

A large, light gray silhouette of the Statue of Lady Justice, blindfolded and holding scales of justice in her left hand and a sword in her right hand. The statue is positioned on the left side of the page, with the title text overlaid on its right side.

ASSET FORFEITURE & MONEY LAUNDERING STATUTES

2015

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TITLE 7

7 U.S.C. § 2024. Violations and enforcement.

(a) In general

Notwithstanding any other provision of this chapter, the Secretary may provide for the issuance or presentment for redemption of benefits to such person or persons, and at such times and in such manner, as the Secretary deems necessary or appropriate to protect the interests of the United States or to ensure enforcement of the provisions of this chapter or the regulations issued pursuant to this chapter.

(b) Unauthorized use, transfer, acquisition, alteration, or possession of benefits

(1) Subject to the provisions of paragraph (2) of this subsection, whoever knowingly uses, transfers, acquires, alters, or possesses benefits in any manner contrary to this chapter or the regulations issued pursuant to this chapter shall, if such benefits are of a value of \$5,000 or more, be guilty of a felony and shall be fined not more than \$250,000 or imprisoned for not more than twenty years, or both, and shall, if such benefits are of a value of \$100 or more, but less than \$5,000, or if the item used, transferred, acquired, altered, or possessed is a benefit that has a value of \$100 or more, but less than \$5,000, be guilty of a felony and shall, upon the first conviction thereof, be fined not more than \$10,000 or imprisoned for not more than five years, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not less than six months nor more than five years and may also be fined not more than \$10,000 or, if such benefits are of a value of less than \$100, or if the item used, transferred, acquired, altered, or processed is a benefit that has a value of less than \$100, shall be guilty of a misdemeanor, and, upon the first conviction thereof, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than \$1,000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the supplemental nutrition assistance program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 2015(b)(1) of this title.

(2) In the case of any individual convicted of an offense under paragraph (1) of this subsection, the court may permit such individual to perform work approved by the court for the purpose of providing restitution for losses incurred by the United States and the State agency as a result of the offense for which such individual was convicted. If the court permits such individual to perform such work and such individual agrees thereto, the court shall withhold the imposition of the sentence

on the condition that such individual perform the assigned work. Upon the successful completion of the assigned work the court may suspend such sentence.

(c) Presentation for payment or redemption of benefits that have been illegally received, transferred, or used

Whoever presents, or causes to be presented, benefits for payment or redemption of the value of \$100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this chapter or the regulations issued pursuant to this chapter, shall be guilty of a felony and, upon the first conviction thereof, shall be fined not more than \$20,000 or imprisoned for not more than five years, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not less than one year nor more than five years and may also be fined not more than \$20,000, or, if such benefits are of a value of less than \$100, shall be guilty of a misdemeanor and, upon the first conviction thereof, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than \$1,000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the supplemental nutrition assistance program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 2015(b)(1) of this title.

(d) Benefits as obligations of the United States

Benefits issued pursuant to this chapter shall be deemed to be obligations of the United States within the meaning of section 8 of Title 18.

(e) Forfeiture of property involved in illegal benefit transactions

The Secretary may subject to forfeiture and denial of property rights any nonfood items, moneys, negotiable instruments, securities, or other things of value that are furnished by any person in exchange for benefits, or anything of value obtained by use of an access device, in any manner contrary to this chapter or the regulations issued under this chapter. Any forfeiture and disposal of property forfeited under this subsection shall be conducted in accordance with procedures contained in regulations issued by the Secretary.

(f) Criminal forfeiture

(1) In general

In imposing a sentence on a person convicted of an offense in violation of subsection (b) or (c) of this section, a court shall order, in addition to any other sentence imposed under this section, that the person forfeit to the United States all property described in paragraph (2).

(2) Property subject to forfeiture

All property, real and personal, used in a transaction or attempted transaction, to commit, or to facilitate the commission of, a violation (other than a misdemeanor) of subsection (b) or (c) of this section, or proceeds traceable to a violation of subsection (b) or (c) of this section, shall be subject to forfeiture to the United States under paragraph (1).

(3) Interest of owner

No interest in property shall be forfeited under this subsection as the result of any act or omission established by the owner of the interest to have been committed or omitted without the knowledge or consent of the owner.

(4) Proceeds

The proceeds from any sale of forfeited property and any monies forfeited under this subsection shall be used--

(A) first, to reimburse the Department of Justice for the costs incurred by the Department to initiate and complete the forfeiture proceeding;

(B) second, to reimburse the Department of Agriculture Office of Inspector General for any costs the Office incurred in the law enforcement effort resulting in the forfeiture;

(C) third, to reimburse any Federal or State law enforcement agency for any costs incurred in the law enforcement effort resulting in the forfeiture; and

(D) fourth, by the Secretary to carry out the approval, reauthorization, and compliance investigations of retail stores and wholesale food concerns under section 2018 of this title.

Amended: Agricultural Act of 2014, Pub. L. 113-79, Title IV, § 4030(h), Feb. 7, 2014, 128 Stat. 649.

7 U.S.C. § 2156. Animal fighting venture prohibition.

(a) Sponsoring or exhibiting an animal in, attending, or causing an individual who has not attained the age of 16 to attend, an animal fighting venture

(1) Sponsoring or exhibiting

Except as provided in paragraph (3), it shall be unlawful for any person to knowingly sponsor or exhibit an animal in an animal fighting venture.

(2) Attending or causing an individual who has not attained the age of 16 to attend

It shall be unlawful for any person to—

(A) knowingly attend an animal fighting venture; or

(B) knowingly cause an individual who has not attained the age of 16 to attend an animal fighting venture.

(3) Special rule for certain State

With respect to fighting ventures involving live birds in a State where it would not be in violation of the law, it shall be unlawful under this subsection for a person to sponsor or exhibit a bird in the fighting venture only if the person knew that any bird in the fighting venture was knowingly bought, sold, delivered, transported, or received in interstate or foreign commerce for the purpose of participation in the fighting venture.

(b) Buying, selling, delivering, possessing, training, or transporting animals for participation in animal fighting venture

It shall be unlawful for any person to knowingly sell, buy, possess, train, transport, deliver, or receive any animal for purposes of having the animal participate in an animal fighting venture.

(c) Use of Postal Service or other interstate instrumentality for promoting or furthering animal fighting venture

It shall be unlawful for any person to knowingly use the mail service of the United States Postal Service or any instrumentality of interstate commerce for commercial speech for purposes of advertising an animal, or an instrument described in subsection (e), for use in animal fighting venture, promoting or in any other manner furthering an animal fighting venture except as performed outside the limits of the States of the United States.

(d) Violations of State law

Notwithstanding the provisions of subsection (c) of this section, the activities prohibited by such subsection shall be unlawful with respect to fighting ventures involving live birds only if the fight is to take place in a State where it would be in violation of the laws thereof.

(e) Buying, selling, delivering, or transporting sharp instruments for use in animal fighting venture

It shall be unlawful for any person to knowingly sell, buy, transport, or deliver in interstate or foreign commerce a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture.

(f) Investigation of violations by Secretary; assistance by other Federal agencies; issuance of search warrant; forfeiture; costs recoverable in forfeiture or civil action

The Secretary or any other person authorized by him shall make such investigations as the Secretary deems necessary

to determine whether any person has violated or is violating any provision of this section, and the Secretary may obtain the assistance of the Federal Bureau of Investigation, the Department of the Treasury, or other law enforcement agencies of the United States, and State and local governmental agencies, in the conduct of such investigations, under cooperative agreements with such agencies. A warrant to search for and seize any animal which there is probable cause to believe was involved in any violation of this section may be issued by any judge of the United States or of a State court of record or by a United States magistrate judge within the district wherein the animal sought is located. Any United States marshal or any person authorized under this section to conduct investigations may apply for and execute any such warrant, and any animal seized under such a warrant shall be held by the United States marshal or other authorized person pending disposition thereof by the court in accordance with this subsection. Necessary care including veterinary treatment shall be provided while the animals are so held in custody. Any animal involved in any violation of this section shall be liable to be proceeded against and forfeited to the United States at any time on complaint filed in any United States district court or other court of the United States for any jurisdiction in which the animal is found and upon a judgment of forfeiture shall be disposed of by sale for lawful purposes or by other humane means, as the court may direct. Costs incurred for care of animals seized and forfeited under this section shall be recoverable from the owner of the animals (1) if he appears in such forfeiture proceedings, or (2) in a separate civil action brought in the jurisdiction in which the owner is found, resides, or transacts business.

(g) Definitions

In this section—

(1) the term “animal fighting venture” means any event, in or affecting interstate or foreign commerce, that involves a fight conducted or to be conducted between at least 2 animals for purposes of sport, wagering, or entertainment, except that the term “animal fighting venture” shall not be deemed to include any activity the primary purpose of which involves the use of one or more animals in hunting another animal;

(2) the term “instrumentality of interstate commerce” means any written, wire, radio, television or other form of communication in, or using a facility of, interstate commerce;

(3) the term “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;

(4) the term “animal” means any live bird, or any live mammal, except man.

(h) Relationship to other provisions

The conduct by any person of any activity prohibited by this section shall not render such person subject to the other sections of this chapter as a dealer, exhibitor, or otherwise.

(i) Conflict with State law

(1) In general

The provisions of this chapter shall not supersede or otherwise invalidate any such State, local, or municipal legislation or ordinance relating to animal fighting ventures except in case of a direct and irreconcilable conflict between any requirements thereunder and this chapter or any rule, regulation, or standard hereunder.

(2) Omitted

(j) Criminal penalties

The criminal penalties for violations of subsection (a), (b), (c), or (e) are provided in section 49 of Title 18.

Amended: Agricultural Act of 2014, Pub. L. 113-79, Title XII, § 12308(b)(1), Feb. 7, 2014, 128 Stat. 990.

TITLE 8

8 U.S.C. § 1324(b). Seizure and forfeiture of conveyances, gross proceeds, and property traceable to such conveyances or proceeds.

(b) Seizure and forfeiture

(1) In general

Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a), the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.

(2) Applicable procedures

Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of Title 18, relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Attorney General.

(3) Prima facie evidence in determinations of violations

In determining whether a violation of subsection (a) has occurred, 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.

Amended: Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, Pub. L. 109-97, Title VII, § 796, Nov. 10, 2005, 119 Stat. 2120, 2165.

TITLE 13

13 U.S.C. § 305. Penalties for unlawful export information activities.

(a) Criminal penalties.—

(1) Failure to file; submission of false or misleading information.—Any person who knowingly fails to file or knowingly submits false or misleading export information through the Shippers Export Declaration (SED) (or any successor document) or the Automated Export System (AES) shall be subject to a fine not to exceed \$10,000 per violation or imprisonment for not more than 5 years, or both.

(2) Furtherance of illegal activities.—Any person who knowingly reports any information on or uses the SED or the AES to further any illegal activity shall be subject to a fine not to exceed \$10,000 per violation or imprisonment for not more than 5 years, or both.

(3) Forfeiture penalties.—Any person who is convicted under this subsection shall, in addition to any other penalty, be subject to forfeiting to the United States—

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(b) Civil penalties.—The Secretary (and officers of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed \$10,000 per violation on any person violating the provisions of this chapter or any rule, regulation, or order issued thereunder, except as provided in section 304. Such penalty may be in addition to any other penalty imposed by law.

(c) Civil penalty procedure.—

(1) In general.—Whenever a civil penalty is sought for a violation of this section or of section 304, the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Any such hearing shall be conducted in accordance with sections 556 and 557 of title 5, United States Code.

(2) Commencement of civil actions.—If any person fails to pay a civil penalty imposed under this chapter, the Secretary may request the Attorney General to commence a civil action in an appropriate district court of the United States to recover the amount imposed (plus interest at currently prevailing rates from the date of the final order). No such action may be commenced more than 5 years after the date the order imposing the civil penalty becomes final. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(3) Remission or mitigation of penalties.—The Secretary may remit or mitigate any penalties imposed under paragraph (1) if, in the Secretary's opinion—

(A) the penalties were incurred without willful negligence or fraud; or

(B) other circumstances exist that justify a remission or mitigation.

(4) Applicable law for delegated functions.—If, pursuant to section 306, the Secretary delegates functions under this section to another agency, the provisions of law of that agency relating to penalty assessment, remission or mitigation of such penalties, collection of such penalties, and limitations of actions and compromise of claims, shall apply.

(5) Deposit of payments in general fund of the treasury.—Any amount paid in satisfaction of a civil penalty imposed under this section or section 304 shall be deposited into the general fund of the Treasury and credited as miscellaneous receipts.

(d) Enforcement.—

(1) By the Secretary of Commerce.—The Secretary of Commerce may designate officers or employees of the Office of Export Enforcement to conduct investigations pursuant to this chapter. In conducting such investigations, those officers or employees may, to the extent necessary or appropriate to the enforcement of this chapter, exercise such authorities as are conferred upon them by other laws of the United States, subject to policies and procedures approved by the Attorney General.

(2) By the Commissioner of customs.—The Commissioner of Customs may designate officers or employees of the Customs Service to enforce the provisions of this chapter, or to conduct investigations pursuant to this chapter.

(e) Regulations.—The Secretary of Commerce shall promulgate regulations for the implementation and enforcement of this section.

(f) Exemption.—The criminal fines provided for in this section are exempt from the provisions of section 3571 of title 18, United States Code.

Amended: Foreign Relations Authorization Act, Fiscal Year 2003, Pub. L. 107-228, Div. B, Title XIV, § 1404(f)(1), Sept. 30, 2002, 116 Stat. 1455.

TITLE 15

15 U.S.C. § 6. Forfeiture of property in transit.

Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this title, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

Enacted: July 2, 1890, c. 647, § 6, 26 Stat. 210.

15 U.S.C. § 715f. Forfeiture of contraband oil shipped in violation of law; procedure.

(a) Seizure procedure; return of contraband oil

Contraband oil shipped or transported in interstate commerce in violation of the provisions of this chapter shall be liable to be proceeded against in any district court of the United States within the jurisdiction of which the same may be found, and seized for forfeiture to the United States by a process of libel for condemnation; but in any such case the court may in its discretion, and under such terms and conditions as it shall prescribe, order the return of such contraband oil to the owner thereof where undue hardship would result from such forfeiture. The proceedings in such cases shall conform as nearly as may be to proceedings in rem in admiralty, except that either party may demand a trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States. Contraband oil forfeited to the United States as provided in this section shall be used or disposed of pursuant to such rules and regulations as the President shall prescribe.

(b) Certificates of clearance

No such forfeiture shall be made in the case of contraband oil owned by any person (other than a person shipping such contraband oil in violation of the provisions of this chapter) who has with respect to such contraband oil a certificate of clearance which on its face appears to be valid and to have been issued by a board created under authority of section 715d of this title, certifying that the shipment in question is not contraband oil, and such person had no reasonable ground for believing such certificate to be invalid or to have been issued as a result of fraud or misrepresentation of fact.

Enacted: Feb. 22, 1935, c. 18, § 7, 49 Stat. 32.

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.

Enacted: Jan. 2, 1951, c. 1194, § 7, 64 Stat. 1135.

TITLE 16

16 U.S.C. §§ 470gg(b) and (c). Forfeitures; disposition of penalties collected and items forfeited in cases involving archaeological resources excavated or removed from Indian lands. (Archaeological Resources Protection Act)

(b) Forfeitures

All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 470ee of this title occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

(1) such person's conviction of such violation under section 470ee of this title,

(2) assessment of a civil penalty against such person under section 470ff of this title with respect to such violation, or

(3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) Disposition of penalties collected and items forfeited in cases involving archaeological resources excavated or removed from Indian lands

In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 470ee of this title involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 470ff of this title and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

Enacted: Archaeological Resources Protection Act of 1979, Pub. L. 96-95, § 8, Oct. 31, 1979, 93 Stat. 721, 726.

16 U.S.C. § 916f. Violations; fines and penalties. (Whaling Convention Act)

Except as to violations defined in clause 3 of subsection (a) of section 916c of this title, any person violating any provision of the convention, or of any regulation of the Commission, or of this subchapter, or of any regulation of the Secretary of Commerce upon conviction, shall be fined not more than \$10,000 or be imprisoned not more than one year, or both. In addition the court may prohibit such person from whaling

for such period of time as it may determine, and may order forfeited, in whole or in part, the whales taken by such person in whaling during the season, or the whale products derived therefrom or the monetary value thereof. Such forfeited whales or whale products shall be disposed of in accordance with the direction of the court.

Amended: 1970 Reorg. Plan No. 4, 35 F.R. 15627, eff. Oct. 3, 1970, 84 Stat. 2090.

16 U.S.C. § 957. Violations; fines and forfeitures; application of related laws. (Tuna Conventions)

(a) It shall be unlawful for any master or other person in charge of a fishing vessel of the United States to engage in fishing in violation of any regulation adopted pursuant to section 955(c) of this title or for any person knowingly to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken or retained in violation of such regulations.

(b) It shall be unlawful for the master or any person in charge of any fishing vessel of the United States or any person on board such vessel to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this chapter to be made, kept, or furnished; or to fail to stop upon being hailed by a duly authorized official of the United States; or to refuse to permit the duly authorized officials of the United States or authorized officials of the commissions to board such vessel or inspect its catch, equipment, books, documents, records, or other articles or question the persons on board in accordance with the provisions of this chapter, or the convention, as the case may be.

(c) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 955(c) of this title, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the commission, or any tuna in any form not under regulation but under investigation by the commission, during the period such fish have been denied entry in accordance with the provisions of section 955(c) of this title. In the case of any fish as described in this subsection offered for entry into the United States, the Secretary of Commerce shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 955(c) of this title.

(d) Any person violating any provisions of subsection (a) of this section shall be fined not more than \$25,000, and for a subsequent violation of any provisions of said subsection (a) shall be fined not more than \$50,000.

(e) Any person violating any provision of subsection (b) of this section shall be fined not more than \$1,000, and for a subsequent violation of any provision of subsection (b) shall be fined not more than \$5,000.

(f) Any person violating any provision of subsection (c) of this section shall be fined not more than \$100,000.

(g) All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

(h) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter.

Amended: 1970 Reorg. Plan No. 4, 35 F.R. 15627, eff. Oct. 3, 1970, 84 Stat. 2090.

16 U.S.C. § 971e. Violations. (Atlantic Tunas Convention)

(a) In general

It shall be unlawful—

(1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section 971d of this title; or

(2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section 971d of this title, without regard to the citizenship of the person or vessel which took the fish.

(b) Failure to furnish returns, records, or reports

It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this chapter to be made, kept, or furnished by such master or person.

(c) Refusal of request to board and inspect vessel

It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this chapter and any regulations adopted pursuant thereto, to board such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of this chapter, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

(d) Importation of ineligible species or species under investigation

It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 971d(c) or (d) of this title, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section 971d(c) or (d) of this title. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 971d(c) or (d) of this title.

(e) Sanctions

The civil penalty and permit sanctions of section 1858 of this title are hereby made applicable to violations of this section as if they were violations of section 1857 of this title.

(f) Forfeiture

All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

(g) Applicability of other laws

All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter.

Amended: Governing International Fishery Agreement With Poland, Pub. L. 105- 384, Title II, § 202(b)(1)(F), Nov. 13, 1998, 112 Stat. 3451, 3453.

16 U.S.C. § 972f. Prohibited acts. (Eastern Pacific tuna fishing)

(a) Unlawful acts

It is unlawful for any person subject to the jurisdiction of the United States—

(1) to engage in fishing for a designated species of tuna within the Agreement Area unless issued a license under the Agreement authorizing such fishing;

(2) to engage in fishing for a designated species of tuna within the Agreement area in contravention of regulations promulgated by the Secretary of Commerce under the Agreement;

(3) knowingly to ship, transport, purchase, sell, offer for sale, export, or have in custody, possession, or control any designated species of tuna taken or retained in violation of regulations issued under section 972e of this title;

(4) to fail to make, keep, or furnish any catch return, statistical record, or other report required by regulations issued under section 972e of this title;

(5) being a person in charge of a vessel of the United States, to fail to stop upon being hailed by an authorized official of the United States, or to refuse to permit officials of the United States to board the vessel or inspect its catch, equipment, books, documents, records, or other articles, or to question individuals on board; or

(6) to import from any country, in violation of any regulation issued under section 972e of this title, any designated species of tuna.

(b) Penalties

Any person who is convicted of violating—

(1) subsection (a)(1), (a)(2), or (a)(3) of this section shall be fined or assessed a civil penalty not more than \$25,000, and for a subsequent violation shall be fined or assessed a civil penalty not more than \$50,000;

(2) subsection (a)(4) or (a)(5) of this section shall be fined or assessed a civil penalty not more than \$5,000, and for a subsequent violation shall be fined or assessed a civil penalty not more than \$5,000; or

(3) subsection (a)(6) of this section shall be fined or assessed a civil penalty not more than \$100,000.

(c) Forfeiture

All designated species of tuna taken or retained in violation of subsection (a)(1), (2), (3), or (6) of this section, or the monetary value thereof, is subject to forfeiture.

(d) Application of laws relating to seizures and forfeitures

All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter.

Enacted: Eastern Pacific Tuna Licensing Act of 1984, Pub. L. 98-445, § 8, Oct. 4, 1984, 98 Stat. 1715, 1717.

16 U.S.C. § 1171. Seizure and forfeiture of vessels. (North Pacific fur seals)

(a) Every vessel subject to the jurisdiction of the United States that is employed in any manner in connection with a violation of the provision of this chapter, including its tackle, apparel, furniture, appurtenances, cargo, and stores shall be subject to forfeiture; and all fur seals, or parts thereof, taken or retained in violation of this chapter, or the monetary value thereof, shall be forfeited.

(b) All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of a vessel, including its tackle, apparel, furniture, appurtenances, cargo, and stores for violation of the customs laws, the disposition of such vessel, including its tackle, apparel, furniture, appurtenances, cargo, and stores or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter.

Amended: Fur Seal Act Amendments of 1983, Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 835, 844.

16 U.S.C. § 1376. Seizure and forfeiture of cargo. (Marine Mammal Protection Act)

(a) Application of consistent provisions

Any vessel or other conveyance subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall have its entire cargo or the monetary value thereof subject to seizure and forfeiture. All provisions of law relating to the seizure, judicial forfeiture, and condemnation of cargo for violation of the customs laws, the disposition of such cargo, and the proceeds from the sale thereof, and the remission or mitigation of any such forfeiture, shall apply with respect to the cargo of any vessel or other conveyance seized in connection with the unlawful taking of a marine mammal insofar as such

provisions of law are applicable and not inconsistent with the provisions of this subchapter.

(b) Penalties

Any vessel subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall be liable for a civil penalty of not more than \$25,000. Such penalty shall be assessed by the district court of the United States having jurisdiction over the vessel. Clearance of a vessel against which a penalty has been assessed, from a port of the United States, may be withheld until such penalty is paid, or until a bond or otherwise satisfactory surety is posted. Such penalty shall constitute a maritime lien on such vessel which may be recovered by action in rem in the district court of the United States having jurisdiction over the vessel.

(c) Reward for information leading to conviction

Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the fine incurred but not to exceed \$2,500 to any person who furnishes information which leads to a conviction for a violation of this subchapter. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

Enacted: Marine Mammal Protection Act of 1972, Pub. L. 92-522, Title I, § 106, Oct. 21, 1972, 86 Stat. 1036.

16 U.S.C. § 1377. Enforcement. (Marine Mammal Protection Act)

(a) Utilization of personnel

Except as otherwise provided in this subchapter, the Secretary shall enforce the provisions of this subchapter. The Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal agency for purposes of enforcing this subchapter.

(b) State officers and employees

The Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this subchapter. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Director of the Office of Personnel Management.

(c) Warrants and other process for enforcement

The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process, including warrants or other process issued in admiralty proceedings in United States district courts, as may be required for enforcement of this subchapter and any regulations issued thereunder.

(d) Execution of process; arrest; search; seizure

Any person authorized by the Secretary to enforce this subchapter may execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this subchapter. Such person so authorized may, in addition to any other authority conferred by law—

(1) with or without warrant or other process, arrest any person committing in his presence or view a violation of this subchapter or the regulations issued thereunder;

(2) with a warrant or other process, or without a warrant if he has reasonable cause to believe that a vessel, other conveyance, or container subject to the jurisdiction of the United States or any person on board is in violation of any provision of this subchapter or the regulations issued thereunder, search such vessel or conveyance and arrest such person;

(3) seize the cargo of any vessel or other conveyance subject to the jurisdiction of the United States used or employed contrary to the provisions of this subchapter or the regulations issued hereunder or which reasonably appears to have been so used or employed; and

(4) seize, whenever and wherever found, all marine mammals and marine mammal products taken or retained in violation of this subchapter or the regulations issued thereunder and shall dispose of them in accordance with regulations prescribed by the Secretary.

(e) Disposition of seized cargo

(1) Whenever any cargo or marine mammal or marine mammal product is seized pursuant to this section, the Secretary shall expedite any proceedings commenced under section 1375(a) or (b) of this title. All marine mammals or marine mammal products or other cargo so seized shall be held by any person authorized by the Secretary pending disposition of such proceedings. The owner or consignee of any such marine mammal or marine mammal product or other cargo so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary.

(2) The Secretary may, with respect to any proceeding under section 1375(a) or (b) of this title, in lieu of holding any marine mammal or marine mammal product or other

cargo, permit the person concerned to post bond or other surety satisfactory to the Secretary pending the disposition of such proceeding.

(3)(A) Upon the assessment of a penalty pursuant to section 1375(a) of this title, all marine mammals and marine mammal products or other cargo seized in connection therewith may be proceeded against in any court of competent jurisdiction and forfeited to the Secretary for disposition by him in such manner as he deems appropriate.

(B) Upon conviction for violation of section 1375(b) of this title, all marine mammals and marine mammal products seized in connection therewith shall be forfeited to the Secretary for disposition by him in such manner as he deems appropriate. Any other property or item so seized may, at the discretion of the court, be forfeited to the United States or otherwise disposed of.

(4) If with respect to any marine mammal or marine mammal product or other cargo so seized—

(A) a civil penalty is assessed under section 1375(a) of this title and no judicial action is commenced to obtain the forfeiture of such mammal or product within thirty days after such assessment, such marine mammal or marine mammal product or other cargo shall be immediately returned to the owner or the consignee; or

(B) no conviction results from an alleged violation of section 1375(b) of this title, such marine mammal or marine mammal product or other cargo shall immediately be returned to the owner or consignee if the Secretary does not, with thirty days after the final disposition of the case involving such alleged violation, commence proceedings for the assessment of a civil penalty under section 1375(a) of this title.

Amended: Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, Pub. L. 109-479, Title IX, § 902(c), Jan. 12, 2007, 120 Stat. 3665.

16 U.S.C. § 1540. Penalties and enforcement. (Endangered species)

(a) Civil penalties

(1) Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of this chapter, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F), (a)(2)(A), (B), (C), or (D), (c), (d) (other than regulation relating to recordkeeping or filing of reports), (f) or (g) of section 1538 of this title, may be assessed a civil penalty by the Secretary of not more

than \$25,000 for each violation. Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of any other regulation issued under this chapter may be assessed a civil penalty by the Secretary of not more than \$12,000 for each such violation. Any person who otherwise violates any provision of this chapter, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than \$500 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of Title 5. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) Notwithstanding any other provision of this chapter, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.

(b) Criminal violations

(1) Any person who knowingly violates any provision of this chapter, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection

(a)(1)(A), (B), (C), (D), (E), or (F); (a)(2)(A), (B), (C), or (D), (c), (d) (other than a regulation relating to recordkeeping, or filing of reports), (f), or (g) of section 1538 of this title shall, upon conviction, be fined not more than \$50,000 or imprisoned for not more than one year, or both. Any person who knowingly violates any provision of any other regulation issued under this chapter shall, upon conviction, be fined not more than \$25,000 or imprisoned for not more than six months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing a person to import or export fish, wildlife, or plants, or to operate a quarantine station for imported wildlife, or authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this chapter or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this chapter or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

(3) Notwithstanding any other provision of this chapter, it shall be a defense to prosecution under this subsection if the defendant committed the offense based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual, from bodily harm from any endangered or threatened species.

(c) District court jurisdiction

The several district courts of the United States, including the courts enumerated in section 460 of Title 28, shall have jurisdiction over any actions arising under this chapter. For the purpose of this chapter, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

(d) Rewards and incidental expenses

The Secretary or the Secretary of the Treasury shall pay, from sums received as penalties, fines, or forfeitures of property for any violation of this chapter or any regulation issued hereunder (1) a reward to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this chapter or any regulation issued hereunder, and (2) the reasonable and necessary costs incurred by any person in providing temporary care for any fish, wildlife, or plant pending the disposition of any civil or criminal proceeding alleging a violation of this chapter with respect

to that fish, wildlife, or plant. The amount of the reward, if any, is to be designated by the Secretary or the Secretary of the Treasury, as appropriate. Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of his official duties is ineligible for payment under this subsection. Whenever the balance of sums received under this section and section 3375(d) of this title, as penalties or fines, or from forfeitures of property, exceed \$500,000, the Secretary of the Treasury shall deposit an amount equal to such excess balance in the cooperative endangered species conservation fund established under section 1535(i) of this title.

(e) Enforcement

(1) The provisions of this chapter and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this chapter.

(2) The judges of the district courts of the United States and the United States magistrate judges may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this chapter may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may make arrests without a warrant for any violation of this chapter if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this chapter. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary, but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other

than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this chapter, as the Secretary shall by regulation prescribe.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this chapter, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this chapter, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to subsection (b)(1) of this section.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this chapter, be exercised or performed by the Secretary or by such persons as he may designate.

(6) The Attorney General of the United States may seek to enjoin any person who is alleged to be in violation of any provision of this chapter or regulation issued under authority thereof.

(f) Regulations

The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this chapter, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this chapter including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this chapter. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) Citizen suits

(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this chapter or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 1535(g)(2)(B)(ii) of this title, the prohibitions set forth in or authorized pursuant to section 1533(d) or 1538(a)(1)(B) of this title with respect to the taking of any resident endangered species or threatened species within any State; or

(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under section 1533 of this title which is not discretionary with the Secretary.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, or to order the Secretary to perform such act or duty, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section 1535(g)(2)(B)(ii) of this title to determine whether any such emergency exists.

(C) No action may be commenced under subparagraph (1)(C) of this section prior to sixty days after written notice has been given to the Secretary; except that such action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife or plants.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) Coordination with other laws

The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this chapter with the administration of the animal quarantine laws (as defined in section 136a(f) of Title 21) and section 306 of the Tariff Act of 1930 (19 U.S.C. § 1306). Nothing in this chapter or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this chapter shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this chapter shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930 [19 U.S.C.A. § 1202 et seq.], including, without limitation, section 527 of that Act (19 U.S.C. § 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

Amended: Farm Security and Rural Investment Act of 2002, Pub. L. 107-171, Title X, § 10418(b)(3), May 13, 2002, 116 Stat. 134, 508.

16 U.S.C. § 1860. Civil forfeitures. (National Fishery Management Program)

(a) In general

Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 1857 of this title (other than any act for which the issuance of a citation under section 1861(c) of this title is sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish (or the fair market value thereof) shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) Jurisdiction of district courts

Any district court of the United States which has jurisdiction under section 1861(d) of this title shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) of this section and any action provided for under subsection (d) of this section.

(c) Judgment

If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this chapter or for which security has not previously been obtained under subsection (d) of this section. The provisions of the customs laws relating to—

(1) the seizure, forfeiture, and condemnation of property for violation of the customs law;

(2) the disposition of such property or the proceeds from the sale thereof; and

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

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, unless such provisions are inconsistent with the purposes, policy, and provisions of this chapter. The duties and powers imposed upon the Commissioner of Customs or other persons under such provisions shall, with respect to this chapter, be performed by officers or other persons designated for such purpose by the Secretary.

(d) Procedure

(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 1861(d) of this title shall—

(A) stay the execution of such process; or

(B) discharge any fish seized pursuant to such process;

upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person (i) delivering such property to the appropriate court upon order thereof, without any impairment of its value, or (ii) paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court. Nothing in this paragraph may be construed to require the Secretary, except in the Secretary's discretion or pursuant to the order of a court under section 1861(d) of this title, to release on bond any seized fish or other property or the proceeds from the sale thereof.

(2) Any fish seized pursuant to this chapter may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) Rebuttable presumptions

(1) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 1857 of this title were taken or retained in violation of this chapter.

(2) For purposes of this chapter, it shall be a rebuttable presumption that any fish of a species which spawns in fresh or estuarine waters and migrates to ocean waters that is found on board a vessel is of United States origin if the vessel is within the migratory range of the species during that part of the year to which the migratory range applies.

(3) For purposes of this chapter, it shall be a rebuttable presumption that any vessel that is shoreward of the outer boundary of the exclusive economic zone of the United States or beyond the exclusive economic zone of any nation, and that has gear on board that is capable of use for large-scale driftnet fishing, is engaged in such fishing.

Amended: Sustainable Fisheries Act, Pub. L. 104-297, Title I, § 114(d), Oct. 11, 1996, 110 Stat. 3559, 3599.

16 U.S.C. § 3374. Forfeiture. (Lacey Act)

(a) In general

(1) All fish or wildlife or plants imported, exported, transported, sold, received, acquired, or purchased contrary to the provisions of section 3372 of this title (other than section 3372(b) of this title), or any regulation issued pursuant thereto, shall be subject to forfeiture to the United States notwithstanding any

culpability requirements for civil penalty assessment or criminal prosecution included in section 3373 of this title.

(2) All vessels, vehicles, aircraft, and other equipment used to aid in the importing, exporting, transporting, selling, receiving, acquiring, or purchasing of fish or wildlife or plants in a criminal violation of this chapter for which a felony conviction is obtained shall be subject to forfeiture to the United States if (A) the owner of such vessel, vehicle, aircraft, or equipment was at the time of the alleged illegal act a consenting party or privy thereto or in the exercise of due care should have known that such vessel, vehicle, aircraft, or equipment would be used in a criminal violation of this chapter, and (B) the violation involved the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants.

(b) Application of customs laws

All provisions of law relating to the seizure, forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter, except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department may, for the purposes of this chapter, also be exercised or performed by the Secretary or by such persons as he may designate: Provided, That any warrant for search or seizure shall be issued in accordance with rule 41 of the Federal Rules of Criminal Procedure.

(c) Storage cost

Any person convicted of an offense, or assessed a civil penalty, under section 3373 of this title shall be liable for the costs incurred in the storage, care, and maintenance of any fish or wildlife or plant seized in connection with the violation concerned.

(d) Civil forfeitures

Civil forfeitures under this section shall be governed by the provisions of chapter 46 of Title 18.

Amended: Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, Title VIII, § 8204(d), June 18, 2008, 122 Stat. 2056.

16 U.S.C. § 3606. Violations and penalties. (North Atlantic salmon fishing)

(a) Directed fishing for salmon; Convention, rules and regulations

It is unlawful for any person, or any vessel, subject to the jurisdiction of the United States—

(1) to conduct directed fishing for salmon in waters seaward of twelve miles from the baselines from which the breadths of territorial seas are measured, in waters of the Atlantic Ocean north of 36 degrees north latitude; or

(2) to violate any provision of the Convention or this chapter, or of any regulation promulgated under this chapter.

(b) Civil and criminal penalties

Any person who commits any act that is unlawful under subsection (a) of this section shall—

(1) be liable to the United States for a civil penalty under section 308 of the Act of 1976 (16 U.S.C. § 1858) to the same extent as if such act were an act prohibited under section 307 of the Act of 1976 (16 U.S.C. § 1857); and

(2) be guilty of an offense under section 309 of the Act of 1976 (16 U.S.C. § 1859) to the same extent as if such act were an act prohibited by section 307(1) (D), (E), (F), or (H) of the Act of 1976 (16 U.S.C. §§ 1857(1)(D), (E), (F), or (H)).

(c) Civil forfeiture of vessel

Any vessel used, and any fish (or the fair market value thereof) taken or retained in any manner, in connection with or as the result of the commission of an act which is unlawful under subsection (a) of this section shall be subject to civil forfeiture under section 310 of the Act of 1976 (16 U.S.C. § 1860) to the same extent as if such vessel was used in, or such fish was taken or retained in connection with or as the result of, the commission of an act prohibited by section 307 of the Act of 1976 (16 U.S.C. § 1857).

Amended: Technical corrections to the Atlantic Salmon Convention Act of 1982, Pub. L. 98-44, Title I, § 102(2), July 12, 1983, 97 Stat. 216.

16 U.S.C. § 3637. Prohibited acts and penalties. (Pacific salmon fishing)

(a) Unlawful acts

It is unlawful for any person or vessel subject to the jurisdiction of the United States—

(1) to violate any provision of this chapter, or of any regulation adopted hereunder, or of any Fraser River Panel regulation approved by the United States under the Treaty;

(2) to refuse to permit any officer authorized to enforce the provisions of this chapter to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this chapter;

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (2);

(4) to resist a lawful arrest for any act prohibited by this section;

(5) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this chapter; or

(6) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.

(b) Civil penalty

Any person who commits any act that is unlawful under subsection (a) of this section shall be liable to the United States for a civil penalty as provided by section 308 of the Magnuson Act (16 U.S.C. § 1858).

(c) Criminal penalty

Any person who commits an act that is unlawful under paragraph (2), (3), (4), or (6) of subsection (a) of this section shall be guilty of an offense punishable as provided by section 309(b) of the Magnuson Act (16 U.S.C. § 1859(b)).

(d) Forfeiture

(1) Any vessel (including its gear, furniture, appurtenances, stores, and cargo) used in the commission of an act which is prohibited under subsection (a) of this section, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act which is prohibited by subsection (a) of this section, shall be subject to forfeiture as provided by section 310 of the Magnuson Act (16 U.S.C. § 1860).

(2) Any fish seized pursuant to this chapter may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed by regulation of the Secretary.

(e) Enforcement authority

The Secretary and the Secretary of the Department in which the Coast Guard is operating shall enforce the provisions of this chapter and shall have the authority provided by subsections 311(a), (b)(1), and (c) of the Magnuson Act (16 U.S.C. §§ 1861(a), (b)(1), and (c)).

(f) Jurisdiction

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under this section and may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

Enacted: Pacific Salmon Treaty Act of 1985, Pub. L. 99-5, § 8, Mar. 15, 1985, 99 Stat. 7, 12.

16 U.S.C. § 5010. Penalties. (North Pacific Anadromous Stocks Convention)

(a) Civil penalties

(1) Any person who is found by the Secretary of Commerce, after notice and opportunity for a hearing in accordance with section 554 of Title 5, to have committed an act prohibited by section 5009 of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary of Commerce, or the Secretary's designee, by written notice. In determining the amount of such penalty, the Secretary of Commerce shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(2) Any person against whom a civil penalty is assessed under paragraph (1) may obtain review thereof in the appropriate court of the United States by filing a complaint in such court within 30 days from the date of such order and by simultaneously serving a copy of such complaint by certified mail on the Secretary of Commerce, the Attorney General, and the appropriate United States Attorney. The Secretary of Commerce shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of Title 28. The findings and order of the Secretary of Commerce shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of Title 5.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary of Commerce, the matter shall be referred to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 5009 of this title shall be liable in rem for any civil penalty assessed for such violation under

paragraph (1) and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel that may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(5) The Secretary of Commerce may compromise, modify, or remit, with or without conditions, any civil penalty that is subject to imposition or that has been imposed under this section.

(6) For the purposes of conducting any hearing under this section, the Secretary of Commerce may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary of Commerce or to appear and produce documents before the Secretary of Commerce, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Offenses

(1) A person is guilty of an offense if the person commits any act prohibited by section 5009(5), (6), (7), or (8) of this title.

(2) Any offense described in paragraph (1) is a class A misdemeanor punishable by a fine under Title 18 or imprisonment for not more than 6 months, or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any enforcement officer, or places any such officer in fear of imminent bodily injury, the offense is a felony punishable by a fine under Title 18 or imprisonment for not more than 10 years, or both.

(c) Forfeiture

(1) Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or a fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 5009 of this title shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(2) Any district court of the United States shall have jurisdiction, upon application of the Attorney General on behalf of the United States, to order any forfeiture authorized under paragraph (1) and any action provided for under paragraph (4).

(3) If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this chapter or for which security has not previously been obtained. The provisions of the customs laws relating to—

(A) the seizure, forfeiture, and condemnation of property for violation of the customs law;

(B) the disposition of such property or the proceeds from the sale thereof; and

(C) the remission or mitigation of any such forfeiture;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, unless such provisions are inconsistent with the purposes, policy, and provisions of this chapter.

(4)(A) Any officer authorized to serve any process in rem that is issued by a court having jurisdiction under section 5008(b) of this title shall—

(i) stay the execution of such process; or

(ii) discharge any fish seized pursuant to such process;

upon receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(B) Any fish seized pursuant to this chapter may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(5) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel and which is seized in connection with an act prohibited by section 5009 of this title were taken or retained in violation of the Convention and this chapter.

Amended: Pribilof Islands Transition Act/Coral Reef Conservation Act of 2000, Pub. L. 106-562, Title III, § 304(a), Dec. 23, 2000, 114 Stat. 2794, 2806.

16 U.S.C. § 5106. Secretarial action. (Atlantic coastal fisheries)

(a) Secretarial review of Commission determination of noncompliance

Within 30 days after receiving a notification from the Commission under section 5105(b) of this title and after review of the Commission's determination of noncompliance, the Secretary shall make a finding on—

(1) whether the State in question has failed to carry out its responsibility under section 5104 of this title; and

(2) if so, whether the measures that the State has failed to implement and enforce are necessary for the conservation of the fishery in question.

(b) Consideration of comments

In making a finding under subsection (a) of this section, the Secretary shall—

(A) give careful consideration to the comments of the State that the Commission has determined under section 5105(a) of this title is not in compliance with a coastal fishery management plan, and provide such State, upon request, with the opportunity to meet with and present its comments directly to the Secretary; and

(B) solicit and consider the comments of the Commission and the appropriate Councils.

(c) Moratorium

(1) Upon making a finding under subsection (a) of this section that a State has failed to carry out its responsibility under section 5104 of this title and that the measures it failed to implement and enforce are necessary for conservation, the Secretary shall declare a moratorium on fishing in the fishery in question within the waters of the noncomplying State. The Secretary shall specify the moratorium's effective date, which shall be any date within 6 months after declaration of the moratorium.

(2) If after a moratorium is declared under paragraph (1) the Secretary is notified by the Commission that the Commission is withdrawing under section 5105(c) of this title the determination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable plan. If so, the moratorium shall be terminated.

(d) Implementing regulations

The Secretary may issue regulations necessary to implement this section. Such regulations—

(1) may provide for the possession and use of fish which have been produced in an aquaculture operation, subject to applicable State regulations; and

(2) shall allow for retention of fish that are subject to a moratorium declared under this section and unavoidably taken as incidental catch in fisheries directed toward menhaden if—

(A) discarding the retained fish is impracticable;

(B) the retained fish do not constitute a significant portion of the catch of the vessel; and

(C) retention of the fish will not, in the judgment of the Secretary, adversely affect the conservation of the species of fish retained.

(e) Prohibited acts during moratorium

During the time in which a moratorium under this section is in effect, it is unlawful for any person to—

(1) violate the terms of the moratorium or of any implementing regulation issued under subsection (d) of this section;

(2) engage in fishing for any species of fish to which the moratorium applies within the waters of the State subject to the moratorium;

(3) land, attempt to land, or possess fish that are caught, taken, or harvested in violation of the moratorium or of any implementing regulation issued under subsection (d) of this section;

(4) fail to return to the water immediately, with a minimum of injury, any fish to which the moratorium applies that are taken incidental to fishing for species other than those to which the moratorium applies, except as provided by regulations issued under subsection (d) of this section;

(5) refuse to permit any officer authorized to enforce the provisions of this chapter to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this chapter;

(6) forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection under this chapter;

(7) resist a lawful arrest for any act prohibited by this section;

(8) ship, transport, offer for sale, sell, purchase, import, or have custody, control, or possession of, any fish taken or retained in violation of this chapter; or

(9) interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.

(f) Civil and criminal penalties

(1) Any person who commits any act that is unlawful under subsection (e) of this section shall be liable to the United States for a civil penalty as provided by section 308 of the

Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1858).

(2) Any person who commits an act prohibited by paragraph (5), (6), (7), or (9) of subsection (e) of this section is guilty of an offense punishable as provided by section 309(a)(1) and (b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1859(a)(1) and (b)).

(g) Civil forfeitures

(1) Any vessel (including its gear, equipment, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with, or as the result of, the commission of any act that is unlawful under subsection (e) of this section, shall be subject to forfeiture to the United States as provided in section 310 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1860).

(2) Any fish seized pursuant to this chapter may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed in regulation.

(h) Enforcement

A person authorized by the Secretary or the Secretary of the department in which the Coast Guard is operating may take any action to enforce a moratorium declared under subsection (c) of this section that an officer authorized by the Secretary under section 311(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1861(b)) may take to enforce that Act [16 U.S.C.A. § 1801 et seq.]. The Secretary may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal department or agency and of any agency of a State in carrying out that enforcement.

Amended: Striped Bass Conservation Act, Pub. L. 106-555, Title I, § 122(b)(3), Dec. 21, 2000, 114 Stat. 2765, 2766.

16 U.S.C. § 5154. Moratorium. (Atlantic striped bass conservation)

(a) Secretarial action after notification

Upon receiving notice from the Commission under section 5153(c) of this title of a negative determination regarding a coastal State, the Secretaries shall determine jointly, within 30 days, whether that coastal State is in compliance with the Plan and, if the State is not in compliance, the Secretaries shall declare jointly a moratorium on fishing for Atlantic striped bass within the coastal waters of that coastal State. In making such a determination, the Secretaries shall carefully consider and review the comments of the Commission and that coastal State in question.

