removing motor vehicle identification numbers);

(B) section 553 (importing or exporting stolen motor vehicles);

(C) section 2119 (armed robbery of automobiles);

(D) section 2312 (transporting stolen motor vehicles in interstate commerce); or

(E) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce);

shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, as a result of such violation.

(b) (1) Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed —

(A) in the case of a forfeiture under subsection (a)(1) of this section, by

subsections (c) and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853); and

(B) in the case of a forfeiture under subsection (a)(2) of this section, by subsections (b), (c), (e), and (g) through (p) of section 413 of such Act.

(2) The substitution of assets provisions of subsection 413(p) shall not be used to order a defendant to forfeit assets in place of the actual property laundered where such defendant acted merely as an intermediary who handled but did not retain the property in the course of the money laundering offense unless the defendant, in committing the offense or offenses giving rise to the forfeiture, conducted three or more separate transactions involving a total of \$100,000 or more in any twelve month period.



■ **18 U.S.C. § 984 / Civil forfeiture of fungible property**

(a) 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 of title 31, United States Code.

(b) (1) In any forfeiture action in rem in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution (as defined in section 20 of this title), or other fungible property –

(A) it shall not be necessary for the Government to identify the specific property involved in the offense that is the basis for the forfeiture; and

(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 (c), 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.

(c) 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.

(d) (1) 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.

(2) As used in this section, the term “interbank account” means an account held by one financial institution at another financial institution primarily for the purpose of facilitating customer transactions.

Obscenity

■ 18 U.S.C. § 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 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 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.

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Obscenity

■ 18 U.S.C. § 1467 / Criminal forfeiture

(a) **Property subject to criminal forfeiture.** A person who is convicted of an offense involving obscene material under this chapter shall forfeit to the United States such person's interest in –

(1) any obscene material produced, transported, mailed, shipped, or received in violation of this chapter;

(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense, if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property in the offense.

(b) **Third party transfers.** All right, title, and interest in property described in subsection (a)

of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(c) Protective orders. (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section –

(A) upon the filing of an indictment or information charging a violation of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that –

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered;

except that an order entered under subparagraph (B) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(d) Warrant of seizure. The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (c) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

(e) Order of forfeiture. The court shall order forfeiture of property referred to in subsection (a) if –

(1) the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture; and

(2) with respect to property referred to in subsection (a)(3), if the court exercises the court's discretion under that subsection.

(f) Execution. Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

(g) Disposition of property. Following the seizure of property ordered forfeited under this section, the Attorney General shall destroy or retain for official use any property described in paragraph (1) of subsection (a) and shall direct the disposition of any property described in paragraph (2) or (3) of subsection (a) by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

(h) Authority of Attorney General. With respect to property ordered forfeited under this section, the Attorney General is authorized to –

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) comprise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, under section 616 of the Tariff Act of 1930, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(i) Bar on intervention. Except as provided in subsection (1) of this section, no party claiming an interest in property subject to forfeiture under this section may —

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(j) Jurisdiction to enter orders. The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) Depositions. In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(l) Third party interests. (1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a

substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within 30 days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that –

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent

purchaser or transferee.

(m) Construction. This section shall be liberally construed to effectuate its remedial purposes.

(n) Substitute assets. If any of the property described in subsection (a), as a result of any act or omission of the defendant –

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

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■ **18 U.S.C. § 2253 / Criminal forfeiture for child pornography**

(a) Property subject to criminal forfeiture. A person who is convicted of an offense under this chapter involving a visual depiction described in section 2251, 2251A, or 2252 of this chapter shall forfeit to the United States such person's interest in –

- (1) any visual depiction described in section 2251, 2251A, or 2252 of this chapter, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of this chapter;
- (2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and
- (3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

(b) Third party transfers. All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) of this section that he is a bona fide purchaser for value of such property who

at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(c) Protective orders. (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section –

(A) upon the filing of an indictment or information charging a violation of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that –

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered;

except that an order entered pursuant to subparagraph (B) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(d) Warrant of seizure. The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (c) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

(e) Order of forfeiture. The court shall order forfeiture of property referred to in subsection (a) if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

(f) Execution. Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

(g) Disposition of property. Following the seizure of property ordered forfeited under this section, the Attorney General shall destroy or retain for official use any article described in paragraph (1) of subsection (a), and shall retain for official use or direct the disposition of any property described in paragraph (2) or (3) of subsection (a) by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

(h) Authority of Attorney General. With respect to property ordered forfeited under this section, the Attorney General is authorized to –

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, under section 616 of the Tariff Act of 1930, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(i) Applicability of civil forfeiture provisions. Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 2254(d) of this title (18 U.S.C. 2254(d)) shall apply to a criminal forfeiture under this section.

(j) Bar on intervention. Except as provided in subsection (m) of this section, no party claiming an interest in property subject to forfeiture under this section may –

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(k) Jurisdiction to enter orders. The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(l) Depositions. In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(m) Third party interests. (1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which

has been ordered forfeited to the United States pursuant to this section may, within 30 days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that –

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of the purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(n) **Construction.** This section shall be liberally construed to effectuate its remedial purposes.