(b) Prohibited acts during moratorium

During a moratorium period, it is unlawful for any person—

- (1) to engage in fishing within the moratorium area;
- (2) to land, or attempt to land, Atlantic striped bass that are caught, taken, or harvested in violation of paragraph (1);
- (3) to land lawfully harvested Atlantic striped bass within the boundaries of a coastal State when a moratorium declared under subsection (a) of this section applies to that State; or
- (4) to fail to return to the water Atlantic striped bass to which the moratorium applies that are caught incidental to harvesting that occurs in the course of commercial or recreational fish catching activities, regardless of the physical condition of the striped bass when caught.

(c) Civil penalties**(1) Civil penalty**

Any person who commits any act that is unlawful under subsection (b) of this section shall be liable to the United States for a civil penalty as provided by section 308 of the Magnuson Act.

(2) Civil forfeitures**(A) In general**

Any vessel (including its gear, equipment, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with, or as the result of, the commission of any act that is unlawful under subsection (b) of this section shall be subject to forfeiture to the United States as provided in section 310 of the Magnuson Act.

(B) Disposal of fish

Any fish seized pursuant to this chapter may be disposed of pursuant to the order of a court of competent jurisdiction, or, if perishable, in a manner prescribed in regulations.

(d) Enforcement

A person authorized by the Secretaries or the Secretary of the department in which the Coast Guard is operating may take any action to enforce a moratorium declared under subsection (a) of this section that an officer authorized by the Secretary under section 311(b) of the Magnuson Act may take to enforce that Act. The Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal department or agency and of any agency of a State in carrying out that enforcement.

(e) Regulations

The Secretaries may issue regulations to implement this section.

Amended: Atlantic Striped Bass Conservation Act Amendments of 1997, Pub. L. 105-146, § 2, Dec. 16, 1997, 111 Stat. 2672, 2974.

16 U.S.C. § 5509. Forfeitures. (High seas fishing)**(a) In general**

Any high seas fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any living marine resources (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 5505 of this title (other than an act for which the issuance of a citation under section 5506 of this title is a sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such living marine resources (or the fair market value thereof) shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) Jurisdiction of district courts

Any district court of the United States shall have jurisdiction, upon application of the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) of this section and any action provided for under subsection (d) of this section.

(c) Judgment

If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this chapter or for which security has not previously been obtained. The provisions of the customs laws relating to—

(1) the seizure, forfeiture, and condemnation of property for violation of the customs law;

(2) the disposition of such property or the proceeds from the sale thereof; and

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

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, unless such provisions are inconsistent with the purposes, policy, and provisions of this chapter.

(d) Procedure

(1) Any officer authorized to serve any process in rem that is issued by a court under section 5506(b) of this title shall—

(A) stay the execution of such process; or

(B) discharge any living marine resources seized pursuant to such process;

upon receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(2) Any living marine resources seized pursuant to this chapter may be sold, subject to the approval of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) Rebuttable presumption

For purposes of this section, all living marine resources found on board a high seas fishing vessel and which are seized in connection with an act prohibited by section 5505 of this title are presumed to have been taken or retained in violation of this chapter, but the presumption can be rebutted by an appropriate showing of evidence to the contrary.

Enacted: Fisheries Act of 1995, Pub. L. 104-43, Title I, § 110, Nov. 3, 1995, 109 Stat. 366, 375.

16 U.S.C. § 5606. Prohibited acts and penalties. (Northwest Atlantic Fisheries Convention)

(a) Prohibition

It is unlawful for any person or vessel that is subject to the jurisdiction of the United States—

(1) to violate any regulation issued under this chapter or any measure that is legally binding on the United States under the Convention;

(2) to refuse to permit any authorized enforcement officer to board a fishing vessel that is subject to the person's control for purposes of conducting any search or inspection in connection with the enforcement of this chapter, any regulation issued under this chapter, or any measure that is legally binding on the United States under the Convention;

(3) forcibly to assault, resist, oppose, impede, intimidate, or interfere with any authorized enforcement officer in the conduct of any search or inspection described in paragraph (2);

(4) to resist a lawful arrest for any act prohibited by this section;

(5) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this section; or

(6) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that the other person has committed an act prohibited by this section.

(b) Civil penalty

Any person who commits any act that is unlawful under subsection (a) of this section shall be liable to the United States for a civil penalty, or may be subject to a permit sanction, under section 1858 of this title.

(c) Criminal penalty

Any person who commits an act that is unlawful under paragraph (2), (3), (4), or (6) of subsection (a) of this section shall be guilty of an offense punishable under section 1859(b) of this title.

(d) Civil forfeitures

(1) In general

Any vessel (including its gear, furniture, appurtenances, stores, and cargo) used in the commission of an act that is unlawful under subsection (a) of this section, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act that is unlawful under subsection (a) of this section, shall be subject to seizure and forfeiture as provided in section 1860 of this title.

(2) Disposal of fish

Any fish seized pursuant to this chapter may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed by regulations issued by the Secretary.

(e) Enforcement

The Secretary and the Secretary of the department in which the Coast Guard is operating shall enforce the provisions of this chapter and shall have the authority specified in section 1861(a), (b)(1), and (c) of this title for that purpose.

(f) Jurisdiction of courts

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under this section and may, at any time—

- (1) enter restraining orders or prohibitions;
- (2) issue warrants, process in rem, or other process;
- (3) prescribe and accept satisfactory bonds or other security; and
- (4) take such other actions as are in the interests of justice.

Amended: Governing International Fishery Agreement With Poland, Pub. L. 105-384, Title II, § 201(b)(1), Nov. 13, 1998, 112 Stat. 3451.

TITLE 17

17 U.S.C. § 506(b). Criminal offenses. (Copyright infringements)

(b) Forfeiture, destruction, and restitution.—Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323 of title 18, to the extent provided in that section, in addition to any other similar remedies provided by law.

Amended: Prioritizing Resources and Organization for Intellectual Property Act of 2008, Pub. L. 110-403, Title II, § 201(a), Oct. 13, 2008, Stat. 4260.

TITLE 18

18 U.S.C. § 38. Fraud involving aircraft or space vehicle parts in interstate or foreign commerce.

(a) Offenses. Whoever, in or affecting interstate or foreign commerce, knowingly and with the intent to defraud—

(1)(A) falsifies or conceals a material fact concerning any aircraft or space vehicle part;

(B) makes any materially fraudulent representation concerning any aircraft or space vehicle part; or

(C) makes or uses any materially false writing, entry, certification, document, record, data plate, label, or electronic communication concerning any aircraft or space vehicle part;

(2) exports from or imports or introduces into the United States, sells, trades, installs on or in any aircraft or space vehicle any aircraft or space vehicle part using or by means of a fraudulent representation, document, record, certification, depiction, data plate, label, or electronic communication; or

(3) attempts or conspires to commit an offense described in paragraph (1) or (2),

shall be punished as provided in subsection (b).

(b) Penalties. The punishment for an offense under subsection (a) is as follows:

(1) Aviation quality. If the offense relates to the aviation quality of a part and the part is installed in an aircraft or space vehicle, a fine of not more than \$500,000, imprisonment for not more than 15 years, or both.

(2) Failure to operate as represented. If, by reason of the failure of the part to operate as represented, the part to which the offense is related is the proximate cause of a malfunction or failure that results in serious bodily injury (as defined in section 1365), a fine of not more than \$ 1,000,000, imprisonment for not more than 20 years, or both.

(3) Failure resulting in death. If, by reason of the failure of the part to operate as represented, the part to which the offense is related is the proximate cause of a malfunction or failure that results in the death of any person, a fine of not more than \$ 1,000,000, imprisonment for any term of years or life, or both.

(4) Other circumstances. In the case of an offense under subsection (a) not described in paragraph (1), (2), or (3) of this subsection, a fine under this title, imprisonment for not more than 10 years, or both.

(5) Organizations. If the offense is committed by an organization, a fine of not more than—

(A) \$10,000,000 in the case of an offense described in paragraph (1) or (4); and

(B) \$20,000,000 in the case of an offense described in paragraph (2) or (3).

(c) Civil remedies.

(1) In general. The district courts of the United States shall have jurisdiction to prevent and restrain violations of this section by issuing appropriate orders, including—

(A) ordering a person (convicted of an offense under this section) to divest any interest, direct or indirect, in any enterprise used to commit or facilitate the commission of the offense, or to destroy, or to mutilate and sell as scrap, aircraft material or part inventories or stocks;

(B) imposing reasonable restrictions on the future activities or investments of any such person, including prohibiting engagement in the same type of endeavor as used to commit the offense; and

(C) ordering the dissolution or reorganization of any enterprise knowingly used to commit or facilitate the commission of an offense under this section making due provisions for the rights and interests of innocent persons.

(2) Restraining orders and prohibition. Pending final determination of a proceeding brought under this section, the court may enter such restraining orders or prohibitions, or take such other actions (including the acceptance of satisfactory performance bonds) as the court deems proper.

(3) Estoppel. A final judgment rendered in favor of the United States in any criminal proceeding brought under this section shall stop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

(d) Criminal forfeiture.

(1) In general. The court, in imposing sentence on any person convicted of an offense under this section, shall order, in addition to any other sentence and irrespective of any provision of State law, that the person forfeit to the United States—

(A) any property constituting, or derived from, any proceeds that the person obtained, directly or indirectly, as a result of the offense; and

(B) any property used, or intended to be used in any manner, to commit or facilitate the commission of the offense, if the court in its discretion so determines, taking

into consideration the nature, scope, and proportionality of the use of the property on the offense.

(2) Application of other law. The forfeiture of property under this section, including any seizure and disposition of the property, and any proceedings relating to the property, shall be governed by section 413 of the Comprehensive Drug Abuse and Prevention Act of 1970 (21 U.S.C. 853) (not including subsection (d) of that section).

(e) Construction with other law. This section does not preempt or displace any other remedy, civil or criminal, provided by Federal or State law for the fraudulent importation, sale, trade, installation, or introduction into commerce of an aircraft or space vehicle part.

(f) Territorial scope. This section also applies to conduct occurring outside the United States if—

(1) the offender is a natural person who is a citizen or permanent resident alien of the United States, or an organization organized under the laws of the United States or political subdivision thereof;

(2) the aircraft or spacecraft part as to which the violation relates was installed in an aircraft or space vehicle owned or operated at the time of the offense by a citizen or permanent resident alien of the United States, or by an organization thereof; or

(3) an act in furtherance of the offense was committed in the United States.

Enacted: Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. 106-181, Title V, § 506(c)(1), Apr. 5, 2000, 114 Stat. 61, 137.

18 U.S.C. § 371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Amended: Violent Crime Control and Law Enforcement Act of 1994, Pub.L. 103-322, Title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.

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 under this title 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.

Amended: Criminal Law Technical Amendments Act of 2002, Pub. L. 107-273, Div. B, Title IV, § 4002(d)(1)(A), Nov. 2, 2002, 116 Stat. 1758, 1809.

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 chapter 301 of title 49; 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 with respect to seizure and forfeiture under such provisions shall be performed under this section by such persons as may be designated by the Attorney General.

(c) As used in this section, the terms “identification number”, “motor vehicle”, and “motor vehicle scrap processor” have the meanings given those terms in section 511 of this title.

Amended: Revision of Title 49, United States Code Annotated, “Transportation,” Pub. L. 103-272, § 5(e)(4), July 5, 1994, 108 Stat. 745, 1373.

18 U.S.C. § 545. Smuggling goods into the United States.

Whoever knowingly and willfully, with intent to defraud the United States, smuggles, or clandestinely introduces or attempts to smuggle or clandestinely introduce into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper; or

Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law—

Shall be fined under this title or imprisoned not more than 20 years, or both.

Proof of defendant’s possession of such goods, unless explained to the satisfaction of the jury, shall be deemed evidence sufficient to authorize conviction for violation of this section.

Merchandise introduced into the United States in violation of this section, or the value thereof, to be recovered from any person described in the first or second paragraph of this section, shall be forfeited to the United States.

The term “United States”, as used in this section, shall not include the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam.

Amended: USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. 109-177, Title III, § 310, Mar. 9, 2006, 120 Stat. 192, 242.

18 U.S.C. § 550. False claim for refund of duties.

Whoever knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback, allowance, or refund of duties upon the exportation of merchandise, or knowingly or willfully makes or files any false affidavit, abstract, record, certificate, or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties, on the exportation of merchandise, greater than that legally due thereon, shall be fined under this title or imprisoned not more than two years, or both, and such merchandise or the value thereof shall be forfeited.

Amended: Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, Title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 1796, 2147.

18 U.S.C. § 641. Public money, property or records.

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted--

Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

Amended: Identity Theft Penalty Enhancement Act, Pub.L. 108-275, § 4, July 15, 2004, 118 Stat. 833.

18 U.S.C. § 657. Lending, credit and insurance institutions

Whoever, being an officer, agent or employee of or connected in any capacity with the Federal Deposit Insurance Corporation, National Credit Union Administration, any Federal home loan bank, the Federal Housing Finance Agency, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, or the Farm Credit System Insurance Corporation, a Farm Credit Bank, a bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution, other than an insured bank (as defined in section 656), the accounts of which are insured by the Federal Deposit Insurance Corporation, or by the National Credit Union Administration Board or any small business investment company, or any community development financial institution receiving financial assistance under the Riegle Community Development and Regulatory Improvement Act of 1994, and whoever, being a receiver of any such institution, or agent or employee of the receiver, embezzles, abstracts, purloins or willfully misapplies any moneys, funds, credits, securities or other things of value belonging to such institution, or pledged or otherwise entrusted to its care, shall be fined not more than

\$1,000,000 or imprisoned not more than 30 years, or both; but if the amount or value embezzled, abstracted, purloined or misapplied does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

Amended: Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, Title III, § 377(2), July 21, 2010, 124 Stat. 1569..

18 U.S.C. § 658. Property mortgaged or pledged to farm credit agencies

Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, the Farm Credit Administration, any Federal intermediate credit bank, or the Federal Crop Insurance Corporation, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, any production credit association organized under sections 1131-1134m of Title 12, any regional agricultural credit corporation, or any bank for cooperatives, shall be fined under this title or imprisoned not more than five years, or both; but if the value of such property does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

Amended: Appropriations, 2000, Pub.L. 106-78, Title VII, § 767, Oct. 22, 1999, 113 Stat. 1174.

18 U.S.C. § 666. Theft or bribery concerning programs receiving Federal funds

(a) Whoever, if the circumstance described in subsection (b) of this section exists--

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof--

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that--

(i) is valued at \$5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of \$5,000 or more; or

(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of \$5,000 or more;

shall be fined under this title, imprisoned not more than 10 years, or both.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

(c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) As used in this section--

(1) the term “agent” means a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative;

(2) the term “government agency” means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established, and subject to control, by a government or governments for the execution of a governmental or intergovernmental program;

(3) the term “local” means of or pertaining to a political subdivision within a State;

(4) the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(5) the term “in any one-year period” means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense.

Amended: Violent Crime Control and Law Enforcement Act of 1994, Pub.L. 103-322, Title XXXIII, § 330003(c), Sept. 13, 1994, 108 Stat. 2140.

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 his 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 under this title 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, 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. For the purposes of this subsection, the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(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 (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §§ 853(b), (c), and (e)-(p)) 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.

Amended: Economic Espionage Act of 1996, Pub. L. 104-294, Title VI, § 607(b), Oct. 11, 1996, 110 Stat. 3488, 3511.

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, except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds that the offense resulted in the identification by a foreign power (as defined in section 101(a) of the Foreign Intelligence Surveillance Act of 1978) of an individual acting as an agent of the United States and consequently in the death of that individual, or directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy.

(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.

For the purposes of this subsection, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(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 (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §§ 853(b), (c), and (e)-(p)) 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.

Amended: Economic Espionage Act of 1996, Pub. L. 104-294, Title VI, §§ 604(b)(2), 607(b), Oct. 11, 1996, 110 Stat. 3488, 3506, 3511.

18 U.S.C. § 844(c). Penalties. (Explosive materials)

(c)(1) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

(2) Notwithstanding paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture in which it would be impracticable or unsafe to remove the materials to a place of storage or would be unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least 1 credible witness. The seizing officer shall make a report of the seizure and take samples as the Attorney General may by regulation prescribe.

(3) Within 60 days after any destruction made pursuant to paragraph (2), the owner of (including any person having an interest in) the property so destroyed may make application to the Attorney General for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Attorney General that—

(A) the property has not been used or involved in a violation of law; or

(B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,

the Attorney General shall make an allowance to the claimant not exceeding the value of the property destroyed.

Amended: Norman Y. Mineta Research and Special Programs Improvement Act, Pub. L. 108-426, § 2(c)(6), Nov. 30, 2004, 118 Stat. 2423, 2424.

18 U.S.C. § 924(d). Penalties. (Firearms/ammunition)

(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States,

or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: Provided, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924(c)(3) of this title;

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. § 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. § 951 et seq.);

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of this title; and

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

Amended: Codification of Title 46, Pub. L. 109-304, § 17(d)(3), Oct. 6, 2006, 120 Stat. 1707. *Subsection (d) was not amended.*

18 U.S.C. § 981. Civil forfeiture.

(a)(1) 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 1956, 1957 or 1960 of this title, or any property traceable to such property.

(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, or any property used to facilitate such an offense, if the offense—

(i) involves trafficking in nuclear, chemical, biological, or radiological weapons technology or material, or the manufacture, importation, sale, or distribution of a controlled substance (as that term is defined for purposes of the Controlled Substances Act), or any other conduct described in section 1956(c)(7)(B);

(ii) would be punishable within the jurisdiction of the foreign nation by death or imprisonment for a term exceeding 1 year; and

(iii) would be punishable under the laws of the United States by imprisonment for a term exceeding 1 year, if the act or activity constituting the offense 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, 670, 842, 844, 1005, 1006, 1007, 1014, 1028, 1029, 1030, 1032, or 1344 of this title or any offense constituting “specified unlawful activity” (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

See “Appendix A” for a list of all violations of federal and state or foreign law identified as “specified unlawful activity” under 18 U.S.C. § 1956(c)(7). See also text of section 1956(c)(7) at page 57.

(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 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 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).

(G) All assets, foreign or domestic—

(i) of any individual, entity, or organization engaged in planning or perpetrating any any Federal crime of terrorism (as defined in section 2332b(g)(5)) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

(ii) acquired or maintained by any person with the intent and for the purpose of supporting, planning, conducting, or concealing any Federal crime of terrorism (as defined in section 2332b(g)(5)) against the United States, citizens or residents of the United States, or their property;

(iii) derived from, involved in, or used or intended to be used to commit any Federal crime of terrorism (as defined in section 2332b(g)(5)) against the United States, citizens or residents of the United States, or their property; or

(iv) of any individual, entity, or organization engaged in planning or perpetrating any act of international terrorism (as defined in section 2331) against any international organization (as defined in section 209 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4309(b)) or against any foreign Government. Where the property sought for forfeiture is located beyond the territorial boundaries of the United States, an act in further-ance of such planning or perpetration must have occurred within the jurisdiction of the United States.

(H) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 2339C of this title.

(2) For purposes of paragraph (1), the term “proceeds” is defined as follows:

(A) In cases involving illegal goods, illegal services, unlawful activities, and telemarketing and health care fraud schemes, the term “proceeds” means property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture,

and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

(B) In cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the term “proceeds” means the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. The claimant shall have the burden of proof with respect to the issue of direct costs. The direct costs shall not include any part of the overhead expenses of the entity providing the goods or services, or any part of the income taxes paid by the entity.

(C) In cases involving fraud in the process of obtaining a loan or extension of credit, the court shall allow the claimant a deduction from the forfeiture to the extent that the loan was repaid, or the debt was satisfied, without any financial loss to the victim.

(b)(1) Except as provided in section 985, any property subject to forfeiture to the United States under subsection (a) may be seized by the Attorney General and, in the case of property involved in a violation investigated by the Secretary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

(2) Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, except that a seizure may be made without a warrant if—

(A) a complaint for forfeiture has been filed in the United States district court and the court issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

(B) there is probable cause to believe that the property is subject to forfeiture and—

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

(ii) another exception to the Fourth Amendment warrant requirement would apply; or

(C) the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency.

(3) Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, and may be executed in any district in which the property is found, or transmitted to the central authority of any foreign state for

service in accordance with any treaty or other international agreement. Any motion for the return of property seized under this section shall be filed in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(4)(A) If any person is arrested or charged in a foreign country in connection with an offense that would give rise to the forfeiture of property in the United States under this section or under the Controlled Substances Act, the Attorney General may apply to any Federal judge or magistrate judge in the district in which the property is located for an ex parte order restraining the property subject to forfeiture for not more than 30 days, except that the time may be extended for good cause shown at a hearing conducted in the manner provided in rule 43(e) of the Federal Rules of Civil Procedure.

(B) The application for the restraining order shall set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture, and shall contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection.

(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 such property under 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) as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity; 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)(1) Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a related criminal case.

(2) Upon the motion of a claimant, the court shall stay the civil forfeiture proceeding with respect to that claimant if the court determines that—

(A) the claimant is the subject of a related criminal investigation or case;

(B) the claimant has standing to assert a claim in the civil forfeiture proceeding; and

(C) continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case.

(3) With respect to the impact of civil discovery described in paragraphs (1) and (2), the court may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the opposing party to pursue the civil case. In no case, however, shall the court impose a protective order as an alternative to a stay if the effect of such protective order would be to allow one party to pursue discovery while the other party is substantially unable to do so.

(4) In this subsection, the terms “related criminal case” and “related criminal investigation” mean an actual prosecution or investigation in progress at the time at which the request for the stay, or any subsequent motion to lift the stay is made. In determining whether a criminal case or investigation is “related” to a civil forfeiture proceeding, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the two proceedings, without requiring an identity with respect to any one or more factors.

(5) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(6) Whenever a civil forfeiture proceeding is stayed pursuant to this subsection, the court shall enter any order necessary to preserve the value of the property or to protect the rights of lienholders or other persons with an interest in the property while the stay is in effect.

(7) A determination by the court that the claimant has standing to request a stay pursuant to paragraph (2) shall apply only to this subsection and shall not preclude the Government from objecting to the standing of the claimant by dispositive motion or at the time of trial.

(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 481(h) 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.

(k) Interbank accounts.—

(1) In general.—

(A) In general.—For the purpose of a forfeiture under this section or under the Controlled Substances Act (21 U.S.C. 801 et seq.), if funds are deposited into an account at a foreign financial institution (as defined in section 984(c)(2)(A) of this title), and that foreign financial institution (as defined in section 984(c)(2)(A) of this title) has an interbank account in the United States with a covered financial institution (as defined in section 5318(j)(1) of title 31), the funds shall be deemed to have been deposited into the interbank account in the United States, and any restraining order, seizure warrant, or arrest warrant in rem regarding the funds may be served on the covered financial institution, and funds in the interbank account, up to the value of the funds deposited into the account at the foreign financial institution (as defined in section 984(c)(2)(A) of this title), may be restrained, seized, or arrested.

(B) Authority to suspend.—The Attorney General, in consultation with the Secretary of the Treasury, may suspend or terminate a forfeiture under this section if the Attorney General determines that a conflict of law exists between the laws of the jurisdiction in which the foreign financial institution (as defined in section 984(c)(2)(A) of this title) is located and the laws of the United States with respect to liabilities arising from the restraint, seizure, or arrest of such funds, and that such suspension or termination would be in the interest of justice and would not harm the national interests of the United States.

(2) No requirement for Government to trace funds.—If a forfeiture action is brought against funds that are re-strained, seized, or arrested under paragraph (1), it shall not be necessary for the Government to establish that the funds are directly traceable to the funds that were deposited into the foreign financial institution (as defined in section 984(c)(2)

(A) of this title), nor shall it be necessary for the Government to rely on the application of section 984.

(3) Claims brought by owner of the funds.—If a forfeiture action is instituted against funds restrained, seized, or arrested under paragraph (1), the owner of the funds deposited into the account at the foreign financial institution (as defined in section 984(c)(2)(A) of this title) may contest the forfeiture by filing a claim under section 983.

(4) Definitions.—For purposes of this subsection, the following definitions shall apply:

(A) Interbank account.—The term “interbank account” has the same meaning as in section 984(c)(2)(B).

(B) Owner.—

(i) In general.—Except as provided in clause (ii), the term “owner”—

(I) means the person who was the owner, as that term is defined in section 983(d)(6), of the funds that were deposited into the foreign financial institution (as defined in section 984(c)(2)(A) of this title) at the time such funds were deposited; and

(II) does not include either the foreign financial institution (as defined in section 984(c)(2)(A) of this title) or any financial institution acting as an intermediary in the transfer of the funds into the interbank account.

(ii) Exception.—The foreign financial institution (as defined in section 984(c)(2)(A) of this title) may be considered the “owner” of the funds (and no other person shall qualify as the owner of such funds) only if—

(I) the basis for the forfeiture action is wrongdoing committed by the foreign financial institution (as defined in section 984(c)(2)(A) of this title); or

(II) the foreign financial institution (as defined in section 984(c)(2)(A) of this title) establishes, by a pre-ponderance of the evidence, that prior to the restraint, seizure, or arrest of the funds, the foreign financial institution (as defined in section 984(c)(2)(A) of this title) had discharged all or part of its obligation to the prior owner of the funds, in which case the foreign financial institution (as defined in section 984(c)(2)(A) of this title) shall be deemed the owner of the funds to the extent of such discharged obligation.

Amended: Strengthening and Focusing Enforcement to Deter Organized Stealing and Enhance Safety Act of 2012, Pub. L. 112-186, § 3, Oct. 5, 2012, 126 Stat. 1428.

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 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.

(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, 555, 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);

(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 the [FN1] 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 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.

(6)(A) The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, section 274(a), 274A(a)(1), or 274A(a)(2) of the Immigration and Nationality Act or section 555, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of this title, or a violation of, or conspiracy to violate, section 1028 of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States, regardless of any provision of State law—

(i) any conveyance, including any vessel, vehicle, or aircraft used in the commission of the offense of which the person is convicted; and

(ii) any property real or personal—

(I) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of the offense of which the person is convicted; or

(II) that is used to facilitate, or is intended to be used to facilitate, the commission of the offense of which the person is convicted.

(B) The court, in imposing sentence on a person described in subparagraph (A), shall order that the person forfeit to the United States all property described in that subparagraph.

(7) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

(8) The court, in sentencing a defendant convicted of an offense under section 1028, 1029, 1341, 1342, 1343, or 1344, or of a conspiracy to commit such an offense, if the offense involves telemarketing (as that term is defined in section 2325), shall order that the defendant forfeit to the United States any real or personal property—

(A) used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and

(B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.

(b)(1) The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).

(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.

Amended: Border Tunnel Prevention Act, Pub. L. 112-127, § 5, June 5, 2012, 126 Stat. 371.

18 U.S.C. § 983. General rules for civil forfeiture proceedings.

(a) Notice; claim; complaint.—

(1)(A)(i) Except as provided in clauses (ii) through (v), in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the Government is required to send written notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than 60 days after the date of the seizure.

(ii) No notice is required if, before the 60-day period expires, the Government files a civil judicial forfeiture action against the property and provides notice of that action as required by law.

(iii) If, before the 60-day period expires, the Government does not file a civil judicial forfeiture action, but does obtain a criminal indictment containing an allegation that the property is subject to forfeiture, the Government shall either—

(I) send notice within the 60 days and continue the nonjudicial civil forfeiture proceeding under this section; or

(II) terminate the nonjudicial civil forfeiture proceeding, and take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute.

(iv) In a case in which the property is seized by a State or local law enforcement agency and turned over to a Federal law enforcement agency for the purpose of forfeiture under Federal law, notice shall be sent not more than 90 days after the date of seizure by the State or local law enforcement agency.

(v) If the identity or interest of a party is not determined until after the seizure or turnover but is determined before a declaration of forfeiture is entered, notice shall be sent to such interested party not later than 60 days after the determination by the Government of the identity of the party or the party's interest.

(B) A supervisory official in the headquarters office of the seizing agency may extend the period for sending notice under subparagraph (A) for a period not to exceed 30 days (which period may not be further extended except by a court), if the official determines that the conditions in subparagraph (D) are present.

(C) Upon motion by the Government, a court may extend the period for sending notice under subparagraph (A) for a period not to exceed 60 days, which period may be further extended by the court for 60-day periods, as necessary, if the court determines, based on a written certification of a supervisory official in the headquarters office of the seizing agency, that the conditions in subparagraph (D) are present.

(D) The period for sending notice under this paragraph may be extended only if there is reason to believe that notice may have an adverse result, including—

(i) endangering the life or physical safety of an individual;

(ii) flight from prosecution;

(iii) destruction of or tampering with evidence;

(iv) intimidation of potential witnesses; or

(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(E) Each of the Federal seizing agencies conducting nonjudicial forfeitures under this section shall report periodically to the Committees on the Judiciary of the House of Representatives and the Senate the number of

occasions when an extension of time is granted under subparagraph (B).

(F) If the Government does not send notice of a seizure of property in accordance with subparagraph (A) to the person from whom the property was seized, and no extension of time is granted, the Government shall return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. The Government shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess.

(2)(A) Any person claiming property seized in a nonjudicial civil forfeiture proceeding under a civil forfeiture statute may file a claim with the appropriate official after the seizure.

(B) A claim under subparagraph (A) may be filed not later than the deadline set forth in a personal notice letter (which deadline may be not earlier than 35 days after the date the letter is mailed), except that if that letter is not received, then a claim may be filed not later than 30 days after the date of final publication of notice of seizure.

(C) A claim shall—

- (i) identify the specific property being claimed;
- (ii) state the claimant's interest in such property; and
- (iii) be made under oath, subject to penalty of perjury.

(D) A claim need not be made in any particular form. Each Federal agency conducting nonjudicial forfeitures under this section shall make claim forms generally available on request, which forms shall be written in easily understandable language.

(E) Any person may make a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

(3)(A) Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

(B) If the Government does not—

- (i) file a complaint for forfeiture or return the property, in accordance with subparagraph (A); or
- (ii) before the time for filing a complaint has expired—

(I) obtain a criminal indictment containing an allegation that the property is subject to forfeiture; and

(II) take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute,

the Government shall promptly release the property pursuant to regulations promulgated by the Attorney General, and may not take any further action to effect the civil forfeiture of such property in connection with the underlying offense.

(C) In lieu of, or in addition to, filing a civil forfeiture complaint, the Government may include a forfeiture allegation in a criminal indictment. If criminal forfeiture is the only forfeiture proceeding commenced by the Government, the Government's right to continued possession of the property shall be governed by the applicable criminal forfeiture statute.

(D) No complaint may be dismissed on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property.

(4)(A) In any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government's complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

(B) A person asserting an interest in seized property, in accordance with subparagraph (A), shall file an answer to the Government's complaint for forfeiture not later than 20 days after the date of the filing of the claim.

(b) Representation.—

(1)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

(B) In determining whether to authorize counsel to represent a person under subparagraph (A), the court shall take into account such factors as—

- (i) the person's standing to contest the forfeiture; and

(ii) whether the claim appears to be made in good faith.

(2)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the property subject to forfeiture is real property that is being used by the person as a primary residence, the court, at the request of the person, shall insure that the person is represented by an attorney for the Legal Services Corporation with respect to the claim.

(B)(i) At appropriate times during a representation under subparagraph (A), the Legal Services Corporation shall submit a statement of reasonable attorney fees and costs to the court.

(ii) The court shall enter a judgment in favor of the Legal Services Corporation for reasonable attorney fees and costs submitted pursuant to clause (i) and treat such judgment as payable under section 2465 of title 28, United States Code, regardless of the outcome of the case.

(3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.

(c) Burden of proof.—In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property—

(1) the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture;

(2) the Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that property is subject to forfeiture; and

(3) if the Government’s theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.

(d) Innocent owner defense.—

(1) An innocent owner’s interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.

(2)(A) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term “innocent owner” means an owner who—

(i) did not know of the conduct giving rise to forfeiture; or

(ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

(B)(i) For the purposes of this paragraph, ways in which a person may show that such person did all that reasonably could be expected may include demonstrating that such person, to the extent permitted by law—

(I) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and

(II) in a timely fashion revoked or made a good faith attempt to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

(ii) A person is not required by this subparagraph to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

(3)(A) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term “innocent owner” means a person who, at the time that person acquired the interest in the property—

(i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and

(ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.

(B) An otherwise valid claim under subparagraph (A) shall not be denied on the ground that the claimant gave nothing of value in exchange for the property if—

(i) the property is the primary residence of the claimant;

(ii) depriving the claimant of the property would deprive the claimant of the means to maintain reasonable shelter in the community for the claimant and all dependents residing with the claimant;

(iii) the property is not, and is not traceable to, the proceeds of any criminal offense; and

(iv) the claimant acquired his or her interest in the property through marriage, divorce, or legal separation, or the claimant was the spouse or legal dependent of a person whose death resulted in the transfer of the property to the claimant through inheritance or probate,

except that the court shall limit the value of any real property interest for which innocent ownership is recognized under this subparagraph to the value necessary to maintain reasonable shelter in the community for such claimant and all dependents residing with the claimant.

(4) Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.

(5) If the court determines, in accordance with this section, that an innocent owner has a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court may enter an appropriate order—

(A) severing the property;

(B) transferring the property to the Government with a provision that the Government compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or

(C) permitting the innocent owner to retain the property subject to a lien in favor of the Government to the extent of the forfeitable interest in the property.

(6) In this subsection, the term “owner”—

(A) means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest; and

(B) does not include—

(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

(iii) a nominee who exercises no dominion or control over the property.

(e) Motion to set aside forfeiture.—

(1) Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person’s interest in the property, which motion shall be granted if—

(A) the Government knew, or reasonably should have known, of the moving party’s interest and failed to take reasonable steps to provide such party with notice; and

(B) the moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim.

(2)(A) Notwithstanding the expiration of any applicable statute of limitations, if the court grants a motion under paragraph (1), the court shall set aside the declaration of forfeiture as to the interest of the moving party without prejudice to the right of the Government to commence a subsequent forfeiture proceeding as to the interest of the moving party.

(B) Any proceeding described in subparagraph (A) shall be commenced—

(i) if nonjudicial, within 60 days of the entry of the order granting the motion; or

(ii) if judicial, within 6 months of the entry of the order granting the motion.

(3) A motion under paragraph (1) may be filed not later than 5 years after the date of final publication of notice of seizure of the property.

(4) If, at the time a motion made under paragraph (1) is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government may institute proceedings against a substitute sum of money equal to the value of the moving party’s interest in the property at the time the property was disposed of.

(5) A motion filed under this subsection shall be the exclusive remedy for seeking to set aside a declaration of forfeiture under a civil forfeiture statute.

(f) Release of seized property.—

(1) A claimant under subsection (a) is entitled to immediate release of seized property if—

(A) the claimant has a possessory interest in the property;

(B) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

(C) the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;

(D) the claimant’s likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

(E) none of the conditions set forth in paragraph (8) applies.

(2) A claimant seeking release of property under this subsection must request possession of the property from the appropriate official, and the request must set forth the basis on which the requirements of paragraph (1) are met.

(3)(A) If not later than 15 days after the date of a request under paragraph (2) the property has not been released, the claimant may file a petition in the district court in which the complaint has been filed or, if no complaint has been filed, in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(B) The petition described in subparagraph (A) shall set forth—

(i) the basis on which the requirements of paragraph (1) are met; and

(ii) the steps the claimant has taken to secure release of the property from the appropriate official.

(4) If the Government establishes that the claimant's claim is frivolous, the court shall deny the petition. In responding to a petition under this subsection on other grounds, the Government may in appropriate cases submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(5) The court shall render a decision on a petition filed under paragraph (3) not later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.

(6) If—

(A) a petition is filed under paragraph (3); and

(B) the claimant demonstrates that the requirements of paragraph (1) have been met,

the district court shall order that the property be returned to the claimant, pending completion of proceedings by the Government to obtain forfeiture of the property.

(7) If the court grants a petition under paragraph (3)—

(A) the court may enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including—

(i) permitting the inspection, photographing, and inventory of the property;

(ii) fixing a bond in accordance with rule E(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and

(iii) requiring the claimant to obtain or maintain insurance on the subject property; and

(B) the Government may place a lien against the property or file a lis pendens to ensure that the property is not transferred to another person.

(8) This subsection shall not apply if the seized property—

(A) is contraband, currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;

(B) is to be used as evidence of a violation of the law;

(C) by reason of design or other characteristic, is particularly suited for use in illegal activities; or

(D) is likely to be used to commit additional criminal acts if returned to the claimant.

(g) Proportionality.—

(1) The claimant under subsection (a)(4) may petition the court to determine whether the forfeiture was constitutionally excessive.

(2) In making this determination, the court shall compare the forfeiture to the gravity of the offense giving rise to the forfeiture.

(3) The claimant shall have the burden of establishing that the forfeiture is grossly disproportional by a preponderance of the evidence at a hearing conducted by the court without a jury.

(4) If the court finds that the forfeiture is grossly disproportional to the offense it shall reduce or eliminate the forfeiture as necessary to avoid a violation of the Excessive Fines Clause of the Eighth Amendment of the Constitution.

(h) Civil fine.—

(1) In any civil forfeiture proceeding under a civil forfeiture statute in which the Government prevails, if the court finds that the claimant's assertion of an interest in the property was frivolous, the court may impose a civil fine on the claimant of an amount equal to 10 percent of the value of the forfeited property, but in no event shall the fine be less than \$250 or greater than \$5,000.

(2) Any civil fine imposed under this subsection shall not preclude the court from imposing sanctions under rule 11 of the Federal Rules of Civil Procedure.

(3) In addition to the limitations of section 1915 of title 28, United States Code, in no event shall a prisoner file a claim under a civil forfeiture statute or appeal a judgment in a civil action or proceeding based on a civil forfeiture statute if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or

appeal in a court of the United States that was dismissed on the grounds that it is frivolous or malicious, unless the prisoner shows extraordinary and exceptional circumstances.

(i) Civil forfeiture statute defined.—In this section, the term “civil forfeiture statute” —

(1) means any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense; and

(2) does not include—

(A) the Tariff Act of 1930 or any other provision of law codified in title 19;

(B) the Internal Revenue Code of 1986;

(C) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.);

(D) the Trading with the Enemy Act (50 U.S.C. App. § 1 et seq.) or the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. § 1701 et seq.); or

(E) section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. § 401).

(j) Restraining orders; protective orders.—

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, custodians, appraisers, accountants, or trustees, or take any other action to seize, secure, maintain, or preserve the availability of property subject to civil forfeiture—

(A) upon the filing of a civil forfeiture complaint alleging that the property with respect to which the order is sought is subject to civil forfeiture; or

(B) prior to the filing of such a complaint, 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.

(2) An order entered pursuant to paragraph (1)(B) shall be effective for not more than 90 days, unless extended by the court for good cause shown, or unless a complaint described in paragraph (1)(A) has been filed.

(3) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when a complaint 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 is subject to civil forfeiture and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 14 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.

(4) 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.

Amended: Statutory Time-Periods Technical Amendments Act of 2009, Pub. L. 111-16, § 3(1), May 7, 2009, 123 Stat. 1607.

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

(a)(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 precious metals—

(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 (b), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

(b) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than 1 year from the date of the offense.

(c)(1) Subsection (a) does not apply to an action against funds held by a financial institution in an interbank account unless the account holder knowingly engaged in the offense that is the basis for the forfeiture.

(2) In this subsection—

(A) the term “financial institution” includes a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. § 3101(b)(7)); and

(B) the term “interbank account” means an account held by one financial institution at another financial institution primarily for the purpose of facilitating customer transactions.

(d) Nothing in this section may be construed to limit the ability of the Government to forfeit property under any provision of law if the property involved in the offense giving rise to the forfeiture or property traceable thereto is available for forfeiture.

Amended: Civil Asset Forfeiture Reform Act (CAFRA) of 2000, Pub. L. 106-185, § 13(a), Apr. 25, 2000, 114 Stat. 202, 218.

18 U.S.C. § 985. Civil forfeiture of real property.

(a) Notwithstanding any other provision of law, all civil forfeitures of real property and interests in real property shall proceed as judicial forfeitures.

(b)(1) Except as provided in this section—

(A) real property that is the subject of a civil forfeiture action shall not be seized before entry of an order of forfeiture; and

(B) the owners or occupants of the real property shall not be evicted from, or otherwise deprived of the use and enjoyment of, real property that is the subject of a pending forfeiture action.

(2) The filing of a *lis pendens* and the execution of a writ of entry for the purpose of conducting an inspection and inventory of the property shall not be considered a seizure under this subsection.

(c)(1) The Government shall initiate a civil forfeiture action against real property by—

(A) filing a complaint for forfeiture;

(B) posting a notice of the complaint on the property; and

(C) serving notice on the property owner, along with a copy of the complaint.

(2) If the property owner cannot be served with the notice under paragraph (1) because the owner—

(A) is a fugitive;

(B) resides outside the United States and efforts at service pursuant to rule 4 of the Federal Rules of Civil Procedure are unavailing; or

(C) cannot be located despite the exercise of due diligence,

constructive service may be made in accordance with the laws of the State in which the property is located.

(3) If real property has been posted in accordance with this subsection, it shall not be necessary for the court to issue an arrest warrant in rem, or to take any other action to establish in rem jurisdiction over the property.

(d)(1) Real property may be seized prior to the entry of an order of forfeiture if—

(A) the Government notifies the court that it intends to seize the property before trial; and

(B) the court—

(i) issues a notice of application for warrant, causes the notice to be served on the property owner and posted on the property, and conducts a hearing in which the property owner has a meaningful opportunity to be heard; or

(ii) makes an *ex parte* determination that there is probable cause for the forfeiture and that there are exigent circumstances that permit the Government to seize the property without prior notice and an opportunity for the property owner to be heard.

(2) For purposes of paragraph (1)(B)(ii), to establish exigent circumstances, the Government shall show that less restrictive measures such as a *lis pendens*, restraining order, or bond would not suffice to protect the Government’s interests in preventing the sale, destruction, or continued unlawful use of the real property.

(e) If the court authorizes a seizure of real property under subsection (d)(1)(B)(ii), it shall conduct a prompt post-seizure hearing during which the property owner shall have an opportunity to contest the basis for the seizure.

(f) This section—

(1) applies only to civil forfeitures of real property and interests in real property;

(2) does not apply to forfeitures of the proceeds of the sale of such property or interests, or of money or other assets intended to be used to acquire such property or interests; and

(3) shall not affect the authority of the court to enter a restraining order relating to real property.

Enacted: Civil Asset Forfeiture Reform Act (CAFRA) of 2000, Pub. L. 106-185, § 7(a), Apr. 25, 2000, 114 Stat. 202, 214.

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 or 5324 of title 31, United States Code, or the Controlled Substances Act, any party may request the Clerk of the Court in the district in which the proceeding is pending to issue a subpoena duces tecum to any financial institution, as defined in section 5312(a) of title 31, United States Code, to produce books, records and any other documents at any place designated by the requesting party. All parties to the proceeding shall be notified of the issuance of any such subpoena. The procedures and limitations set forth in section 985 of this title shall apply to subpoenas issued under this section.

(b) Service of a subpoena issued pursuant to this section shall be by certified mail. Records produced in response to such a subpoena may be produced in person or by mail, common carrier, or such other method as may be agreed upon by the party requesting the subpoena and the custodian of records. The party requesting the subpoena may require the custodian of records to submit an affidavit certifying the authenticity and completeness of the records and explaining the omission of any record called for in the subpoena.

(c) Nothing in this section shall preclude any party from pursuing any form of discovery pursuant to the Federal Rules of Civil Procedure.

(d) Access to records in bank secrecy jurisdictions.—

(1) In general.—In any civil forfeiture case, or in any ancillary proceeding in any criminal forfeiture case governed by section 413(n) of the Controlled Substances Act (21 U.S.C. § 853(n)), in which—

(A) financial records located in a foreign country may be material—

(i) to any claim or to the ability of the Government to respond to such claim; or

(ii) in a civil forfeiture case, to the ability of the Government to establish the forfeitability of the property; and

(B) it is within the capacity of the claimant to waive the claimant's rights under applicable financial secrecy laws, or to obtain the records so that such records can be made available notwithstanding such secrecy laws,

the refusal of the claimant to provide the records in response to a discovery request or to take the action necessary otherwise to make the records available shall be grounds for judicial sanctions, up to and including dismissal of the claim with prejudice.

(2) Privilege.—This subsection shall not affect the right of the claimant to refuse production on the basis of any privilege guaranteed by the Constitution of the United States or any other provision of Federal law.

Amended: Civil Asset Forfeiture Reform Act (CAFRA) of 2000, Pub. L. 106-185, § 17, Apr. 25, 2000, 114 Stat. 202, 221.

18 U.S.C. § 987. Anti-terrorist forfeiture protection.

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

(1) the property is not subject to confiscation under such provision of law; or

(2) the innocent owner provisions of section 983(d) of title 18, United States Code, apply to the case.

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

(c) Clarifications.—

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

(A) subsection (a) of this section;

(B) the Constitution; or

(C) subchapter II of chapter 5 of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

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

Added: USA Patriot Improvement and Reauthorization Act of 2005, Pub. L. 109-177, Title IV, § 406(b)(1)(B), Mar. 9, 2006, 120 Stat. 192, 244.

18 U.S.C. § 1028. Fraud and related activity in connection with identification documents, authentication features, and information.

(a) Whoever, in a circumstance described in subsection (c) of this section—

(1) knowingly and without lawful authority produces an identification document, authentication feature, or a false identification document;

(2) knowingly transfers an identification document, authentication feature, or a false identification document knowing that such document or feature was stolen or produced without lawful authority;

(3) knowingly possesses with intent to use unlawfully or transfer unlawfully five or more identification documents (other than those issued lawfully for the use of the possessor), authentication features, or false identification documents;

(4) knowingly possesses an identification document (other than one issued lawfully for the use of the possessor), authentication feature, or a false identification document, with the intent such document or feature be used to defraud the United States;

(5) knowingly produces, transfers, or possesses a document-making implement or authentication feature with the intent such document-making implement or authentication feature will be used in the production of a false identification document or another document-making implement or authentication feature which will be so used;

(6) knowingly possesses an identification document or authentication feature that is or appears to be an identification document or authentication feature of the United States or a sponsoring entity of an event designated as a special event of national significance which is stolen or produced without lawful authority knowing that such document or feature was stolen or produced without such authority;

(7) knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law; or

(8) knowingly traffics in false or actual authentication features for use in false identification documents, document-making implements, or means of identification;

shall be punished as provided in subsection (b) of this section.

(b) The punishment for an offense under subsection (a) of this section is—

(1) except as provided in paragraphs (3) and (4), a fine under this title or imprisonment for not more than 15 years, or both, if the offense is—

(A) the production or transfer of an identification document, authentication feature, or false identification document that is or appears to be—

(i) an identification document or authentication feature issued by or under the authority of the United States; or

(ii) a birth certificate, or a driver's license or personal identification card;

(B) the production or transfer of more than five identification documents, authentication features, or false identification documents;

(C) an offense under paragraph (5) of such subsection; or

(D) an offense under paragraph (7) of such subsection that involves the transfer, possession, or use of 1 or more means of identification if, as a result of the offense, any individual committing the offense obtains anything of value aggregating \$1,000 or more during any 1-year period;

(2) except as provided in paragraphs (3) and (4), a fine under this title or imprisonment for not more than 5 years, or both, if the offense is—

(A) any other production, transfer, or use of a means of identification, an identification document, authentication features, or a false identification document; or

(B) an offense under paragraph (3) or (7) of such subsection;

(3) a fine under this title or imprisonment for not more than 20 years, or both, if the offense is committed—

(A) to facilitate a drug trafficking crime (as defined in section 929(a)(2));

(B) in connection with a crime of violence (as defined in section 924(c)(3)); or

(C) after a prior conviction under this section becomes final;

(4) a fine under this title or imprisonment for not more than 30 years, or both, if the offense is committed to facilitate an act of domestic terrorism (as defined under section 2331(5) of this title) or an act of international terrorism (as defined in section 2331(1) of this title);

(5) in the case of any offense under subsection (a), forfeiture to the United States of any personal property used or intended to be used to commit the offense; and

(6) a fine under this title or imprisonment for not more than one year, or both, in any other case.

(c) The circumstance referred to in subsection (a) of this section is that—

(1) the identification document, authentication feature, or false identification document is or appears to be issued by or under the authority of the United States or a sponsoring entity of an event designated as a special event of national significance or the document-making implement is designed or suited for making such an identification document, authentication feature, or false identification document;

(2) the offense is an offense under subsection (a)(4) of this section; or

(3) either—

(A) the production, transfer, possession, or use prohibited by this section is in or affects interstate or foreign commerce, including the transfer of a document by electronic means; or

(B) the means of identification, identification document, false identification document, or document-making implement is transported in the mail in the course of the production, transfer, possession, or use prohibited by this section.

(d) In this section and section 1028A—

(1) the term “authentication feature” means any hologram, watermark, certification, symbol, code, image, sequence of numbers or letters, or other feature that either individually or in combination with another feature is used by the issuing authority on an identification document, document-making implement, or means of identification to determine if the document is counterfeit, altered, or otherwise falsified;

(2) the term “document-making implement” means any implement, impression, template, computer file, computer disc, electronic device, or computer hardware or software, that is specifically configured or primarily used for making an identification document, a false identification document, or another document-making implement;

(3) the term “identification document” means a document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a sponsoring entity of an event designated as a special event of national significance, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals;

(4) the term “false identification document” means a document of a type intended or commonly accepted for the purposes of identification of individuals that—

(A) is not issued by or under the authority of a governmental entity or was issued under the authority of a governmental entity but was subsequently altered for purposes of deceit; and

(B) appears to be issued by or under the authority of the United States Government, a State, a political subdivision of a State, a sponsoring entity of an event designated by the President as a special event of national significance, a foreign government, a political subdivision of a foreign government, or an international governmental or quasi-governmental organization;

(5) the term “false authentication feature” means an authentication feature that—

(A) is genuine in origin, but, without the authorization of the issuing authority, has been tampered with or altered for purposes of deceit;

(B) is genuine, but has been distributed, or is intended for distribution, without the authorization of the issuing authority and not in connection with a lawfully made identification document, document-making implement, or means of identification to which such authentication feature is intended to be affixed or embedded by the respective issuing authority; or

(C) appears to be genuine, but is not;

(6) the term “issuing authority”—

(A) means any governmental entity or agency that is authorized to issue identification documents, means of identification, or authentication features; and

(B) includes the United States Government, a State, a political subdivision of a State, a sponsoring entity of an event designated by the President as a special event of national significance, a foreign government, a political subdivision of a foreign government, or an international government or quasi-governmental organization;

(7) the term “means of identification” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any—

(A) name, social security number, date of birth, official State or government issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

(B) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(C) unique electronic identification number, address, or routing code; or

(D) telecommunication identifying information or access device (as defined in section 1029(e));

(8) the term “personal identification card” means an identification document issued by a State or local government solely for the purpose of identification;

(9) the term “produce” includes alter, authenticate, or assemble;

(10) the term “transfer” includes selecting an identification document, false identification document, or document-making implement and placing or directing the placement of such identification document, false identification document, or document-making implement on an online location where it is available to others;

(11) the term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth, possession, or territory of the United States; and

(12) the term “traffic” means—

(A) to transport, transfer, or otherwise dispose of, to another, as consideration for anything of value; or

(B) to make or obtain control of with intent to so transport, transfer, or otherwise dispose of.

(e) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of this title.

(f) Attempt and conspiracy. Any person who attempts or conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(g) Forfeiture procedures. The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).

(h) Forfeiture; disposition. In the circumstance in which any person is convicted of a violation of subsection (a), the court shall order, in addition to the penalty prescribed, the forfeiture and destruction or other disposition of all illicit authentication features, identification documents, document-making implements, or means of identification.

(i) Rule of construction. For purpose of subsection (a)(7), a single identification document or false identification document that contains 1 or more means of identification shall be construed to be 1 means of identification.

Amended: USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. 109-177, Title VI, § 603, Mar. 9, 2006, 120 Stat. 192, 253.

18 U.S.C. § 1029. Fraud and related activity in connection with access devices.

(a) Whoever—

(1) knowingly and with intent to defraud produces, uses, or traffics in one or more counterfeit access devices;

(2) knowingly and with intent to defraud traffics in or uses one or more unauthorized access devices during any one-year period, and by such conduct obtains anything of value aggregating \$1,000 or more during that period;

(3) knowingly and with intent to defraud possesses fifteen or more devices which are counterfeit or unauthorized access devices;

(4) knowingly, and with intent to defraud, produces, traffics in, has control or custody of, or possesses device-making equipment;

(5) knowingly and with intent to defraud effects transactions, with 1 or more access devices issued to another person or persons, to receive payment or any other thing of value during any 1-year period the aggregate value of which is equal to or greater than \$1,000;

(6) without the authorization of the issuer of the access device, knowingly and with intent to defraud solicits a person for the purpose of—

(A) offering an access device; or

(B) selling information regarding or an application to obtain an access device;

(7) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a telecommunications instrument that has been modified or altered to obtain unauthorized use of telecommunications services;

(8) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a scanning receiver;

(9) knowingly uses, produces, traffics in, has control or custody of, or possesses hardware or software, knowing it has been configured to insert or modify telecommunication identifying information associated with or contained in a telecommunications instrument so that such instrument may be used to obtain telecommunications service without authorization; or

(10) without the authorization of the credit card system member or its agent, knowingly and with intent to defraud causes or arranges for another person to present to the member or its agent, for payment, 1 or more evidences or records of transactions made by an access device;

shall, if the offense affects interstate or foreign commerce, be punished as provided in subsection (c) of this section.

(b)(1) Whoever attempts to commit an offense under subsection (a) of this section shall be subject to the same penalties as those prescribed for the offense attempted.

(2) Whoever is a party to a conspiracy of two or more persons to commit an offense under subsection (a) of this section, if any of the parties engages in any conduct in furtherance of such offense, shall be fined an amount not greater than the amount provided as the maximum fine for such offense under subsection (c) of this section or imprisoned not longer than one-half the period provided as the maximum imprisonment for such offense under subsection (c) of this section, or both.

(c) Penalties.—

(1) Generally.—The punishment for an offense under subsection (a) of this section is—

(A) in the case of an offense that does not occur after a conviction for another offense under this section—

(i) if the offense is under paragraph (1), (2), (3), (6), (7), or (10) of subsection (a), a fine under this title or imprisonment for not more than 10 years, or both; and

(ii) if the offense is under paragraph (4), (5), (8), or (9) of subsection (a), a fine under this title or imprisonment for not more than 15 years, or both;

(B) in the case of an offense that occurs after a conviction for another offense under this section, a fine under this title or imprisonment for not more than 20 years, or both; and

(C) in either case, forfeiture to the United States of any personal property used or intended to be used to commit the offense.

(2) Forfeiture procedure.—The forfeiture of property under this section, including any seizure and disposition of the property and any related administrative and judicial proceeding, shall be governed by section 413 of the Controlled Substances Act, except for subsection (d) of that section.

(d) The United States Secret Service shall, in addition to any other agency having such authority, have the authority to investigate offenses under this section. Such authority of the United States Secret Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

(e) As used in this section—

(1) the term “access device” means any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or

other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument);

(2) the term “counterfeit access device” means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device;

(3) the term “unauthorized access device” means any access device that is lost, stolen, expired, revoked, canceled, or obtained with intent to defraud;

(4) the term “produce” includes design, alter, authenticate, duplicate, or assemble;

(5) the term “traffic” means transfer, or otherwise dispose of, to another, or obtain control of with intent to transfer or dispose of;

(6) the term “device-making equipment” means any equipment, mechanism, or impression designed or primarily used for making an access device or a counterfeit access device;

(7) The term “credit card system member” means a financial institution or other entity that is a member of a credit card system, including an entity, whether affiliated with or identical to the credit card issuer, that is the sole member of a credit card system;

(8) the term “scanning receiver” means a device or apparatus that can be used to intercept a wire or electronic communication in violation of chapter 119 or to intercept an electronic serial number, mobile identification number, or other identifier of any telecommunications service, equipment, or instrument;

(9) the term “telecommunications service” has the meaning given such term in section 3 of title I of the Communications Act of 1934 (47 U.S.C. § 153);

(10) the term “facilities-based carrier” means an entity that owns communications transmission facilities, is responsible for the operation and maintenance of those facilities, and holds an operating license issued by the Federal Communications Commission under the authority of title III of the Communications Act of 1934; and

(11) the term “telecommunication identifying information” means electronic serial number or any other number or signal that identifies a specific telecommunications instrument or account, or a specific communication transmitted from a telecommunications instrument.

(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of this title. For purposes of this subsection, the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(g)(1) It is not a violation of subsection (a)(9) for an officer, employee, or agent of, or a person engaged in business with, a facilities-based carrier, to engage in conduct (other than trafficking) otherwise prohibited by that subsection for the purpose of protecting the property or legal rights of that carrier, unless such conduct is for the purpose of obtaining telecommunications service provided by another facilities-based carrier without the authorization of such carrier.

(2) In a prosecution for a violation of subsection (a)(9), (other than a violation consisting of producing or trafficking) it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) that the conduct charged was engaged in for research or development in connection with a lawful purpose.

(h) Any person who, outside the jurisdiction of the United States, engages in any act that, if committed within the jurisdiction of the United States, would constitute an offense under subsection (a) or (b) of this section, shall be subject to the fines, penalties, imprisonment, and forfeiture provided in this title if—

(1) the offense involves an access device issued, owned, managed, or controlled by a financial institution, account issuer, credit card system member, or other entity within the jurisdiction of the United States; and

(2) the person transports, delivers, conveys, transfers to or through, or otherwise stores, secrets, or holds within the jurisdiction of the United States, any article used to assist in the commission of the offense or the proceeds of such offense or property derived therefrom.

Amended: Criminal Law Technical Amendments Act of 2002, Pub. L. 107-273, Div. B, Title IV, § 4002(b)(11), Nov. 2, 2002, 116 Stat. 1758, 1808.

18 U.S.C. § 1030. Fraud and related activity in connection with computers.

(a) Whoever—

(1) having knowingly accessed a computer without authorization or exceeding authorized access, and by means of such conduct having obtained information that has been determined by the United States Government pursuant to

an Executive order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, or any restricted data, as defined in paragraph y. of section 11 of the Atomic Energy Act of 1954, with reason to believe that such information so obtained 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;

(2) intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains—

(A) information contained in a financial record of a financial institution, or of a card issuer as defined in section 1602(n) of title 15, or contained in a file of a consumer reporting agency on a consumer, as such terms are defined in the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

(B) information from any department or agency of the United States; or

(C) information from any protected computer;

(3) intentionally, without authorization to access any nonpublic computer of a department or agency of the United States, accesses such a computer of that department or agency that is exclusively for the use of the Government of the United States or, in the case of a computer not exclusively for such use, is used by or for the Government of the United States and such conduct affects that use by or for the Government of the United States;

(4) knowingly and with intent to defraud, accesses a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer and the value of such use is not more than \$5,000 in any 1-year period;

(5)(A) knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a protected computer;

(B) intentionally accesses a protected computer without authorization, and as a result of such conduct, recklessly causes damage; or

(C) intentionally accesses a protected computer without authorization, and as a result of such conduct, causes damage and loss.

(6) knowingly and with intent to defraud traffics (as defined in section 1029) in any password or similar information through which a computer may be accessed without authorization, if—

(A) such trafficking affects interstate or foreign commerce; or

(B) such computer is used by or for the Government of the United States;

(7) with intent to extort from any person any money or other thing of value, transmits in interstate or foreign commerce any communication containing any—

(A) threat to cause damage to a protected computer;

(B) threat to obtain information from a protected computer without authorization or in excess of authorization or to impair the confidentiality of information obtained from a protected computer without authorization or by exceeding authorized access; or

(C) demand or request for money or other thing of value in relation to damage to a protected computer, where such damage was caused to facilitate the extortion; shall be punished as provided in subsection (c) of this section.

(b) Whoever conspires to commit or attempts to commit an offense under subsection (a) of this section shall be punished as provided in subsection (c) of this section.

(c) The punishment for an offense under subsection (a) or (b) of this section is—

(1)(A) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(1) of this section which does not occur after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph; and

(B) a fine under this title or imprisonment for not more than twenty years, or both, in the case of an offense under subsection (a)(1) of this section which occurs after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;

(2)(A) except as provided in subparagraph (B), a fine under this title or imprisonment for not more than one year, or both, in the case of an offense under subsection (a)(2), (a)(3), or (a)(6) of this section which does not occur after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;

(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under subsection (a)(2), or an attempt to commit an offense punishable under this subparagraph, if—

(i) the offense was committed for purposes of commercial advantage or private financial gain;

(ii) the offense was committed in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or of any State; or

(iii) the value of the information obtained exceeds \$5,000; and

(C) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(2), (a)(3) or (a)(6) of this section which occurs after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;

(3)(A) a fine under this title or imprisonment for not more than five years, or both, in the case of an offense under subsection (a)(4) or (a)(7) of this section which does not occur after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph; and

(B) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(4) or (a)(7) of this section which occurs after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;

(4)(A) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 5 years, or both, in the case of—

(i) an offense under subsection (a)(5)(B), which does not occur after a conviction for another offense under this section, if the offense caused (or, in the case of an attempted offense, would, if completed, have caused)—

(I) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least \$5,000 in value;

(II) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals;

(III) physical injury to any person;

(IV) a threat to public health or safety;

(V) damage affecting a computer used by or for an entity of the United States Government in furtherance of the administration of justice, national defense, or national security; or

(VI) damage affecting 10 or more protected computers during any 1-year period; or

(ii) an attempt to commit an offense punishable under this subparagraph;

(B) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 10 years, or both, in the case of—

(i) an offense under subsection (a)(5)(A), which does not occur after a conviction for another offense under this section, if the offense caused (or, in the case of an attempted offense, would, if completed, have caused) a harm provided in subclauses (I) through (VI) of subparagraph (A)(i); or

(ii) an attempt to commit an offense punishable under this subparagraph;

(C) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 20 years, or both, in the case of—

(i) an offense or an attempt to commit an offense under subparagraphs (A) or (B) of subsection (a)(5) that occurs after a conviction for another offense under this section; or

(ii) an attempt to commit an offense punishable under this subparagraph;

(D) a fine under this title, imprisonment for not more than 10 years, or both, in the case of—

(i) an offense or an attempt to commit an offense under subsection (a)(5)(C) that occurs after a conviction for another offense under this section; or

(ii) an attempt to commit an offense punishable under this subparagraph;

(E) if the offender attempts to cause or knowingly or recklessly causes serious bodily injury from conduct in violation of subsection (a)(5)(A), a fine under this title, imprisonment for not more than 20 years, or both;

(F) if the offender attempts to cause or knowingly or recklessly causes death from conduct in violation of subsection (a)(5)(A), a fine under this title, imprisonment for any term of years or for life, or both; or

(G) a fine under this title, imprisonment for not more than 1 year, or both, for—

(i) any other offense under subsection (a)(5); or

(ii) an attempt to commit an offense punishable under this subparagraph.

(d)(1) The United States Secret Service shall, in addition to any other agency having such authority, have the authority to investigate offenses under this section.

(2) The Federal Bureau of Investigation shall have primary authority to investigate offenses under subsection (a)(1) for any cases involving espionage, foreign counterintelligence, information protected against unauthorized disclosure for reasons of national defense or foreign relations, or Restricted Data (as that term is defined in section 11y of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y))), except for offenses affecting the duties of the United States Secret Service pursuant to section 3056(a) of this title.

(3) Such authority shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

(e) As used in this section—

(1) the term “computer” means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device;

(2) the term “protected computer” means a computer—

(A) exclusively for the use of a financial institution or the United States Government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the United States Government and the conduct constituting the offense affects that use by or for the financial institution or the Government; or

(B) which is used in or affecting interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States;

(3) the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth, possession or territory of the United States;

(4) the term “financial institution” means—

(A) an institution, with deposits insured by the Federal Deposit Insurance Corporation;

(B) the Federal Reserve or a member of the Federal Reserve including any Federal Reserve Bank;

(C) a credit union with accounts insured by the National Credit Union Administration;

(D) a member of the Federal home loan bank system and any home loan bank;

(E) any institution of the Farm Credit System under the Farm Credit Act of 1971;

(F) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934;

(G) the Securities Investor Protection Corporation;

(H) a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978); and

(I) an organization operating under section 25 or section 25(a) of the Federal Reserve Act;

(5) the term “financial record” means information derived from any record held by a financial institution pertaining to a customer’s relationship with the financial institution;

(6) the term “exceeds authorized access” means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter;

(7) the term “department of the United States” means the legislative or judicial branch of the Government or one of the executive departments enumerated in section 101 of title 5;

(8) the term “damage” means any impairment to the integrity or availability of data, a program, a system, or information;

(9) the term “government entity” includes the Government of the United States, any State or political subdivision of the United States, any foreign country, and any state, province, municipality, or other political subdivision of a foreign country;

(10) the term “conviction” shall include a conviction under the law of any State for a crime punishable by imprisonment for more than 1 year, an element of which is unauthorized access, or exceeding authorized access, to a computer;

(11) the term “loss” means any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service; and

(12) the term “person” means any individual, firm, corporation, educational institution, financial institution, governmental entity, or legal or other entity.

(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

(g) Any person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief. A civil action for a violation of this section may be brought only if the conduct involves 1 of the factors set forth in subclauses (I), (II), (III), (IV), or (V) of subsection (c)(4)(A)(i). Damages for a violation involving only conduct described in subsection (c)(4)(A)(i)(I) are limited to economic damages. No action may be brought under this subsection unless such action is begun within 2 years of the date of the act complained of or the date of the discovery of the damage. No action may be brought under this subsection for the negligent design or manufacture of computer hardware, computer software, or firmware.

(h) The Attorney General and the Secretary of the Treasury shall report to the Congress annually, during the first 3 years following the date of the enactment of this subsection, concerning investigations and prosecutions under subsection (a)(5).

(i)(1) The court, in imposing sentence on any person convicted of a violation of this section, or convicted of conspiracy to violate this section, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person forfeit to the United States—

(A) such person’s interest in any personal property that was used or intended to be used to commit or to facilitate the commission of such violation; and

(B) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(2) The criminal forfeiture of property under this subsection, any seizure and disposition thereof, and any judicial proceeding in relation thereto, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except subsection (d) of that section.

(j) For purposes of subsection (i), the following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) Any personal property used or intended to be used to commit or to facilitate the commission of any violation of this section, or a conspiracy to violate this section.

(2) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this section, or a conspiracy to violate this section.

Amended: Former Vice President Protection Act of 2008, Pub. L. 110-326, Title II, §§ 203, 204(a), 205 to 208, Sept. 26, 2008, 122 Stat. 3561, 3563.

18 U.S.C. § 1037. Fraud and related activity in connection with electronic mail.

(a) In general.—Whoever, in or affecting interstate or foreign commerce, knowingly—

(1) accesses a protected computer without authorization, and intentionally initiates the transmission of multiple commercial electronic mail messages from or through such computer,

(2) uses a protected computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages,

(3) materially falsifies header information in multiple commercial electronic mail messages and intentionally initiates the transmission of such messages,

(4) registers, using information that materially falsifies the identity of the actual registrant, for five or more electronic mail accounts or online user accounts or two or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names, or

(5) falsely represents oneself to be the registrant or the legitimate successor in interest to the registrant of 5 or more Internet Protocol addresses, and intentionally initiates the transmission of multiple commercial electronic mail messages from such addresses, or conspires to do so, shall be punished as provided in subsection (b).

(b) Penalties.—The punishment for an offense under subsection (a) is—

(1) a fine under this title, imprisonment for not more than 5 years, or both, if—

(A) the offense is committed in furtherance of any felony under the laws of the United States or of any State; or

(B) the defendant has previously been convicted under this section or section 1030, or under the law of any State for conduct involving the transmission of multiple commercial electronic mail messages or unauthorized access to a computer system;

(2) a fine under this title, imprisonment for not more than 3 years, or both, if—

(A) the offense is an offense under subsection (a)(1);

(B) the offense is an offense under subsection (a)(4) and involved 20 or more falsified electronic mail or online user account registrations, or 10 or more falsified domain name registrations;

(C) the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during any 24-

hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period;

(D) the offense caused loss to one or more persons aggregating \$5,000 or more in value during any 1-year period;

(E) as a result of the offense any individual committing the offense obtained anything of value aggregating \$5,000 or more during any 1-year period; or

(F) the offense was undertaken by the defendant in concert with three or more other persons with respect to whom the defendant occupied a position of organizer or leader; and

(3) a fine under this title or imprisonment for not more than 1 year, or both, in any other case.

(c) Forfeiture.—

(1) In general.—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States—

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

(B) any equipment, software, or other technology used or intended to be used to commit or to facilitate the commission of such offense.

(2) Procedures.—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. § 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

(d) Definitions.—In this section:

(1) Loss.—The term “loss” has the meaning given that term in section 1030(e) of this title.

(2) Materially.—For purposes of paragraphs (3) and (4) of subsection (a), header information or registration information is materially falsified if it is altered or concealed in a manner that would impair the ability of a recipient of the message, an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation.

(3) Multiple.—The term “multiple” means more than 100 electronic mail messages during a 24-hour period, more than 1,000 electronic mail messages during a 30-day period, or more than 10,000 electronic mail messages during a 1-year period.

(4) Other terms.—Any other term has the meaning given that term by section 3 of the CAN-SPAM Act of 2003.

Enacted: CAN-SPAM Act of 2003, Pub. L. 108-187, § 4(a)(1), Dec. 16, 2003, 117 Stat. 2699, 2703.

18 U.S.C. § 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

Amended: Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007, Pub.L. 110-179, § 3, Jan. 7, 2008, 121 Stat. 2557.

18 U.S.C. § 1467. Criminal forfeiture. (Obscenity)

(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.

(b) The provisions of section 413 of the Controlled Substances Act (21 U.S.C. 853), with the exception of subsections (a) and (d), shall apply to the criminal forfeiture of property pursuant to subsection (a).

(c) Any property subject to forfeiture pursuant to subsection (a) may be forfeited to the United States in a civil case in accordance with the procedures set forth in chapter 46 of this title.

Amended: Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, Title V, § 505(a), July 27, 2006, 120 Stat. 629.

18 U.S.C. § 1594. General provisions. (Trafficking in persons)

(a) Whoever attempts to violate section 1581, 1583, 1584, 1589, 1590, or 1591 shall be punishable in the same manner as a completed violation of that section.

(b) Whoever conspires with another to violate section 1581, 1583, 1589, 1590, or 1592 shall be punished in the same manner as a completed violation of such section.

(c) Whoever conspires with another to violate section 1591 shall be fined under this title, imprisoned for any term of years or for life, or both.

(d) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—

(1) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and

(2) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(e)(1) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

(B) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this subsection.

(f) Witness protection.—Any violation of this chapter shall be considered an organized criminal activity or other serious offense for the purposes of application of chapter 224 (relating to witness protection).

Enacted: William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, Title II, § 222(c), Dec. 23, 2008, 122 Stat. 5070.

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.

(b) Whoever violates this section shall be fined under this title, 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.

Amended: Economic Espionage Act of 1996, Pub. L. 104-294, Title VI, § 601(a)(7), Oct. 11, 1996, 110 Stat. 3488, 3498.

**18 U.S.C. § 1834. Criminal forfeiture.
(Protection of trade secrets)**

Forfeiture, destruction, and restitution relating to this chapter shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.

Enacted: Prioritizing Resources and Organization for Intellectual Property Act of 2008, Pub. L. 110-403, Title II, § 207, Oct. 13, 2008, 122 Stat. 4263.

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 under this title 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 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 seizures, 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 1954, 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.

Amended: Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, Title XXXIII, § 330016(1)(N), Sept. 13, 1994, 108 Stat. 1796, 2148.

18 U.S.C. § 1956. Laundering of monetary instruments.

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent—

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Penalties.—

(1) In general.—Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) \$10,000.

(2) Jurisdiction over foreign persons.—For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and—

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

(3) Court authority over assets.—A court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(4) Federal receiver.—

(A) In general.—A court may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982, or a criminal sentence under section 1957 or subsection (a) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) Appointment and authority.—A Federal Receiver described in subparagraph (A)—

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant—

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section—

(1) the term “knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful

activity” means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term “conducts” includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term “financial transaction” means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term “monetary instruments” means (i) coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term “financial institution” includes—

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101);

(7) the term “specified unlawful activity” means—

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16);

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978);

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving—

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730-774);

(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or

(vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), section 555 (relating to border tunnels), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs

receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(1) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to fraudulent Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2252A (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct, section 2260 (production of certain child pornography for importation into the United States), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the

Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 2008 [7 U.S.C.A. § 2024] (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than \$5,000, any violation of section 543(a)(1) of the Housing Act of 1949 [42 U.S.C.A. § 1490s(a)(1)] (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons)

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(E) a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.); or

(F) any act or activity constituting an offense involving a Federal health care offense;

(8) the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term “proceeds” means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General. Violations of this section involving offenses de-scribed in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney

General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding \$10,000.

(g) Notice of conviction of financial institutions.—If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(i) Venue.—(1) Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in—

(A) any district in which the financial or monetary transaction is conducted; or

(B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted.

(2) A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place.

(3) For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.

Amended: Border Tunnel Prevention Act of 2012, Pub.L. 112-127, § 6, June 5, 2012, 126 Stat. 371.

See “Appendix A” for a list of all violations of federal and state or foreign law identified as “specified unlawful activity” under 18 U.S.C. § 1956(c)(7).

18 U.S.C. § 1960. Prohibition of unlicensed money transmitting businesses.

(a) Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

(b) As used in this section—

(1) the term “unlicensed money transmitting business” means a money transmitting business which affects interstate or foreign commerce in any manner or degree and—

(A) is operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law, whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable;

(B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section; or

(C) otherwise involves the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity;

(2) the term “money transmitting” includes transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier; and

(3) the term “State” means any State of the United States, the District of Columbia, the Northern Mariana Islands, and any commonwealth, territory, or possession of the United States.

Amended: Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, Title XI, § 1171(a)(2), Jan. 5, 2006, 119 Stat. 2960, 3123.

18 U.S.C. § 1961(1). Definitions.

As used in this chapter—

(1) “racketeering activity” means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports

bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1592 (relating to peonage, slavery, and trafficking in persons), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24

(relating to white slave traffic), sections 175-178 (relating to biological weapons), sections 229-229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) an act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B).

Amended: Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, Title XII, § 1211(a), March 7, 2013, 127 Stat. 142.

18 U.S.C. § 1963. Criminal penalties. (RICO)

(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—

(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 (l) 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 of the property for forfeiture. Such a temporary order shall expire not more than fourteen 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;

(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 (l), 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) 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 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).

Amended: Statutory Time-Periods Technical Amendments Act of 2009, Pub. L. 111-16, § 3(4), May 7, 2009, 123 Stat. 1607.

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

(a) Destruction or removal of property to prevent seizure.—Whoever, before, during, or after any search for or seizure of property by any person authorized to make such search or seizure, knowingly destroys, damages, wastes, disposes of, transfers, or otherwise takes any action, or knowingly attempts to destroy, damage, waste, dispose of, transfer, or otherwise take any action, for the purpose of preventing or impairing the Government’s lawful authority to take such property into its custody or control or to continue holding such property under its lawful custody and control, shall be fined under this title or imprisoned not more than 5 years, or both.

(b) Impairment of in rem jurisdiction.—Whoever, knowing that property is subject to the in rem jurisdiction of a United States court for purposes of civil forfeiture under Federal law, knowingly and without authority from that court, destroys, damages, wastes, disposes of, transfers, or otherwise takes any action, or knowingly attempts to destroy, damage, waste, dispose of, transfer, or otherwise take any action, for the purpose of impairing or defeating the court’s continuing in rem jurisdiction over the property, shall be fined under this title or imprisoned not more than 5 years, or both.

(c) Notice of search or execution of seizure warrant or warrant of arrest in rem.—Whoever, having knowledge that any person authorized to make searches and seizures, or to execute a seizure warrant or warrant of arrest in rem, in order to prevent the authorized seizing or securing of any person or property, gives notice or attempts to give notice in advance of the search, seizure, or execution of a seizure warrant or warrant of arrest in rem, to any person shall be fined under this title or imprisoned not more than 5 years, or both.

(d) 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.

(e) Foreign intelligence surveillance.—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.

Amended: Civil Asset Forfeiture Reform Act (CAFRA) of 2000, Pub. L. 106-185, § 12, Apr. 25, 2000, 114 Stat. 202, 218.

18 U.S.C. § 2233. Rescue of seized property.

Whoever forcibly rescues, dispossesses, or attempts to rescue or dispossess any property, articles, or objects after the same shall have been taken, detained, or seized by any officer or other person under the authority of any revenue law of the United States, or by any person authorized to make searches and seizures, shall be fined under this title or imprisoned not more than two years, or both.

Amended: Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, Title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 1796, 2147.

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, 2252, 2252A, or 2260 of this chapter or who is convicted of an offense under section 2252B of this chapter, or who is convicted of an offense under chapter 109A, shall forfeit to the United States such person’s interest in—

(1) any visual depiction described in section 2251, 2251A, or 2252[,] 2252A, 2252B, or 2260 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 or any property traceable to such property.

(b) Section 413 of the Controlled Substances Act (21 U.S.C. 853) with the exception of subsections (a) and (d), applies to the criminal forfeiture of property pursuant to subsection (a).

Amended: Adam Walsh Child Protection And Safety Act of 2006, Pub. L. 109-248, Title V, § 505(b), (c), July 27, 2006, 120 Stat. 630.

18 U.S.C. § 2254. Civil forfeiture. (For child pornography)

Any property subject to forfeiture pursuant to section 2253 may be forfeited to the United States in a civil case in accordance with the procedures set forth in chapter 46.

Amended: Adam Walsh Child Protection And Safety Act of 2006, Pub. L. 109-248, Title V, § 505(d), July 27, 2006, 120 Stat. 630.

18 U.S.C. § 2318(d). Trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, and copies of motion pictures or other audio visual works, and trafficking in counterfeit computer program documentation or packaging.

(d) Forfeiture and destruction of property; restitution.— Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.

Amended: Copyright Cleanup, Clarification, and Corrections Act of 2010, Pub. L. 111-295, § 6(i), Dec. 9, 2010, 124 Stat. 3182.

Section (d) was not affected.

18 U.S.C. § 2319A. Unauthorized fixation of and trafficking in sound recordings and music videos of live performances.

(a) Offense. Whoever, without the consent of the performer or performers involved, knowingly and for purposes of commercial advantage or private financial gain—

(1) fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation;

(2) transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance; or

(3) distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phonorecord fixed as described in paragraph (1), regardless of whether the fixations occurred in the United States;

shall be imprisoned for not more than 5 years or fined in the amount set forth in this title, or both, or if the offense is a second or subsequent offense, shall be imprisoned for not more than 10 years or fined in the amount set forth in this title, or both.

(b) Forfeiture and destruction of property; restitution.— Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.

(c) Seizure and forfeiture.—If copies or phonorecords of sounds or sounds and images of a live musical performance are fixed outside of the United States without the consent of the performer or performers involved, such copies or phonorecords are subject to seizure and forfeiture in the United States in the same manner as property imported in violation of the customs laws. The Secretary of Homeland Security shall issue regulations by which any performer may, upon payment of a specified fee, be entitled to notification by United States Customs and Border Protection of the importation of copies or phonorecords that appear to consist of unauthorized fixations of the sounds or sounds and images of a live musical performance.

(d) Victim impact statement.

(1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

(2) Persons permitted to submit victim impact statements shall include—

(A) producers and sellers of legitimate works affected by conduct involved in the offense;

(B) holders of intellectual property rights in such works; and

(C) the legal representatives of such producers, sellers, and holders.

(e) Definitions. As used in this section—

(1) the terms “copy”, “fixed”, “musical work”, “phonorecord”, “reproduce”, “sound recordings”, and “transmit” mean those terms within the meaning of title 17; and

(2) the term “traffic” has the same meaning as in section 2320(e) of this title.

(f) Use. This section shall apply to any Act or Acts that occur on or after the date of the enactment of the Uruguay Round Agreements Act.

Amended: Prioritizing Resources and Organization for Intellectual Property Act of 2008, Pub. L. 110-403, Title II, § 203, Oct. 13, 2008, 122 Stat. 4261.

18 U.S.C. § 2319B. Unauthorized recording of Motion pictures in a Motion picture exhibition facility.

(a) Offense.—Any person who, without the authorization of the copyright owner, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under title 17, or any part thereof, from a performance of such work in a motion picture exhibition facility, shall—

(1) be imprisoned for not more than 3 years, fined under this title, or both; or

(2) if the offense is a second or subsequent offense, be imprisoned for no more than 6 years, fined under this title, or both.

The possession by a person of an audiovisual recording device in a motion picture exhibition facility may be considered as evidence in any proceeding to determine whether that person committed an offense under this subsection, but shall not, by itself, be sufficient to support a conviction of that person for such offense.

(b) Forfeiture and destruction of property; restitution.—Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.

(c) Authorized activities.—This section does not prevent any lawfully authorized investigative, protective, or intelligence activity by an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or by a person acting under a contract with the United States, a State, or a political subdivision of a State.

(d) Immunity for theaters.—With reasonable cause, the owner or lessee of a motion picture exhibition facility where a motion picture or other audiovisual work is being exhibited, the authorized agent or employee of such owner or lessee, the licensor of the motion picture or other audiovisual work being exhibited, or the agent or employee of such licensor—

(1) may detain, in a reasonable manner and for a reasonable time, any person suspected of a violation of this section with respect to that motion picture or audiovisual work for the purpose of questioning or summoning a law enforcement officer; and

(2) shall not be held liable in any civil or criminal action arising out of a detention under paragraph (1).

(e) Victim impact statement.—

(1) In general.—During the preparation of the presentence report under rule 32(c) of the Federal Rules of Criminal Procedure, victims of an offense under this section shall be

permitted to submit to the probation officer a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

(2) Contents.—A victim impact statement submitted under this subsection shall include—

(A) producers and sellers of legitimate works affected by conduct involved in the offense;

(B) holders of intellectual property rights in the works described in subparagraph (A); and

(C) the legal representatives of such producers, sellers, and holders.

(f) State law not preempted.—Nothing in this section may be construed to annul or limit any rights or remedies under the laws of any State.

(g) Definitions.—In this section, the following definitions shall apply:

(1) Title 17 definitions.—The terms “audiovisual work”, “copy”, “copyright owner”, “motion picture”, “motion picture exhibition facility”, and “transmit” have, respectively, the meanings given those terms in section 101 of title 17.

(2) Audiovisual recording device.—The term “audiovisual recording device” means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a copyrighted motion picture or other audiovisual work, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.

Amended: Prioritizing Resources and Organization for Intellectual Property Act of 2008, Pub. L. 110-403, Title II, § 204, Oct. 13, 2008, 122 Stat. 4261.

18 U.S.C. § 2320. Trafficking in counterfeit goods or services.

(a) Offenses.—Whoever intentionally—

(1) traffics in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services,

(2) traffics in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive,

(3) traffics in goods or services knowing that such good or service is a counterfeit military good or service the use,

malfunction, or failure of which is likely to cause serious bodily injury or death, the disclosure of classified information, impairment of combat operations, or other significant harm to a combat operation, a member of the Armed Forces, or to national security, or

(4) traffics in a counterfeit drug, or attempts or conspires to violate any of paragraphs (1) through (4) shall be punished as provided in subsection (b).

(b) Penalties.—

(1) In general.—Whoever commits an offense under subsection (a)—

(A) if an individual, shall be fined not more than \$2,000,000 or imprisoned not more than 10 years, or both, and, if a person other than an individual, shall be fined not more than \$5,000,000; and

(B) for a second or subsequent offense under subsection (a), if an individual, shall be fined not more than \$5,000,000 or imprisoned not more than 20 years, or both, and if other than an individual, shall be fined not more than \$15,000,000.

(2) Serious bodily injury or death.—

(A) Serious bodily injury.—Whoever knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of subsection (a), if an individual, shall be fined not more than \$ 5,000,000 or imprisoned for not more than 20 years, or both, and if other than an individual, shall be fined not more than \$15,000,000.

(B) Death.—Whoever knowingly or recklessly causes or attempts to cause death from conduct in violation of subsection (a), if an individual, shall be fined not more than \$5,000,000 or imprisoned for any term of years or for life, or both, and if other than an individual, shall be fined not more than \$15,000,000.

(3) Counterfeit military goods or services and counterfeit drugs.—Whoever commits an offense under subsection (a) involving a counterfeit military good or service or counterfeit drug—

(A) if an individual, shall be fined not more than \$5,000,000, imprisoned not more than 20 years, or both, and if other than an individual, be fined not more than \$15,000,000; and

(B) for a second or subsequent offense, if an individual, shall be fined not more than \$15,000,000, imprisoned not more than 30 years, or both, and if other than an individual, shall be fined not more than \$30,000,000.

(c) Forfeiture and destruction of property; restitution.—Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323, to the extent provided in that

section, in addition to any other similar remedies provided by law.

(d) Defenses.—All defenses, affirmative defenses, and limitations on remedies that would be applicable in an action under the Lanham Act shall be applicable in a prosecution under this section. In a prosecution under this section, the defendant shall have the burden of proof, by a preponderance of the evidence, of any such affirmative defense.

(e) Presentence report.—(1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

(2) Persons permitted to submit victim impact statements shall include—

(A) producers and sellers of legitimate goods or services affected by conduct involved in the offense;

(B) holders of intellectual property rights in such goods or services; and

(C) the legal representatives of such producers, sellers, and holders.

(f) Definitions.—For the purposes of this section—

(1) the term “counterfeit mark” means—

(A) a spurious mark—

(i) that is used in connection with trafficking in any goods, services, labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature;

(ii) that is identical with, or substantially indistinguishable from, a mark registered on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered;

(iii) that is applied to or used in connection with the goods or services for which the mark is registered with the United States Patent and Trademark Office, or is applied to or consists of a label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature that is designed, marketed, or otherwise intended to be used on or in connection with the goods or services for which the mark is registered in the United States Patent and Trademark Office; and

(iv) the use of which is likely to cause confusion, to cause mistake, or to deceive; or

(B) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which the remedies of the Lanham Act are made available by reason of section 220506 of title 36; but such term does not include any mark or designation used in connection with goods or services, or a mark or designation applied to labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature used in connection with such goods or services, of which the manufacturer or producer was, at the time of the manufacture or production in question, authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation;

(2) the term “financial gain” includes the receipt, or expected receipt, of anything of value;

(3) the term “Lanham Act” means the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (15 U.S.C. 1051 et seq.);

(4) the term “counterfeit military good or service” means a good or service that uses a counterfeit mark on or in connection with such good or service and that—

(A) is falsely identified or labeled as meeting military specifications, or

(B) is intended for use in a military or national security application;

(5) the term “traffic” means to transport, transfer, or otherwise dispose of, to another, for purposes of commercial advantage or private financial gain, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of; and

(6) the term “counterfeit drug” means a drug, as defined by section 201 of the Federal Food, Drug, and Cosmetic Act, that uses a counterfeit mark on or in connection with the drug.

(g) Limitation on cause of action.—Nothing in this section shall entitle the United States to bring a criminal cause of action under this section for the repackaging of genuine goods or services not intended to deceive or confuse.

(h) Report to Congress.—(1) Beginning with the first year after the date of enactment of this subsection, the Attorney General shall include in the report of the Attorney General to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28, an accounting, on a district by district basis, of the following with respect to all actions taken by the Department of Justice that involve trafficking in counterfeit

labels for phonorecords, copies of computer programs or computer program documentation or packaging, copies of motion pictures or other audiovisual works (as defined in section 2318 of this title), criminal infringement of copyrights (as defined in section 2319 of this title), unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances (as defined in section 2319A of this title), or trafficking in goods or services bearing counterfeit marks (as defined in section 2320 of this title):

(A) The number of open investigations.

(B) The number of cases referred by the United States Customs Service.

(C) The number of cases referred by other agencies or sources.

(D) The number and outcome, including settlements, sentences, recoveries, and penalties, of all prosecutions brought under sections 2318, 2319, 2319A, and 2320 of title 18.

(2)(A) The report under paragraph (1), with respect to criminal infringement of copyright, shall include the following:

(i) The number of infringement cases in these categories: audiovisual (videos and films); audio (sound recordings); literary works (books and musical compositions); computer programs; video games; and, others.

(ii) The number of online infringement cases.

(iii) The number and dollar amounts of fines assessed in specific categories of dollar amounts. These categories shall be: no fines ordered; fines under \$500; fines from \$500 to \$1,000; fines from \$1,000 to \$5,000; fines from \$5,000 to \$10,000; and fines over \$10,000.

(iv) The total amount of restitution ordered in all copyright infringement cases.

(B) In this paragraph, the term “online infringement cases” as used in paragraph (2) means those cases where the infringer—

(i) advertised or publicized the infringing work on the Internet; or

(ii) made the infringing work available on the Internet for download, reproduction, performance, or distribution by other persons.

(C) The information required under subparagraph (A) shall be submitted in the report required in fiscal year 2005 and thereafter.

(i) Transshipment and exportation.—No goods or services, the trafficking in of which is prohibited by this section, shall be transshipped through or exported

from the United States. Any such transshipment or exportation shall be deemed a violation of section 42 of an Act to provide for the registration of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes, approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946” or the “Lanham Act”).

Amended: Food and Drug Administration Safety and Innovation Act, Pub. L. 112-144, Title VII, § 717(a)(1) to (3), July 9, 2012, 126 Stat. 1076.

18 U.S.C. § 2323. Forfeiture, destruction, and restitution.

(a) Civil forfeiture.—

(1) Property subject to forfeiture.—The following property is subject to forfeiture to the United States Government:

(A) Any article, the making or trafficking of which is, prohibited under section 506 of title 17, or section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title.

(B) Any property used, or intended to be used, in any manner or part to commit or facilitate the commission of an offense referred to in subparagraph (A).

(C) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of an offense referred to in subparagraph (A).

(2) Procedures.—The provisions of chapter 46 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. For seizures made under this section, the court shall enter an appropriate protective order with respect to discovery and use of any records or information that has been seized. The protective order shall provide for appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in such records is not improperly disclosed or used. At the conclusion of the forfeiture proceedings, unless otherwise requested by an agency of the United States, the court shall order that any property forfeited under paragraph (1) be destroyed, or otherwise disposed of according to law.

(b) Criminal forfeiture.—

(1) Property subject to forfeiture.—The court, in imposing sentence on a person convicted of an offense under section 506 of title 17, or section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title, shall order, in addition to any other sentence imposed, that the person forfeit to the United States Government any property subject to forfeiture under subsection (a) for that offense.

(2) Procedures.—

(A) In general.—The forfeiture of property under paragraph (1), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section.

(B) Destruction.—At the conclusion of the forfeiture proceedings, the court, unless otherwise requested by an agency of the United States shall order that any—

(i) forfeited article or component of an article bearing or consisting of a counterfeit mark be destroyed or otherwise disposed of according to law; and

(ii) infringing items or other property described in subsection (a)(1)(A) and forfeited under paragraph (1) of this subsection be destroyed or otherwise disposed of according to law.

(c) Restitution.—When a person is convicted of an offense under section 506 of title 17 or section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title, the court, pursuant to sections 3556, 3663A, and 3664 of this title, shall order the person to pay restitution to any victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii) of this title.

Enacted: Prioritizing Resources and Organization for Intellectual Property Act of 2008, Pub. L. 110-403, Title II, § 206(a), Oct. 13, 2008, 122 Stat. 4262.

18 U.S.C. § 2331. Definitions. (Terrorism)

As used in this chapter—

(1) the term “international terrorism” means activities that—

(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the

persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;

(2) the term “national of the United States” has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;

(3) the term “person” means any individual or entity capable of holding a legal or beneficial interest in property;

(4) the term “act of war” means any act occurring in the course of—

(A) declared war;

(B) armed conflict, whether or not war has been declared, between two or more nations; or

(C) armed conflict between military forces of any origin; and

(5) the term “domestic terrorism” means activities that—

(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily within the territorial jurisdiction of the United States.