Obscenity

(o) Substitute assets. If any of the property described in subsection (a), as a result of any act or omission of the defendant –

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

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■ 18 U.S.C. § 2254 / Civil forfeiture for child pornography

(a) Property subject to civil forfeiture. The following property shall be subject to forfeiture by the United States:

- (1) Any visual depiction described in section 2251, 2251A, or 2252 of this chapter, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, or received in violation of this chapter.
- (2) Any property, real or personal, used or intended to be used to commit or to promote the commission of an offense under this chapter involving a visual depiction described in section 2251, 2251A, or 2252 of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.
- (3) Any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from a violation of this chapter involving a visual depiction described in section 2251, 2251A, or 2252 of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(b) Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims. Any property subject to forfeiture to the United States under this section may be seized by the Attorney General, the Secretary of the Treasury, or the United States Postal Service upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime

Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when the seizure is pursuant to a search under a search warrant or incident to an arrest. The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

(c) Custody of federal official. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, Secretary of the Treasury, or the United States Postal Service subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General, Secretary of the Treasury, or the United States Postal Service may –

- (1) place the property under seal;
- (2) remove the property to a place designated by the official or agency; or
- (3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) Other laws and proceedings applicable. All provisions of the customs laws relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, the Secretary of the Treasury, or the Postal Service, except to the extent that such duties arise from seizures and forfeitures affected by any customs officer.

(e) Inapplicability of certain sections. Sections 1606, 1613, 1614, 1617, and 1618 of title 19, United States Code, shall not apply with respect to any visual depiction or any matter containing a visual depiction subject to forfeiture under subsection (a)(1) of this section.

(f) Disposition of forfeited property. Whenever property is forfeited under this section the Attorney General shall destroy or retain for official use any property described in paragraph (1) of subsection (a) and, with respect to property described in paragraph (2) or (3) of subsection (a), may –

- (1) retain the property for official use or transfer the custody or ownership of any forfeited property to a Federal, State, or local agency under section 616 of the Tariff Act of 1930;

Prison-Made Goods

- (2) sell, by public sale or any other commercially feasible means, any forfeited property which is not required to be destroyed by law and which is not harmful to the public; or
- (3) require that the General Services Administration take custody of the property and dispose of it in accordance with law.

The Attorney General, Secretary of the Treasury, or the United States Postal Service shall ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by an official or agency pursuant to paragraph (1) shall not be subject to judicial review. With respect to a forfeiture conducted by the Attorney General, the Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28 the proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter. With respect to a forfeiture conducted by the Postal Service, the proceeds from any sale under paragraph (2) and any moneys forfeited under this section shall be deposited in the Postal Service Fund as required by section 2003(b)(7) of title 39.

(g) Title to property. All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(h) Stay of proceedings. The filing of an indictment or information alleging a violation of this chapter which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

(i) Venue. In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

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Prison-Made Goods

■ 18 U.S.C. § 1762 / Marking packages

(a) All packages containing any goods, wares, or merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, when shipped or transported in interstate or foreign commerce shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the outside of such package.

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(b) Whoever violates this section shall be fined not more than \$50,000, and any goods, wares, or merchandise transported in violation of this section or section 1761 of this title shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law.

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Racketeer Influenced and Corrupt Organizations (RICO)
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■ **18 U.S.C. § 1963 / Criminal penalties**

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law –

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any –

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes –

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- (1) real property, including things growing on, affixed to, and found in land; and
- (2) tangible and intangible personal property, including rights, privileges, interests, claims and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (d) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d) (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section –

(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that –

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability

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of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(e) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(f) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(g) With respect to property ordered forfeited under this section, the Attorney General is authorized to –

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

(2) compromise claims arising under this section;

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- (3) award compensation to persons providing information resulting in a forfeiture under this section;**
- (4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and**
- (5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.**

(h) The Attorney General may promulgate regulations with respect to –

- (1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;**
- (2) granting petitions for remission or mitigation of forfeiture;**
- (3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;**
- (4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;**
- (5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and**
- (6) the compromise of claims arising under this chapter.**

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(i) Except as provided in subsection (f), no party claiming an interest in property subject to forfeiture under this section may –

- (1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or**
- (2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.**

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(j) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(l) (1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that –

(A) the petitioner has a legal right, title, or interest in the property, and such

Regulations for Expedited Administrative Forfeiture Procedures

right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(m) If any of the property described in subsection (a), as a result of any act or omission of the defendant –

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

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<h2>Regulations for Expedited Administrative Forfeiture Procedures</h2>
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■ Section 6079 of Pub. L. 100-690 provided that:

(a) **In General.** Not later than 90 days after the date of enactment of this Act [Nov. 18, 1988],

Regulations for Expedited Administrative Forfeiture Procedures

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) 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 vessels as defined in section 2101(11a), (11b), and

Search and Seizure

(11c) 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 nonpersonal use amounts.

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Search and Seizure

■ 18 U.S.C. § 2232 / Destruction or removal of property to prevent seizure

(a) Physical interference with search. Whoever, before, during, or after seizure of any property by any person authorized to make searches and seizures, in order to prevent the seizure or securing of any goods, wares, or merchandise by such person, staves, breaks, throws overboard, destroys, or removes the same, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(b) Notice of search. Whoever, having knowledge that any person authorized to make searches and seizures has been authorized or is otherwise likely to make a search or seizure, in order to prevent the authorized seizing or securing of any person, goods, wares, merchandise or other property, gives notice or attempts to give notice of the possible search or seizure to any person shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(c) Notice of certain electronic surveillance. Whoever, having knowledge that a Federal investigative or law enforcement officer has been authorized or has applied for authorization under chapter 119 to intercept a wire, oral, or electronic communication, in order to obstruct, impede, or prevent such interception, gives notice or attempts to give notice of the possible interception to any person shall be fined under this title or imprisoned not more than five years, or both.

Whoever, having knowledge that a Federal officer has been authorized or has applied for authorization to conduct electronic surveillance under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801, et seq.), in order to obstruct, impede, or prevent such activity, gives notice or attempts to give notice of the possible activity to any person shall be fined under this title or imprisoned not more than five years, or both.