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title VIII, § 802(a), Oct. 26, 2001, 115 Stat. 272, 376.

18 U.S.C. § 2332b(g)(5). Definition. (Federal crime of terrorism)

(g)(5) the term “Federal crime of terrorism” means an offense that—

(A) is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct; and

(B) is a violation of—

(i) section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175 or

175b (relating to biological weapons), 175c (relating to variola virus), 229 (relating to chemical weapons), subsection (a), (b), (c), or (d) of section 351 (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 831 (relating to nuclear materials), 832 (relating to participation in nuclear and weapons of mass destruction threats to the United States) 842(m) or (n) (relating to plastic explosives), 844(f)(2) or (3) (relating to arson and bombing of Government property risking or causing death), 844(i) (relating to arson and bombing of property used in interstate commerce), 930(c) (relating to killing or attempted killing during an attack on a Federal facility with a dangerous weapon), 956(a)(1) (relating to conspiracy to murder, kidnap, or maim persons abroad), 1030(a)(1) (relating to protection of computers), 1030(a)(5)(A) resulting in damage as defined in 1030(c)(4)(A)(i)(II) through (VI) (relating to protection of computers), 1114 (relating to killing or attempted killing of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1361 (relating to government property or contracts), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366(a) (relating to destruction of an energy facility), 1751(a), (b), (c), or (d) (relating to Presidential and Presidential staff assassination and kidnaping), 1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air), 2155 (relating to destruction of national defense materials, premises, or utilities), 2156 (relating to national defense material, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2332f (relating to bombing of public places and facilities), 2332g (relating to missile systems designed to destroy aircraft), 2332h (relating to radiological dispersal devices), 2339 (relating to harboring terrorists), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), 2339C (relating to financing of terrorism), 2339D (relating to military-type training from a foreign terrorist organization), or 2340A (relating to torture) of this title;

(ii) sections 92 (relating to prohibitions governing atomic weapons) or 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2122 or 2284);

(iii) section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved (relating to application of certain criminal laws to acts on aircraft), or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49; or

(iv) section 1010A of the Controlled Substances Import and Export Act (relating to narco-terrorism).

Amended: Secret Service Protection to Former Vice Presidents, Pub. L. 110-326, Title II, § 204(b), Sept. 26, 2008, 122 Stat. 3562.

18 U.S.C. § 2344. Penalties. (Trafficking in contraband cigarettes)

(a) Whoever knowingly violates section 2342(a) of this title shall be fined under this title or imprisoned not more than five years, or both.

(b) Whoever knowingly violates any rule or regulation promulgated under section 2343(a) or 2346 of this title or violates section 2342(b) of this title shall be fined under this title or imprisoned not more than three years, or both.

(c) Any contraband cigarettes or contraband smokeless tobacco involved in any violation of the provisions of this chapter shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure and forfeiture. The provisions of chapter 46 of title 18 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. Any cigarettes or smokeless tobacco so seized and forfeited shall be either—

(1) destroyed and not resold; or

(2) used for undercover investigative operations for the detection and prosecution of crimes, and then destroyed and not resold.

Amended: USA Patriot Improvement and Reauthorization Act of 2005, Pub. L. 109-177, Title I, § 121(b)(4), (d), Mar. 9, 2006, 120 Stat. 192, 222, 223.

18 U.S.C. § 2428. Forfeitures. (Transportation for illegal sexual activity and related crimes)

(a) In general. The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—

(1) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and

(2) any property, real or personal, constituting or derived from any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(b) Property subject to forfeiture.

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

(A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

(B) Any property, real or personal, that constitutes or is derived from proceeds traceable to any violation of this chapter.

(2) Applicability of chapter 46. The provisions of chapter 46 of this title relating to civil forfeitures shall apply to any seizure or civil forfeiture under this subsection.

Enacted: Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. 109-164, Title I, § 103(d)(1), Jan. 10, 2006, 119 Stat. 3558, 3563.

18 U.S.C. § 2513. Confiscation of wire, oral, or electronic communication intercepting devices.

Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, sold, or advertised in violation of section 2511 or section 2512 of this chapter may be seized and forfeited to the United States. All provisions of law relating to (1) the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violations of the customs laws contained in title 19 of the United States Code, (2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof, (3) the remission or mitigation of such forfeiture, (4) the compromise of claims, and (5) 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 the collector of customs 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 of the United States Code shall be performed with respect to seizure and forfeiture of electronic, mechanical, or other intercepting devices under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

Amended: Electronic Communications Privacy Act of 1986, Pub. L. 99-508, Title I, § 101(c)(1)(A), Oct. 21, 1986, 100 Stat. 1848, 1851.

18 U.S.C. § 3051. Powers of special agents of Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(a) Special agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, as well as any other investigator or officer charged by the Attorney General with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of the laws of the United States, may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

(b) Any special agent of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, in respect to the performance of his or her duties, make seizures of property subject to forfeiture to the United States.

(c)(1) Except as provided in paragraphs (2) and (3), and except to the extent that such provisions conflict with the provisions of section 983 of title 18, United States Code, insofar as section 983 applies, the provisions of the Customs laws relating to—

- (A) the seizure, summary and judicial forfeiture, and condemnation of property;
- (B) the disposition of such property;
- (C) the remission or mitigation of such forfeiture; and
- (D) the compromise of claims,

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

(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 Attorney General.

(3) Notwithstanding any other provision of law, the disposition of firearms forfeited by reason of a violation of any law of the United States shall be governed by the provisions of section 5872(b) of the Internal Revenue Code of 1986.

Enacted: Homeland Security Act of 2002, Pub. L. 107-296, Title XI, § 1113, Nov. 25, 2002, 116 Stat. 2135, 2279.

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

(a) A person who is privy to grand jury information—

- (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 any civil forfeiture provision of Federal law.

(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 Federal or State 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) at any time during or after the completion of the investigation of the grand jury, 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, 1344, 1956, or 1957; or

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

(C) any provision of subchapter II of chapter 53 of title 31, United States Code;

(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.

Amended: Law Enforcement Tribute Act, Pub. L. 107-273, Div. C, Title I, § 11002, Nov. 2, 2002, 116 Stat. 1758, 1816.

18 U.S.C. § 3486. Administrative subpoenas

(a) Authorization.—

(1) (A) In any investigation of—

(i) (I) a Federal health care offense; or

(II) a Federal offense involving the sexual exploitation or abuse of children, the Attorney General; or

(ii) an unregistered sex offender conducted by the United States Marshals Service, the Director of the United States Marshals Service; or

(iii) an offense under section 871 or 879, or a threat against a person protected by the United States Secret Service under paragraph (5) or (6) of section 3056,¹ if the Director of the Secret Service determines that the threat constituting the offense or the threat against the person protected is imminent, the Secretary of the Treasury, may issue in writing and cause to be served a subpoena requiring the production and testimony described in subparagraph (B).

(B) Except as provided in subparagraph (C), a subpoena issued under subparagraph (A) may require—

(i) the production of any records or other things relevant to the investigation; and

(ii) testimony by the custodian of the things required to be produced concerning the production and authenticity of those things.

(C) A subpoena issued under subparagraph (A) with respect to a provider of electronic communication service or remote computing service, in an investigation of a

Federal offense involving the sexual exploitation or abuse of children shall not extend beyond—

(i) requiring that provider to disclose the information specified in section 2703 (c)(2), which may be relevant to an authorized law enforcement inquiry; or

(ii) requiring a custodian of the records of that provider to give testimony concerning the production and authentication of such records or information.

(D) As used in this paragraph, the term “Federal offense involving the sexual exploitation or abuse of children” means an offense under section 1201, 1591, 2241 (c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423, in which the victim is an individual who has not attained the age of 18 years.

(2) A subpoena under this subsection shall describe the objects required to be produced and prescribe a return date within a reasonable period of time within which the objects can be assembled and made available.

(3) The production of records relating to a Federal health care offense shall not be required under this section at any place more than 500 miles distant from the place where the subpoena for the production of such records is served. The production of things in any other case may be required from any place within the United States or subject to the laws or jurisdiction of the United States.

(4) Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(5) At any time before the return date specified in the summons, the person or entity summoned may, in the United States district court for the district in which that person or entity does business or resides, petition for an order modifying or setting aside the summons, or a prohibition of disclosure ordered by a court under paragraph (6).

(6)(A) A United State² district court for the district in which the summons is or will be served, upon application of the United States, may issue an ex parte order that no person or entity disclose to any other person or entity (other than to an attorney in order to obtain legal advice) the existence of such summons for a period of up to 90 days.

(B) Such order may be issued on a showing that the things being sought may be relevant to the investigation and there is reason to believe that such disclosure may result in—

(i) endangerment to the life or physical safety of any person;

(ii) flight to avoid prosecution;

¹ So in original. Probably should be section “3056(a).”.

² So in original.

- (iii) destruction of or tampering with evidence; or
- (iv) intimidation of potential witnesses.

(C) An order under this paragraph may be renewed for additional periods of up to 90 days upon a showing that the circumstances described in subparagraph (B) continue to exist.

(7) A summons issued under this section shall not require the production of anything that would be protected from production under the standards applicable to a subpoena duces tecum issued by a court of the United States.

(8) If no case or proceeding arises from the production of records or other things pursuant to this section within a reasonable time after those records or things are produced, the agency to which those records or things were delivered shall, upon written demand made by the person producing those records or things, return them to that person, except where the production required was only of copies rather than originals.

(9) A subpoena issued under paragraph (1)(A)(i)(II) or (1)(A)(ii) may require production as soon as possible, but in no event less than 24 hours after service of the subpoena.

(10) As soon as practicable following the issuance of a subpoena under paragraph (1)(A)(ii), the Secretary of the Treasury shall notify the Attorney General of its issuance.

(b) Service.— A subpoena issued under this section may be served by any person who is at least 18 years of age and is designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

(c) Enforcement.— In the case of contumacy by or refusal to obey a subpoena issued to any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which he carries on business or may be found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed person to appear before the Attorney General to produce records, if so ordered, or to give testimony concerning the production and authentication of such records. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process

in any such case may be served in any judicial district in which such person may be found.

(d) Immunity From Civil Liability.— Notwithstanding any Federal, State, or local law, any person, including officers, agents, and employees, receiving a subpoena under this section, who complies in good faith with the subpoena and thus produces the materials sought, shall not be liable in any court of any State or the United States to any customer or other person for such production or for nondisclosure of that production to the customer.

(e) Limitation on Use.—

(1) Health information about an individual that is disclosed under this section may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual who is the subject of the information unless the action or investigation arises out of and is directly related to receipt of health care or payment for health care or action involving a fraudulent claim related to health; or if authorized by an appropriate order of a court of competent jurisdiction, granted after application showing good cause therefor.

(2) In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.

(3) Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

Amended: Child Protection Act of 2012, Pub. L. 112-206, § 4(a), Dec. 7, 2012, 126 Stat. 1492.

18 U.S.C. § 3552(d). Disclosure of presentence reports.

The court shall assure that a report filed pursuant to this section is disclosed to the defendant, the counsel for the defendant, and the attorney for the Government at least ten days prior to the date set for sentencing, unless this minimum period is waived by the defendant. The court shall provide a copy of the presentence report to the attorney for the Government to use in collecting an assessment, criminal fine, forfeiture or restitution imposed.

Amended: Crime Control Act of 1990, Pub. L. 101-647, Title XXXVI, § 3625, Nov. 29, 1990, 104 Stat. 4789, 4965.

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.

Enacted: Sentencing Reform Act of 1984, Pub. L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1837, 1990.

18 U.S.C. § 3665. Firearms possessed by convicted felons.

A judgment of conviction for transporting a stolen motor vehicle in interstate or foreign commerce or for committing or attempting to commit a felony in violation of any law of the United States involving the use of threats, force, or violence or perpetrated in whole or in part by the use of firearms, may, in addition to the penalty provided by law for such offense, order the confiscation and disposal of firearms and ammunition found in the possession or under the immediate control of the defendant at the time of his arrest.

The court may direct the delivery of such firearms or ammunition to the law-enforcement agency which apprehended such person, for its use or for any other disposition in its discretion.

Amended: Sentencing Reform Act of 1984, Pub. L. 98-473, Title II, § 212(a)(1), Oct. 12, 1984, 98 Stat. 1837, 1987.

TITLE 19

19 U.S.C. § 1466. Equipment and repairs of vessels.

(a) Vessels subject to duty; penalties

The equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country. If the owner or master willfully or knowingly neglects or fails to report, make entry, and pay duties as herein required, or if he makes any false statement in respect of such purchases or repairs without reasonable cause to believe the truth of such statements, or aids or procures the making of any false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, such vessel, or a monetary amount up to the value thereof as determined by the Secretary, to be recovered from the owner, shall be subject to seizure and forfeiture. For the purposes of this section, compensation paid to members of the regular crew of such vessel in connection with the installation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment or part thereof, or of such repairs.

(b) Notice

If the appropriate customs officer has reasonable cause to believe a violation has occurred and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intention to issue a penalty claim. Such notice shall—

- (1) describe the circumstances of the alleged violation;
- (2) specify all laws and regulations allegedly violated;
- (3) disclose all the material facts which establish the alleged violation;
- (4) state the estimated loss of lawful duties, if any, and taking into account all of the circumstances, the amount of the proposed penalty; and
- (5) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

(c) Violation

After considering representations, if any, made by the person concerned pursuant to the notice issued under subsection (b) of this section, the appropriate customs officer shall determine

whether any violation of subsection (a) of this section, as alleged in the notice, has occurred. If such officer determines that there was no violation, he shall promptly notify, in writing, the person to whom the notice was sent. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under paragraphs (1) through (4) of subsection (b) of this section.

(d) Remission for necessary repairs

If the owner or master of such vessel furnishes good and sufficient evidence that—

- (1) such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination;
- (2) such equipments or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel; or
- (3) such equipments, or parts thereof, or materials, or labor, were used as dunnage for cargo, or for the packing or shoring thereof, or in the erection of temporary bulkheads or other similar devices for the control of bulk cargo, or in the preparation (without permanent repair or alteration) of tanks for the carriage of liquid cargo;

then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license, or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments or parts thereof or materials and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this section, and the duties accruing thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited.

(e) Exclusions for arrivals two or more years after last departure

(1) In the case of any vessel referred to in subsection (a) of this section that arrives in a port of the United States two years or more after its last departure from a port in the United States, the duties imposed by this section shall apply only with respect to—

(A) fish nets and netting, and

(B) other equipments and parts thereof, repair parts and materials purchased, or repairs made, during the first six months after the last departure of such vessel from a port of the United States.

(2) If such vessel is designed and used primarily for transporting passengers or property, paragraph (1) shall not apply if the vessel departed from the United States for the sole purpose of obtaining such equipments, parts, materials, or repairs.

(f) Civil aircraft exception

The duty imposed under subsection (a) of this section shall not apply to the cost of equipments, or any part thereof, purchased, of repair parts or materials used, or of repairs made in a foreign country with respect to a United States civil aircraft, within the meaning of general note (3)(c)(iv) of the Harmonized Tariff Schedule of the United States.

(g) Fish net and netting purchases and repairs

The duty imposed by subsection (a) of this section shall not apply to entries on and after October 1, 1979, and before January 1, 1982, of—

(1) tuna purse seine nets and netting which are equipments or parts thereof,

(2) repair parts for such nets and netting, or materials used in repairing such nets and netting, or

(3) the expenses of repairs of such nets and netting,

for any United States documented tuna purse seine vessel of greater than 500 tons carrying capacity or any United States tuna purse seine vessel required to carry a certificate of inclusion under the general permit issued to the American Tunaboat Association pursuant to section 1374 of Title 16.

(h) Foreign repair of vessels

The duty imposed by subsection (a) of this section shall not apply to—

(1) the cost of any equipment, or any part of equipment, purchased for, or the repair parts or materials to be used, or the expense of repairs made in a foreign country with respect to, LASH (Lighter Aboard Ship) barges documented under the laws of the United States and utilized as cargo containers;

(2) the cost of spare repair parts or materials (other than nets or nettings) which the owner or master of the vessel certifies are intended for use aboard a cargo vessel, documented under the laws of the United States and engaged in the foreign or coasting trade, for installation or use on such vessel, as needed, in the United States, at sea, or in a foreign country, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part purchased in, or imported from, a foreign country;

(3) the cost of spare parts necessarily installed before the first entry into the United States, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the

United States of each such spare part purchased in, or imported from, a foreign country; or

(4) the cost of equipment, repair parts, and materials that are installed on a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas, in foreign waters, or in a foreign port, and does not involve foreign shipyard repairs by foreign labor.

Declaration and entry shall not be required with respect to the installation, equipment, parts, and materials described in paragraph (4).

Amended: Pension Protection Act of 2006, Aug. 17, 2006, Pub. L. 109-280, Title XIV, § 1631(a), 120 Stat. 1164.

19 U.S.C. § 1497. Penalties for failure to declare.

(a) In general

(1) Any article which—

(A) is not included in the declaration and entry as made or transmitted; and

(B) is not mentioned before examination of the baggage begins—

(i) in writing by such person, if written declaration and entry was required, or

(ii) orally, if written declaration and entry was not required;

shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.

(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—

(A) if the article is a controlled substance, either \$500 or an amount equal to 1,000 percent of the value of the article, whichever amount is greater; and

(B) if the article is not a controlled substance, the value of the article.

(b) Value of controlled substances

(1) Notwithstanding any other provision of this chapter, the value of any controlled substance shall, for purposes of this section, be equal to the amount determined by the Secretary in consultation with the Attorney General of the United States, to be equal to the price at which such controlled substance is likely to be illegally sold to the consumer of such controlled substance.

(2) The Secretary and the Attorney General of the United States shall establish a method of determining the price at which each controlled substance is likely to be illegally sold to the consumer of such controlled substance.

Amended: North American Free Trade Agreement (NAFTA) Implementation Act, Pub. L. 103-182, Title VI, § 612, Dec. 8, 1993, 107 Stat. 2170.

19 U.S.C. § 1592. Penalties for fraud, gross negligence, and negligence.

(a) Prohibition

(1) General rule

Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty, tax, or fee thereby, no person, by fraud, gross negligence, or negligence—

(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—

(i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or

(ii) any omission which is material, or

(B) may aid or abet any other person to violate subparagraph (A).

(2) Exception

Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

(b) Procedures

(1) Pre-penalty notice

(A) In general

If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a) of this section and determines that further proceedings are warranted, it shall issue to the person concerned a written notice of its intention to issue a claim for a monetary penalty. Such notice shall—

(i) describe the merchandise;

(ii) set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;

(iii) specify all laws and regulations allegedly violated;

(iv) disclose all the material facts which establish the alleged violation;

(v) state whether the alleged violation occurred as a result of fraud, gross negligence, or negligence;

(vi) state the estimated loss of lawful duties, taxes, and fees, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty; and

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) Exceptions

The preceding subparagraph shall not apply if—

(i) the importation with respect to which the violation of subsection (a) of this section occurs is noncommercial in nature, or

(ii) the amount of the penalty in the penalty claim issued under paragraph (2) is \$1,000 or less.

(2) Penalty claim

After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a) of this section, as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, it shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, it shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vi) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 1618 of this title to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 1618, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(c) Maximum penalties

(1) Fraud

A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise.

(2) Gross negligence

A grossly negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) four times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 40 percent of the dutiable value of the merchandise.

(3) Negligence

A negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) two times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise.

(4) Prior disclosure

If the person concerned discloses the circumstances of a violation of subsection (a) of this section before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) of this section shall not exceed—

(A) if the violation resulted from fraud—

(i) an amount equal to 100 percent of the lawful duties, taxes, and fees of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount, or

(ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or

(B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of Title 26) on the amount of lawful duties, taxes, and fees of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount.

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge. For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) of this section existed.

(5) Prior disclosure regarding NAFTA claims

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim for preferential tariff treatment under section 3332 of this title if the importer—

(A) has reason to believe that the NAFTA Certificate of Origin (as defined in section 1508(b)(1) of this title) on which the claim was based contains incorrect information; and

(B) in accordance with regulations issued by the Secretary, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(6) Prior disclosure regarding claims under the United States-Chile Free Trade Agreement

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good qualifies as an originating good under section 202 of the United States-Chile Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily makes a corrected declaration and pays any duties owing.

(7) Prior disclosure regarding claims under the United States-Singapore Free Trade Agreement

(A) An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good qualifies as an originating good under section 202 of the United States-Singapore Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(B) In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim that a good qualifies as an originating good.

(8) Prior disclosure regarding claims under the United States-Australia Free Trade Agreement

(A) In general

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States-Australia Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(B) Time periods for making corrections

In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim.

(9) Prior disclosure regarding claims under the Dominican Republic-Central America-United States Free Trade Agreement

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good qualifies as an originating good under section 4033 of this title if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing.

(10) Prior disclosure regarding claims under the United States-Peru Trade Promotion Agreement

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States-Peru Trade Promotion Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing with respect to that good.

(11) Prior disclosure regarding claims under the United States-Korea Free Trade Agreement

An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 202 of the United States-Korea Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing with respect to that good.

(12) Prior disclosure regarding claims under the United States-Colombia Trade Promotion Agreement

An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States-Colombia Trade Promotion Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing with respect to that good.

(13) Prior disclosure regarding claims under the United States-Panama Trade Promotion Agreement

An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States-Panama Trade Promotion Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing with respect to that good.

(14) Seizure

If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) of this section and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c) of this section.

(d) Deprivation of lawful duties, taxes, or fees

Notwithstanding section 1514 of this title, if the United States has been deprived of lawful duties, taxes, or fees as a result of a violation of subsection (a) of this section, the Customs Service shall require that such lawful duties, taxes, and fees be restored, whether or not a monetary penalty is assessed.

(e) Court of International Trade proceedings

Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence;

(3) if the monetary penalty is based on gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and

(4) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of proof that the act or omission did not occur as a result of negligence.

(f) False certifications regarding exports to NAFTA countries

(1) In general

Subject to paragraph (3), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a NAFTA Certificate of Origin (as defined in section 1508(b)(1) of this title) that a good to be exported to a NAFTA country (as defined in section 3301(4) of this title) qualifies under the rules of origin set out in section 3332 of this title.

(2) Applicable provisions

The procedures and penalties of this section that apply to a violation of subsection (a) of this section also apply to a violation of paragraph (1), except that—

(A) subsection (d) of this section does not apply, and

(B) subsection (c)(5) of this section applies only if the person voluntarily and promptly provides, to all persons to whom the person provided the NAFTA Certificate of Origin, written notice of the falsity of the Certificate.

(3) Exception

A person may not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a NAFTA Certificate of Origin but was later rendered incorrect due to a change in circumstances; and

(B) the person voluntarily and promptly provides written notice of the change to all persons to whom the person provided the Certificate of Origin.

(g) False certifications of origin under the United States-Chile Free Trade Agreement

(1) In general

Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a Chile FTA Certificate of Origin (as defined in section 1508(f)(1)(B) of this title) that a good exported from the United States qualifies as an originating good under the rules of origin set out in section 202 of the United States-Chile Free Trade

Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) of this section also apply to a violation of this subsection.

(2) Immediate and voluntary disclosure of incorrect information

No penalty shall be imposed under this subsection if, immediately after an exporter or producer that issued a Chile FTA Certificate of Origin has reason to believe that such certificate contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certificate was issued.

(3) Exception

A person may not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a Chile FTA Certificate of Origin but was later rendered incorrect due to a change in circumstances; and

(B) the person immediately and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certificate.

(h) False certifications of origin under the Dominican Republic-Central America-United States Free Trade Agreement

(1) In general

Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a CAFTA-DR certification of origin (as defined in section 1508(g)(1)(B) of this title) that a good exported from the United States qualifies as an originating good under the rules of origin set out in section 4033 of this title. The procedures and penalties of this section that apply to a violation of subsection (a) of this section also apply to a violation of this subsection.

(2) Prompt and voluntary disclosure of incorrect information

No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a CAFTA-DR certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

(3) Exception

A person may not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a CAFTA-DR certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

(i) False certifications of origin under the United States-Peru Trade Promotion Agreement

(1) In general

Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a PTPA certification of origin (as defined in section 1508(h)(1)(B) of this title) that a good exported from the United States qualifies as an originating good under the rules of origin provided for in section 203 of the United States-Peru Trade Promotion Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) of this section also apply to a violation of this subsection.

(2) Prompt and voluntary disclosure of incorrect information

No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a PTPA certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

(3) Exception

A person shall not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a PTPA certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

(j) False certifications of origin under the United States-Korea Free Trade Agreement

(1) In general

Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a KFTA certification of origin (as defined in section 1508 of this title) that a good exported from the United States qualifies as an originating good under the rules of origin provided for in section 202 of the United States-Korea Free Trade Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of this subsection.

(2) Prompt and voluntary disclosure of incorrect information

No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a KFTA certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

(3) Exception

A person shall not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a KFTA certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

(k) False certifications of origin under the United States-Colombia Trade Promotion Agreement

(1) In general

Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a CTPA certification of origin (as defined in section 508 of this Act) that a good exported from the United States qualifies as an originating good under the rules of origin provided for in section 203 of the United States-Colombia Trade Promotion Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of this subsection.

(2) Prompt and voluntary disclosure of incorrect information

No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a CTPA certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

(3) Exception

A person shall not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a CTPA certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

(l) False certifications of origin under the United States-Panama Trade Promotion Agreement**(1) In general**

Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a Panama TPA certification of origin (as defined in section 1508 of this title) that a good exported from the United States qualifies as an originating good under the rules of origin provided for in section 203 of the United States-Panama Trade Promotion Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of this subsection.

(2) Prompt and voluntary disclosure of incorrect information

No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a Panama TPA certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

(3) Exception

A person shall not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a Panama TPA certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

Amended: United States-Panama Trade Promotion Agreement Implementation Act, Pub. L. 112-43, Title II, § 205(a), Oct. 21, 2011, 125 Stat. 518.

19 U.S.C. § 1594. Seizure of conveyances.**(a) In general**

Whenever—

(1) any vessel, vehicle, or aircraft; or

(2) the owner or operator, or the master, pilot, conductor, driver, or other person in charge of a vessel, vehicle, or aircraft; is subject to a penalty for violation of the customs laws, the conveyance involved shall be held for the payment of such penalty and may be seized and forfeited and sold in accordance with the customs laws. The proceeds of sale, if any, in excess of the assessed penalty and expenses of seizing, maintaining,

and selling the property shall be held for the account of any interested party.

(b) Exceptions

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to seizure and forfeiture under the customs laws for violations relating to merchandise contained—

(A) on the person;

(B) in baggage belonging to and accompanying a passenger being lawfully transported on such conveyance; or

(C) in the cargo of the conveyance if the cargo is listed on the manifest and marks, numbers, weights and quantities of the outer packages or containers agree with the manifest;

unless the owner or operator, or the master, pilot, conductor, driver or other person in charge participated in, or had knowledge of, the violation, or was grossly negligent in preventing or discovering the violation.

(2) Except as provided in paragraph (1) or subsection (c) of this section, no vessel, vehicle, or aircraft is subject to forfeiture to the extent of an interest of an owner for a drug-related offense established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.

(c) Prohibited merchandise on conveyance

If any merchandise the importation of which is prohibited is found to be, or to have been—

(1) on board a conveyance used as a common carrier in the transaction of business as a common carrier in one or more packages or containers—

(A) that are not manifested (or not shown on bills of lading or airway bills); or

(B) whose marks, numbers, weight or quantities disagree with the manifest (or with the bills of lading or airway bills); or

(2) concealed in or on such a conveyance, but not in the cargo;

the conveyance may be seized, and after investigation, forfeited unless it is established that neither the owner or operator, master, pilot, nor any other employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence could have known, that such merchandise was on board.

(d) Definitions

For purposes of this section—

(1) The term “owner or operator” includes—

(A) a lessee or person operating a conveyance under a rental agreement or charter party; and

(B) the officers and directors of a corporation;

(C) station managers and similar supervisory ground personnel employed by airlines;

(D) one or more partners of a partnership;

(E) representatives of the owner or operator in charge of the passenger or cargo operations at a particular location; and

(F) and other persons with similar responsibilities.

(2) The term “master” and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported in the conveyance.

(e) Costs and expenses of seizure

When a common carrier has been seized in accordance with the provisions of subsection (c) of this section and it is subsequently determined that a violation of such subsection occurred but that the vessel will be released, the conveyance is liable for the costs and expenses of the seizure and detention.

Amended: Anti-Drug Abuse Act of 1988, Pub. L. 100-690, Title VI, § 6076(b), Nov. 18, 1988, 102 Stat. 4181, 4324.

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

(a) Importation, removal, etc. contrary to laws of United States. Except as specified in subsection (b) or (c) of section 594 of this Act, 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, unloading, 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) Merchandise introduced contrary to law. 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;

(C) is a contraband article, as defined in section 1 of the Act of August 9, 1939 (49 U.S.C. App. 781); or

(D) is a plastic explosive, as defined in section 841(q) of title 18, United States Code, which does not contain a detection agent, as defined in section 841(p) of such title.

(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 42, 43, or 45 of the Act of July 5, 1946 (15 U.S.C. 1124, 1125, or 1127), section 506 of title 17, United States Code, or section 2318 or 2320 of title 18, United States Code);

(D) it is trade dress merchandise involved in the violation of a court order citing section 43 of such Act of July 5, 1946 (15 U.S.C. 1125);

(E) it is merchandise which is marked intentionally in violation of section 304; 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 304.

(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 499 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 592.

(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 618, 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.

(d) Merchandise exported or sent from the United States or attempted to be exported or sent from the United States contrary to law, or the proceeds or value thereof, and property used to facilitate the exporting or sending of such merchandise, the attempted exporting or sending of such merchandise, or the receipt, purchase, transportation, concealment, or sale of such merchandise prior to exportation shall be seized and forfeited to the United States.

Amended: Prioritizing Resources and Organization for Intellectual Property Act of 2008, Oct. 13, 2008, Pub. L. 110-403, Title II, § 209(b), 122 Stat. 4264.

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.

Amended: Trade and Tariff Act of 1984, Pub. L. 98-573, Title II, § 213(a)(1), Oct. 30, 1984, 98 Stat. 2948, 2984.

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 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.

Amended: Anti-Drug Abuse Act of 1988, Pub. L. 100-690, Title VII, § 7365, Nov. 18, 1988, 102 Stat. 4181, 4478.

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.

Amended: Customs Courts Act of 1980, Pub. L. 96-417, Title VI, § 610, Oct. 10, 1980, 94 Stat. 1727, 1746.

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.

Amended: Trade and Tariff Act of 1984, Pub. L. 98-573, Title II, § 213(a)(2), Oct. 30, 1984, 98 Stat. 2948, 2984.

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.

Amended: Trade and Tariff Act of 1984, Pub. L. 98-573, Title II, § 213(a)(3), Oct. 30, 1984, 98 Stat. 2948, 2984.

19 U.S.C. § 1607. Seizure; value \$500,000 or less, prohibited articles, transporting conveyances.

(a) Notice of seizure

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 listed chemical; 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 terms “controlled substance” and “listed chemical” have the meaning given such terms 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.

Amended: Comprehensive Methamphetamine Control Act of 1996, Pub. L. 104-237, Title II, § 201(c), Oct. 3, 1996, 110 Stat. 3099, 3101.

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 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.

Reenacted: Anti-Drug Abuse Act of 1988, Pub. L. 100-690, Title VII, § 7367(c)(2), Nov. 18, 1988, 102 Stat. 4181, 4479.

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.

Amended: Anti-Drug Abuse Act of 1988, Pub. L. 100-690, Title VII, § 7367(b), Nov. 18, 1988, 102 Stat. 4181, 4479.

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.

Amended: Anti-Drug Abuse Act of 1988, Pub. L. 100-690, Title VII, § 7367(c)(3), Nov. 18, 1988, 102 Stat. 4181, 4480.

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.

Amended: Trade and Tariff Act of 1984, Pub. L. 98- 573, Title II, § 213(a)(8), Oct. 30, 1984, 98 Stat. 2948, 2985.

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.

Amended: North American Free Trade Agreement (NAFTA) Implementation Act, Pub. L. 103-182, Title VI, § 667, Dec. 8, 1993, 107 Stat. 2057, 2215.

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

In 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.

Amended: Anti-Drug Abuse Act of 1986, Pub. L. 99-570, Title III, § 3124, Oct. 27, 1986, 100 Stat. 3207-88.

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.

(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 audits conducted by the Comptroller General of the United States, under such conditions as the Comptroller General determines appropriate.

(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) of this section:

(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.

Amended: General Accounting Office Act of 1996, Pub. L. 104-316, Title I, § 110(a), Oct. 19, 1996, 110 Stat. 3826, 3832.

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.

Amended: Trade and Tariff Act of 1984, Pub. L. 98-573, Title II, § 213(a)(12), Oct. 30, 1984, 98 Stat. 2948, 2987.

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.

Amended: Trade and Tariff Act of 1984, Pub. L. 98-573, Title II, § 213(a)(13), Oct. 30, 1984, 98 Stat. 2948, 2987.

19 U.S.C. § 1616a. Disposition 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

(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(b) 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.

Amended: International Narcotics Control Corrections Act of 1994, Pub. L. 103-447, Title I, § 102(c), Nov. 2, 1994, 108 Stat. 4691, 4693.

19 U.S.C. § 1617. Compromise of Government claims by Secretary of the 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.

Amended: The Customs Courts Act of 1970, Pub. L. 91-271, Title III, § 301(gg), June 2, 1970, 84 Stat. 291.

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.

Amended: Trade and Tariff Act of 1984, Pub. L. 98-573, Title II, § 213(a)(16), Oct. 30, 1984, 98 Stat. 2948, 2988.

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

(2) such detection and seizure or such information leads to a recovery of—

(A) any duties withheld, or

(B) any fine, penalty, or forfeiture of property incurred;

the Secretary may award and pay such person an amount that does not exceed 25 percent of the net amount so recovered.

(b) Forfeited property not sold

If—

(1) any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States and is thereafter, in lieu of sale—

(A) destroyed under the customs or navigation laws, or

(B) delivered to any governmental agency for official use, and

(2) any person would be eligible to receive an award under subsection (a) of this section but for the lack of sale of such forfeited property,

the Secretary may award and pay such person an amount that does not exceed 25 percent of the appraised value of such forfeited property.

(c) Dollar limitation

The amount awarded and paid to any person under this section may not exceed \$250,000 for any case.

(d) Source of payment

Unless otherwise provided by law, any amount paid under this section shall be paid out of appropriations available for the collection of the customs revenue.

(e) Recovery of bail bond

For purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred.

Amended: Anti-Drug Abuse Act of 1986, Pub. L. 99-570, Title III, § 3125, Oct. 27, 1986, 100 Stat. 3207-88.

19 U.S.C. § 1620. Acceptance of money by United States officers.

Any officer of the United States who directly or indirectly receives, accepts, or contracts for any portion of the money which may accrue to any person making such detection and seizure, or furnishing such information, shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or both, and shall be thereafter ineligible to any office of honor, trust, or emolument. Any such person

who pays to any such officer, or to any person for the use of such officer, any portion of such money, or anything of value for or because of such money, shall have a right of action against such officer, or his legal representatives, or against such person, or his legal representatives, and shall be entitled to recover the money so paid or the thing of value so given.

Enacted: June 17, 1930, c. 497, Title IV, § 620, 46 Stat. 758.

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, or in the case of forfeiture, within 2 years after the time when the involvement of the property in the alleged offense was discovered, whichever was later; 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.

Amended: Civil Asset Forfeiture Reform Act (CAFRA) of 2000, Pub. L. 106-185, § 11, Apr. 25, 2000, 114 Stat. 202, 217.

19 U.S.C. § 1703. Seizure and forfeiture of vessels.

(a) Vessels subject to seizure and forfeiture

Whenever any vessel which shall have been built, purchased, fitted out in whole or in part, or held, in the United States or elsewhere, for the purpose of being employed to defraud the revenue or to smuggle any merchandise into the United States, or to smuggle any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, or whenever any vessel which shall be found, or discovered to have been, employed, or attempted to be employed, within the United States for any such purpose, or is anywise in assistance thereof, or whenever any vessel of the United States which

shall be found, or discovered to have been employed, or attempted to be employed at any place, for any such purpose, or in anywise in assistance thereof, if not subsequently forfeited to the United States or to a foreign government, is found at any place at which any such vessel may be examined by an officer of the customs in the enforcement of any law respecting the revenue, the said vessel and its cargo shall be seized and forfeited.

(b) “Vessels of the United States” defined

Every vessel which is documented, owned, or controlled in the United States, and every vessel of foreign registry which is, directly or indirectly, substantially owned or controlled by any citizen of, or corporation incorporated, owned, or controlled in, the United States, shall, for the purposes of this section, be deemed a vessel of the United States.

(c) Acts constituting prima facie evidence vessel engaged in smuggling

For the purposes of this section, the fact that a vessel has become subject to pursuit as provided in section 1581 of this title, or is a hovering vessel, or that a vessel fails, at any place within the customs waters of the United States or within a customs-enforcement area, to display lights as required by law, shall be prima facie evidence that such vessel is being, or has been, or is attempted to be employed to defraud the revenue of the United States.

Enacted: Aug. 5, 1935, c. 438, Title I, § 3, 49 Stat. 518.

19 U.S.C. § 2609. Seizure and forfeiture. (Cultural property)

(a) In general. Any designated archaeological or ethnological material or article of cultural property, as the case may be, which is imported into the United States in violation of section 307 or section 308 shall be subject to seizure and forfeiture. All provisions of law relating to seizure, forfeiture, and condemnation for violation of the customs laws shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this title, insofar as such provisions of law are applicable to, and not inconsistent with, the provisions of this title.

(b) Archaeological and ethnological material. Any designated archaeological or ethnological material which is imported into the United States in violation of section 307 and which is forfeited to the United States under this title shall—

(1) first be offered for return to the State Party;

(2) if not returned to the State Party, be returned to a claimant with respect to whom the material was forfeited if that claimant establishes—

(A) valid title to the material,

(B) that the claimant is a bona fide purchaser for value of the material; or

(3) if not returned to the State Party under paragraph (1) or to a claimant under paragraph (2), be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

No return of material may be made under paragraph (1) or (2) unless the State Party or claimant, as the case may be, bears the expenses incurred incident to the return and delivery, and complies with such other requirements relating to the return as the Secretary shall prescribe.

(c) Articles of cultural property.

(1) In any action for forfeiture under this section regarding an article of cultural property imported into the United States in violation of section 208, if the claimant establishes valid title to the article, under applicable law, as against the institution from which the article was stolen, forfeiture shall not be decreed unless the State Party to which the article is to be returned pays the claimant just compensation for the article. In any action for forfeiture under this section where the claimant does not establish such title but establishes that it purchased the article for value without knowledge or reason to believe it was stolen, forfeiture shall not be decreed unless—

(A) the State Party to which the article is to be returned pays the claimant an amount equal to the amount which the claimant paid for the article, or

(B) the United States establishes that such State Party, as a matter of law or reciprocity, would in similar circumstances recover and return an article stolen from an institution in the United States without requiring the payment of compensation.

(2) Any article of cultural property which is imported into the United States in violation of section 308 and which is forfeited to the United States under this title shall—

(A) first be offered for return to the State Party in whose territory is situated the institution referred to in section 308 and shall be returned if that State Party bears the expenses incident to such return and delivery and complies with such other requirements relating to the return as the Secretary prescribes; or

(B) if not returned to such State Party, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

Enacted: Convention on Cultural Property Implementation Act, Pub. L. 97-446, Title III, § 310, Jan. 12, 1983, 96 Stat. 2329, 2360.

TITLE 21

21 U.S.C. § 334. Seizure.

(a) Grounds and jurisdiction

(1) Any article of food, drug, or cosmetic that is adulterated or misbranded when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 331(*ll*), 344, or 355 of this title, be introduced into interstate commerce, shall be liable to be proceeded against while in interstate commerce, or at any time thereafter, on libel of information and condemned in any district court of the United States or United States court of a Territory within the jurisdiction of which the article is found. No libel for condemnation shall be instituted under this chapter, for any alleged misbranding if there is pending in any court a libel for condemnation proceeding under this chapter based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply (A) when such misbranding has been the basis of a prior judgment in favor of the United States, in a criminal, injunction, or libel for condemnation proceeding under this chapter, or (B) when the Secretary has probable cause to believe from facts found, without hearing, by him or any officer or employee of the Department that the misbranded article is dangerous to health, or that the labeling of the misbranded article is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer. In any case where the number of libel for condemnation proceedings is limited as above provided the proceeding pending or instituted shall, on application of the claimant, seasonably made, be removed for trial to any district agreed upon by stipulation between the parties, or, in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, to which the case shall be removed for trial.

(2) The following shall be liable to be proceeded against at any time on libel of information and condemned in any district court of the United States or United States court of a Territory within the jurisdiction of which they are found: (A) Any drug that is a counterfeit drug, (B) Any container of a counterfeit drug, (C) Any punch, die, plate, stone, labeling, container, or other thing used or designed for use in making a counterfeit drug or drugs, (D) Any adulterated or misbranded device, and (E) Any adulterated or misbranded tobacco product.

(3)(A) Except as provided in subparagraph (B), no libel for condemnation may be instituted under paragraph (1) or (2) against any food which—

(i) is misbranded under section 343(a)(2) of this title because of its advertising, and

(ii) is being held for sale to the ultimate consumer in an establishment other than an establishment owned or operated by a manufacturer, packer, or distributor of the food.

(B) A libel for condemnation may be instituted under paragraph (1) or (2) against a food described in subparagraph (A) if—

(i)(I) the food's advertising which resulted in the food being misbranded under section 343(a)(2) of this title was disseminated in the establishment in which the food is being held for sale to the ultimate consumer,

(II) such advertising was disseminated by, or under the direction of, the owner or operator of such establishment, or

(III) all or part of the cost of such advertising was paid by such owner or operator; and

(ii) the owner or operator of such establishment used such advertising in the establishment to promote the sale of the food.

(b) Procedure; multiplicity of pending proceedings

The article, equipment, or other thing proceeded against shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of adulteration or misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the claimant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the claimant may apply to the court of one such jurisdiction and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The

court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

(c) Availability of samples of seized goods prior to trial

The court at any time after seizure up to a reasonable time before trial shall by order allow any party to a condemnation proceeding, his attorney or agent, to obtain a representative sample of the article seized and a true copy of the analysis, if any, on which the proceeding is based and the identifying marks or numbers, if any, of the packages from which the samples analyzed were obtained.

(d) Disposition of goods after decree of condemnation; claims for remission or mitigation of forfeitures

(1) Any food, drug, device, tobacco product, or cosmetic condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such article shall not be sold under such decree contrary to the provisions of this chapter or the laws of the jurisdiction in which sold. After entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such article shall not be sold or disposed of contrary to the provisions of this chapter or the laws of any State or Territory in which sold, the court may by order direct that such article be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this chapter, under the supervision of an officer or employee duly designated by the Secretary, and the expenses of such supervision shall be paid by the person obtaining release of the article under bond. If the article was imported into the United States and the person seeking its release establishes (A) that the adulteration, misbranding, or violation did not occur after the article was imported, and (B) that he had no cause for believing that it was adulterated, misbranded, or in violation before it was released from customs custody, the court may permit the article to be delivered to the owner for exportation in lieu of destruction upon a showing by the owner that all of the conditions of section 381(e) of this title can and will be met. The provisions of this sentence shall not apply where condemnation is based upon violation of section 342(a)(1), (2), or (6), section 351(a)(3), section 352(j), or section 361(a) or (d) of this title. Where such exportation is made to the original foreign supplier, then subparagraphs (A) and (B) of section 381(e)(1) of this title and the preceding sentence shall not be applicable; and in all cases of exportation the bond shall be conditioned that the article shall not be sold or disposed of until the applicable conditions of section 381(e) of this title have been met. Any person seeking to export an imported article pursuant to any of the provisions of this subsection shall establish that the article was intended for export at the time the article entered commerce. Any article condemned by

reason of its being an article which may not, under section 344 or 355 of this title, be introduced into interstate commerce, shall be disposed of by destruction.

(2) The provisions of paragraph (1) of this subsection shall, to the extent deemed appropriate by the court, apply to any equipment or other thing which is not otherwise within the scope of such paragraph and which is referred to in paragraph (2) of subsection (a) of this section.

(3) Whenever in any proceeding under this section, involving paragraph (2) of subsection (a) of this section, the condemnation of any equipment or thing (other than a drug) is decreed, the court shall allow the claim of any claimant, to the extent of such claimant's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court (i) that he has not committed or caused to be committed any prohibited act referred to in such paragraph (2) and has no interest in any drug referred to therein, (ii) that he has an interest in such equipment or other thing as owner or lienor or otherwise, acquired by him in good faith, and (iii) that he at no time had any knowledge or reason to believe that such equipment or other thing was being or would be used in, or to facilitate, the violation of laws of the United States relating to counterfeit drugs.

(e) Costs

When a decree of condemnation is entered against the article, court costs and fees, and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the article.

(f) Removal of case for trial

In the case of removal for trial of any case as provided by subsection (a) or (b) of this section—

(1) The clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction.

(2) The court to which such case was removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

(g) Administrative restraint; detention orders

(1) If during an inspection conducted under section 374 of this title of a facility or a vehicle, a device or tobacco product which the officer or employee making the inspection has reason to believe is adulterated or misbranded is found in such facility or vehicle, such officer or employee may order the device or tobacco product detained (in accordance with regulations prescribed by the Secretary) for a reasonable period which may not exceed twenty days unless the Secretary

determines that a period of detention greater than twenty days is required to institute an action under subsection (a) of this section or section 332 of this title, in which case he may authorize a detention period of not to exceed thirty days. Regulations of the Secretary prescribed under this paragraph shall require that before a device or tobacco product may be ordered detained under this paragraph the Secretary or an officer or employee designated by the Secretary approve such order. A detention order under this paragraph may require the labeling or marking of a device or tobacco product during the period of its detention for the purpose of identifying the device or tobacco product as detained. Any person who would be entitled to claim a device or tobacco product if it were seized under subsection (a) of this section may appeal to the Secretary a detention of such device or tobacco product under this paragraph. Within five days of the date an appeal of a detention is filed with the Secretary, the Secretary shall after affording opportunity for an informal hearing by order confirm the detention or revoke it.

(2)(A) Except as authorized by subparagraph (B), a device or tobacco product subject to a detention order issued under paragraph (1) shall not be moved by any person from the place at which it is ordered detained until—

- (i) released by the Secretary, or
 - (ii) the expiration of the detention period applicable to such order,
- whichever occurs first.

(B) A device subject to a detention order under paragraph (1) may be moved—

- (i) in accordance with regulations prescribed by the Secretary, and
- (ii) if not in final form for shipment, at the discretion of the manufacturer of the device for the purpose of completing the work required to put it in such form.

(h) Administrative detention of foods

(1) Detention authority

(A) In general

An officer or qualified employee of the Food and Drug Administration may order the detention, in accordance with this subsection, of any article of food that is found during an inspection, examination, or investigation under this chapter conducted by such officer or qualified employee, if the officer or qualified employee has reason to believe that such article is adulterated or misbranded.

(B) Secretary's approval

An article of food may be ordered detained under subparagraph (A) only if the Secretary or an official

designated by the Secretary approves the order. An official may not be so designated unless the official is the director of the district under this chapter in which the article involved is located, or is an official senior to such director.

(2) Period of detention

An article of food may be detained under paragraph (1) for a reasonable period, not to exceed 20 days, unless a greater period, not to exceed 30 days, is necessary, to enable the Secretary to institute an action under subsection (a) of this section or section 332 of this title. The Secretary shall by regulation provide for procedures for instituting such action on an expedited basis with respect to perishable foods.

(3) Security of detained article

An order under paragraph (1) with respect to an article of food may require that such article be labeled or marked as detained, and shall require that the article be removed to a secure facility, as appropriate. An article subject to such an order shall not be transferred by any person from the place at which the article is ordered detained, or from the place to which the article is so removed, as the case may be, until released by the Secretary or until the expiration of the detention period applicable under such order, whichever occurs first. This subsection may not be construed as authorizing the delivery of the article pursuant to the execution of a bond while the article is subject to the order, and section 381(b) of this title does not authorize the delivery of the article pursuant to the execution of a bond while the article is subject to the order.

(4) Appeal of detention order

(A) In general

With respect to an article of food ordered detained under paragraph (1), any person who would be entitled to be a claimant for such article if the article were seized under subsection (a) of this section may appeal the order to the Secretary. Within five days after such an appeal is filed, the Secretary, after providing opportunity for an informal hearing, shall confirm or terminate the order involved, and such confirmation by the Secretary shall be considered a final agency action for purposes of section 702 of Title 5. If during such five-day period the Secretary fails to provide such an opportunity, or to confirm or terminate such order, the order is deemed to be terminated.

(B) Effect of instituting court action

The process under subparagraph (A) for the appeal of an order under paragraph (1) terminates if the Secretary institutes an action under subsection (a) of this section or section 332 of this title regarding the article of food involved.

Amended: FDA Food Safety Modernization Act, Pub. L. 111-353, Title II, § 207(a), Jan. 4, 2011, 124 Stat. 3944.

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 408 of this title (21 U.S.C. 848), 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 title or title III, 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) 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) 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 title or title III 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 title or title III or within a reasonable time after such period; and

(2) there was no likely source for such property other than the violation of this title or title III.

(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) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of this title or title III 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 fourteen 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.

(4) Order to repatriate and deposit.

(A) In general. Pursuant to its authority to enter a pretrial restraining order under this section, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

(B) Failure to comply. Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.

(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) 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 title, 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 511(e) of this title (21 U.S.C. 881(e)), 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 511(d) of this title (21 U.S.C. 881(d)) shall apply to a criminal forfeiture under this section.

(k) Bar on intervention. Except as provided in subsection (n), 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.

(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.

(1) In general. Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant—

(A) cannot be located upon the exercise of due diligence;

(B) has been transferred or sold to, or deposited with, a third party;

(C) has been placed beyond the jurisdiction of the court;

(D) has been substantially diminished in value; or

(E) has been commingled with other property which cannot be divided without difficulty.

(2) Substitute property. In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

(3) Return of property to jurisdiction. In the case of property described in paragraph (1)(C), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.

(q) Restitution for cleanup of clandestine laboratory sites. The court, when sentencing a defendant convicted of an offense under this title or title III involving the manufacture, the possession, or the possession with intent to distribute, of amphetamine or methamphetamine, shall—

(1) order restitution as provided in sections 3612 and 3664 of title 18, United States Code;

(2) order the defendant to reimburse the United States, the State or local government concerned, or both the United States and the State or local government concerned for the costs incurred by the United States or the State or local government concerned, as the case may be, for the cleanup associated with the manufacture of amphetamine or methamphetamine by the defendant, or on premises or in property that the defendant owns, resides, or does business in; and

(3) order restitution to any person injured as a result of the offense as provided in section 3663A of title 18, United States Code.

Amended: Statutory Time-Periods Technical Amendments Act of 2009, Pub. L. 111-16, § 5, May 7, 2009, 123 Stat. 1608.

21 U.S.C. § 881. Forfeitures. (Civil)

(a) Subject property

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 or listed chemical 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).

(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 or listed chemical 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.

(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.

(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, dispensed, acquired, or intended to be distributed, dispensed, acquired, imported, or exported, in violation of this subchapter or subchapter II of this chapter.

(10) Any drug paraphernalia (as defined in section 863 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 procedures

Any property subject to forfeiture to the United States under this section may be seized by the Attorney General in the manner set forth in section 981(b) of Title 18.

(c) Custody of Attorney General

Property taken or detained under this section shall not be replevable, 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 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(b) 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 39, 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 principal 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 and II substances

(1) All controlled substances in schedule I or II that are possessed, transferred, sold, or offered for sale in 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; applicability

The provisions of section 981(g) of title 18, United States Code, regarding the stay of a civil forfeiture proceeding shall apply to forfeitures under this section.

(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.

Amended: Criminal Law Technical Amendments Act of 2002, Pub. L. 107-273, Div. B, Title IV, § 4002(e)(3), Nov. 2, 2002, 116 Stat. 1758, 1810.

21 U.S.C. § 881. Note.

[The following “regulations to provide forfeiture procedures” are part of section 6079 of Pub. L. 100-690, but are not codified to any section of the United States Code.]

(a) In general.—Not later than 90 days after the date of enactment of this Act, 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, the Attorney General, the Secretary of the Treasury, and the Secretary of Transportation shall prescribe joint regulations, after a public comment period of at least 30 days, providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel as defined in section 2101(11a), (11b), and (11c) 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.

This note can be found in the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, § 6079, Nov. 18, 1988, 102 Stat. 4181.

21 U.S.C. § 1049. Seizure and condemnation proceedings. (Egg products)

(a) Jurisdiction; disposal of condemned articles; court costs and fees; conformity to supplemental rules for admiralty and maritime claims; jury trial; United States as plaintiff

Any eggs or egg products that are or have been processed, bought, sold, possessed, used, transported, or offered or received for sale or transportation, in violation of this chapter, or in any other way are in violation of this chapter, and any restricted eggs, capable of use as human food, in the possession of any person not authorized to acquire such eggs under the regulations of the Secretary shall be liable to be proceeded against and seized and condemned, at any time, on a complaint in any United States district court or other proper court as provided in section 1050 of this title within the jurisdiction of which the articles are found. If the articles are condemned they shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the Treasury of the United States, but the articles shall not be sold contrary to the provision of this chapter, the Federal Food, Drug, and Cosmetic Act or the Fair Packaging and Labeling Act, or the laws of the jurisdiction in which they are sold: Provided, That upon the execution and delivery of a good and sufficient bond conditioned that the articles shall not be sold or otherwise disposed of contrary to the provisions of this chapter, the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, or the laws of the jurisdiction in which disposal is made, the court may direct that they be delivered to the owner thereof subject to such supervision by authorized representatives of the Secretary as is necessary to insure compliance with the applicable laws. When a decree of condemnation is entered against the articles and they are released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant thereof. The proceedings in such cases shall conform, as nearly as may be, to the supplemental rules for certain admiralty and maritime claims, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

(b) Condemnation or seizure under other provisions unaffected

The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this chapter, or other laws.

Enacted: Egg Products Inspection Act, Pub. L. 91-597, § 20, Dec. 29, 1970, 84 Stat. 1620, 1631.

TITLE 22

22 U.S.C. § 401. Illegal exportation of war materials. (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. The Secretary of Commerce may seize and detain any commodity (other than arms or munitions of war) or technology which is intended to be or is being exported in violation of laws governing such exports and may seize and detain any vessel, vehicle, or aircraft containing the same or which has been used or is being used in exporting or attempting to export such 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. However, with respect to seizures and forfeitures of property under this section by the Secretary of Commerce, 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 law may be performed by such officers as are designated by the Secretary of Commerce or, upon the request of the Secretary of Commerce, by any other agency that has authority to manage and dispose of seized property. 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 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.

Amended: Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. 105-119, Title II, § 211(a), Nov. 26, 1997, 111 Stat. 2440, 2487.

22 U.S.C. § 1978. Restriction on importation of fishery or wildlife products from countries which violate international fishery or endangered or threatened species programs.

(a) Certification to President

(1) When the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce shall certify such fact to the President.

(2) When the Secretary of Commerce or the Secretary of the Interior finds that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species, the Secretary making such finding shall certify such fact to the President.

(3) In administering this subsection, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall—

(A) periodically monitor the activities of foreign nationals that may affect the international programs referred to in paragraphs (1) and (2);

(B) promptly investigate any activity by foreign nationals that, in the opinion of the Secretary, may be cause for certification under paragraph (1) or (2); and

(C) promptly conclude; and reach a decision with respect to; any investigation commenced under subparagraph (B).

(4) Upon receipt of any certification made under paragraph (1) or (2), the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of any products from the offending country for any duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the World Trade Organization (as defined in section 3501(8) of

Title 19) or the multilateral trade agreements (as defined in section 3501(4) of Title 19).

(b) Notification to Congress

Within sixty days following certification by the Secretary of Commerce or the Secretary of the Interior, the President shall notify the Congress of any action taken by him pursuant to such certification. In the event the President fails to direct the Secretary of the Treasury to prohibit the importation of fish products or wildlife products of the offending country, or if such prohibition does not cover all fish products or wildlife products of the offending country, the President shall inform the Congress of the reasons therefor.

(c) Importation of fish products from offending country prohibited

It shall be unlawful for any person subject to the jurisdiction of the United States knowingly to bring or import into, or cause to be imported into, the United States any products prohibited by the Secretary of the Treasury pursuant to this section.

(d) Periodic review by Secretary of Commerce or Secretary of the Interior; termination of certification; notice

After making a certification to the President under subsection (a) of this section, the Secretary of Commerce or the Secretary of the Interior, as the case may be, shall periodically review the activities of the nationals of the offending country to determine if the reasons for which the certification was made no longer prevail. Upon determining that such reasons no longer prevail, the Secretary concerned shall terminate the certification and publish notice thereof, together with a statement of the facts on which such determination is based, in the Federal Register.

(e) Penalties; forfeiture; customs laws

(1) Any person violating the provisions of this section shall be fined not more than \$10,000 for the first violation, and not more than \$25,000 for each subsequent violation.

(2) All products brought or imported into the United States in violation of this section, or the monetary value thereof, may be forfeited.

(3) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as such provisions of law are applicable and not inconsistent with this section.

(f) Enforcement

(1) Enforcement of the provisions of this section prohibiting the bringing or importation of products into the United States shall be the responsibility of the Secretary of the Treasury.

(2) The judges of the United States district courts, and United States magistrate judges may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and regulations issued thereunder.

(3) Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this section.

(4) Such person so authorized shall have the power—

(A) with or without a warrant or other process, to arrest any persons subject to the jurisdiction of the United States committing in his presence or view a violation of this section or the regulations issued thereunder;

(B) with or without a warrant or other process, to search any vessel or other conveyance subject to the jurisdiction of the United States, and, if as a result of such search he has reasonable cause to believe that such vessel or other conveyance or any person on board is engaging in operations in violation of this section or the regulations issued thereunder, then to arrest such person.

(5) Such person so authorized, may seize, whenever and wherever lawfully found, all products brought or imported into the United States in violation of this section or the regulations issued thereunder. Products so seized may be disposed of pursuant to the order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary of the Treasury after consultation with the Secretary of Health and Human Services.

(g) Regulations

The Secretary of the Treasury, the Secretary of Commerce, and the Secretary of the Interior are each authorized to prescribe such regulations as he determines necessary to carry out the provisions of this section.

(h) Definitions

As used in this section—

(1) The term “person” means any individual, partnership, corporation, or association.

(2) The term “United States” means the several States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and every other territory and possession of the United States.

(3) The term “international fishery conservation program” means any ban, restriction, regulation, or other measure in effect pursuant to a bilateral or multilateral agreement which is in force with respect to the United States, the purpose of which is to conserve or protect the living resources of the sea, including marine mammals.

(4) The term “international program for endangered or threatened species” means any ban, restriction, regulation, or other measure in effect pursuant to a multilateral agreement which is in force with respect to the United States, the purpose of which is to protect endangered or threatened species of animals.

(5) The term “taking”, as used with respect to animals to which an international program for endangered or threatened species applies, means to—

(A) harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or

(B) attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

Amended: Miscellaneous Trade and Technical Corrections Act of 1999, Pub. L. 106-36, Title I, § 1002(d), June 25, 1999, 113 Stat. 127, 133.

TITLE 26

26 U.S.C. § 5872. Forfeitures. (Machine guns, destructive devices, and certain other firearms)

(a) Laws applicable.—Any firearm involved in any violation of the provisions of this chapter shall be subject to seizure and forfeiture, and (except as provided in subsection (b)) all the provisions of internal revenue laws relating to searches, seizures, and forfeitures of unstamped articles are extended to and made to apply to the articles taxed under this chapter, and the persons to whom this chapter applies.

(b) Disposal.—In the case of the forfeiture of any firearm by reason of a violation of this chapter, no notice of public sale shall be required; no such firearm shall be sold at public sale; if such firearm is forfeited for a violation of this chapter and there is no remission or mitigation of forfeiture thereof, it shall be delivered by the Secretary to the Administrator of General Services, General Services Administration, who may order such firearm destroyed or may sell it to any State, or possession, or political subdivision thereof, or at the request of the Secretary, may authorize its retention for official use of the Treasury Department, or may transfer it without charge to any executive department or independent establishment of the Government for use by it.

Amended: Tax Reform Act of 1976, Pub. L. 94-455, Title XIX, § 1906(b) (13) (A), Oct. 4, 1976, 90 Stat. 1520, 1834.

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.

Enacted: Internal Revenue Code of 1954, Aug. 16, 1954, c. 736, 68A Stat. 867.

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.

Amended: Tax Reform Act of 1976, Pub. L. 94-455, Title XIX, § 1904(b)(8)(G), (9)(D), Oct. 4, 1976, 90 Stat. 1520, 1816.

TITLE 28

28 U.S.C. § 524(c). Availability of Appropriations. (Department of Justice Assets Forfeiture Fund)

(c)(1) There is established in the United States Treasury a special fund to be known as the Department of Justice Assets Forfeiture Fund (hereafter in this subsection referred to as the “Fund”) which shall be available to the Attorney General without fiscal year limitation for the following law enforcement purposes—

(A) the payment, at the discretion of the Attorney General, of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell, or dispose of property under seizure, detention, or forfeited pursuant to any law enforced or administered by the Department of Justice, or of any other necessary expense incident to the seizure, detention, forfeiture, or disposal of such property including—

(i) payments for—

(I) contract services;

(II) the employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and

(III) reimbursement of any Federal, State, or local agency for any expenditures made to perform the functions described in this clause;

(ii) payments to reimburse any Federal agency participating in the Fund for investigative costs leading to seizures;

(iii) payments for contracting for the services of experts and consultants needed by the Department of Justice to assist in carrying out duties related to asset seizure and forfeiture; and

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

(ii) for payment for—

(I) costs incurred by or on behalf of the Department of Justice in connection with the removal, for purposes of Federal forfeiture and disposition, of any hazardous substance or pollutant or contaminant associated with the illegal manufacture of amphetamine or methamphetamine; and

(II) costs incurred by or on behalf of a State or local government in connection with such removal in any case in which such State or local government has assisted in a Federal prosecution relating to amphetamine or methamphetamine, to the extent such costs exceed equitable sharing payments made to such State or local government in such case;

(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

(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) 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.

Amounts for paying the expenses authorized by subparagraphs (B), (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 Fund from division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, section 6101(b) to (d) of title 41, 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, 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 Administration. Any award pursuant to paragraph (1)(B) shall not exceed \$500,000. Any award pursuant to paragraph (1)(C) shall not exceed the lesser of \$500,000 or one-fourth of the amount realized by the United States from the property forfeited, without both the personal approval of the Attorney General and written notice within 30 days thereof to the Chairmen and ranking minority members of the Committees on

Appropriations and the Judiciary of the Senate and of the House of Representatives.

(3) Any amount under subparagraph (G) 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;

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

(D) all amounts collected—

(i) by the United States pursuant to a reimbursement order under paragraph (2) of section 413(q) of the Controlled Substances Act (21 U.S.C. § 853(q)); and

(ii) pursuant to a restitution order under paragraph (1) or (3) of section 413(q) of the Controlled Substances Act for injuries to the United States.

(5) Amounts in the Fund, and in any holding accounts associated with the Fund, that 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)(A) The Attorney General shall transmit to Congress and make available to the public, not later than 4 months after the end of each fiscal year, detailed reports for the prior fiscal year as follows:

(i) A report on total deposits to the Fund by State of deposit.

(ii) A report on total expenses paid from the Fund, by category of expense and recipient agency, including equitable sharing payments.

(iii) A report describing the number, value, and types of properties placed into official use by Federal agencies, by recipient agency.

(iv) A report describing the number, value, and types of properties transferred to State and local law enforcement agencies, by recipient agency.

(v) A report, by type of disposition, describing the number, value, and types of forfeited property disposed of during the year.

(vi) A report on the year-end inventory of property under seizure, but not yet forfeited, that reflects the type of property, its estimated value, and the estimated value of liens and mortgages outstanding on the property.

(vii) A report listing each property in the year-end inventory, not yet forfeited, with an outstanding equity of not less than \$1,000,000.

(B) The Attorney General shall transmit to Congress and make available to the public, not later than 2 months after final issuance, the audited financial statements for each fiscal year for the Fund.

(C) Reports under subparagraph (A) shall include information with respect to all forfeitures under any law enforced or administered by the Department of Justice.

(D) The transmittal and publication requirements in subparagraphs (A) and (B) may be satisfied by—

(i) posting the reports on an Internet website maintained by the Department of Justice for a period of not less than 2 years; and

(ii) notifying the Committees on the Judiciary of the House of Representatives and the Senate when the reports are available electronically.

(7) 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.

(8)(A) There are authorized to be appropriated such sums as necessary for the purposes described in subparagraphs (B), (F), and (G) of paragraph (1).

(B) Subject to subparagraphs (C) and (D), at the end of each of fiscal years 1994, 1995, and 1996, 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) of this paragraph, any excess unobligated balance remaining in the Fund on September 30, 1997 and thereafter 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 subparagraph may be used under authorities available to the organization receiving the funds.

(9)(A) 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, in her discretion, to warrant clear title to any subsequent purchaser or transferee of such property.

(B) For fiscal years 2002 and 2003, the Attorney General is authorized to transfer, under such terms and conditions as the Attorney General shall specify, real or personal property of limited or marginal value, to a State or local government agency, or its designated contractor or transferee, for use to support drug abuse treatment, drug and crime prevention and education, housing, job skills, and other community-based public health and safety programs. Each such transfer shall be subject to satisfaction by the recipient involved of any outstanding lien against the property transferred, but no such transfer shall create or confer any private right of action in any person against the United States.

(10) 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.

(11) 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—

(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 or pursuant to the authority of the Secretary of Commerce.

[(12) Redesignated (11)]

(d)(1) The Attorney General may accept, hold, administer, and use gifts, devises, and bequests of any property or services for the purpose of aiding or facilitating the work of the Department of Justice.

(2) Gifts, devises, and bequests of money, the proceeds of sale or liquidation of any other property accepted hereunder, and any income accruing from any property accepted hereunder—

(A) shall be deposited in the Treasury in a separate fund and held in trust by the Secretary of the Treasury for the benefit of the Department of Justice; and

(B) are hereby appropriated, without fiscal year limitation, and shall be disbursed on order of the Attorney General.

(3) Upon request of the Attorney General, the Secretary of the Treasury may invest and reinvest the fund described herein in public debt securities with maturities suitable for the needs of the fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States or comparable maturities.

(4) Evidences of any intangible personal property (other than money) accepted hereunder shall be deposited with the Secretary of the Treasury, who may hold or liquidate them, except that they shall be liquidated upon the request of the Attorney General.

(5) For purposes of federal income, estate, and gift taxes, property accepted hereunder shall be considered a gift, devise, or bequest to, or for the use of, the United States.

Amended: Public Contracts—Enact Certain Laws, Pub. L. 111-350, § 5(g)(1), Jan. 4, 2011, 124 Stat. 3848.

**28 U.S.C. § 1355. Fine, penalty, or forfeiture.
(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.

Amended: Housing and Community Development Act of 1992, Pub. L. 102-550, Title XV, § 1521, Oct. 28, 1992, 106 Stat. 3672, 4062.

28 U.S.C. § 1395. Fine, penalty, or forfeiture. (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.

Enacted: June 25, 1948, c. 646, 62 Stat. 936.

28 U.S.C. § 1651. All Writs Act.

- (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
- (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

Amended: May 24, 1949, c. 139, § 90, 63 Stat. 102.

28 U.S.C. § 2001. Sale of realty generally.

- (a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs.

Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at

the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

- (b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

- (c) This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

Amended: May 24, 1949, c. 139, § 99, 63 Stat. 104.

28 U.S.C. § 2002. Notice of sale of realty.

A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.

If such realty is situated in more than one county, state, district or circuit, such notice shall be published in one or more of the counties, states, or districts wherein it is situated, as the court directs. The notice shall be substantially in such form and contain such description of the property by reference or otherwise as the court approves. The court may direct that the publication be made in other newspapers.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

Amended: May 24, 1949, c. 139, § 100, 63 Stat. 104.

28 U.S.C. § 2003. Marshal's incapacity after levy on or sale of realty.

Whenever a United States marshal dies, is removed from office, or the term of his commission expires, after levying on realty or any interest therein under a writ of execution issued by a court of the United States, and before sale or other final disposition thereof, like process shall issue to the succeeding marshal and the same proceedings shall be had as if such contingency had not occurred.

Whenever any such contingency arises after a marshal has sold any realty or interest therein and before a deed is executed, the court may, on application by the purchaser, or the plaintiff in whose action the sale was made, setting forth the facts of the case and the reason why the title was not perfected by such marshal, order the succeeding marshal to perfect the title and execute a deed to the purchaser, upon payment of the purchase money and unpaid costs.

Amended: May 24, 1949, c. 139, § 101, 63 Stat. 104.

28 U.S.C. § 2004. Sale of personalty generally.

Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

Enacted: June 25, 1948, c. 646, 62 Stat. 959.

28 U.S.C. § 2005. Appraisal of goods taken on execution.

Whenever State law requires that goods taken on execution be appraised before sale, goods taken under execution issued from a court of the United States shall be appraised in like manner.

The United States marshal shall summon the appraisers in the same manner as the sheriff is required to summon appraisers under State law.

If the appraisers fail to attend and perform their required duties, the marshal may sell the goods without an appraisal. Appraisers attending and performing their duties, shall receive the fees allowed for appraisals under State law.

Enacted: June 25, 1948, c. 646, 62 Stat. 959.

28 U.S.C. § 2006. Execution against revenue officer.

Execution shall not issue against a collector or other revenue officer on a final judgment in any proceeding against him for any of his acts, or for the recovery of any money exacted by or paid to him and subsequently paid into the Treasury, in performing his official duties, if the court certifies that:

- (1) probable cause existed; or
- (2) the officer acted under the directions of the Secretary of the Treasury, the Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, or other proper Government officer.

When such certificate has been issued, the amount of the judgment shall be paid out of the proper appropriation by the Treasury.

Amended: Homeland Security Act of 2002, Pub. L. 107-296, Title XI, § 1121(I), Nov. 25, 2002, 116 Stat. 2135, 2277.

28 U.S.C. § 2007. Imprisonment for debt.

(a) A person shall not be imprisoned for debt on a writ of execution or other process issued from a court of the United States in any State wherein imprisonment for debt has been abolished. All modifications, conditions, and restrictions upon such imprisonment provided by State law shall apply to any writ of execution or process issued from a court of the United States in accordance with the procedure applicable in such State.

(b) Any person arrested or imprisoned in any State on a writ of execution or other process issued from any court of the United States in a civil action shall have the same jail privileges and be governed by the same regulations as persons confined in like cases on process issued from the courts of such State. The same requirements governing discharge as are applicable in such State shall apply. Any proceedings for discharge shall be conducted before a United States magistrate judge for the judicial district wherein the defendant is held.

Amended: Judicial Improvement Acts of 1990, Pub. L. 101-650, Title III, § 321, Dec. 1, 1990, 104 Stat. 5089, 5117.

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.

(c) If a person is charged in a criminal case with a violation of an Act of Congress for which the civil or criminal forfeiture of property is authorized, the Government may include notice of the forfeiture in the indictment or information pursuant to the Federal Rules of Criminal Procedure. If the defendant is convicted of the offense giving rise to the forfeiture, the court shall order the forfeiture of the property as part of the sentence in the criminal case pursuant to the Federal Rules of Criminal Procedure and section 3554 of title 18, United States Code. The procedures in section 413 of the Controlled Substances Act (21 U.S.C. 853) apply to all stages of a criminal forfeiture proceeding, except that subsection (d) of such section applies only in cases in which the defendant is convicted of a violation of such Act.

Amended: USA PATRIOT Improvement and Reauthorization Act of 2005, 109-177, Title IV, § 410, Mar. 9, 2006, 120 Stat. 192, 246.

28 U.S.C. § 2462. Time for commencing proceedings.

Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

Enacted: June 25, 1948, c. 646, 62 Stat. 974.

28 U.S.C. § 2465. Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interests.

(a) Upon the entry of a judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of Federal law—

(1) such property shall be returned forthwith to the claimant or his agent; and

(2) if it appears that there was reasonable cause for the seizure or arrest, the court shall cause a proper certificate thereof to be entered and, in such case, neither the person who made the seizure or arrest nor the prosecutor shall be liable to suit or judgment on account of such suit or prosecution, nor shall the claimant be entitled to costs, except as provided in subsection (b).

(b)(1) Except as provided in paragraph (2), in any civil proceeding to forfeit property under any provision of Federal law in which the claimant substantially prevails, the United States shall be liable for—

(A) reasonable attorney fees and other litigation costs reasonably incurred by the claimant;

(B) post-judgment interest, as set forth in section 1961 of this title; and

(C) in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale—

(i) interest actually paid to the United States from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument; and

(ii) an imputed amount of interest that such currency, instruments, or proceeds would have earned at the rate applicable to the 30-day Treasury Bill, for any period during which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence), commencing 15 days after the property was seized by a Federal law enforcement agency, or was turned over to a Federal law enforcement agency by a State or local law enforcement agency.

(2)(A) The United States shall not be required to disgorge the value of any intangible benefits nor make any other payments to the claimant not specifically authorized by this subsection.

(B) The provisions of paragraph (1) shall not apply if the claimant is convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law.

(C) If there are multiple claims to the same property, the United States shall not be liable for costs and attorneys fees associated with any such claim if the United States—

- (i) promptly recognizes such claim;
- (ii) promptly returns the interest of the claimant in the property to the claimant, if the property can be divided without difficulty and there are no competing claims to that portion of the property;
- (iii) does not cause the claimant to incur additional, reasonable costs or fees; and
- (iv) prevails in obtaining forfeiture with respect to one or more of the other claims.

(D) If the court enters judgment in part for the claimant and in part for the Government, the court shall reduce the award of costs and attorney fees accordingly.

Amended: Civil Asset Forfeiture Reform Act (CAFRA) of 2000, Pub. L. 106-185, § 4(a), Apr. 25, 2000, 114 Stat. 202, 211.

28 U.S.C. § 2466. Fugitive disentitlement.

(a) A judicial officer may disallow a person from using the resources of the courts of the United States in furtherance of a claim in any related civil forfeiture action or a claim in third party proceedings in any related criminal forfeiture action upon a finding that such person—

(1) after notice or knowledge of the fact that a warrant or process has been issued for his apprehension, in order to avoid criminal prosecution—

- (A) purposely leaves the jurisdiction of the United States;
- (B) declines to enter or reenter the United States to submit to its jurisdiction; or
- (C) otherwise evades the jurisdiction of the court in which a criminal case is pending against the person; and

(2) is not confined or held in custody in any other jurisdiction for commission of criminal conduct in that jurisdiction.

(b) Subsection (a) may be applied to a claim filed by a corporation if any majority shareholder, or individual filing the claim on behalf of the corporation is a person to whom subsection (a) applies.

Amended: USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. 109-177, Title IV, § 406(a)(1), Mar. 9, 2006, 120 Stat. 192, 244.

28 U.S.C. § 2467. Enforcement of foreign judgment.

(a) Definitions.—In this section—

(1) the term “foreign nation” means a country that has become a party to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (referred to in this section as the “United Nations Convention”) or a foreign jurisdiction with which the United States has a treaty or other formal international agreement in effect providing for mutual forfeiture assistance; and

(2) the term “forfeiture or confiscation judgment” means a final order of a foreign nation compelling a person or entity—

(A) to pay a sum of money representing the proceeds of an offense described in Article 3, Paragraph 1, of the United Nations Convention, any violation of foreign law that would constitute a violation or an offense for which property could be forfeited under Federal law if the offense were committed in the United States, or any foreign offense described in section 1956(c)(7)(B) of title 18, or property the value of which corresponds to such proceeds; or

(B) to forfeit property involved in or traceable to the commission of such offense.

(b) Review by attorney general.—

(1) In general.—A foreign nation seeking to have a forfeiture or confiscation judgment registered and enforced by a district court of the United States under this section shall first submit a request to the Attorney General or the designee of the Attorney General, which request shall include—

(A) a summary of the facts of the case and a description of the proceedings that resulted in the forfeiture or confiscation judgment;

(B) certified copy of the forfeiture or confiscation judgment;

(C) an affidavit or sworn declaration establishing that the foreign nation took steps, in accordance with the principles of due process, to give notice of the proceedings to all persons with an interest in the property in sufficient time to enable such persons to defend against the charges and that the judgment rendered is in force and is not subject to appeal; and

(D) such additional information and evidence as may be required by the Attorney General or the designee of the Attorney General.

(2) Certification of request.—The Attorney General or the designee of the Attorney General shall determine whether, in the interest of justice, to certify the request, and such decision shall be final and not subject to either judicial review or

review under subchapter II of chapter 5, or chapter 7, of title 5 (commonly known as the “Administrative Procedure Act”).

(c) Jurisdiction and venue.—

(1) In general.—If the Attorney General or the designee of the Attorney General certifies a request under subsection (b), the United States may file an application on behalf of a foreign nation in district court of the United States seeking to enforce the foreign forfeiture or confiscation judgment as if the judgment had been entered by a court in the United States.

(2) Proceedings.—In a proceeding filed under paragraph (1)—

(A) the United States shall be the applicant and the defendant or another person or entity affected by the forfeiture or confiscation judgment shall be the respondent;

(B) venue shall lie in the district court for the District of Columbia or in any other district in which the defendant or the property that may be the basis for satisfaction of a judgment under this section may be found; and

(C) the district court shall have personal jurisdiction over a defendant residing outside of the United States if the defendant is served with process in accordance with rule 4 of the Federal Rules of Civil Procedure.

(d) Entry and enforcement of judgment.—

(1) In general.—The district court shall enter such orders as may be necessary to enforce the judgment on behalf of the foreign nation unless the court finds that—

(A) the judgment was rendered under a system that provides tribunals or procedures incompatible with the requirements of due process of law;

(B) the foreign court lacked personal jurisdiction over the defendant;

(C) the foreign court lacked jurisdiction over the subject matter;

(D) the foreign nation did not take steps, in accordance with the principles of due process, to give notice of the proceedings to a person with an interest in the property of the proceedings in sufficient time to enable him or her to defend; or

(E) the judgment was obtained by fraud.

(2) Process.—Process to enforce a judgment under this section shall be in accordance with rule 69(a) of the Federal Rules of Civil Procedure.

(3) Preservation of property.—

(A) Restraining orders.—

(i) In general.—To preserve the availability of property subject to civil or criminal forfeiture under foreign law, the Government may apply for, and the court may issue, a restraining order at any time before or after the initiation of forfeiture proceedings by a foreign nation.

(ii) Procedures.—

(I) In general.—A restraining order under this subparagraph shall be issued in a manner consistent with subparagraphs (A), (C), and (E) of paragraph (1) and the procedural due process protections for a re-restraining order under section 983(j) of title 18.

(II) Application.—For purposes of applying such section 983(j)—

(aa) references in such section 983(j) to civil forfeiture or the filing of a complaint shall be deemed to refer to the applicable foreign criminal or forfeiture proceedings; and 3608

(bb) the reference in paragraph (1)(B)(i) of such section 983(j) to the United States shall be deemed to refer to the foreign nation.

(B) Evidence.—The court, in issuing a restraining order under subparagraph (A)—

(i) may rely on information set forth in an affidavit describing the nature of the proceeding or investigation underway in the foreign country, and setting forth a reasonable basis to believe that the property to be restrained will be named in a judgment of forfeiture at the conclusion of such proceeding; or

(ii) may register and enforce a restraining order that has been issued by a court of competent jurisdiction in the foreign country and certified by the Attorney General pursuant to subsection (b)(2).

(C) Limit on grounds for objection.—No person may object to a restraining order under subparagraph (A) on any ground that is the subject of parallel litigation involving the same property that is pending in a foreign court.

(e) Finality of foreign findings.—In entering orders to enforce the judgment, the court shall be bound by the findings of fact to the extent that they are stated in the foreign forfeiture or confiscation judgment.

(f) Currency conversion.—The rate of exchange in effect at the time the suit to enforce is filed by the foreign nation shall be used in calculating the amount stated in any forfeiture or confiscation judgment requiring the payment of a sum of money submitted for registration.

Amended: Preserving Foreign Criminal Assets for Forfeiture Act of 2010, Pub. L. 111-342, § 2, Dec. 22, 2010, 124 Stat. 3607.

28 U.S.C. § 2680. Exceptions. (Federal Tort Claims Act)

The provisions of this chapter and section 1346(b) of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer, except that the provisions of this chapter and section 1346(b) of this title apply to any claim based on injury or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer, if—

(1) the property was seized for the purpose of forfeiture under any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense;

(2) the interest of the claimant was not forfeited;

(3) the interest of the claimant was not remitted or mitigated (if the property was subject to forfeiture); and

(4) the claimant was not convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law.

(d) Any claim for which a remedy is provided by chapter 309 or 311 of title 46, relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of sections 1-31 of Title 50, Appendix.

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

[(g) Repealed. Sept. 26, 1950, c. 1049, § 13(5), 64 Stat. 1043.]

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights: Provided, That, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising, on or after the date

of the enactment of this proviso, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this subsection, “investigative or law enforcement officer” means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(k) Any claim arising in a foreign country.

(l) Any claim arising from the activities of the Tennessee Valley Authority.

(m) Any claim arising from the activities of the Panama Canal Company.

(n) Any claim arising from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

Amended: Codification of Title 46, Oct. 6, 2006, Pub. L. 109-304, § 17(f)(4), 120 Stat. 1708.

28 U.S.C. § 3304(b). Transfer fraudulent as to a debt to the United States.

(b) Transfers without regard to date of judgment.—

(1) Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States, whether such debt arises before or after the transfer is made or the obligation is incurred, if the debtor makes the transfer or incurs the obligation—

(A) with actual intent to hinder, delay, or defraud a creditor; or

(B) without receiving a reasonably equivalent value in exchange for the transfer or obligation if the debtor—

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under paragraph (1), consideration may be given, among other factors, to whether—

(A) the transfer or obligation was to an insider;

(B) the debtor retained possession or control of the property transferred after the transfer;

- (C) the transfer or obligation was disclosed or concealed;
- (D) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (E) the transfer was of substantially all the debtor's assets;
- (F) the debtor absconded;
- (G) the debtor removed or concealed assets;
- (H) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (I) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (J) the transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (K) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Enacted: Crime Control Act of 1990, Pub. L. 101-647, Title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4789, 4961.

28 U.S.C. § 3306(a). Remedies of the United States.

(a) In general.—In an action or proceeding under this subchapter for relief against a transfer or obligation, the United States, subject to section 3307 and to applicable principles of equity and in accordance with the Federal Rules of Civil Procedure, may obtain—

- (1) avoidance of the transfer or obligation to the extent necessary to satisfy the debt to the United States;
- (2) a remedy under this chapter against the asset transferred or other property of the transferee; or
- (3) any other relief the circumstances may require.

Enacted: Crime Control Act of 1990, Pub. L. 101-647, Title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4789, 4963.

TITLE 31

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) Forfeiture.—

(1) Criminal forfeiture.—

(A) In general.—The court in imposing sentence for any violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit such violation, shall order the defendant to forfeit all property, real or personal, involved in the offense and any property traceable thereto.

(B) Procedure.—Forfeitures under this paragraph shall be governed by the procedures established in section 413 of the Controlled Substances Act.

(2) Civil forfeiture.—Any property involved in a violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy, may be seized and forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title III, §§ 365(b)(2)(B), 372(a), Oct. 26, 2001, 115 Stat. 272, 335, 338.

31 U.S.C. § 5318(k). Compliance, exemptions, and summons authority. (Bank records related to anti-money laundering programs)

(k) Bank records related to anti-money laundering programs.—

(1) Definitions.—For purposes of this subsection, the following definitions shall apply:

(A) Appropriate Federal banking agency.—The term “appropriate Federal banking agency” has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(B) Incorporated term.—The term “correspondent account” has the same meaning as in section 5318A(e)(1)(B).

(2) 120-hour rule.—Not later than 120 hours after receiving a request by an appropriate Federal banking agency for information related to anti-money laundering compliance by a covered financial institution or a customer of such institution, a covered financial institution shall provide to the appropriate Federal banking agency, or make available at a location specified by the representative of the appropriate Federal banking agency, information and account documentation for any account opened, maintained, administered or managed in the United States by the covered financial institution.

(3) Foreign bank records.—

(A) Summons or subpoena of records.—

(i) In general.—The Secretary of the Treasury or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank.

(ii) Service of summons or subpoena.—A summons or subpoena referred to in clause (i) may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

(B) Acceptance of service.—

(i) Maintaining records in the United States.—Any covered financial institution which maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of such foreign bank and the name and address of a person who resides in the United States and is authorized to accept service of legal process for records regarding the correspondent account.

(ii) Law enforcement request.—Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained under this paragraph, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

(C) Termination of correspondent relationship.—

(i) Termination upon receipt of notice.—A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed—

(I) to comply with a summons or subpoena issued under subparagraph (A); or

(II) to initiate proceedings in a United States court contesting such summons or subpoena.

(ii) Limitation on liability.—A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with this subsection.

(iii) Failure to terminate relationship.—Failure to terminate a correspondent relationship in accordance with this subsection shall render the covered financial institution liable for a civil penalty of up to \$10,000 per day until the correspondent relationship is so terminated.

Amended: Consolidated Appropriations Act 2012, Pub. L. 112-74, Div. C, Title I, § 118, Dec. 23, 2011, 125 Stat. 891.

31 U.S.C. § 5324. Structuring transactions to evade reporting requirement prohibited. (Involving financial institutions)

(a) Domestic coin and currency transactions involving financial institutions.—No person shall, for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508—

(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by

an order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508;

(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by any order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

(b) Domestic coin and currency transactions involving nonfinancial trades or businesses.—No person shall, for the purpose of evading the report requirements of section 5331 or any regulation prescribed under such section—

(1) cause or attempt to cause a nonfinancial trade or business to fail to file a report required under section 5331 or any regulation prescribed under such section;

(2) cause or attempt to cause a nonfinancial trade or business to file a report required under section 5331 or any regulation prescribed under such section that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with 1 or more nonfinancial trades or businesses.

(c) International monetary instrument transactions.—No person shall, for the purpose of evading the reporting requirements of section 5316—

(1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report;

(2) file or cause or attempt to cause a person to file a report required under section 5316 that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of monetary instruments.

(d) Criminal penalty.—

(1) In general.—Whoever violates this section shall be fined in accordance with title 18, United States Code, imprisoned for not more than 5 years, or both.

(2) Enhanced penalty for aggravated cases.—Whoever violates this section while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

Amended: International Money Laundering Abatement and Financial Antiterrorism Technical Corrections Act of 2004, Pub. L. 108-458, Title IV, Subtitle C, § 6203, Dec. 17, 2004, 118 Stat. 3638, 3747.

31 U.S.C. § 5331. Reports relating to coins and currency received in nonfinancial trade or business.

(a) Coin and currency receipts of more than \$10,000.—Any person—

(1)(A) who is engaged in a trade or business, and

(B) who, in the course of such trade or business, receives more than \$10,000 in coins or currency in 1 transaction (or 2 or more related transactions), or

(2) who is required to file a report under section 6050I(g) of the Internal Revenue Code of 1986,

shall file a report described in subsection (b) with respect to such transaction (or related transactions) with the Financial Crimes Enforcement Network at such time and in such manner as the Secretary may, by regulation, prescribe.

(b) Form and manner of reports.—A report is described in this subsection if such report—

(1) is in such form as the Secretary may prescribe;

(2) contains—

(A) the name and address, and such other identification information as the Secretary may require, of the person from whom the coins or currency was received;

(B) the amount of coins or currency received;

(C) the date and nature of the transaction; and

(D) such other information, including the identification of the person filing the report, as the Secretary may prescribe.

(c) Exceptions.—

(1) Amounts received by financial institutions.—Subsection (a) shall not apply to amounts received in a transaction reported under section 5313 and regulations prescribed under such section.

(2) Transactions occurring outside the United States.—Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

(d) Currency includes foreign currency and certain monetary instruments.—

(1) In general.—For purposes of this section, the term “currency” includes—

(A) foreign currency; and

(B) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than \$10,000.

(2) Scope of application.—Paragraph (1)(B) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), or (S) of section 5312(a)(2).

Amended: Consolidated Appropriations Act, 2012, Pub. L. 112-74, Div. C, Title I, § 120, Dec. 23, 2011, 125 Stat. 891.

31 U.S.C. § 5332. Bulk cash smuggling into or out of the United States.

(a) Criminal offense.—

(1) In general.—Whoever, with the intent to evade a currency reporting requirement under section 5316, knowingly conceals more than \$10,000 in currency or other monetary instruments on the person of such individual or in any conveyance, article of luggage, merchandise, or other container, and transports or transfers or attempts to transport or transfer such currency or monetary instruments from a place within the United States to a place outside of the United States, or from a place outside the United States to a place within the United States, shall be guilty of a currency smuggling offense and subject to punishment pursuant to subsection (b).

(2) Concealment on person.—For purposes of this section, the concealment of currency on the person of any individual includes concealment in any article of clothing worn by the individual or in any luggage, backpack, or other container worn or carried by such individual.

(b) Penalty.—

(1) Term of imprisonment.—A person convicted of a currency smuggling offense under subsection (a), or a conspiracy to commit such offense, shall be imprisoned for not more than 5 years.

(2) Forfeiture.—In addition, the court, in imposing sentence under paragraph (1), shall order that the defendant forfeit to the

United States, any property, real or personal, involved in the offense, and any property traceable to such property.

(3) Procedure.—The seizure, restraint, and forfeiture of property under this section shall be governed by section 413 of the Controlled Substances Act.

(4) Personal money judgment.—If the property subject to forfeiture under paragraph (2) is unavailable, and the defendant has insufficient substitute property that may be forfeited pursuant to section 413(p) of the Controlled Substances Act, the court shall enter a personal money judgment against the defendant for the amount that would be subject to forfeiture.

(c) Civil forfeiture.—

(1) In general.—Any property involved in a violation of subsection (a), or a conspiracy to commit such violation, and any property traceable to such violation or conspiracy, may be seized and, forfeited to the United States.

(2) Procedure.—The seizure and forfeiture shall be governed by the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

(3) Treatment of certain property as involved in the offense.—For purposes of this subsection and subsection (b), any currency or other monetary instrument that is concealed or intended to be concealed in violation of subsection (a) or a conspiracy to commit such violation, any article, container, or conveyance used, or intended to be used, to conceal or transport the currency or other monetary instrument, and any other property used, or intended to be used, to facilitate the offense, shall be considered property involved in the offense.

Amended: International Money Laundering Abatement and Financial Antiterrorism Technical Corrections Act of 2004, Pub. L. 108-458, Title IV, Subtitle C, § 6203, Dec. 17, 2004, 118 Stat. 3638, 3747.

31 U.S.C. § 5332. Note.

[The following “findings” and “purposes” are part of section 371 of Pub. L. 107-56, but are not codified to any section of the United States Code.]

(a) Findings.—The Congress finds the following:

(1) Effective enforcement of the currency reporting requirements of subchapter II of chapter 53 of title 31, United States Code [commonly referred to as the Bank Secrecy Act], and the regulations prescribed under such subchapter, has forced drug dealers and other criminals engaged in cash-based businesses to avoid using traditional financial institutions.

(2) In their effort to avoid using traditional financial institutions, drug dealers and other criminals are forced to move large quantities of currency in bulk form to and through the airports, border crossings, and other ports of entry where the currency can be smuggled out of the United States and placed in a foreign financial institution or sold on the black market.

(3) The transportation and smuggling of cash in bulk form may now be the most common form of money laundering, and the movement of large sums of cash is one of the most reliable warning signs of drug trafficking, terrorism, money laundering, racketeering, tax evasion and similar crimes.

(4) The intentional transportation into or out of the United States of large amounts of currency or monetary instruments, in a manner designed to circumvent the mandatory reporting provisions of subchapter II of chapter 53 of title 31, United States Code, is the equivalent of, and creates the same harm as, the smuggling of goods.

(5) The arrest and prosecution of bulk cash smugglers are important parts of law enforcement’s effort to stop the laundering of criminal proceeds, but the couriers who attempt to smuggle the cash out of the United States are typically low-level employees of large criminal organizations, and thus are easily replaced. Accordingly, only the confiscation of the smuggled bulk cash can effectively break the cycle of criminal activity of which the laundering of the bulk cash is a critical part.

(6) The current penalties for violations of the currency reporting requirements are insufficient to provide a deterrent to the laundering of criminal proceeds. In particular, in cases where the only criminal violation under current law is a reporting offense, the law does not adequately provide for the confiscation of smuggled currency. In contrast, if the smuggling of bulk cash were itself an offense, the cash could be confiscated as the corpus delicti of the smuggling offense.

(b) Purposes- The purposes of this section are—

(1) to make the act of smuggling bulk cash itself a criminal offense;

(2) to authorize forfeiture of any cash or instruments of the smuggling offense;

(3) to emphasize the seriousness of the act of bulk cash smuggling.

31 U.S.C. § 9703. Department of the 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.

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

(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.

(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—

(I) section 1028, 1029, or 1030 or 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; and

(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).

(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) 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;

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

(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 division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, section 6101(b) to (d) of title 41, 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)—

(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 the 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;

(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), at the end of each of fiscal years 1994, 1995, 1996, and 1997, the Secretary 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.

(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). Further, transfers under subparagraph (A) may not exceed one-half of the excess unobligated balance for a year. In addition, transfers under subparagraph (A) 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.

(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, 1994, 1995, and 1996, 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. At the end of fiscal year 1997, and at the end of each fiscal year thereafter, the Secretary

shall reserve 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 subsection (a). Unobligated balances remaining pursuant to section 4(B) of 9703(g) shall also be carried forward.

(4)(A) 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.

(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 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 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.

(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) 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 Tax and Trade Bureau, 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.

Amended: Public Contracts—Enact Certain Laws, Pub. L. 111-350, § 5(h)(10), Jan. 4, 2011, 124 Stat. 3849.

TITLE 42

42 U.S.C. § 1786(p). Criminal forfeiture. (Supplemental nutrition program for women, infants, and children)

(p) Criminal forfeiture

(1) In general

Notwithstanding any provision of State law and in addition to any other penalty authorized by law, a court may order a person that is convicted of a violation of a provision of law described in paragraph (2), with respect to food instruments (including any item described in subsection (o)(1)(A) of this section issued in lieu of a food instrument under this section), funds, assets, or property that have a value of \$100 or more and that are the subject of a grant or other form of assistance under this section, to forfeit to the United States all property described in paragraph (3).

(2) Applicable laws

A provision of law described in this paragraph is—

(A) section 1760(g) of this title; and

(B) any other Federal law imposing a penalty for embezzlement, willful misapplication, stealing, obtaining by fraud, or trafficking in food instruments (including any item described in subsection (o)(1)(A) of this section issued in lieu of a food instrument under this section), funds, assets, or property.

(3) Property subject to forfeiture

The following property shall be subject to forfeiture under paragraph (1):

(A) All property, real and personal, used in a transaction or attempted transaction, to commit, or to facilitate the commission of, a violation described in paragraph (1).

(B) All property, real and personal, constituting, derived from, or traceable to any proceeds a person obtained directly or indirectly as a result of a violation described in paragraph (1).

(4) Procedures; interest of owner

Except as provided in paragraph (5), all property subject to forfeiture under this subsection, any seizure or disposition of the property, and any proceeding relating to the forfeiture, seizure, or disposition shall be subject to section 853 of Title 21, other than subsection (d) of that section.

(5) Proceeds

The proceeds from any sale of forfeited property and any amounts forfeited under this subsection shall be used—

(A) first, to reimburse the Department of Justice, the Department of the Treasury, and the United States Postal Service for the costs incurred by the Departments or Service to initiate and complete the forfeiture proceeding;

(B) second, to reimburse the Office of Inspector General of the Department of Agriculture for any costs incurred by the Office in the law enforcement effort resulting in the forfeiture;

(C) third, to reimburse any Federal, State, or local law enforcement agency for any costs incurred in the law enforcement effort resulting in the forfeiture; and

(D) fourth, by the State agency to carry out approval, reauthorization, and compliance investigations of vendors.

Amended: National Defense Authorization Act for Fiscal Year 2012, Pub. L. 112-81, Div. A, Title VI, § 631(f)(4)(B), Dec. 31, 2011, 125 Stat. 1465.

TITLE 46

46 U.S.C. § 12118. Owners engaged primarily in manufacturing or mineral industry.

(a) Definitions.—In this section:

(1) Bowaters corporation.—The term “Bowaters corporation” means a corporation that has filed a certificate under oath with the Secretary, in the form and at the times prescribed by the Secretary, establishing that—

(A) the corporation is incorporated under the laws of the United States or a State;

(B) a majority of the officers and directors of the corporation are individuals who are citizens of the United States;

(C) at least 90 percent of the employees of the corporation are residents of the United States;

(D) the corporation is engaged primarily in a manufacturing or mineral industry in the United States;

(E) the total book value of the vessels owned by the corporation is not more than 10 percent of the total book value of the assets of the corporation; and

(F) the corporation buys or produces in the United States at least 75 percent of the raw materials used or sold in its operations.

(2) Parent.—The term “parent” means a corporation that has filed a certificate under oath with the Secretary, in the form and at the times prescribed by the Secretary, establishing that the corporation—

(A) is incorporated under the laws of the United States or a State; and

(B) controls, directly or indirectly, at least 50 percent of the voting stock of a Bowaters corporation.

(3) Subsidiary.—The term “subsidiary” means a corporation that has filed a certificate under oath with the Secretary, in the form and at the times prescribed by the Secretary, establishing that the corporation—

(A) is incorporated under the laws of the United States or a State; and

(B) has at least 50 percent of its voting stock controlled, directly or indirectly, by a Bowaters corporation or its parent.

(b) Deemed citizen.—A Bowaters corporation is deemed to be a citizen of the United States for purposes of chapters 121, 551, and 561 and section 80104 of this title.

(c) Issuance of documentation.—A certificate of documentation and appropriate endorsement may be issued for a vessel that—

(1) is owned by a Bowaters corporation;

(2) was built in the United States; and

(3)(A) is self-propelled and less than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage as measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; or

(B) is not self-propelled.

(d) Effects of documentation.—

(1) In general.—Subject to paragraph (2)—

(A) a vessel documented under this section may engage in the coastwise trade; and

(B) the vessel and its owner and master are entitled to the same benefits and are subject to the same requirements and penalties as if the vessel were otherwise documented or exempt from documentation under this chapter.

(2) Transportation of passengers or merchandise.—A vessel documented under this section may transport passengers or merchandise for hire in the coastwise trade only—

(A) as a service for a parent or subsidiary of the corporation owning the vessel; or

(B) when under a demise or bareboat charter, at prevailing rates for use not in the domestic noncontiguous trades, from the corporation owning the vessel to a carrier that—

(i) is subject to jurisdiction under subchapter II of chapter 135 of title 49;

(ii) otherwise qualifies as a citizen of the United States under section 50501 of this title; and

(iii) is not owned or controlled, directly or indirectly, by the corporation owning the vessel.

(e) Validity of corporate certificate.—A certificate filed by a corporation under this section remains valid only as long as the corporation continues to satisfy the conditions required of the corporation by this section. When a corporation no longer satisfies those conditions, the corporation loses its status under this section and immediately shall surrender to the Secretary any documents issued to it based on that status.

(f) Penalties.—

(1) Falsifying material fact.—If a corporation knowingly falsifies a material fact in a certificate filed under subsection (a), the vessel (or its value) documented or operated under this section shall be forfeited.

(2) Transporting merchandise.—If a vessel transports merchandise for hire in violation of this section, the merchandise shall be forfeited to the United States Government.

(3) Transporting passengers.—If a vessel transports passengers for hire in violation of this section, the vessel is liable for a penalty of \$200 for each passenger so transported.

(4) Remission or mitigation.—A penalty or forfeiture incurred under this subsection may be remitted or mitigated under section 2107(b) of this title.

Enacted: Codification of Title 46, Pub. L. 109-304, § 5, Oct. 6, 2006, 120 Stat. 1500.

46 U.S.C. § 31327. Forfeiture of mortgagee interest.

The interest of a mortgagee in a documented vessel or a vessel covered by a preferred mortgage under section 31322(d) of this title may be terminated by a forfeiture of the vessel for a violation of a law of the United States only if the mortgagee authorized, consented, or conspired to do the act, failure, or omission that is the basis of the violation.

Enacted: Pub. L. 100-710, Title I, § 102(c), Nov. 23, 1988, 102 Stat. 4746.

46 U.S.C. § 55102. Transportation of merchandise.

(a) Definition.—In this section, the term “merchandise” includes—

(1) merchandise owned by the United States Government, a State, or a subdivision of a State; and

(2) valueless material.

(b) Requirements.—Except as otherwise provided in this chapter or chapter 121 of this title, a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via a foreign port, unless the vessel—

(1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and

(2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

(c) Penalty.—Merchandise transported in violation of subsection (b) is liable to seizure by and forfeiture to the Government. Alternatively, an amount equal to the value of the merchandise (as determined by the Secretary of Homeland Security) or the actual cost of the transportation, whichever is

greater, may be recovered from any person transporting the merchandise or causing the merchandise to be transported.

Enacted: Codification of Title 46, Pub. L. 109-304, § 8(c), Oct. 6, 2006, 120 Stat. 1632.

46 U.S.C. § 55105. Transportation of hazardous waste.

(a) In general.—The transportation of hazardous waste, as defined in section 1004(5) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6903(5)), from a point in the United States to sea for incineration is deemed to be transportation of merchandise under section 55102 of this title.

(b) Nonapplication to certain foreign vessels.—

(1) In general.—Subsection (a) does not apply to transportation performed by a foreign ocean incineration vessel owned by or under construction on May 1, 1982, for a corporation wholly owned by citizens of the United States under section 50501(a)-(c) of this title.

(2) Standards for incineration equipment.—Incineration equipment on a vessel described in paragraph (1) must meet standards of the Coast Guard and the Environmental Protection Agency.

(3) Inspection.—A vessel described in paragraph (1) shall be inspected by the Coast Guard, regardless of whether inspected by the nation in which it is registered. The inspection shall be the same as would be required of a vessel of the United States, including drydock inspection and internal examination of tanks and void spaces. The inspection may be made concurrently with an inspection by that nation or within one year after the initial issuance or next scheduled issuance of the Safety of Life at Sea Safety Construction Certificate. In making the inspection, the Coast Guard shall refer to the condition of the hull and superstructure established by the initial foreign certification as the basis for evaluating the current condition of the hull and superstructure. The Coast Guard shall allow the substitution of fittings, material, apparatus, equipment, and appliances different from those required for vessels of the United States if satisfied they are equivalent and at least as effective as those required for vessels of the United States. A satisfactory inspection under this paragraph shall be certified in writing by the Secretary of Homeland Security.

(c) Effective date.—Subsection (a) is not effective until an appropriate vessel has been built and documented under chapter 121 of this title.

Amended: National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, Div. C, Title XXXV, § 3525(a)(4), Jan. 28, 2008, 122 Stat. 601.

46 U.S.C. § 70507. Forfeitures.

(a) In general.—Property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)) that is used or intended for use to commit, or to facilitate the commission of, an offense under section 70503 of this title may be seized and forfeited in the same manner that similar property may be seized and forfeited under section 511 of that Act (21 U.S.C. 881).

(b) Prima facie evidence of violation.—Practices commonly recognized as smuggling tactics may provide prima facie evidence of intent to use a vessel to commit, or to facilitate the commission of, an offense under section 70503 of this title, and may support seizure and forfeiture of the vessel, even in the absence of controlled substances aboard the vessel. The following indicia, among others, may be considered, in the totality of the circumstances, to be prima facie evidence that a vessel is intended to be used to commit, or to facilitate the commission of, such an offense:

(1) The construction or adaptation of the vessel in a manner that facilitates smuggling, including—

(A) the configuration of the vessel to ride low in the water or present a low hull profile to avoid being detected visually or by radar;

(B) the presence of any compartment or equipment that is built or fitted out for smuggling, not including items such as a safe or lock-box reasonably used for the storage of personal valuables;

(C) the presence of an auxiliary tank not installed in accordance with applicable law or installed in such a manner as to enhance the vessel's smuggling capability;

(D) the presence of engines that are excessively over-powered in relation to the design and size of the vessel;

(E) the presence of materials used to reduce or alter the heat or radar signature of the vessel and avoid detection;

(F) the presence of a camouflaging paint scheme, or of materials used to camouflage the vessel, to avoid detection; or

(G) the display of false vessel registration numbers, false indicia of vessel nationality, false vessel name, or false vessel homeport.

(2) The presence or absence of equipment, personnel, or cargo inconsistent with the type or declared purpose of the vessel.

(3) The presence of excessive fuel, lube oil, food, water, or spare parts, inconsistent with legitimate vessel operation, inconsistent with the construction or equipment of the vessel, or inconsistent with the character of the vessel's stated purpose.

(4) The operation of the vessel without lights during times lights are required to be displayed under applicable law or regulation and in a manner of navigation consistent with smuggling tactics used to avoid detection by law enforcement authorities.

(5) The failure of the vessel to stop or respond or heave to when hailed by government authority, especially where the vessel conducts evasive maneuvering when hailed.

(6) The declaration to government authority of apparently false information about the vessel, crew, or voyage or the failure to identify the vessel by name or country of registration when requested to do so by government authority.

(7) The presence of controlled substance residue on the vessel, on an item aboard the vessel, or on an individual aboard the vessel, of a quantity or other nature that reasonably indicates manufacturing or distribution activity.

(8) The use of petroleum products or other substances on the vessel to foil the detection of controlled substance residue.

(9) The presence of a controlled substance in the water in the vicinity of the vessel, where given the currents, weather conditions, and course and speed of the vessel, the quantity or other nature is such that it reasonably indicates manufacturing or distribution activity.

Enacted: Codification of Title 46, Pub. L. 109-304, § 10(2), Oct. 6, 2006, 120 Stat. 1688.

TITLE 49

49 U.S.C. § 80301. Definitions.

In this chapter—

(1) “aircraft” means a contrivance used, or capable of being used, for transportation in the air.

(2) “vehicle” means a contrivance used, or capable of being used, for transportation on, below, or above land, but does not include aircraft.

(3) “vessel” means a contrivance used, or capable of being used, for transportation in water, but does not include aircraft.

Enacted: Revision of Title 49, United States Code Annotated, “Transportation,” Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 745, 1353.

49 U.S.C. § 80302. Prohibitions.

(a) Definition.— In this section, “contraband” means—

(1) a narcotic drug (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 802)), including marihuana (as defined in section 102 of that Act (21 U.S.C. § 802)), that—

(A) is possessed with intent to sell or offer for sale in violation of the laws and regulations of the United States;

(B) is acquired, possessed, sold, transferred, or offered for sale in violation of those laws;

(C) is acquired by theft, robbery, or burglary and transported—

(i) in the District of Columbia or a territory or possession of the United States; or

(ii) from a place in a State, the District of Columbia, or a territory or possession of the United States, to a place in another State, the District of Columbia, or a territory or possession; or

(D) does not bear tax-paid internal revenue stamps required by those laws or regulations;

(2) a firearm involved in a violation of chapter 53 of the Internal Revenue Code of 1986 (26 U.S.C. § 5801 et seq.);

(3) a forged, altered, or counterfeit—

(A) coin or an obligation or other security of the United States Government (as defined in section 8 of title 18); or

(B) coin, obligation, or other security of the government of a foreign country;

(4) material or equipment used, or intended to be used, in making a coin, obligation, or other security referred to in clause (3) of this subsection; or

(5) a cigarette involved in a violation of chapter 114 of title 18 or a regulation prescribed under chapter 114; or

(6)(A) a counterfeit label for a phonorecord, copy of a computer program or computer program documentation or packaging, or copy of a motion picture or other audiovisual work (as defined in section 2318 of title 18);

(B) a phonorecord or copy in violation of section 2319 of title 18;

(C) a fixation of a sound recording or music video of a live musical performance in violation of section 2319A of title 18; or

(D) any good bearing a counterfeit mark (as defined in section 2320 of title 18).

(b) Prohibitions.— A person may not—

(1) transport contraband in an aircraft, vehicle, or vessel;

(2) conceal or possess contraband on an aircraft, vehicle, or vessel; or

(3) use an aircraft, vehicle, or vessel to facilitate the transportation, concealment, receipt, possession, purchase, sale, exchange, or giving away of contraband.

Amended: Anticounterfeiting Consumer Protection Act of 1996, Pub. L. 104-153, § 13, July 2, 1996, 110 Stat. 1386, 1389.

49 U.S.C. § 80303. Seizure and forfeiture.

The Secretary of the Treasury or the Governor of Guam or of the Northern Mariana Islands as provided in section 80304 of this title or, when the violation of this chapter involves contraband described in paragraph (2) or (5) of section 80302(a), the Attorney General, or a person authorized by another law to enforce section 80302 of this title, shall seize an aircraft, vehicle, or vessel involved in a violation of section 80302 and place it in the custody of a person designated by the Secretary, the Attorney General, or appropriate Governor, as the case may be. The seized aircraft, vehicle, or vessel shall be forfeited, except when the owner establishes that a person except the owner committed the violation when the aircraft, vehicle, or vessel was in the possession of a person who got possession by violating a criminal law of the United States or a State. However, an aircraft, vehicle, or vessel used by a common carrier to provide transportation for compensation may be forfeited only when—

(1) the owner, conductor, driver, pilot, or other individual in charge of the aircraft or vehicle (except a rail car or engine) consents to, or knows of, the alleged violation when the violation occurs;

(2) the owner of the rail car or engine consents to, or knows of, the alleged violation when the violation occurs; or

(3) the master or owner of the vessel consents to, or knows of, the alleged violation when the violation occurs.

Amended: Homeland Security Act of 2002, Pub. L. 107-296, Title XI, § 1112(q), Nov. 25, 2002, 116 Stat. 2135, 2278.

49 U.S.C. § 80304. Administrative.

(a) General.— Except as provided in subsections (b), (c), and (d) of this section, the Secretary of the Treasury—

(1) may designate officers, employees, agents, or other persons to carry out this chapter; and

(2) shall prescribe regulations to carry out this chapter.

(b) In Guam.— The Governor of Guam—

(1) or officers of the government of Guam designated by the Governor shall carry out this chapter in Guam;

(2) may carry out laws referred to in section 80306(b) of this title with modifications the Governor decides are necessary to meet conditions in Guam; and

(3) may prescribe regulations to carry out this chapter in Guam.

(c) In Northern Mariana Islands.—The Governor of the Northern Mariana Islands—

(1) or officers of the government of the Northern Mariana Islands designated by the Governor shall carry out this chapter in the Northern Mariana Islands;

(2) may carry out laws referred to in section 80306(b) of this title with modifications the Governor decides are necessary to meet conditions in the Northern Mariana Islands; and

(3) may prescribe regulations to carry out this chapter in the Northern Mariana Islands.

(d) Attorney General.—The Attorney General, or officers, employees, or agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice designated by the Attorney General, shall carry out the laws referred to in section 80306(b) of this title to the extent that the violation of this chapter involves contraband described in section 80302(a)(2) or (a)(5).

(e) Customs laws on seizure and forfeiture.—The Secretary, or the Governor of Guam or of the Northern Mariana Islands

as provided in subsections (b) and (c) of this section, shall carry out the customs laws on the seizure and forfeiture of aircraft, vehicles, and vessels under this chapter.

Amended: Homeland Security Act of 2002, Pub. L. 107-296, Title XI, § 1112(r), Nov. 25, 2002, 116 Stat. 2135, 2278.

49 U.S.C. § 80305. Availability of certain appropriations.

Appropriations for enforcing customs, narcotics, counterfeiting, or internal revenue laws are available to carry out this chapter.

Enacted: Revision of Title 49, United States Code Annotated, “Transportation,” Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 745, 1355.

49 U.S.C. § 80306. Relationship to other laws.

(a) Chapter as additional law.— This chapter is in addition to another law—

(1) imposing, or authorizing the compromise of, fines, penalties, or forfeitures, or

(2) providing for seizure, condemnation, or disposition of forfeited property, or the proceeds from the property.

(b) Laws applicable to seizures and forfeitures.— To the extent applicable and consistent with this chapter, the following apply to a seizure or forfeiture under this chapter:

(1) provisions of law related to the seizure, forfeiture, and condemnation of vehicles and vessels violating the customs laws.

(2) provisions of law related to the disposition of those vehicles or vessels or the proceeds from the sale of those vehicles or vessels.

(3) provisions of law related to the compromise of those forfeitures or claims related to those forfeitures.

(4) provisions of law related to the award of compensation to an informer about those forfeitures.

Enacted: Revision of Title 49, United States Code Annotated, “Transportation,” Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 745, 1355.

TITLE 50

50 U.S.C. App. § 16. Offenses; punishment; forfeitures of property. (Trading with the Enemy Act)

(a) Whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of the Act shall, upon conviction, be fined not more than \$1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b)(1) A civil penalty of not to exceed \$50,000 may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of this Act.

(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation under paragraph (1) shall, at the direction of the Secretary of the Treasury, be forfeited to the United States Government.

(3) The penalties provided under this subsection may be imposed only on the record after opportunity for an agency hearing in accordance with sections 554 through 557 of title 5, United States Code, with the right to prehearing discovery.

(4) Judicial review of any penalty imposed under this subsection may be had to the extent provided in section 702 of title 5, United States Code.

(c) Upon conviction, any property, funds, securities, papers, or other articles or documents, or any vessel, together with tackle, apparel, furniture, and equipment, concerned in any violation of subsection (a) may be forfeited to the United States.

Amended: Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. 111-195, Title I, § 107(a)(4), July 1, 2010, 124 Stat. 1337.

50 U.S.C. § 1702. Presidential authorities. (IEEPA)

(a)(1) At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit—

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States;

(B) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and

(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this chapter shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this chapter, or any regulation, instruction, or direction issued under this chapter.

(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly—

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value;

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances; or

(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 2404 of the Appendix to this title, or under section 2405 of the Appendix to this title to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of Title 18;

(4) any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

(c) Classified information.—In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court *ex parte* and in camera. This subsection does not confer or imply any right to judicial review.

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title I, § 106, Oct. 26, 2001, 115 Stat. 272, 277.

50 U.S.C. App. § 2410(g). Violations. (Export Administration Act)

(g) Forfeiture of property interest and proceeds.

(1) Any person who is convicted under subsection (a) or (b) of a violation of an export control imposed under section 5 of this Act (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States—

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(2) The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of section 1963 of title 18, United States Code.

Amended: Export Enhancement Act of 1988, Pub. L. 100-418, Title II, Subtitle D, Part I, § 2426, Aug. 23, 1988, 102 Stat. 107, 1361.

28 C.F.R. PART 9. REGULATIONS GOVERNING THE REMISSION OR MITIGATION OF CIVIL AND CRIMINAL FORFEITURES

28 C.F.R. § 9.1 Purpose, authority, and scope.

(a) Purpose. This part sets forth the procedures for agency officials to follow when considering remission or mitigation of administrative forfeitures under the jurisdiction of the agency, and civil judicial and criminal judicial forfeitures under the jurisdiction of the Department of Justice's Criminal Division. The purpose of this part is to provide a basis for the partial or total remission of forfeiture for individuals who have an interest in the forfeited property but who did not participate in, or have knowledge of, the conduct that resulted in the property being subject to forfeiture and, where required, took all reasonable steps under the circumstances to ensure that such property would not be used, acquired, or disposed of contrary to law. Additionally, the regulations provide for partial or total mitigation of the forfeiture and imposition of alternative conditions in appropriate circumstances.

(b) Authority to grant remission and mitigation.

(1) Remission and mitigation functions in administrative forfeitures are performed by the agency seizing the property. Within the Federal Bureau of Investigation (FBI), authority to grant remission and mitigation is delegated to the Forfeiture Counsel, who is the Unit Chief, Legal Forfeiture Unit, Office of the General Counsel; within the Drug Enforcement Administration (DEA), authority to grant remission and mitigation is delegated to the Forfeiture Counsel, Office of Chief Counsel; and within the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), authority to grant remission and mitigation is delegated to the Associate Chief Counsel, Office of Chief Counsel.

(2) Remission and mitigation functions in judicial cases are performed by the Criminal Division of the Department of Justice. Within the Criminal Division, authority to grant remission and mitigation is delegated to the Chief, Asset Forfeiture and Money Laundering Section.

(3) The powers and responsibilities delegated by this part may be redelegated to attorneys or managers working under the supervision of the designated officials.

(c) Scope. This part governs any petition for remission filed with the Attorney General and supersedes any Department of

Justice regulation governing petitions for remission, to the extent such regulation is inconsistent with this part.

(d) The time periods and internal requirements established in this part are designed to guide the orderly administration of the remission and mitigation process and are not intended to create rights or entitlements in favor of individuals seeking remission or mitigation. This part applies to all forfeiture actions commenced on or after October 12, 2012.

Amended: eff. Oct. 12, 2012.

28 C.F.R. § 9.2 Definitions.

As used in this part:

Administrative forfeiture means the process by which property may be forfeited by a seizing agency rather than through judicial proceedings. Administrative forfeiture has the same meaning as nonjudicial forfeiture, as that term is used in 18 U.S.C. 983.

Appraised value means the estimated market value of property at the time and place of seizure if such or similar property were freely offered for sale between a willing seller and a willing buyer.

Assets Forfeiture Fund means the Department of Justice Assets Forfeiture Fund or Department of the Treasury Forfeiture Fund, depending upon the identity of the seizing agency.

Attorney General means the Attorney General of the United States or his or her designee.

Beneficial owner means a person with actual use of, as well as an interest in, the property subject to forfeiture.

Chief, Asset Forfeiture and Money Laundering Section, and Chief, refer to the Chief of the Asset Forfeiture and Money Laundering Section, Criminal Division, United States Department of Justice.

General creditor means one whose claim or debt is not secured by a specific right to obtain satisfaction against the particular property subject to forfeiture.

Judgment creditor means one who has obtained a judgment against the debtor but has not yet received full satisfaction of the judgment.

Judicial forfeiture means either a civil or a criminal proceeding in a United States District Court that may result in a final judgment and order of forfeiture.

Lienholder means a creditor whose claim or debt is secured by a specific right to obtain satisfaction against the particular property subject to forfeiture. A lien creditor qualifies as a lienholder if the lien:

- (1) Was established by operation of law or contract;
- (2) Was created as a result of an exchange of money, goods, or services; and
- (3) Is perfected against the specific property forfeited for which remission or mitigation is sought (e.g., a real estate mortgage; a mechanic's lien).

Net equity means the amount of a lienholder's monetary interest in property subject to forfeiture. Net equity shall be computed by determining the amount of unpaid principal and unpaid interest at the time of seizure and by adding to that sum unpaid interest calculated from the date of seizure through the last full month prior to the date of the decision on the petition. Where a rate of interest is set forth in a security agreement, the rate of interest to be used in this computation will be the annual percentage rate so specified in the security agreement that is the basis of the lienholder's interest. In this computation, however, there shall be no allowances for attorney fees, accelerated or enhanced interest charges, amounts set by contract as damages, unearned extended warranty fees, insurance, service contract charges incurred after the date of seizure, allowances for dealer's reserve, or any other similar charges.

Nonjudicial forfeiture has the same meaning as administrative forfeiture as defined in this section.

Owner means the person in whom primary title is vested or whose interest is manifested by the actual and beneficial use of the property, even though the title is vested in another. A victim of an offense, as defined in this section, may also be an owner if he or she has a present legally cognizable ownership interest in the property forfeited. A nominal owner of property will not be treated as its true owner if he or she is not its beneficial owner.

Person means an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property.

Petition means a petition for remission or mitigation of forfeiture under the regulations in this part. This definition includes a petition for restoration of the proceeds of sale of forfeited property and a petition for the value of forfeited property placed into official use.

Petitioner means the person applying for remission, mitigation, or restoration of the proceeds of sale, or for the appraised value of forfeited property, under this part. A petitioner may be an owner as defined in this section, a lienholder as defined in this section, or a victim as defined in this section, subject to the limitations of § 9.8.

Property means real or personal property of any kind capable of being owned or possessed.

Record means two or more arrests for related crimes, unless the arrestee was acquitted or the charges were dismissed for lack of evidence, a conviction for a related crime or completion of sentence within ten years of the acquisition of the property subject to forfeiture, or two convictions for a related crime at any time in the past.

Related crime as used in this section and § 9.6(e) means any crime similar in nature to that which gives rise to the seizure of property for forfeiture. For example, where property is seized for a violation of the federal laws relating to drugs, a related crime would be any offense involving a violation of the federal laws relating to drugs or the laws of any state or political subdivision thereof relating to drugs.

Related offense as used in § 9.8 means:

- (1) Any predicate offense charged in a federal Racketeer Influenced and Corrupt Organizations Act (RICO) count for which forfeiture was ordered; or
- (2) An offense committed as part of the same scheme or design, or pursuant to the same conspiracy, as was involved in the offense for which forfeiture was ordered.

Ruling official means any official to whom decision-making authority has been delegated pursuant to § 9.1(b).

Seizing agency means the federal agency that seized the property or adopted the seizure of another agency for federal forfeiture.

Victim means a person who has incurred a pecuniary loss as a direct result of the commission of the offense underlying a forfeiture. A drug user is not considered a victim of a drug trafficking offense under this definition. A victim does not include one who acquires a right to sue the perpetrator of the criminal offense for any loss by assignment, subrogation, inheritance, or otherwise from the actual victim, unless that person has acquired an actual ownership interest in the forfeited property; provided however, that if a victim has received compensation from insurance or any other source with respect to a pecuniary loss, remission may be granted to the third party who provided the compensation, up to the amount of the victim's pecuniary loss as defined in § 9.8(c).

Violator means the person whose use or acquisition of the property in violation of the law subjected such property to seizure for forfeiture.

Amended: eff. Oct. 12, 2012.

28 C.F.R. § 9.3 Petitions in administrative forfeiture cases.

(a) Notice of seizure. The notice of seizure and intent to forfeit the property shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission or mitigation within 30 days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until the property has been forfeited, except in cases involving petitions to restore the proceeds from the sale of forfeited property. A notice of seizure shall include the title of the seizing agency, the ruling official, the mailing and street address of the official to whom petitions should be sent, and an asset identifier number.

(b) Persons who may file.

(1) A petition for remission or mitigation must be filed by a petitioner as defined in § 9.2 or as prescribed in § 9.9(g) and (h). A person or person on their behalf may not file a petition if, after notice or knowledge of the fact that a warrant or process has been issued for his apprehension, in order to avoid criminal prosecution, the person:

- (i) Purposely leaves the jurisdiction of the United States;
- (ii) Declines to enter or reenter the United States to submit to its jurisdiction; or
- (iii) Otherwise evades the jurisdiction of the court in which a criminal matter is pending against the person.

(2) Paragraph (b)(1) of this section applies to a petition filed by a corporation if any majority shareholder, or individual filing the claim on behalf of the corporation:

- (i) Purposely leaves the jurisdiction of the United States;
- (ii) Declines to enter or reenter the United States to submit to its jurisdiction; or
- (iii) Otherwise evades the jurisdiction of the court in which a criminal matter is pending against the person.

(c) Contents of petition.

(1) All petitions must include the following information in clear and concise terms:

- (i) The name, address, and social security or other taxpayer identification number of the person claiming an interest in the seized property who is seeking remission or mitigation;
- (ii) The name of the seizing agency, the asset identifier number, and the date and place of seizure;
- (iii) A complete description of the property, including make, model, and serial numbers, if any; and

(iv) A description of the petitioner's interest in the property as owner, lienholder, or otherwise, supported by original or certified bills of sale, contracts, deeds, mortgages, or other documentary evidence. Such documentation includes evidence establishing the source of funds for seized currency or the source of funds used to purchase the seized asset.

(2) Any factual recitation or documentation of any type in a petition must be supported by a declaration under penalty of perjury that meets the requirements of 28 U.S.C. 1746.

(d) Releases. In addition to the contents of the petition for remission or mitigation set forth in paragraph (c) of this section, upon request of the agency, the petitioner shall also furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the property releasing interest in such property.

(e) Filing petition with agency.

(1) A petition for remission or mitigation subject to administrative forfeiture is to be sent to the official address provided in the notice of seizure and shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set out in § 9.9(g).

(2) If the notice of seizure does not provide an official address, the petition shall be addressed to the appropriate federal agency as follows:

(i)(A) DEA: All submissions must be filed with the Forfeiture Counsel, Asset Forfeiture Section, Office of Chief Counsel, Drug Enforcement Administration, HQS Forfeiture Response, P.O. Box 1475, Quantico, Virginia 22134-1475.

(B) Correspondence via private delivery must be filed with The Forfeiture Counsel, Asset Forfeiture Section (CCF), Office of Chief Counsel, Drug Enforcement Administration, 8701 Morrisette Drive, Springfield, Virginia 22152.

(C) Submission by facsimile or other electronic means will not be accepted.

(ii)(A) FBI: All submissions must be filed with the FBI Special Agent in Charge at the Field Office that seized the property.

(B) Submission by facsimile or other electronic means will not be accepted.

(iii)(A) ATF: All submissions must be filed with the Office of Chief Counsel, Attention: Forfeiture Counsel, 99 New York Avenue NE., Washington, DC 20226.

(B) Submission by facsimile or other electronic means will not be accepted.

(f) Agency investigation. Upon receipt of a petition, the seizing agency shall investigate the merits of the petition and may prepare a written report containing the results of that investigation. This report shall be submitted to the ruling official for review and consideration.

(g) Ruling. Upon receipt of the petition and the agency report, the ruling official for the seizing agency shall review the petition and the report, if any, and shall rule on the merits of the petition. No hearing shall be held.

(h) Petitions granted. If the ruling official grants a remission or mitigation of the forfeiture, a copy of the decision shall be mailed to the petitioner or, if represented by an attorney, to the petitioner's attorney. A copy shall also be sent to the United States Marshals Service (USMS) or other property custodian. The written decision shall include the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures the petitioner must follow to obtain release of the property or the monetary interest therein.

(i) Petitions denied. If the ruling official denies a petition, a copy of the decision shall be mailed to the petitioner or, if represented by an attorney, to the petitioner's attorney of record. A copy of the decision shall also be sent to the USMS or other property custodian. The decision shall specify the reason that the petition was denied. The decision shall advise the petitioner that a request for reconsideration of the denial of the petition may be submitted to the ruling official in accordance with paragraph (j) of this section.

(j) Request for reconsideration.

(1) A request for reconsideration of the denial of the petition shall be considered if:

(i) It is postmarked or received by the office of the ruling official within 10 days from the receipt of the notice of denial of the petition by the petitioner; and

(ii) The request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly demonstrating that the denial was erroneous.

(2) In no event shall a request for reconsideration be decided by the same ruling official who ruled on the original petition.

(3) Only one request for reconsideration of a denial of a petition shall be considered.

(k) Restoration of proceeds from sale.

(1) A petition for restoration of the proceeds from the sale of forfeited property, or for the appraised value of forfeited property when the forfeited property has been retained by or delivered to a government agency for official use, may be submitted by an owner or lienholder in cases in which the petitioner:

(i) Did not know of the seizure prior to the entry of a declaration of forfeiture; and

(ii) Could not reasonably have known of the seizure prior to the entry of a declaration of forfeiture.

(2) Such a petition shall be submitted pursuant to paragraphs (b) through (e) of this section within 90 days of the date the property is sold or otherwise disposed of.

Amended: eff. Oct. 12, 2012.

28 C.F.R. § 9.4 Petitions in judicial forfeiture cases.

(a) Notice of seizure. The notice of seizure and intent to forfeit the property shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission or mitigation within 30 days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until such time as the forfeited property is placed in official use, sold, or otherwise disposed of according to law, except in cases involving petitions to restore property. A notice of seizure shall include the title of the ruling official and the mailing and street address of the official to whom petitions should be sent, the name of the agency seizing the property, an asset identifier number, and the district court docket number.

(b) Persons who may file. A petition for remission or mitigation must be filed by a petitioner as defined in § 9.2 or as prescribed in § 9.9(g) and (h).

(c) Contents of petition.

(1) All petitions must include the following information in clear and concise terms:

(i) The name, address, and social security or other taxpayer identification number of the person claiming an interest in the seized property who is seeking remission or mitigation;

(ii) The name of the seizing agency, the asset identifier number, and the date and place of seizure;

(iii) The district court docket number;

(iv) A complete description of the property, including the address or legal description of real property, and make, model, and serial numbers of personal property, if any; and

(v) A description of the petitioner's interest in the property as owner, lienholder, or otherwise, supported by original or certified bills of sale, contracts, mortgages, deeds, or other documentary evidence.

(2) Any factual recitation or documentation of any type in a petition must be supported by a declaration under penalty of perjury that meets the requirements of 28 U.S.C. 1746.

(d) Releases. In addition to the content of the petition for remission or mitigation set forth in paragraph (c) of this section, the petitioner, upon request, also shall furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the property releasing the interest in such property.

(e) Filing petition with Department of Justice. A petition for remission or mitigation of a judicial forfeiture shall be addressed to the Attorney General; shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set forth in § 9.9(g); and shall be submitted to the U.S. Attorney for the district in which the judicial forfeiture proceedings are brought.

(f) Agency investigation and recommendation; U.S. Attorney's recommendation. Upon receipt of a petition, the U.S. Attorney shall direct the seizing agency to investigate the merits of the petition based on the information provided by the petitioner and the totality of the agency's investigation of the underlying basis for forfeiture. The agency shall submit to the U.S. Attorney a report of its investigation and its recommendation on whether the petition should be granted or denied. Upon receipt of the agency's report and recommendation, the U.S. Attorney shall forward to the Chief, Asset Forfeiture and Money Laundering Section, the petition, the seizing agency's report and recommendation, and the U.S. Attorney's recommendation on whether the petition should be granted or denied.

(g) Ruling. The Chief shall rule on the petition. No hearing shall be held. The Chief shall not rule on any petition for remission if such remission was previously denied by the agency pursuant to § 9.3.

(h) Petitions under Internal Revenue Service liquor laws. The Chief shall accept and consider petitions submitted in judicial forfeiture proceedings under the Internal Revenue Service liquor laws only prior to the time a decree of forfeiture is entered. Thereafter, the district court has exclusive jurisdiction.

(i) Petitions granted. If the Chief grants a remission or mitigates the forfeiture, the Chief shall mail a copy of the decision to the petitioner (or, if represented by an attorney, to the petitioner's attorney) and shall mail or transmit electronically a copy of the decision to the appropriate U.S. Attorney, the USMS or other property custodian, and the seizing agency. The written decision shall include the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures the petitioner must follow to obtain release of the property or the monetary interest therein. The Chief shall advise the petitioner or the petitioner's attorney to consult

with the U.S. Attorney as to such terms and conditions. The U.S. Attorney shall confer with the seizing agency regarding the release and shall coordinate disposition of the property with that office and the USMS or other property custodian.

(j) Petitions denied. If the Chief denies a petition, a copy of that decision shall be mailed to the petitioner (or, if represented by an attorney, to the petitioner's attorney of record) and mailed or transmitted electronically to the appropriate U.S. Attorney, the USMS or other property custodian, and to the seizing agency. The decision shall specify the reason that the petition was denied. The decision shall advise the petitioner that a request for reconsideration of the denial of the petition may be submitted to the Chief at the address provided in the decision, in accordance with paragraph (k) of this section.

(k) Request for reconsideration.

(1) A request for reconsideration of the denial shall be considered if:

(i) It is postmarked or received by the Asset Forfeiture and Money Laundering Section at the address contained in the decision denying the petition within 10 days from the receipt of the notice of denial of the petition by the petitioner;

(ii) A copy of the request is also received by the appropriate U.S. Attorney within 10 days of the receipt of the denial by the petitioner; and

(iii) The request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly demonstrating that the denial was erroneous.

(2) In no event shall a request for reconsideration be decided by the ruling official who ruled on the original petition.

(3) Only one request for reconsideration of a denial of a petition shall be considered.

(4) Upon receipt of the request for reconsideration of the denial of a petition, disposition of the property will be delayed pending notice of the decision at the request of the Chief. If the request for reconsideration is not received within the prescribed period, the USMS or other property custodian may dispose of the property.

(l) Restoration of proceeds from sale.

(1) A petition for restoration of the proceeds from the sale of forfeited property, or for the appraised value of forfeited property when the forfeited property has been retained by or delivered to a government agency for official use, may be submitted by an owner or lienholder in cases in which the petitioner:

(i) Did not know of the seizure prior to the entry of a final order of forfeiture; and

(ii) Could not reasonably have known of the seizure prior to the entry of a final order of forfeiture.

(2) Such a petition must be submitted pursuant to paragraphs (b) through (e) of this section within 90 days of the date the property was sold or otherwise disposed of.

Amended: eff. Oct. 12, 2012.

28 C.F.R. § 9.5 Criteria governing administrative and judicial remission and mitigation.

(a) Remission.

(1) The ruling official shall not grant remission of a forfeiture unless the petitioner establishes that the petitioner has a valid, good faith, and legally cognizable interest in the seized property as owner or lienholder as defined in this part and is an innocent owner within the meaning of 18 U.S.C. 983(d)(2)(A) or 983(d)(3)(A).

(2) For purposes of paragraph (a)(1) of this section, the knowledge and responsibilities of a petitioner's representative, agent, or employee are imputed to the petitioner where the representative, agent, or employee was acting in the course of his or her employment and in furtherance of the petitioner's business.

(3) The petitioner has the burden of establishing the basis for granting a petition for remission or mitigation of forfeited property, a restoration of proceeds of sale or appraised value of forfeited property, or a reconsideration of a denial of such a petition. Failure to provide information or documents and to submit to interviews, as requested, may result in a denial of the petition.

(4) The ruling official shall presume a valid forfeiture and shall not consider whether the evidence is sufficient to support the forfeiture.

(5) Willful, materially false statements or information made or furnished by the petitioner in support of a petition for remission or mitigation of forfeited property, the restoration of proceeds or appraised value of forfeited property, or the reconsideration of a denial of any such petition, shall be grounds for denial of such petition and possible prosecution for the filing of false statements.

(b) Mitigation.

(1) The ruling official may grant mitigation to a party not involved in the commission of the offense underlying forfeiture:

(i) Where the petitioner has not met the minimum conditions for remission, but the ruling official finds that some relief should be granted to avoid extreme hardship, and that return of the property combined with imposition of monetary or other conditions of mitigation in lieu of a complete forfeiture will promote the interest of justice and will not diminish the deterrent effect of the law. Extenuating circumstances justifying such a finding include those circumstances that reduce the responsibility of the petitioner for knowledge of the illegal activity, knowledge of the criminal record of a user of the property, or failure to take reasonable steps to prevent the illegal use or acquisition by another for some reason, such as a reasonable fear of reprisal; or

(ii) Where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the ruling official, complete relief is not warranted.

(2) The ruling official may in his or her discretion grant mitigation to a party involved in the commission of the offense underlying the forfeiture where certain mitigating factors exist, including, but not limited to: the lack of a prior record or evidence of similar criminal conduct; if the violation does not include drug distribution, manufacturing, or importation, the fact that the violator has taken steps, such as drug treatment, to prevent further criminal conduct; the fact that the violation was minimal and was not part of a larger criminal scheme; the fact that the violator has cooperated with federal, state, or local investigations relating to the criminal conduct underlying the forfeiture; or the fact that complete forfeiture of an asset is not necessary to achieve the legitimate purposes of forfeiture.

(3) Mitigation may take the form of a monetary condition or the imposition of other conditions relating to the continued use of the property, and the return of the property, in addition to the imposition of any other costs that would be chargeable as a condition to remission. This monetary condition is considered as an item of cost payable by the petitioner, and shall be deposited into the Assets Forfeiture Fund as an amount realized from forfeiture in accordance with the applicable statute. If the petitioner fails to accept the ruling official's mitigation decision or any of its conditions, or fails to pay the monetary amount within 20 days of the receipt of the decision, the property shall be sold, and the monetary amount imposed and other costs chargeable as a condition to mitigation shall be subtracted from the proceeds of the sale before transmitting the remainder to the petitioner.

Amended: eff. Oct. 12, 2012.

28 C.F.R. § 9.6 Special rules for specific petitioners.

(a) General creditors. A general creditor may not be granted remission or mitigation of forfeiture unless he or she otherwise qualifies as petitioner under this part.

(b) Rival claimants. If the beneficial owner of the forfeited property and the owner of a security interest in the same property each file a petition, and if both petitions are found to be meritorious, the claims of the beneficial owner shall take precedence.

(c) Voluntary bailments. A petitioner who allows another to use his or her property without cost, and who is not in the business of lending money secured by property or of leasing or renting property for profit, shall be granted remission or mitigation of forfeiture in accordance with the provisions of § 9.5.

(d) Lessors. A person engaged in the business of leasing or renting real or personal property on a long-term basis with the right to sublease shall not be entitled to remission or mitigation of a forfeiture of such property unless the lessor can demonstrate compliance with all the requirements of § 9.5.

(e) Straw owners. A petition by any person who has acquired a property interest recognizable under this part, and who knew or had reason to believe that the interest was conveyed by the previous owner for the purpose of circumventing seizure, forfeiture, or the regulations in this part, shall be denied. A petition by a person who purchases or owns property for another who has a record for related crimes as defined in § 9.2, or a petition by a lienholder who knows or has reason to believe that the purchaser or owner of record is not the real purchaser or owner, shall be denied unless both the purchaser of record and the real purchaser or owner meet the requirements of § 9.5.

(f) Judgment creditors.

(1) A judgment creditor will be recognized as a lienholder if:

(i) The judgment was duly recorded before the seizure of the property for forfeiture;

(ii) Under applicable state or local law, the judgment constitutes a valid lien on the property that attached to it before the seizure of the property for forfeiture; and

(iii) The petitioner had no knowledge of the commission of any act or acts giving rise to the forfeiture at the time the judgment became a lien on the forfeited property.

(2) A judgment creditor will not be recognized as a lienholder if the property in question is not property of which the judgment debtor is entitled to claim ownership under applicable state or local law (e.g., stolen property). A judgment creditor is entitled under this part to no more than the amount

of the judgment, exclusive of any interest, costs, or other fees including attorney fees associated with the action that led to the judgment or its collection.

(3) A judgment creditor's lien must be registered in the district where the property is located if the judgment was obtained outside the district.

Amended: eff. Oct. 12, 2012.

28 C.F.R. § 9.7 Terms and conditions of remission and mitigation.

(a) Owners.

(1) An owner's interest in property that has been forfeited is represented by the property itself or by a monetary interest equivalent to that interest at the time of seizure. Whether the property or a monetary equivalent will be remitted to an owner shall be determined at the discretion of the ruling official.

(2) If a civil judicial forfeiture action against the property is pending, release of the property must await an appropriate court order.

(3) Where the Government sells or disposes of the property prior to the grant of the remission, the owner shall receive the proceeds of that sale, less any costs incurred by the Government in the sale. The ruling official, at his or her discretion, may waive the deduction of costs and expenses incident to the forfeiture.

(4) Where the owner does not comply with the conditions imposed upon release of the property by the ruling official, the property shall be sold. Following the sale, the proceeds shall be used to pay all costs of the forfeiture and disposition of the property, in addition to any monetary conditions imposed. The remaining balance shall be paid to the owner.

(b) Lienholders.

(1) When the forfeited property is to be retained for official use or transferred to a state or local law enforcement agency or foreign government pursuant to law, and remission or mitigation has been granted to a lienholder, the recipient of the property shall assure that:

(i) In the case of remission, the lien is satisfied as determined through the petition process; or

(ii) In the case of mitigation, an amount equal to the net equity, less any monetary conditions imposed, is paid to the lienholder prior to the release of the property to the recipient agency or foreign government.

(2) When the forfeited property is not retained for official use or transferred to another agency or foreign government pursuant to law, the lienholder shall be notified by the ruling official of the right to select either of the following alternatives:

(i) Return of property. The lienholder may obtain possession of the property after paying the United States, through the ruling official, the costs and expenses incident to the forfeiture, the amount, if any, by which the appraised value of the property exceeds the lienholder's net equity in the property, and any amount specified in the ruling official's decision as a condition to remit the property. The ruling official, at his or her discretion, may waive costs and expenses incident to the forfeiture. The ruling official shall forward a copy of the decision, a memorandum of disposition, and the original releases to the USMS or other property custodian who shall thereafter release the property to the lienholder; or

(ii) Sale of property and payment to lienholder. Subject to § 9.9(a), upon sale of the property, the lienholder may receive the payment of a monetary amount up to the sum of the lienholder's net equity, less the expenses and costs incident to the forfeiture and sale of the property, and any other monetary conditions imposed. The ruling official, at his or her discretion, may waive costs and expenses incident to the forfeiture.

(3) If the lienholder does not notify the ruling official of the selection of one of the two options set forth in paragraph (b)(2) of this section within 20 days of the receipt of notification, the ruling official shall direct the USMS or other property custodian to sell the property and pay the lienholder an amount up to the net equity, less the costs and expenses incurred incident to the forfeiture and sale, and any monetary conditions imposed. In the event a lienholder subsequently receives a payment of any kind on the debt owed for which he or she received payment as a result of the granting of remission or mitigation, the lienholder shall reimburse the Assets Forfeiture Fund to the extent of the payment received.

(4) Where the lienholder does not comply with the conditions imposed upon the release of the property, the property shall be sold after forfeiture. From the proceeds of the sale, all costs incident to the forfeiture and sale shall first be deducted, and the balance up to the net equity, less any monetary conditions, shall be paid to the lienholder.

Amended: eff. Oct. 12, 2012.

28 C.F.R. § 9.8 Remission procedures for victims.

This section applies to victims of an offense underlying the forfeiture of property, or of a related offense, who do not have a present ownership interest in the forfeited property (or, in the case of multiple victims of an offense, who do not have a present ownership interest in the forfeited property that is clearly superior to that of other petitioner victims). This section applies only with respect to property forfeited pursuant to statutes that explicitly authorize restoration or remission of

forfeited property to victims. A victim requesting remission under this section may concurrently request remission as an owner, pursuant to the regulations set forth in §§ 9.3, 9.4, and 9.7. The claims of victims granted remission as both an owner and victim shall, like claims of other owners, have priority over the claims of any non-owner victims whose claims are recognized under this section.

(a) Remission procedure for victims.

(1) Where to file. Persons seeking remission as victims shall file petitions for remission with the appropriate deciding official as described in §§ 9.3(e) (administrative forfeiture) or 9.4(e) (judicial forfeiture).

(2) Time of decision. The deciding official or his designee as described in § 9.1(b) may consider petitions filed by persons claiming eligibility for remission as victims at any time prior to the disposal of the forfeited property in accordance with law.

(3) Request for reconsideration. Persons denied remission under this section may request reconsideration of the denial, in accordance with §§ 9.3(j) (administrative forfeiture) or 9.4(k) (judicial forfeiture).

(b) Qualification to file. A victim, as defined in § 9.2, may be granted remission, if in addition to complying with the other applicable provisions of § 9.8, the victim satisfactorily demonstrates that:

(1) A pecuniary loss of a specific amount has been directly caused by the criminal offense, or related offense, that was the underlying basis for the forfeiture, and that the loss is supported by documentary evidence including invoices and receipts;

(2) The pecuniary loss is the direct result of the illegal acts and is not the result of otherwise lawful acts that were committed in the course of a criminal offense;

(3) The victim did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner towards the commission of the offense, or related offense, that was the underlying basis of the forfeiture;

(4) The victim has not in fact been compensated for the wrongful loss of the property by the perpetrator or others; and

(5) The victim does not have recourse reasonably available to other assets from which to obtain compensation for the wrongful loss of the property.

(c) Pecuniary loss. The amount of the pecuniary loss suffered by a victim for which remission may be granted is limited to the fair market value of the property of which the victim was deprived as of the date of the occurrence of the loss. No allowance shall be made for interest forgone or for collateral expenses incurred to recover lost property or to seek other recompense.

(d) Torts. A tort associated with illegal activity that formed the basis for the forfeiture shall not be a basis for remission, unless it constitutes the illegal activity itself, nor shall remission be granted for physical injuries to a petitioner or for damage to a petitioner's property.

(e) Denial of petition. In the exercise of his or her discretion, the ruling official may decline to grant remission where:

(1) There is substantial difficulty in calculating the pecuniary loss incurred by the victim or victims;

(2) The amount of the remission, if granted, would be small compared with the amount of expenses incurred by the Government in determining whether to grant remission; or

(3) The total number of victims is large and the monetary amount of the remission so small as to make its granting impractical.

(f) Pro rata basis. In granting remission to multiple victims pursuant to this section, the ruling official should generally grant remission on a pro rata basis to recognized victims when petitions cannot be granted in full due to the limited value of the forfeited property. However, the ruling official may consider the following factors, among others, in establishing appropriate priorities in individual cases:

(1) The specificity and reliability of the evidence establishing a loss;

(2) The fact that a particular victim is suffering an extreme financial hardship;

(3) The fact that a particular victim has cooperated with the Government in the investigation related to the forfeiture or to a related prosecution or civil action; and

(4) In the case of petitions filed by multiple victims of related offenses, the fact that a particular victim is a victim of the offense underlying the forfeiture.

(g) Reimbursement. Any petitioner granted remission pursuant to this part shall reimburse the Assets Forfeiture Fund for the amount received to the extent the individual later receives compensation for the loss of the property from any other source. The petitioner shall surrender the reimbursement upon payment from any secondary source.

(h) Claims of financial institution regulatory agencies. In cases involving property forfeitable under 18 U.S.C. 981(a)(1)(C) or (a)(1)(D), the ruling official may decline to grant a petition filed by a petitioner in whole or in part due to the lack of sufficient forfeitable funds to satisfy both the petition and claims of the financial institution regulatory agencies pursuant to 18 U.S.C. 981(e)(3) or (7). Generally, claims of financial institution regulatory agencies pursuant to 18 U.S.C. 981(e)(3) or (7) shall take priority over claims of victims.

(i) Amount of remission. Consistent with the Assets Forfeiture Fund statute (28 U.S.C. 524(c)), the amount of remission shall not exceed the victim's share of the net proceeds of the forfeitures associated with the activity that caused the victim's loss. The calculation of net proceeds includes, but is not limited to, the deduction of allowable government expenses and valid third-party claims.

Amended: eff. Oct. 12, 2012.

28 C.F.R. § 9.9 Miscellaneous provisions.

(a) Priority of payment. Except where otherwise provided in this part, costs incurred by the USMS and other agencies participating in the forfeiture that were incident to the forfeiture, sale, or other disposition of the property shall be deducted from the amount available for remission or mitigation. Such costs include, but are not limited to, court costs, storage costs, brokerage and other sales-related costs, the amount of any liens and associated costs paid by the Government on the property, costs incurred in paying the ordinary and necessary expenses of a business seized for forfeiture, awards for information as authorized by statute, expenses of trustees or other assistants pursuant to paragraph (c) of this section, investigative or prosecutive costs specially incurred incident to the particular forfeiture, and costs incurred incident to the processing of the petition(s) for remission or mitigation. The remaining balance shall be available for remission or mitigation. The ruling official shall direct the distribution of the remaining balance in the following order of priority, except that the ruling official may exercise discretion in determining the priority between petitioners belonging to classes described in paragraphs (a)(3) and (4) of this section in exceptional circumstances:

(1) Owners;

(2) Lienholders;

(3) Federal financial institution regulatory agencies (pursuant to paragraph (e) of this section), not constituting owners or lienholders; and

(4) Victims not constituting owners or lienholders (pursuant to § 9.8).

(b) Sale or disposition of property prior to ruling. If forfeited property has been sold or otherwise disposed of prior to a ruling, the ruling official may grant relief in the form of a monetary amount. The amount realized by the sale of the property is presumed to be the value of the property. Monetary relief shall not be greater than the appraised value of the property at the time of seizure and shall not exceed the amount realized from the sale or other disposition. The proceeds of the sale shall be distributed as follows:

(1) Payment of the Government's expenses incurred incident to the forfeiture and sale, including court costs and storage charges, if any;

(2) Payment to the petitioner of an amount up to his or her interest in the property;

(3) Payment to the Assets Forfeiture Fund of all other costs and expenses incident to the forfeiture;

(4) In the case of victims, payment of any amount up to the amount of his or her loss; and

(5) Payment of the balance remaining, if any, to the Assets Forfeiture Fund.

(c) Trustees and other assistants. In the exercise of his or her discretion, the ruling official, with the approval of the Asset Forfeiture and Money Laundering Section, may use the services of a trustee, other government official, or appointed contractors to notify potential petitioners, process petitions, and make recommendations to the ruling official on the distribution of property to petitioners. The expense for such assistance shall be paid out of the forfeited funds.

(d) Other agencies of the United States. Where another agency of the United States is entitled to remission or mitigation of forfeited assets because of an interest that is recognizable under this part or is eligible for such transfer pursuant to 18 U.S.C. 981(e)(6), such agency shall request the transfer in writing, in addition to complying with any applicable provisions of §§ 9.3 through 9.5. The decision to make such transfer shall be made in writing by the ruling official.

(e) Financial institution regulatory agencies. A ruling official may direct the transfer of property under 18 U.S.C. 981(e) to certain federal financial institution regulatory agencies or an entity acting on their behalf, upon receipt of a written request, in lieu of ruling on a petition for remission or mitigation.

(f) Transfers to foreign governments. A ruling official may decline to grant remission to any petitioner other than an owner or lienholder so that forfeited assets may be transferred to a foreign government pursuant to 18 U.S.C. 981(i)(1), 19 U.S.C. 1616a(c)(2), or 21 U.S.C. 881(e)(1)(E).

(g) Filing by attorneys.

(1) A petition for remission or mitigation may be filed by a petitioner or by his or her attorney or legal guardian. If an attorney files on behalf of the petitioner, the petition must include a signed and sworn statement by the client-petitioner stating that:

(i) The attorney has the authority to represent the petitioner in this proceeding;

(ii) The petitioner has fully reviewed the petition; and

(iii) The petition is truthful and accurate in every respect.

(2) Verbal notification of representation is not acceptable. Responses and notification of rulings shall not be sent to an attorney claiming to represent a petitioner unless a written notice of representation is filed. No extensions of time shall be granted due to delays in submission of the notice of representation.

(h) Consolidated petitions. At the discretion of the ruling official in individual cases, a petition may be filed by one petitioner on behalf of other petitioners, provided the petitions are based on similar underlying facts, and the petitioner who files the petition has written authority to do so on behalf of the other petitioners. This authority must be either expressed in documents giving the petitioner the authority to file petitions for remission, or reasonably implied from documents giving the petitioner express authority to file claims or lawsuits related to the course of conduct in question on behalf of these petitioners. An insurer or an administrator of an employee benefit plan, for example, which itself has standing to file a petition as a "victim" within the meaning of § 9.2, may also file a petition on behalf of its insured or plan beneficiaries for any claims they may have based on co-payments made to the perpetrator of the offense underlying the forfeiture or the perpetrator of a "related offense" within the meaning of § 9.2, if the authority to file claims or lawsuits is contained in the document or documents establishing the plan. Where such a petition is filed, any amounts granted as a remission must be transferred to the other petitioners, not the party filing the petition; although, in his or her discretion, the ruling official may use the actual petitioner as an intermediary for transferring the amounts authorized as a remission to the other petitioners.

Amended: eff. Oct. 12, 2012.

FEDERAL RULES OF CIVIL PROCEDURE

Rule 26. Duty to Disclose; General Provisions Governing Discovery.

(a) Required Disclosures.

(1) Initial Disclosure.

(A) In General. Except as exempted by Rule 26(a)(1) (B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(B) Proceedings Exempt from Initial Disclosure. The following proceedings are exempt from initial disclosure:

(i) an action for review on an administrative record;

(ii) a forfeiture action in rem arising from a federal statute;

(iii) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

(iv) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(v) an action to enforce or quash an administrative summons or subpoena;

(vi) an action by the United States to recover benefit payments;

(vii) an action by the United States to collect on a student loan guaranteed by the United States;

(viii) a proceeding ancillary to a proceeding in another court; and

(ix) an action to enforce an arbitration award.

(C) Time for Initial Disclosures—In General. A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(D) Time for Initial Disclosures—For Parties Served or Joined Later. A party that is first served or otherwise joined after the Rule 26(f) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(E) Basis for Initial Disclosure; Unacceptable Excuses. A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In General. In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) **Witnesses Who Do Not Provide a Written Report.** Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and

(ii) a summary of the facts and opinions to which the witness is expected to testify.

(D) **Time to Disclose Expert Testimony.** A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(i) at least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure.

(E) **Supplementing the Disclosure.** The parties must supplement these disclosures when required under Rule 26(e).

(3) Pretrial Disclosures.

(A) **In General.** In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(i) the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(iii) an identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.

(B) **Time for Pretrial Disclosures; Objections.** Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii); and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 26(a)(3)(A)(iii). An objection not so made—except for one under Federal Rule of Evidence 402 or 403—is waived unless excused by the court for good cause.

(4) **Form of Disclosures.** Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.

(b) Discovery Scope and Limits.

(1) **Scope in General.** Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

(2) Limitations on Frequency and Extent.

(A) **When Permitted.** By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under Rule 30. By order or local rule, the court may also limit the number of requests under Rule 36.

(B) **Specific Limitations on Electronically Stored Information.** A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause,

considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(3) Trial Preparation: Materials.

(A) Documents and Tangible Things. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) Protection Against Disclosure. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) Previous Statement. Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording—or a transcription of it—that recites substantially verbatim the person's oral statement.

(4) Trial Preparation: Experts.

(A) Deposition of an Expert Who May Testify. A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) Trial-Preparation Protection for Draft Reports or Disclosures. Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

(C) Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses. Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) Expert Employed Only for Trial Preparation. Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in Rule 35(b); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(E) Payment. Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and

(ii) for discovery under (D), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

(5) Claiming Privilege or Protecting Trial-Preparation Materials.

(A) Information Withheld. When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) Information Produced. If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) Protective Orders.

(1) In General. A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and place, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) Ordering Discovery. If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) Awarding Expenses. Rule 37(a)(5) applies to the award of expenses.

(d) Timing and Sequence of Discovery.

(1) Timing. A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.

(2) Sequence. Unless, on motion, the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(A) methods of discovery may be used in any sequence; and

(B) discovery by one party does not require any other party to delay its discovery.

(e) Supplementing Disclosures and Responses.

(1) In General. A party who has made a disclosure under Rule 26(a)—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) Expert Witness. For an expert whose report must be disclosed under Rule 26(a)(2)(B), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 26(a)(3) are due.

(f) Conference of the Parties; Planning for Discovery.

(1) Conference Timing. Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as

practicable—and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b).

(2) **Conference Content; Parties’ Responsibilities.** In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

(3) **Discovery Plan.** A discovery plan must state the parties’ views and proposals on:

(A) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;

(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(C) any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(D) any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order;

(E) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

(F) any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

(4) **Expedited Schedule.** If necessary to comply with its expedited schedule for Rule 16(b) conferences, a court may by local rule:

(A) require the parties’ conference to occur less than 21 days before the scheduling conference is held or a scheduling order is due under Rule 16(b); and

(B) require the written report outlining the discovery plan to be filed less than 14 days after the parties’ conference, or excuse the parties from submitting a written

report and permit them to report orally on their discovery plan at the Rule 16(b) conference.

(g) **Signing Disclosures and Discovery Requests, Responses, and Objections.**

(1) **Signature Required; Effect of Signature.** Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorney’s own name—or by the party personally, if unrepresented—and must state the signer’s address, e-mail address, and telephone number. By signing, an attorney or party certifies that to the best of the person’s knowledge, information, and belief formed after a reasonable inquiry:

(A) with respect to a disclosure, it is complete and correct as of the time it is made; and

(B) with respect to a discovery request, response, or objection, it is:

(i) consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) **Failure to Sign.** Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney’s or party’s attention.

(3) **Sanction for Improper Certification.** If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney’s fees, caused by the violation.

Amended: eff. Dec. 1, 2010.

FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 1. Scope; definitions.

(a) Scope.

(1) In General. These rules govern the procedure in all criminal proceedings in the United States district courts, the United States courts of appeals, and the Supreme Court of the United States.

(2) State or Local Judicial Officer. When a rule so states, it applies to a proceeding before a state or local judicial officer.

(3) Territorial Courts. These rules also govern the procedure in all criminal proceedings in the following courts:

(A) the district court of Guam;

(B) the district court for the Northern Mariana Islands, except as otherwise provided by law; and

(C) the district court of the Virgin Islands, except that the prosecution of offenses in that court must be by indictment or information as otherwise provided by law.

(4) Removed Proceedings. Although these rules govern all proceedings after removal from a state court, state law governs a dismissal by the prosecution.

(5) Excluded Proceedings. Proceedings not governed by these rules include:

(A) the extradition and rendition of a fugitive;

(B) a civil property forfeiture for violating a federal statute;

(C) the collection of a fine or penalty;

(D) a proceeding under a statute governing juvenile delinquency to the extent the procedure is inconsistent with the statute, unless Rule 20(d) provides otherwise;

(E) a dispute between seamen under 22 U.S.C. §§ 256-258; and

(F) a proceeding against a witness in a foreign country under 28 U.S.C. § 1784.

(b) Definitions. The following definitions apply to these rules:

(1) “Attorney for the government” means:

(A) the Attorney General or an authorized assistant;

(B) a United States attorney or an authorized assistant;

(C) when applicable to cases arising under Guam law, the Guam Attorney General or other person whom Guam law authorizes to act in the matter; and

(D) any other attorney authorized by law to conduct proceedings under these rules as a prosecutor.

(2) “Court” means a federal judge performing functions authorized by law.

(3) “Federal judge” means:

(A) a justice or judge of the United States as these terms are defined in 28 U.S.C. § 451;

(B) a magistrate judge; and

(C) a judge confirmed by the United States Senate and empowered by statute in any commonwealth, territory, or possession to perform a function to which a particular rule relates.

(4) “Judge” means a federal judge or a state or local judicial officer.

(5) “Magistrate judge” means a United States magistrate judge as defined in 28 U.S.C. §§ 631-639.

(6) “Oath” includes an affirmation.

(7) “Organization” is defined in 18 U.S.C. § 18.

(8) “Petty offense” is defined in 18 U.S.C. § 19.

(9) “State” includes the District of Columbia, and any commonwealth, territory, or possession of the United States.

(10) “State or local judicial officer” means:

(A) a state or local officer authorized to act under 18 U.S.C. § 3041; and

(B) a judicial officer empowered by statute in the District of Columbia or in any commonwealth, territory, or possession to perform a function to which a particular rule relates.

(11) “Telephone” means any technology for transmitting live electronic voice communication.

(12) “Victim” means a “crime victim” as defined in 18 U.S.C. § 3771(e).

(c) Authority of a Justice or Judge of the United States. When these rules authorize a magistrate judge to act, any other federal judge may also act.

Amended: eff. Dec. 1, 2011.

Rule 11. Pleas.**(a) Entering a Plea.**

(1) In General. A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) Conditional Plea. With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) Nolo Contendere Plea. Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

(4) Failure to Enter a Plea. If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

<[Text of subdivision (b) effective until
December 1, 2013, absent contrary
Congressional action.]>

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court's authority to order restitution;

(L) the court's obligation to impose a special assessment;

(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a); and

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.

(2) Ensuring That a Plea Is Voluntary. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) Determining the Factual Basis for a Plea. Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

<[Text of subdivision (b) effective
December 1, 2013, absent contrary
Congressional action.]>

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court's authority to order restitution;

(L) the court's obligation to impose a special assessment;

(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a);

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and

(O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

(2) Ensuring That a Plea Is Voluntary. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) Determining the Factual Basis for a Plea. Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(c) Plea Agreement Procedure.

(1) In General. An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that

a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) Disclosing a Plea Agreement. The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) Judicial Consideration of a Plea Agreement.

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.

(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) Accepting a Plea Agreement. If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) Rejecting a Plea Agreement. If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(d) Withdrawing a Guilty or Nolo Contendere Plea. A defendant may withdraw a plea of guilty or nolo contendere:

(1) before the court accepts the plea, for any reason or no reason; or

(2) after the court accepts the plea, but before it imposes sentence if:

(A) the court rejects a plea agreement under Rule 11(c)(5); or

(B) the defendant can show a fair and just reason for requesting the withdrawal.

(e) **Finality of a Guilty or Nolo Contendere Plea.** After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

(f) **Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements.** The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410.

(g) **Recording the Proceedings.** The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).

(h) **Harmless Error.** A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

Amended: Apr. 16, 2013, eff. Dec. 1, 2013, absent contrary Congressional action.

Rule 32.2. Criminal Forfeiture.

(a) **Notice to the Defendant.** A court must not enter a judgment of forfeiture in a criminal proceeding unless the indictment or information contains notice to the defendant that the government will seek the forfeiture of property as part of any sentence in accordance with the applicable statute. The notice should not be designated as a count of the indictment or information. The indictment or information need not identify the property subject to forfeiture or specify the amount of any forfeiture money judgment that the government seeks.

(b) **Entering a Preliminary Order of Forfeiture.**

(1) **Forfeiture Phase of the Trial.**

(A) **Forfeiture Determinations.** As soon as practical after a verdict or finding of guilty, or after a plea of guilty or nolo contendere is accepted, on any count in an indictment or information regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the applicable statute. If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense. If the government seeks a personal money judgment, the court must determine the amount of money that the defendant will be ordered to pay.

(B) **Evidence and Hearing.** The court's determination may be based on evidence already in the record, including any written plea agreement, and on any additional evidence or information submitted by the parties and accepted by the

court as relevant and reliable. If the forfeiture is contested, on either party's request the court must conduct a hearing after the verdict or finding of guilty.

(2) **Preliminary Order.**

(A) **Contents of a Specific Order.** If the court finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment, directing the forfeiture of specific property, and directing the forfeiture of any substitute property if the government has met the statutory criteria. The court must enter the order without regard to any third party's interest in the property. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).

(B) **Timing.** Unless doing so is impractical, the court must enter the preliminary order sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final as to the defendant under Rule 32.2(b)(4).

(C) **General Order.** If, before sentencing, the court cannot identify all the specific property subject to forfeiture or calculate the total amount of the money judgment, the court may enter a forfeiture order that:

(i) lists any identified property;

(ii) describes other property in general terms; and

(iii) states that the order will be amended under Rule 32.2(e)(1) when additional specific property is identified or the amount of the money judgment has been calculated.

(3) **Seizing Property.** The entry of a preliminary order of forfeiture authorizes the Attorney General (or a designee) to seize the specific property subject to forfeiture; to conduct any discovery the court considers proper in identifying, locating, or disposing of the property; and to commence proceedings that comply with any statutes governing third-party rights. The court may include in the order of forfeiture conditions reasonably necessary to preserve the property's value pending any appeal.

(4) **Sentence and Judgment.**

(A) **When Final.** At sentencing—or at any time before sentencing if the defendant consents—the preliminary forfeiture order becomes final as to the defendant. If the order directs the defendant to forfeit specific property, it remains preliminary as to third parties until the ancillary proceeding is concluded under Rule 32.2(c).

(B) Notice and Inclusion in the Judgment. The court must include the forfeiture when orally announcing the sentence or must otherwise ensure that the defendant knows of the forfeiture at sentencing. The court must also include the forfeiture order, directly or by reference, in the judgment, but the court's failure to do so may be corrected at any time under Rule 36.

(C) Time to Appeal. The time for the defendant or the government to file an appeal from the forfeiture order, or from the court's failure to enter an order, begins to run when judgment is entered. If the court later amends or declines to amend a forfeiture order to include additional property under Rule 32.2(e), the defendant or the government may file an appeal regarding that property under Federal Rule of Appellate Procedure 4(b). The time for that appeal runs from the date when the order granting or denying the amendment becomes final.

(5) Jury Determination.

(A) Retaining the Jury. In any case tried before a jury, if the indictment or information states that the government is seeking forfeiture, the court must determine before the jury begins deliberating whether either party requests that the jury be retained to determine the forfeitability of specific property if it returns a guilty verdict.

(B) Special Verdict Form. If a party timely requests to have the jury determine forfeiture, the government must submit a proposed Special Verdict Form listing each property subject to forfeiture and asking the jury to determine whether the government has established the requisite nexus between the property and the offense committed by the defendant.

(6) Notice of the Forfeiture Order.

(A) Publishing and Sending Notice. If the court orders the forfeiture of specific property, the government must publish notice of the order and send notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding.

(B) Content of the Notice. The notice must describe the forfeited property, state the times under the applicable statute when a petition contesting the forfeiture must be filed, and state the name and contact information for the government attorney to be served with the petition.

(C) Means of Publication; Exceptions to Publication Requirement. Publication must take place as described in Supplemental Rule G(4)(a)(iii) of the Federal Rules of Civil Procedure, and may be by any means described in Supplemental Rule G(4)(a)(iv). Publication is unnecessary if any exception in Supplemental Rule G(4)(a)(i) applies.

(D) Means of Sending the Notice. The notice may be sent in accordance with Supplemental Rules G(4)(b)(iii)-(v) of the Federal Rules of Civil Procedure.

(7) Interlocutory Sale. At any time before entry of a final forfeiture order, the court, in accordance with Supplemental Rule G(7) of the Federal Rules of Civil Procedure, may order the interlocutory sale of property alleged to be forfeitable.

(c) Ancillary Proceeding; Entering a Final Order of Forfeiture.

(1) In General. If, as prescribed by statute, a third party files a petition asserting an interest in the property to be forfeited, the court must conduct an ancillary proceeding, but no ancillary proceeding is required to the extent that the forfeiture consists of a money judgment.

(A) In the ancillary proceeding, the court may, on motion, dismiss the petition for lack of standing, for failure to state a claim, or for any other lawful reason. For purposes of the motion, the facts set forth in the petition are assumed to be true.

(B) After disposing of any motion filed under Rule 32.2(c)(1)(A) and before conducting a hearing on the petition, the court may permit the parties to conduct discovery in accordance with the Federal Rules of Civil Procedure if the court determines that discovery is necessary or desirable to resolve factual issues. When discovery ends, a party may move for summary judgment under Federal Rule of Civil Procedure 56.

(2) Entering a Final Order. When the ancillary proceeding ends, the court must enter a final order of forfeiture by amending the preliminary order as necessary to account for any third-party rights. If no third party files a timely petition, the preliminary order becomes the final order of forfeiture if the court finds that the defendant (or any combination of defendants convicted in the case) had an interest in the property that is forfeitable under the applicable statute. The defendant may not object to the entry of the final order on the ground that the property belongs, in whole or in part, to a codefendant or third party; nor may a third party object to the final order on the ground that the third party had an interest in the property.

(3) Multiple Petitions. If multiple third-party petitions are filed in the same case, an order dismissing or granting one petition is not appealable until rulings are made on all the petitions, unless the court determines that there is no just reason for delay.

(4) Ancillary Proceeding Not Part of Sentencing. An ancillary proceeding is not part of sentencing.

(d) Stay Pending Appeal. If a defendant appeals from a conviction or an order of forfeiture, the court may stay the

order of forfeiture on terms appropriate to ensure that the property remains available pending appellate review. A stay does not delay the ancillary proceeding or the determination of a third party's rights or interests. If the court rules in favor of any third party while an appeal is pending, the court may amend the order of forfeiture but must not transfer any property interest to a third party until the decision on appeal becomes final, unless the defendant consents in writing or on the record.

(e) Subsequently Located Property; Substitute Property.

(1) In General. On the government's motion, the court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include property that:

(A) is subject to forfeiture under an existing order of forfeiture but was located and identified after that order was entered; or

(B) is substitute property that qualifies for forfeiture under an applicable statute.

(2) Procedure. If the government shows that the property is subject to forfeiture under Rule 32.2(e)(1), the court must:

(A) enter an order forfeiting that property, or amend an existing preliminary or final order to include it; and

(B) if a third party files a petition claiming an interest in the property, conduct an ancillary proceeding under Rule 32.2(c).

(3) Jury Trial Limited. There is no right to a jury trial under Rule 32.2(e).

Amended: eff. Dec. 1, 2009.

Rule 32.2. Advisory Committee Notes.

2000 Adoption

Rule 32.2 consolidates a number of procedural rules governing the forfeiture of assets in a criminal case. Existing Rules 7(c)(2), 31(e) and 32(d)(2) are also amended to conform to the new rule. In addition, the forfeiture-related provisions of Rule 38(e) are stricken.

Subdivision (a). Subdivision (a) is derived from Rule 7(c)(2) which provides that notwithstanding statutory authority for the forfeiture of property following a criminal conviction, no forfeiture order may be entered unless the defendant was given notice of the forfeiture in the indictment or information. As courts have held, subdivision (a) is not intended to require that an itemized list of the property to be forfeited appear in the indictment or information itself. The subdivision reflects the trend

in caselaw interpreting present Rule 7(c). Under the most recent cases, Rule 7(c) sets forth a requirement that the government give the defendant notice that it will be seeking forfeiture in accordance with the applicable statute. It does not require a substantive allegation in which the property subject to forfeiture, or the defendant's interest in the property, must be described in detail. *See United States v. DeFries*, 129 F.3d 1293 (D.C. Cir. 1997) (it is not necessary to specify in either the indictment or a bill of particulars that the government is seeking forfeiture of a particular asset, such as the defendant's salary; to comply with Rule 7(c), the government need only put the defendant on notice that it will seek to forfeit everything subject to forfeiture under the applicable statute, such as all property "acquired or maintained" as a result of a RICO violation). *See also United States v. Moffitt, Zwerling & Kemler, P.C.*, 83 F.3d 660, 665 (4th Cir. 1996), *aff'g* 846 F. Supp. 463 (E.D. Va. 1994) (*Moffitt I*) (indictment need not list each asset subject to forfeiture; under Rule 7(c), this can be done with bill of particulars); *United States v. Voigt*, 89 F.3d 1050 (3rd Cir. 1996) (court may amend order of forfeiture at any time to include substitute assets).

Subdivision (b). Subdivision (b) replaces Rule 31(e) which provides that the jury in a criminal case must return a special verdict "as to the extent of the interest or property subject to forfeiture." *See United States v. Saccoccia*, 58 F.3d 754 (1st Cir. 1995) (Rule 31(e) only applies to jury trials; no special verdict required when defendant waives right to jury on forfeiture issues).

One problem under Rule 31(e) concerns the scope of the determination that must be made prior to entering an order of forfeiture. This issue is the same whether the determination is made by the court or by the jury.

As mentioned, the current rule requires the jury to return a special verdict "as to the extent of the interest or property subject to forfeiture." Some courts interpret this to mean only that the jury must answer "yes" or "no" when asked if the property named in the indictment is subject to forfeiture under the terms of the forfeiture statute—*e.g.* was the property used to facilitate a drug offense? Other courts also ask the jury if the defendant has a legal interest in the forfeited property. Still other courts, including the Fourth Circuit, require the jury to determine the *extent* of the defendant's interest in the property vis a vis third parties. *See United States v. Ham*, 58 F.3d 78 (4th Cir. 1995) (case remanded to the district court to impanel a jury to determine, in the first instance, the extent of the defendant's forfeitable interest in the subject property).

The notion that the "extent" of the defendant's interest must be established as part of the criminal trial is related to the fact that criminal forfeiture is an in personam action

in which only the defendant's interest in the property may be forfeited. *United States v. Riley*, 78 F.3d 367 (8th Cir. 1996). When the criminal forfeiture statutes were first enacted in the 1970's, it was clear that a forfeiture of property other than the defendant's could not occur in a criminal case, but there was no mechanism designed to limit the forfeiture to the defendant's interest. Accordingly, Rule 31(e) was drafted to make a determination of the "extent" of the defendant's interest part of the verdict.

The problem is that third parties who might have an interest in the forfeited property are not parties to the criminal case. At the same time, a defendant who has no interest in property has no incentive, at trial, to dispute the government's forfeiture allegations. Thus, it was apparent by the 1980's that Rule 31(e) was an inadequate safeguard against the inadvertent forfeiture of property in which the defendant held no interest.

In 1984, Congress addressed this problem when it enacted a statutory scheme whereby third party interests in criminally forfeited property are litigated by the court in an ancillary proceeding following the conclusion of the criminal case and the entry of a preliminary order of forfeiture. See 21 U.S.C. § 853(n); 18 U.S.C. § 1963(1). Under this scheme, the court orders the forfeiture of the defendant's interest in the property—whatever that interest may be—in the criminal case. At that point, the court conducts a separate proceeding in which all potential third party claimants are given an opportunity to challenge the forfeiture by asserting a superior interest in the property. This proceeding does not involve relitigation of the forfeitability of the property; its only purpose is to determine whether any third party has a legal interest in the forfeited property.

The notice provisions regarding the ancillary proceeding are equivalent to the notice provisions that govern civil forfeitures. Compare 21 U.S.C. § 853(n)(1) with 19 U.S.C. § 1607(a); see *United States v. Boulder*, 927 F. Supp. 911 (W.D.N.C. 1996) (civil notice rules apply to ancillary criminal proceedings). Notice is published and sent to third parties that have a potential interest. See *United States v. BCCI Holdings (Luxembourg) S.A. (In re Petition of Indosuez Bank)*, 916 F. Supp. 1276 (D.D.C. 1996) (discussing steps taken by government to provide notice of criminal forfeiture to third parties). If no one files a claim, or if all claims are denied following a hearing, the forfeiture becomes final and the United States is deemed to have clear title to the property. 21 U.S.C. § 853(n)(7); *United States v. Hentz*, 1996 WL 355327 (E.D. Pa. June 20, 1996) (once third party fails to file a claim in the ancillary proceeding, government has clear title under

§ 853(n)(7) and can market the property notwithstanding third party's name on the deed).

Thus, the ancillary proceeding has become the forum for determining the extent of the defendant's forfeitable interest in the property. This allows the court to conduct a proceeding in which all third party claimants can participate and which ensures that the property forfeited actually belongs to the defendant.

Since the enactment of the ancillary proceeding statutes, the requirement in Rule 31(e) that the court (or jury) determine the extent of the defendant's interest in the property as part of the criminal trial has become an unnecessary anachronism that leads more often than not to duplication and a waste of judicial resources. There is no longer any reason to delay the conclusion of the criminal trial with a lengthy hearing over the extent of the defendant's interest in property when the same issues will have to be litigated a second time in the ancillary proceeding if someone files a claim challenging the forfeiture. For example, in *United States v. Messino*, 917 F. Supp. 1307 (N.D. Ill. 1996), the court allowed the defendant to call witnesses to attempt to establish that they, not he, were the true owners of the property. After the jury rejected this evidence and the property was forfeited, the court conducted an ancillary proceeding in which the same witnesses litigated their claims to the same property.

A more sensible procedure would be for the court, once it (or a jury) determines that property was involved in the criminal offense for which the defendant has been convicted, to order the forfeiture of whatever interest a defendant may have in the property without having to determine exactly what that interest is. If third parties assert that they have an interest in all or part of the property, those interests can be adjudicated at one time in the ancillary proceeding.

This approach would also address confusion that occurs in multi-defendant cases where it is clear that each defendant should forfeit whatever interest he may have in the property used to commit the offense, but it is not at all clear which defendant is the actual owner of the property. For example, suppose A and B are co-defendants in a drug and money laundering case in which the government seeks to forfeit property involved in the scheme that is held in B's name but of which A may be the true owner. It makes no sense to invest the court's time in determining which of the two defendants holds the interest that should be forfeited. Both defendants should forfeit whatever interest they may have. Moreover, if under the current rule the court were to find that A is the true owner of the property, then B would have the right to file a claim in the ancillary proceeding where he may attempt to recover the

property despite his criminal conviction. *United States v. Real Property in Waterboro*, 64 F.3d 752 (1st Cir. 1995) (co-defendant in drug/money laundering case who is not alleged to be the owner of the property is considered a third party for the purpose of challenging the forfeiture of the other co-defendant's interest).

The new rule resolves these difficulties by postponing the determination of the extent of the defendant's interest until the ancillary proceeding. As provided in (b)(1), the court, as soon as practicable after the verdict or finding of guilty in the criminal case, would determine if the property was subject to forfeiture in accordance with the applicable statute, e.g., whether the property represented the proceeds of the offense, was used to facilitate the offense, or was involved in the offense in some other way. The determination could be made based on the evidence in the record from the criminal trial or the facts set forth in a written plea agreement submitted to the court at the time of the defendant's guilty plea, or the court could hold a hearing to determine if the requisite relationship existed between the property and the offense. Subdivision (b)(2) provides that it is not necessary to determine at this stage what interest any defendant might have in the property. Instead, the court would order the forfeiture of whatever interest each defendant might have in the property and conduct the ancillary proceeding.

Subdivision (b)(1) recognizes that there are different kinds of forfeiture judgments in criminal cases. One type is a personal judgment for a sum of money; another is a judgment forfeiting a specific asset. *See, e.g., United States v. Voigt*, 89 F.3d 1050 (3d Cir. 1996) (government is entitled to a personal money judgment equal to the amount involved in the money laundering offense, as well as order forfeiting specific assets involved in, or traceable to, the offense; in addition, if the statutory requirements are met, the government may be entitled to forfeit substitute assets); *United States v. Cleveland*, 1997 WL 537707 (E.D. La. Aug. 26, 1997), *modified*, 1997 WL 602186 (E.D. La. Sept. 29, 1997) (government entitled to a money judgment equal to the amount of money defendant laundered in money laundering case). The finding the court is required to make will depend on the nature of the forfeiture judgment. A number of cases have approved use of money judgment forfeitures. The Committee takes no position on the correctness of those rulings.

To the extent that the government is seeking forfeiture of a particular asset, such as the money on deposit in a particular bank account that is alleged to be the proceeds of a criminal offense, or a parcel of land that is traceable to that offense, the court must find that the government has established the requisite nexus between the property and

the offense. To the extent that the government is seeking a money judgment, such as a judgment for the amount of money derived from a drug trafficking offense or the amount involved in a money laundering offense where the actual property subject to forfeiture has not been found or is unavailable, the court must determine the amount of money that the defendant should be ordered to forfeit.

The court may make the determination based on evidence in the record, or on additional evidence submitted by the defendant or evidence submitted by the government in support of the motion for the entry of a judgment of forfeiture. The defendant would have no standing to object to the forfeiture on the ground that the property belonged to someone else.

Under subdivision (b)(2), if the court finds that property is forfeitable, it must enter a preliminary order of forfeiture. It also recognizes that any determination of a third person's interest in the property is deferred until an ancillary proceeding, if any, is held under subdivision (c).

Subdivision (b)(3) replaces Rule 32(d)(2) (effective December 1996). It provides that once the court enters a preliminary order of forfeiture directing the forfeiture of whatever interest each defendant may have in the forfeited property, the government may seize the property and commence an ancillary proceeding to determine the interests of any third party. The subdivision also provides that the Attorney General may designate someone outside of the Department of Justice to seize forfeited property. This is necessary because in cases in which the lead investigative agency is in the Treasury Department, for example, the seizure of the forfeited property is typically handled by agencies other than the Department of Justice.

If no third party files a claim, the court, at the time of sentencing, will enter a final order forfeiting the property in accordance with subdivision (c)(2), discussed *infra*. If a third party files a claim, the order of forfeiture will become final as to the defendant at the time of sentencing but will be subject to amendment in favor of a third party pending the conclusion of the ancillary proceeding.

Because the order of forfeiture becomes final as to the defendant at the time of sentencing, his right to appeal from that order begins to run at that time. As courts have held, because the ancillary hearing has no bearing on the defendant's right to the property, the defendant has no right to appeal when a final order is, or is not, amended to recognize third party rights. *See, e.g., United States v. Christunas*, 126 F.3d 765 (6th Cir. 1997) (preliminary order of forfeiture is final as to the defendant and is immediately appealable).

Because it is not uncommon for sentencing to be postponed for an extended period to allow a defendant to cooperate with the government in an ongoing investigation, the rule would allow the order of forfeiture to become final as to the defendant before sentencing, if the defendant agrees to that procedure. Otherwise, the government would be unable to dispose of the property until the sentencing took place.

Subdivision (b)(4) addresses the right of either party to request that a jury make the determination of whether any property is subject to forfeiture. The provision gives the defendant, in all cases where a jury has returned a guilty verdict, the option of asking that the jury be retained to hear additional evidence regarding the forfeitability of the property. The only issue for the jury in such cases would be whether the government has established the requisite nexus between the property and the offense. For example, if the defendant disputes the government's allegation that a parcel of real property is traceable to the offense, the defendant would have the right to request that the jury hear evidence on that issue, and return a special verdict, in a bifurcated proceeding that would occur after the jury returns the guilty verdict. The government would have the same option of requesting a special jury verdict on this issue, as is the case under current law. *See* Rule 23(a) (trial by jury may be waived only with the consent of the government).

When Rule 31(e) was promulgated, it was assumed that criminal forfeiture was akin to a separate criminal offense on which evidence would be presented and the jury would have to return a verdict. In *Libretti v. United States*, 516 U.S. 29 (1995), however, the Supreme Court held that criminal forfeiture constitutes an aspect of the sentence imposed in a criminal case and that the defendant has no constitutional right to have the jury determine any part of the forfeiture. The special verdict requirement in Rule 31(e), the Court said, is in the nature of a statutory right that can be modified or repealed at any time.

Even before *Libretti*, lower courts had determined that criminal forfeiture is a sentencing matter and concluded that criminal trials therefore should be bifurcated so that the jury first returns a verdict on guilt or innocence and then returns to hear evidence regarding the forfeiture. In the second part of the bifurcated proceeding, the jury is instructed that the government must establish the forfeitability of the property by a preponderance of the evidence. *See United States v. Myers*, 21 F.3d 826 (8th Cir. 1994) (preponderance standard applies because criminal forfeiture is part of the sentence in money laundering cases); *United States v. Voigt*, 89 F.3d 1050 (3rd Cir. 1996) (following *Myers*); *United States v. Smith*, 966 F.2d 1045,

1050-53 (6th Cir. 1992) (same for drug cases); *United States v. Bieri*, 21 F.3d 819 (8th Cir. 1994) (same).

Although an argument could be made under *Libretti*, that a jury trial is no longer appropriate on any aspect of the forfeiture issue, which is a part of sentencing, the Committee decided to retain the right for the parties, in a trial held before a jury, to have the jury determine whether the government has established the requisite statutory nexus between the offense and the property to be forfeited. The jury, however, would not have any role in determining whether a defendant had an interest in the property to be forfeited. This is a matter for the ancillary proceeding which, by statute, is conducted "before the court alone, without a jury." *See* 21 U.S.C. § 853(n)(2).

Subdivision (c). Subdivision (c) sets forth a set of rules governing the conduct of the ancillary proceeding. When the ancillary hearing provisions were added to 18 U.S.C. § 1963 and 21 U.S.C. § 853 in 1984, Congress apparently assumed that the proceedings under the new provisions would involve simple questions of ownership that could, in the ordinary case, be resolved in 30 days. *See* 18 U.S.C. § 1963(1)(4). Presumably for that reason, the statute contains no procedures governing motions practice or discovery such as would be available in an ordinary civil case. Subdivision (c)(1) makes clear that no ancillary proceeding is required to the extent that the order of forfeiture consists of a money judgment. A money judgment is an *in personam* judgment against the defendant and not an order directed at specific assets in which any third party could have any interest.

Experience has shown that ancillary hearings can involve issues of enormous complexity that require years to resolve. *See United States v. BCCI Holdings (Luxembourg) S.A.*, 833 F.Supp. 9 (D.D.C. 1993) (ancillary proceeding involving over 100 claimants and \$451 million); *United States v. Porcelli*, CR- 85-00756 (CPS), 1992 U.S. Dist. LEXIS 17928 (E.D.N.Y. Nov. 5, 1992) (litigation over third party claim continuing 6 years after RICO conviction). In such cases, procedures akin to those available under the Federal Rules of Civil Procedure should be available to the court and the parties to aid in the efficient resolution of the claims.

Because an ancillary hearing is connected to a criminal case, it would not be appropriate to make the Civil Rules applicable in all respects. The amendment, however, describes several fundamental areas in which procedures analogous to those in the Civil Rules may be followed. These include the filing of a motion to dismiss a claim, conducting discovery, disposing of a claim on a motion for summary judgment, and appealing a final disposition

of a claim. Where applicable, the amendment follows the prevailing case law on the issue. *See, e.g., United States v. Lavin*, 942 F.2d 177 (3rd Cir. 1991) (ancillary proceeding treated as civil case for purposes of applying Rules of Appellate Procedure); *United States v. BCCI Holdings (Luxembourg) S.A. (In re Petitions of General Creditors)*, 919 F. Supp. 31 (D.D.C. 1996) (“If a third party fails to allege in its petition all elements necessary for recovery, including those relating to standing, the court may dismiss the petition without providing a hearing”); *United States v. BCCI (Holdings) Luxembourg S.A. (In re Petition of Department of Private Affairs)*, 1993 WL 760232 (D.D.C. Dec. 8, 1993) (applying court’s inherent powers to permit third party to obtain discovery from defendant in accordance with civil rules). The provision governing appeals in cases where there are multiple claims is derived from Fed.R. Civ. P. 54(b). *See also United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Banque Indosuez)*, 961 F.Supp. 282 (D.D.C. 1997) (in resolving motion to dismiss court assumes all facts pled by third party petitioner to be true, applying Rule 12(b)(6) and denying government’s motion because whether claimant had superior title turned on factual dispute; government acted reasonably in not making any discovery requests in ancillary proceeding until court ruled on its motion to dismiss).

Subdivision (c)(2) provides for the entry of a final order of forfeiture at the conclusion of the ancillary proceeding. Under this provision, if no one files a claim in the ancillary proceeding, the preliminary order would become the final order of forfeiture, but the court would first have to make an independent finding that at least one of the defendants had an interest in the property such that it was proper to order the forfeiture of the property in a criminal case. In making that determination, the court may rely upon reasonable inferences. For example, the fact that the defendant used the property in committing the crime and no third party claimed an interest in the property may give rise to the inference that the defendant had a forfeitable interest in the property.

This subdivision combines and preserves two established tenets of current law. One is that criminal forfeitures are *in personam* actions that are limited to the property interests of the defendant. (This distinguishes criminal forfeiture, which is imposed as part of the defendant’s sentence, from civil forfeiture which may be pursued as an action against the property *in rem* without regard to who the owner may be.) The other tenet of current law is that if a third party has notice of the forfeiture but fails to file a timely claim, his or her interests are extinguished, and may not be recognized when the court enters the final order of forfeiture. *See United States v. Hentz*, 1996 WL 355327 (E.D. Pa. June 20,

1996) (once third party fails to file a claim in the ancillary proceeding, government has clear title under 21 U.S.C. § 853(n)(7) and can market the property notwithstanding third party’s name on the deed). In the rare event that a third party claims that he or she was not afforded adequate notice of a criminal forfeiture action, the person may file a motion under Rule 60(b) of the Federal Rules of Civil Procedure to reopen the ancillary proceeding. *See United States v. Boulter*, 927 F.Supp. 911 (W.D.N.C. 1996) (Rule 60(b) is the proper means by which a third party may move to reopen an ancillary proceeding).

If no third parties assert their interests in the ancillary proceeding, the court must nonetheless determine that the defendant, or combination of defendants, had an interest in the property. Criminal defendants may be jointly and severally liable for the forfeiture of the entire proceeds of the criminal offense. *See United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995) (government can collect the proceeds only once, but subject to that cap, it can collect from any defendant so much of the proceeds as was foreseeable to that defendant); *United States v. Cleveland*, 1997 WL 602186 (E.D. La. Sept. 29, 1997) (same); *United States v. McCarroll*, 1996 WL 355371 at *9 (N.D. Ill. June 25, 1996) (following *Hurley*), *aff’d sub nom. United States v. Jarrett*, 133 F.3d 519 (7th Cir. 1998); *United States v. DeFries*, 909 F.Supp. 13, 19-20 (D.D.C. 1995) (defendants are jointly and severally liable even where government is able to determine precisely how much each defendant benefitted from the scheme), *rev’d on other grounds*, 129 F.3d 1293 (D.C. Cir. 1997). Therefore, the conviction of any of the defendants is sufficient to support the forfeiture of the entire proceeds of the offense, even if the defendants have divided the money among themselves.

As noted in (c)(4), the ancillary proceeding is not considered a part of sentencing. Thus, the Federal Rules of Evidence would apply to the ancillary proceeding, as is the case currently.

Subdivision (d). Subdivision (d) replaces the forfeiture provisions of Rule 38(e) which provide that the court may stay an order of forfeiture pending appeal. The purpose of the provision is to ensure that the property remains intact and unencumbered so that it may be returned to the defendant in the event the appeal is successful. Subdivision (d) makes clear, however, that a district court is not divested of jurisdiction over an ancillary proceeding even if the defendant appeals his or her conviction. This allows the court to proceed with the resolution of third party claims even as the appellate court considers the appeal. Otherwise, third parties would have to await the conclusion of the appellate process even to *begin* to have their claims heard. *See United States v. Messino*, 907 F. Supp. 1231 (N.D. Ill.

1995) (the district court retains jurisdiction over forfeiture matters while an appeal is pending).

Finally, subdivision (d) provides a rule to govern what happens if the court determines that a third-party claim should be granted but the defendant's appeal is still pending. The defendant is barred from filing a claim in the ancillary proceeding. *See* 18 U.S.C. § 1963(1)(2); 21 U.S.C. § 853(n)(2). Thus, the court's determination, in the ancillary proceeding, that a third party has an interest in the property superior to that of the defendant cannot be binding on the defendant. So, in the event that the court finds in favor of the third party, that determination is final only with respect to the government's alleged interest. If the defendant prevails on appeal, he or she recovers the property as if no conviction or forfeiture ever took place. But if the order of forfeiture is affirmed, the amendment to the order of forfeiture in favor of the third party becomes effective.

Subdivision (e). Subdivision (e) makes clear, as courts have found, that the court retains jurisdiction to amend the order of forfeiture at any time to include subsequently located property which was originally included in the forfeiture order and any substitute property. *See United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995) (court retains authority to order forfeiture of substitute assets after appeal is filed); *United States v. Voigt*, 89 F.3d 1050 (3rd Cir. 1996) (following *Hurley*). Third parties, of course, may contest the forfeiture of substitute assets in the ancillary proceeding. *See United States v. Lester*, 85 F.3d 1409 (9th Cir. 1996).

Subdivision (e)(1) makes clear that the right to a bifurcated jury trial to determine whether the government has established the requisite nexus between the property and the offense, *see* (b)(4), does not apply to the forfeiture of substitute assets or to the addition of newly-discovered property to an existing order of forfeiture. It is well established in the case law that the forfeiture of substitute assets is solely an issue for the court. *See United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995) (court retains authority to order forfeiture of substitute assets after appeal is filed); *United States v. Voigt*, 89 F.3d 1050 (3d Cir. 1996) (following *Hurley*; court may amend order of forfeiture at any time to include substitute assets); *United States v. Thompson*, 837 F. Supp. 585 (S.D.N.Y. 1993) (court, not jury, orders forfeiture of substitute assets). As a practical matter, courts have also determined that they, not the jury, must determine the forfeitability of assets discovered after the trial is over and the jury has been dismissed. *See United States v. Saccoccia*, 898 F. Supp. 53 (D.R.I. 1995) (government may conduct post-trial discovery to determine location and identity of forfeitable assets; post-trial discovery resulted in discovery of gold bars buried in defendant's mother's backyard several years after the entry

of an order directing the defendant to forfeit all property, up to \$137 million, involved in his money laundering offense).

GAP Report—Rule 32.2

The Committee amended the rule to clarify several key points. First, subdivision (b) was redrafted to make it clear that if no third party files a petition to assert property rights, the trial court must determine whether the defendant has an interest in the property to be forfeited and the extent of that interest. As published, the rule would have permitted the trial judge to order the defendant to forfeit the property in its entirety if no third party filed a claim.

Second, Rule 32.2(c)(4) was added to make it clear that the ancillary proceeding is not a part of sentencing.

Third, the Committee clarified the procedures to be used if the government (1) discovers property subject to forfeiture after the court has entered an order of forfeiture and (2) seeks the forfeiture of "substitute" property under a statute authorizing such substitution.

2009 Amendments

Subdivision (a). The amendment responds to some uncertainty regarding the form of the required notice that the government will seek forfeiture as part of the sentence, making it clear that the notice should not be designated as a separate count in an indictment or information. The amendment also makes it clear that the indictment or information need only provide general notice that the government is seeking forfeiture, without identifying the specific property being sought. This is consistent with the 2000 Committee Note, as well as many lower court decisions.

Although forfeitures are not charged as counts, the federal judiciary's Case Management and Electronic Case Files system should note that forfeiture has been alleged so as to assist the parties and the court in tracking the subsequent status of forfeiture allegations.

The court may direct the government to file a bill of particulars to inform the defendant of the identity of the property that the government is seeking to forfeit or the amount of any money judgment sought if necessary to enable the defendant to prepare a defense or to avoid unfair surprise. *See, e.g., United States v. Moffitt, Zwerdling, & Kemler, P.C.*, 83 F.3d 660, 665 (4th Cir. 1996) (holding that the government need not list each asset subject to forfeiture in the indictment because notice can be provided in a bill of particulars); *United States v. Vasquez-Ruiz*, 136 F. Supp. 2d 941, 944 (N.D. Ill. 2001) (directing the government to identify in a bill of particulars, at least 30 days before trial, the specific

items of property, including substitute assets, that it claims are subject to forfeiture); *United States v. Best*, 657 F. Supp. 1179, 1182 (N.D. Ill. 1987) (directing the government to provide a bill of particulars apprising the defendants as to the time periods during which they obtained the specified classes of property through their alleged racketeering activity and the interest in each of these properties that was allegedly obtained unlawfully). See also *United States v. Columbo*, 2006 WL 2012511 * 5 & n.13 (S.D. N.Y. 2006) (denying motion for bill of particulars and noting that government proposed sending letter detailing basis for forfeiture allegations).

Subdivision (b)(1). Rule 32.2(b)(1) sets forth the procedure for determining if property is subject to forfeiture. Subparagraph (A) is carried forward from the current Rule without change.

Subparagraph (B) clarifies that the parties may submit additional evidence relating to the forfeiture in the forfeiture phase of the trial, which may be necessary even if the forfeiture is not contested. Subparagraph (B) makes it clear that in determining what evidence or information should be accepted, the court should consider relevance and reliability. Finally, subparagraph (B) requires the court to hold a hearing when forfeiture is contested. The Committee foresees that in some instances live testimony will be needed to determine the reliability of proffered information. Cf. Rule 32.1(b)(1)(B)(iii) (providing the defendant in a proceeding for revocation of probation or supervised release with the opportunity, upon request, to question any adverse witness unless the judge determines this is not in the interest of justice).

Subdivision (b)(2)(A). Current Rule 32.2(b) provides the procedure for issuing a preliminary forfeiture order once the court finds that the government has established the nexus between the property and the offense (or the amount of the money judgment). The amendment makes clear that the preliminary order may include substitute assets if the government has met the statutory criteria.

Subdivision (b)(2)(B). This new subparagraph focuses on the timing of the preliminary forfeiture order, stating that the court should issue the order “sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final.” Many courts have delayed entry of the preliminary order until the time of sentencing. This is undesirable because the parties have no opportunity to advise the court of omissions or errors in the order before it becomes final as to the defendant (which occurs upon oral announcement of the sentence and the entry of the criminal judgment). Once the sentence has been announced, the rules give the sentencing court only very limited authority to correct errors or omissions in the preliminary forfeiture order. Pursuant

to Rule 35(a), the district court may correct a sentence, including an incorporated forfeiture order, within seven days after oral announcement of the sentence. During the seven-day period, corrections are limited to those necessary to correct “arithmetical, technical, or other clear error.” See *United States v. King*, 368 F. Supp. 2d 509, 512-13 (D.S.C. 2005). Corrections of clerical errors may also be made pursuant to Rule 36. If the order contains errors or omissions that do not fall within Rules 35(a) or 36, and the court delays entry of the preliminary forfeiture order until the time of sentencing, the parties may be left with no alternative to an appeal, which is a waste of judicial resources. The amendment requires the court to enter the preliminary order in advance of sentencing to permit time for corrections, unless it is not practical to do so in an individual case.

Subdivision (b)(2)(C). The amendment explains how the court is to reconcile the requirement that it make the forfeiture order part of the sentence with the fact that in some cases the government will not have completed its post-conviction investigation to locate the forfeitable property by the time of sentencing. In that case the court is authorized to issue a forfeiture order describing the property in “general” terms, which order may be amended pursuant to Rule 32.2(e)(1) when additional specific property is identified.

The authority to issue a general forfeiture order should be used only in unusual circumstances and not as a matter of course. For cases in which a general order was properly employed, see *United States v. BCCI Holdings (Luxembourg)*, 69 F. Supp. 2d 36 (D.D.C. 1999) (ordering forfeiture of all of a large, complex corporation’s assets in the United States, permitting the government to continue discovery necessary to identify and trace those assets); *United States v. Saccoccia*, 898 F. Supp. 53 (D.R.I. 1995) (ordering forfeiture of up to a specified amount of laundered drug proceeds so that the government could continue investigation which led to the discovery and forfeiture of gold bars buried by the defendant in his mother’s back yard).

Subdivisions (b)(3) and (4). The amendment moves the language explaining when the forfeiture order becomes final as to the defendant to new subparagraph (b)(4)(A), where it is coupled with new language explaining that the order is not final as to third parties until the completion of the ancillary proceedings provided for in Rule 32.2(c).

New subparagraphs (B) and (C) are intended to clarify what the district court is required to do at sentencing, and to respond to conflicting decisions in the courts regarding the application of Rule 36 to correct clerical errors. The new subparagraphs add considerable detail regarding the oral announcement of the forfeiture at sentencing,

the reference to the forfeiture order in the judgment and commitment order, the availability of Rule 36 to correct the failure to include the forfeiture order in the judgment and commitment order, and the time to appeal.

New subparagraph (C) clarifies the time for appeals concerning forfeiture by the defendant or government from two kinds of orders: the original judgment of conviction and later orders amending or refusing to amend the judgment under Rule 32. 2(e) to add additional property. This provision does not address appeals by the government or a third party from orders in ancillary proceedings under Rule 32. 2(c).

Subdivision (b)(5)(A). The amendment clarifies the procedure for requesting a jury determination of forfeiture. The goal is to avoid an inadvertent waiver of the right to a jury determination, while also providing timely notice to the court and to the jurors themselves if they will be asked to make the forfeiture determination. The amendment requires that the court determine whether either party requests a jury determination of forfeiture in cases where the government has given notice that it is seeking forfeiture and a jury has been empaneled to determine guilt or innocence. The rule requires the court to make this determination before the jury retires. Jurors who know that they may face an additional task after they return their verdict will be more accepting of the additional responsibility in the forfeiture proceeding, and the court will be better able to plan as well.

Although the rule permits a party to make this request just before the jury retires, it is desirable, when possible, to make the request earlier, at the time when the jury is empaneled. This allows the court to plan, and also allows the court to tell potential jurors what to expect in terms of their service.

Subdivision (b)(5)(B) explains that “the government must submit a proposed Special Verdict Form listing each property subject to forfeiture.” Use of such a form is desirable, and the government is in the best position to draft the form.

Subdivisions (b)(6) and (7). These provisions are based upon the civil forfeiture provisions in Supplemental Rule G of the Federal Rules of Civil Procedure, which are also incorporated by cross reference. The amendment governs such mechanical and technical issues as the manner of publishing notice of forfeiture to third parties and the interlocutory sale of property, bringing practice under the Criminal Rules into conformity with the Civil Rules.

Rule 41. Search and Seizure.

(a) Scope and Definitions.

(1) **Scope.** This rule does not modify any statute regulating search or seizure, or the issuance and execution of a search warrant in special circumstances.

(2) **Definitions.** The following definitions apply under this rule:

(A) “Property” includes documents, books, papers, any other tangible objects, and information.

(B) “Daytime” means the hours between 6:00 a.m. and 10:00 p.m. according to local time.

(C) “Federal law enforcement officer” means a government agent (other than an attorney for the government) who is engaged in enforcing the criminal laws and is within any category of officers authorized by the Attorney General to request a search warrant.

(D) “Domestic terrorism” and “international terrorism” have the meanings set out in 18 U.S.C. § 2331.

(E) “Tracking device” has the meaning set out in 18 U.S.C. § 3117(b).

(b) **Authority to Issue a Warrant.** At the request of a federal law enforcement officer or an attorney for the government:

(1) a magistrate judge with authority in the district — or if none is reasonably available, a judge of a state court of record in the district — has authority to issue a warrant to search for and seize a person or property located within the district;

(2) a magistrate judge with authority in the district has authority to issue a warrant for a person or property outside the district if the person or property is located within the district when the warrant is issued but might move or be moved outside the district before the warrant is executed;

(3) a magistrate judge—in an investigation of domestic terrorism or international terrorism—with authority in any district in which activities related to the terrorism may have occurred has authority to issue a warrant for a person or property within or outside that district;

(4) a magistrate judge with authority in the district has authority to issue a warrant to install within the district a tracking device; the warrant may authorize use of the device to track the movement of a person or property located within the district, outside the district, or both; and

(5) a magistrate judge having authority in any district where activities related to the crime may have occurred, or in the District of Columbia, may issue a warrant for property that is located outside the jurisdiction of any state or district, but within any of the following:

(A) a United States territory, possession, or commonwealth;

(B) the premises—no matter who owns them—of a United States diplomatic or consular mission in a foreign state, including any appurtenant building, part of a building, or land used for the mission’s purposes; or

(C) a residence and any appurtenant land owned or leased by the United States and used by United States personnel assigned to a United States diplomatic or consular mission in a foreign state.

(c) Persons or Property Subject to Search or Seizure. A warrant may be issued for any of the following:

(1) evidence of a crime;

(2) contraband, fruits of crime, or other items illegally possessed;

(3) property designed for use, intended for use, or used in committing a crime; or

(4) a person to be arrested or a person who is unlawfully restrained.

(d) Obtaining a Warrant.

(1) In General. After receiving an affidavit or other information, a magistrate judge—or if authorized by Rule 41(b), a judge of a state court of record—must issue the warrant if there is probable cause to search for and seize a person or property or to install and use a tracking device.

(2) Requesting a Warrant in the Presence of a Judge.

(A) Warrant on an Affidavit. When a federal law enforcement officer or an attorney for the government presents an affidavit in support of a warrant, the judge may require the affiant to appear personally and may examine under oath the affiant and any witness the affiant produces.

(B) Warrant on Sworn Testimony. The judge may wholly or partially dispense with a written affidavit and base a warrant on sworn testimony if doing so is reasonable under the circumstances.

(C) Recording Testimony. Testimony taken in support of a warrant must be recorded by a court reporter or by a suitable recording device, and the judge must file the transcript or recording with the clerk, along with any affidavit.

(3) Requesting a Warrant by Telephonic or Other Reliable Electronic Means. In accordance with Rule 4.1, a magistrate judge may issue a warrant based on information communicated by telephone or other reliable electronic means.

(e) Issuing the Warrant.

(1) In General. The magistrate judge or a judge of a state court of record must issue the warrant to an officer authorized to execute it.

(2) Contents of the Warrant.

(A) Warrant to Search for and Seize a Person or Property. Except for a tracking-device warrant, the warrant must identify the person or property to be searched, identify any person or property to be seized, and designate the magistrate judge to whom it must be returned. The warrant must command the officer to:

(i) execute the warrant within a specified time no longer than 14 days;

(ii) execute the warrant during the daytime, unless the judge for good cause expressly authorizes execution at another time; and

(iii) return the warrant to the magistrate judge designated in the warrant.

(B) Warrant Seeking Electronically Stored Information. A warrant under Rule 41(e)(2)(A) may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing the warrant in Rule 41(e)(2)(A) and (f)(1)(A) refers to the seizure or on-site copying of the media or information, and not to any later off-site copying or review.

(C) Warrant for a Tracking Device. A tracking-device warrant must identify the person or property to be tracked, designate the magistrate judge to whom it must be returned, and specify a reasonable length of time that the device may be used. The time must not exceed 45 days from the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each. The warrant must command the officer to:

(i) complete any installation authorized by the warrant within a specified time no longer than 10 days;

(ii) perform any installation authorized by the warrant during the daytime, unless the judge for good cause expressly authorizes installation at another time; and

(iii) return the warrant to the judge designated in the warrant.

(f) Executing and Returning the Warrant.

(1) Warrant to Search for and Seize a Person or Property.

(A) Noting the Time. The officer executing the warrant must enter on it the exact date and time it was executed.

(B) Inventory. An officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken. If either one is not present, the officer must prepare and verify the inventory in the presence of at least one other credible person. In a case involving the seizure of electronic storage media or the seizure or copying of electronically stored information, the inventory may be limited to describing the physical storage media that were seized or copied. The officer may retain a copy of the electronically stored information that was seized or copied.

(C) Receipt. The officer executing the warrant must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken or leave a copy of the warrant and receipt at the place where the officer took the property.

(D) Return. The officer executing the warrant must promptly return it—together with a copy of the inventory—to the magistrate judge designated on the warrant. The officer may do so by reliable electronic means. The judge must, on request, give a copy of the inventory to the person from whom, or from whose premises, the property was taken and to the applicant for the warrant.

(2) Warrant for a Tracking Device.

(A) Noting the Time. The officer executing a tracking-device warrant must enter on it the exact date and time the device was installed and the period during which it was used.

(B) Return. Within 10 days after the use of the tracking device has ended, the officer executing the warrant must return it to the judge designated in the warrant. The officer may do so by reliable electronic means.

(C) Service. Within 10 days after the use of the tracking device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon request of the government, the judge may delay notice as provided in Rule 41(f)(3).

(3) Delayed Notice. Upon the government's request, a magistrate judge—or if authorized by Rule 41(b), a judge of a state court of record—may delay any notice required by this rule if the delay is authorized by statute.

(g) Motion to Return Property. A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

(h) Motion to Suppress. A defendant may move to suppress evidence in the court where the trial will occur, as Rule 12 provides.

(i) Forwarding Papers to the Clerk. The magistrate judge to whom the warrant is returned must attach to the warrant a copy of the return, of the inventory, and of all other related papers and must deliver them to the clerk in the district where the property was seized.

Amended: eff. Dec. 1, 2011.

SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS

Rule C. In rem actions: special provisions.

(1) When Available. An action in rem may be brought:

(a) To enforce any maritime lien;

(b) Whenever a statute of the United States provides for a maritime action in rem or a proceeding analogous thereto.

Except as otherwise provided by law a party who may proceed in rem may also, or in the alternative, proceed in personam against any person who may be liable.

Statutory provisions exempting vessels or other property owned or possessed by or operated by or for the United States from arrest or seizure are not affected by this rule. When a statute so provides, an action against the United States or an instrumentality thereof may proceed on in rem principles.

(2) Complaint. In an action in rem the complaint must:

(a) be verified;

(b) describe with reasonable particularity the property that is the subject of the action; and

(c) state that the property is within the district or will be within the district while the action is pending.

(3) Judicial Authorization and Process.

(a) Arrest Warrant.

(i) The court must review the complaint and any supporting papers. If the conditions for an in rem action appear to exist, the court must issue an order directing the clerk to issue a warrant for the arrest of the vessel or other property that is the subject of the action.

(ii) If the plaintiff or the plaintiff's attorney certifies that exigent circumstances make court review impracticable, the clerk must promptly issue a summons and a warrant for the arrest of the vessel or other property that is the subject of the action. The plaintiff has the burden in any post-arrest hearing under Rule E(4)(f) to show that exigent circumstances existed.

(b) Service.

(i) If the property that is the subject of the action is a vessel or tangible property on board a vessel, the warrant and any supplemental process must be delivered to the marshal for service.

(ii) If the property that is the subject of the action is other property, tangible or intangible, the warrant and

any supplemental process must be delivered to a person or organization authorized to enforce it, who may be: (A) a marshal; (B) someone under contract with the United States; (C) someone specially appointed by the court for that purpose; or, (D) in an action brought by the United States, any officer or employee of the United States.

(c) Deposit in Court. If the property that is the subject of the action consists in whole or in part of freight, the proceeds of property sold, or other intangible property, the clerk must issue—in addition to the warrant—a summons directing any person controlling the property to show cause why it should not be deposited in court to abide the judgment.

(d) Supplemental Process. The clerk may upon application issue supplemental process to enforce the court's order without further court order.

(4) Notice. No notice other than execution of process is required when the property that is the subject of the action has been released under Rule E(5). If the property is not released within 14 days after execution, the plaintiff must promptly—or within the time that the court allows—give public notice of the action and arrest in a newspaper designated by court order and having general circulation in the district, but publication may be terminated if the property is released before publication is completed. The notice must specify the time under Rule C(6) to file a statement of interest in or right against the seized property and to answer. This rule does not affect the notice requirements in an action to foreclose a preferred ship mortgage under 46 U.S.C. §§ 31301 et seq., as amended.

(5) Ancillary Process. In any action in rem in which process has been served as provided by this rule, if any part of the property that is the subject of the action has not been brought within the control of the court because it has been removed or sold, or because it is intangible property in the hands of a person who has not been served with process, the court may, on motion, order any person having possession or control of such property or its proceeds to show cause why it should not be delivered into the custody of the marshal or other person or organization having a warrant for the arrest of the property, or paid into court to abide the judgment; and, after hearing, the court may enter such judgment as law and justice may require.

(6) Responsive Pleading; Interrogatories.

(a) Statement of Interest; Answer. In an action in rem:

(i) a person who asserts a right of possession or any ownership interest in the property that is the subject of the action must file a verified statement of right or interest:

(A) within 14 days after the execution of process, or

(B) within the time that the court allows;

(ii) the statement of right or interest must describe the interest in the property that supports the person's demand for its restitution or right to defend the action;

(iii) an agent, bailee, or attorney must state the authority to file a statement of right or interest on behalf of another; and

(iv) a person who asserts a right of possession or any ownership interest must serve an answer within 21 days after filing the statement of interest or right.

(b) Interrogatories. Interrogatories may be served with the complaint in an in rem action without leave of court. Answers to the interrogatories must be served with the answer to the complaint.

Amended: eff. Dec. 1, 2009.

Rule E. Actions in rem and quasi in rem: general provisions.

(1) Applicability. Except as otherwise provided, this rule applies to actions in personam with process of maritime attachment and garnishment, actions in rem, and petitory, possessory, and partition actions, supplementing Rules B, C, and D.

(2) Complaint; Security.

(a) Complaint. In actions to which this rule is applicable the complaint shall state the circumstances from which the claim arises with such particularity that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading.

(b) Security for Costs. Subject to the provisions of Rule 54(d) and of relevant statutes, the court may, on the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, require the plaintiff, defendant, claimant, or other party to give security, or additional security, in such sum as the court shall direct to pay all costs and expenses that shall be awarded against the party by any interlocutory order or by the final judgment, or on appeal by any appellate court.

(3) Process.

(a) In admiralty and maritime proceedings process in rem or of maritime attachment and garnishment may be served only within the district.

(b) Issuance and Delivery. Issuance and delivery of process in rem, or of maritime attachment and garnishment, shall be held in abeyance if the plaintiff so requests.

(4) Execution of Process; Marshal's Return; Custody of Property; Procedures for Release.

(a) *In General.* Upon issuance and delivery of the process, or, in the case of summons with process of attachment and garnishment, when it appears that the defendant cannot be found within the district, the marshal or other person or organization having a warrant shall forthwith execute the process in accordance with this subdivision (4), making due and prompt return.

(b) *Tangible Property.* If tangible property is to be attached or arrested, the marshal or other person or organization having the warrant shall take it into the marshal's possession for safe custody. If the character or situation of the property is such that the taking of actual possession is impracticable, the marshal or other person executing the process shall affix a copy thereof to the property in a conspicuous place and leave a copy of the complaint and process with the person having possession or the person's agent. In furtherance of the marshal's custody of any vessel the marshal is authorized to make a written request to the collector of customs not to grant clearance to such vessel until notified by the marshal or deputy marshal or by the clerk that the vessel has been released in accordance with these rules.

(c) *Intangible Property.* If intangible property is to be attached or arrested the marshal or other person or organization having the warrant shall execute the process by leaving with the garnishee or other obligor a copy of the complaint and process requiring the garnishee or other obligor to answer as provided in Rules B(3)(a) and C(6); or the marshal may accept for payment into the registry of the court the amount owed to the extent of the amount claimed by the plaintiff with interest and costs, in which event the garnishee or other obligor shall not be required to answer unless alias process shall be served.

(d) *Directions. With Respect to Property in Custody.* The marshal or other person or organization having the warrant may at any time apply to the court for directions with respect to property that has been attached or arrested, and shall give notice of such application to any or all of the parties as the court may direct.

(e) *Expenses of Seizing and Keeping Property; Deposit.* These rules do not alter the provisions of Title 28, U.S.C., § 1921, as amended, relative to the expenses of seizing and keeping property attached or arrested and to the requirement of deposits to cover such expenses.

(f) *Procedure for Release From Arrest or Attachment.* Whenever property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules. This subdivision shall have no application to suits for seamen's wages when process is issued upon a certification of sufficient cause filed pursuant to Title 46, U.S.C. §§ 603 and 604 or to actions by the United States for forfeitures for violation of any statute of the United States.

(5) Release of Property.

(a) *Special Bond.* Whenever process of maritime attachment and garnishment or process in rem is issued the execution of such process shall be stayed, or the property released, on the giving of security, to be approved by the court or clerk, or by stipulation of the parties, conditioned to answer the judgment of the court or of any appellate court. The parties may stipulate the amount and nature of such security. In the event of the inability or refusal of the parties so to stipulate the court shall fix the principal sum of the bond or stipulation at an amount sufficient to cover the amount of the plaintiff's claim fairly stated with accrued interest and costs; but the principal sum shall in no event exceed (i) twice the amount of the plaintiff's claim or (ii) the value of the property on due appraisal, whichever is smaller. The bond or stipulation shall be conditioned for the payment of the principal sum and interest thereon at 6 per cent per annum.

(b) *General Bond.* The owner of any vessel may file a general bond or stipulation, with sufficient surety, to be approved by the court, conditioned to answer the judgment of such court in all or any actions that may be brought thereafter in such court in which the vessel is attached or arrested. Thereupon the execution of all such process against such vessel shall be stayed so long as the amount secured by such bond or stipulation is at least double the aggregate amount claimed by plaintiffs in all actions begun and pending in which such vessel has been attached or arrested. Judgments and remedies may be had on such bond or stipulation as if a special bond or stipulation had been filed in each of such actions. The district court may make necessary orders to carry this rule into effect, particularly as to the giving of proper notice of any action against or attachment of a vessel for which a general bond has been filed. Such bond or stipulation shall be indorsed by the clerk with a minute of the actions wherein process is so stayed. Further security may be required by the court at any time.

If a special bond or stipulation is given in a particular case, the liability on the general bond or stipulation shall cease as to that case.

(c) *Release by Consent or Stipulation; Order of Court or Clerk; Costs.* Any vessel, cargo, or other property in the custody of the marshal or other person or organization having the warrant may be released forthwith upon the marshal's acceptance and approval of a stipulation, bond, or other security, signed by the party on whose behalf the property is detained or the party's attorney and expressly authorizing such release, if all costs and charges of the court and its officers shall have first been paid. Otherwise no property in the custody of the marshal, other person or organization having the warrant, or other officer of the court shall be released without an order of the court; but such order may be entered as of course by the clerk, upon the giving of approved security as provided by law and these rules, or upon the dismissal or discontinuance

of the action; but the marshal or other person or organization having the warrant shall not deliver any property so released until the costs and charges of the officers of the court shall first have been paid.

(d) *Possessory, Petitory, and Partition Actions.* The foregoing provisions of this subdivision (5) do not apply to petitory, possessory, and partition actions. In such cases the property arrested shall be released only by order of the court, on such terms and conditions and on the giving of such security as the court may require.

(6) *Reduction or Impairment of Security.* Whenever security is taken the court may, on motion and hearing, for good cause shown, reduce the amount of security given; and if the surety shall be or become insufficient, new or additional sureties may be required on motion and hearing.

(7) Security on Counterclaim.

(a) When a person who has given security for damages in the original action asserts a counterclaim that arises from the transaction or occurrence that is the subject of the original action, a plaintiff for whose benefit the security has been given must give security for damages demanded in the counterclaim unless the court for cause shown, directs otherwise. Proceedings on the original claim must be stayed until this security is given unless the court directs otherwise.

(b) The plaintiff is required to give security under Rule E(7)(a) when the United States or its corporate instrumentality counterclaims and would have been required to give security to respond in damages if a private party but is relieved by law from giving security.

(8) *Restricted Appearance.* An appearance to defend against an admiralty and maritime claim with respect to which there has issued process in rem, or process of attachment and garnishment, may be expressly restricted to the defense of such claim, and in that event is not an appearance for the purposes of any other claim with respect to which such process is not available or has not been served.

(9) Disposition of Property; Sales.

(a) Interlocutory Sales; Delivery.

(i) On application of a party, the marshal, or other person having custody of the property, the court may order all or part of the property sold—with the sales proceeds, or as much of them as will satisfy the judgment, paid into court to await further orders of the court—if:

(A) the attached or arrested property is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action;

(B) the expense of keeping the property is excessive or disproportionate; or

(C) there is an unreasonable delay in securing release of the property.

(ii) In the circumstances described in Rule E(9)(a)(i), the court, on motion by a defendant or a person filing a statement of interest or right under Rule C(6), may order that the property, rather than being sold, be delivered to the movant upon giving security under these rules.

(b) Sales; Proceeds. All sales of property shall be made by the marshal or a deputy marshal, or by other person or organization having the warrant, or by any other person assigned by the court where the marshal or other person or organization having the warrant is a party in interest; and the proceeds of sale shall be forthwith paid into the registry of the court to be disposed of according to law.

(10) Preservation of Property. When the owner or another person remains in possession of property attached or arrested under the provisions of Rule E(4)(b) that permit execution of process without taking actual possession, the court, on a party's motion or on its own, may enter any order necessary to preserve the property and to prevent its removal.

Amended: eff. Dec. 1, 2006.

Rule G. Forfeiture actions in rem.

(1) Scope. This rule governs a forfeiture action in rem arising from a federal statute. To the extent that this rule does not address an issue, Supplemental Rules C and E and the Federal Rules of Civil Procedure also apply.

(2) Complaint. The complaint must:

(a) be verified;

(b) state the grounds for subject-matter jurisdiction, in rem jurisdiction over the defendant property, and venue;

(c) describe the property with reasonable particularity;

(d) if the property is tangible, state its location when any seizure occurred and—if different—its location when the action is filed;

(e) identify the statute under which the forfeiture action is brought; and

(f) state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial.

(3) Judicial Authorization and Process.

(a) Real Property. If the defendant is real property, the government must proceed under 18 U.S.C. § 985.

(b) Other Property; Arrest Warrant. If the defendant is not real property:

(i) the clerk must issue a warrant to arrest the property if it is in the government's possession, custody, or control;

(ii) the court—on finding probable cause—must issue a warrant to arrest the property if it is not in the government's possession, custody, or control and is not subject to a judicial restraining order; and

(iii) a warrant is not necessary if the property is subject to a judicial restraining order.

(c) Execution of Process.

(i) The warrant and any supplemental process must be delivered to a person or organization authorized to execute it, who may be: (A) a marshal or any other United States officer or employee; (B) someone under contract with the United States; or (C) someone specially appointed by the court for that purpose.

(ii) The authorized person or organization must execute the warrant and any supplemental process on property in the United States as soon as practicable unless:

(A) the property is in the government's possession, custody, or control; or

(B) the court orders a different time when the complaint is under seal, the action is stayed before the warrant and supplemental process are executed, or the court finds other good cause.

(iii) The warrant and any supplemental process may be executed within the district or, when authorized by statute, outside the district.

(iv) If executing a warrant on property outside the United States is required, the warrant may be transmitted to an appropriate authority for serving process where the property is located.

(4) Notice.

(a) Notice by Publication.

(i) When Publication Is Required. A judgment of forfeiture may be entered only if the government has published notice of the action within a reasonable time after filing the complaint or at a time the court orders. But notice need not be published if:

(A) the defendant property is worth less than \$1,000 and direct notice is sent under Rule G(4)(b) to every person the government can reasonably identify as a potential claimant; or

(B) the court finds that the cost of publication exceeds the property's value and that other means of notice would satisfy due process.

(ii) Content of the Notice. Unless the court orders otherwise, the notice must:

(A) describe the property with reasonable particularity;

(B) state the times under Rule G(5) to file a claim and to answer; and

(C) name the government attorney to be served with the claim and answer.

(iii) Frequency of Publication. Published notice must appear:

(A) once a week for three consecutive weeks; or

(B) only once if, before the action was filed, notice of nonjudicial forfeiture of the same property was published on an official internet government forfeiture site for at least 30 consecutive days, or in a newspaper of general circulation for three consecutive weeks in a district where publication is authorized under Rule G(4)(a)(iv).

(iv) Means of Publication. The government should select from the following options a means of publication reasonably calculated to notify potential claimants of the action:

(A) if the property is in the United States, publication in a newspaper generally circulated in the district where the action is filed, where the property was seized, or where property that was not seized is located;

(B) if the property is outside the United States, publication in a newspaper generally circulated in a district where the action is filed, in a newspaper generally circulated in the country where the property is located, or in legal notices published and generally circulated in the country where the property is located; or

(C) instead of (A) or (B), posting a notice on an official internet government forfeiture site for at least 30 consecutive days.

(b) Notice to Known Potential Claimants.

(i) Direct Notice Required. The government must send notice of the action and a copy of the complaint to any person who reasonably appears to be a potential claimant on the facts known to the government before the end of the time for filing a claim under Rule G(5)(a)(ii)(B).

(ii) Content of the Notice. The notice must state:

(A) the date when the notice is sent;

(B) a deadline for filing a claim, at least 35 days after the notice is sent;

(C) that an answer or a motion under Rule 12 must be filed no later than 21 days after filing the claim; and

(D) the name of the government attorney to be served with the claim and answer.

(iii) Sending Notice.

(A) The notice must be sent by means reasonably calculated to reach the potential claimant.

(B) Notice may be sent to the potential claimant or to the attorney representing the potential claimant with respect to the seizure of the property or in a related investigation, administrative forfeiture proceeding, or criminal case.

(C) Notice sent to a potential claimant who is incarcerated must be sent to the place of incarceration.

(D) Notice to a person arrested in connection with an offense giving rise to the forfeiture who is not incarcerated when notice is sent may be sent to the address that person last gave to the agency that arrested or released the person.

(E) Notice to a person from whom the property was seized who is not incarcerated when notice is sent may be sent to the last address that person gave to the agency that seized the property.

(iv) When Notice Is Sent. Notice by the following means is sent on the date when it is placed in the mail, delivered to a commercial carrier, or sent by electronic mail.

(v) Actual Notice. A potential claimant who had actual notice of a forfeiture action may not oppose or seek relief from forfeiture because of the government's failure to send the required notice.

(5) Responsive Pleadings.

(a) Filing a Claim.

(i) A person who asserts an interest in the defendant property may contest the forfeiture by filing a claim in the court where the action is pending. The claim must:

(A) identify the specific property claimed;

(B) identify the claimant and state the claimant's interest in the property;

(C) be signed by the claimant under penalty of perjury; and

(D) be served on the government attorney designated under Rule G(4)(a)(ii)(C) or (b)(ii)(D).

(ii) Unless the court for good cause sets a different time, the claim must be filed:

(A) by the time stated in a direct notice sent under Rule G(4)(b);

(B) if notice was published but direct notice was not sent to the claimant or the claimant's attorney, no later than 30 days after final publication of newspaper notice or legal notice under Rule G(4)(a) or no later than 60 days after the first day of publication on an official internet government forfeiture site; or

(C) if notice was not published and direct notice was not sent to the claimant or the claimant's attorney:

(1) if the property was in the government's possession, custody, or control when the complaint was filed, no later than 60 days after the filing, not counting any time when the complaint was under seal or when the action was stayed before execution of a warrant issued under Rule G(3)(b); or

(2) if the property was not in the government's possession, custody, or control when the complaint was filed, no later than 60 days after the government complied with 18 U.S.C. § 985(c) as to real property, or 60 days after process was executed on the property under Rule G(3).

(iii) A claim filed by a person asserting an interest as a bailee must identify the bailor, and if filed on the bailor's behalf must state the authority to do so.

(b) Answer. A claimant must serve and file an answer to the complaint or a motion under Rule 12 within 21 days after filing the claim. A claimant waives an objection to in rem jurisdiction or to venue if the objection is not made by motion or stated in the answer.

(6) Special Interrogatories.

(a) Time and Scope. The government may serve special interrogatories limited to the claimant's identity and relationship to the defendant property without the court's leave at any time after the claim is filed and before discovery is closed. But if the claimant serves a motion to dismiss the action, the government must serve the interrogatories within 21 days after the motion is served.

(b) Answers or Objections. Answers or objections to these interrogatories must be served within 21 days after the interrogatories are served.

(c) Government's Response Deferred. The government need not respond to a claimant's motion to dismiss the action under Rule G(8)(b) until 21 days after the claimant has answered these interrogatories.

(7) Preserving, Preventing Criminal Use, and Disposing of Property; Sales.

(a) Preserving and Preventing Criminal Use of Property. When the government does not have actual possession of the defendant property the court, on motion or on its own, may enter any order necessary to preserve the property, to prevent its removal or encumbrance, or to prevent its use in a criminal offense.

(b) Interlocutory Sale or Delivery.

(i) Order to Sell. On motion by a party or a person having custody of the property, the court may order all or part of the property sold if:

(A) the property is perishable or at risk of deterioration, decay, or injury by being detained in custody pending the action;

(B) the expense of keeping the property is excessive or is disproportionate to its fair market value;

(C) the property is subject to a mortgage or to taxes on which the owner is in default; or

(D) the court finds other good cause.

(ii) Who Makes the Sale. A sale must be made by a United States agency that has authority to sell the property, by the agency's contractor, or by any person the court designates.

(iii) Sale Procedures. The sale is governed by 28 U.S.C. §§ 2001, 2002, and 2004, unless all parties, with the court's approval, agree to the sale, aspects of the sale, or different procedures.

(iv) Sale Proceeds. Sale proceeds are a substitute res subject to forfeiture in place of the property that was sold. The proceeds must be held in an interest-bearing account maintained by the United States pending the conclusion of the forfeiture action.

(v) Delivery on a Claimant's Motion. The court may order that the property be delivered to the claimant pending the conclusion of the action if the claimant shows circumstances that would permit sale under Rule G(7)(b)(i) and gives security under these rules.

(c) Disposing of Forfeited Property. Upon entry of a forfeiture judgment, the property or proceeds from selling the property must be disposed of as provided by law.

(8) Motions.

(a) Motion To Suppress Use of the Property as Evidence. If the defendant property was seized, a party with standing to contest the lawfulness of the seizure may move to suppress use of the property as evidence. Suppression does not affect forfeiture of the property based on independently derived evidence.

(b) Motion To Dismiss the Action.

(i) A claimant who establishes standing to contest forfeiture may move to dismiss the action under Rule 12(b).

(ii) In an action governed by 18 U.S.C. § 983(a)(3)(D) the complaint may not be dismissed on the ground that the government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property. The sufficiency of the complaint is governed by Rule G(2).

(c) Motion To Strike a Claim or Answer.

(i) At any time before trial, the government may move to strike a claim or answer:

(A) for failing to comply with Rule G(5) or (6), or

(B) because the claimant lacks standing.

(ii) The motion:

(A) must be decided before any motion by the claimant to dismiss the action; and

(B) may be presented as a motion for judgment on the pleadings or as a motion to determine after a hearing or by summary judgment whether the claimant can carry the burden of establishing standing by a preponderance of the evidence.

(d) Petition To Release Property.

(i) If a United States agency or an agency's contractor holds property for judicial or nonjudicial forfeiture under a statute governed by 18 U.S.C. § 983(f), a person who has filed a claim to the property may petition for its release under § 983(f).

(ii) If a petition for release is filed before a judicial forfeiture action is filed against the property, the petition may be filed either in the district where the property was seized or in the district where a warrant to seize the property issued. If a judicial forfeiture action against the property is later filed in another district—or if the government shows that the action will be filed in another district—the petition may be transferred to that district under 28 U.S.C. § 1404.

(e) Excessive Fines. A claimant may seek to mitigate a forfeiture under the Excessive Fines Clause of the Eighth Amendment by motion for summary judgment or by motion made after entry of a forfeiture judgment if:

(i) the claimant has pleaded the defense under Rule 8; and

(ii) the parties have had the opportunity to conduct civil discovery on the defense.

(9) Trial. Trial is to the court unless any party demands trial by jury under Rule 38.

Amended: eff. Dec. 1, 2009.

Rule G. Advisory Committee Notes.

2006 Adoption

Rule G is added to bring together the central procedures that govern civil forfeiture actions. Civil forfeiture actions are in rem proceedings, as are many admiralty proceedings. As the number of civil forfeiture actions has increased, however, reasons have appeared to create sharper distinctions within the framework of the Supplemental Rules. Civil forfeiture practice will benefit from distinctive provisions that express and focus developments in statutory, constitutional, and decisional law. Admiralty practice will be freed from the pressures that arise when the needs of civil forfeiture proceedings counsel interpretations of common rules that may not be suitable for admiralty proceedings.

Rule G generally applies to actions governed by the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) and also to actions excluded from it. The rule refers to some specific CAFRA provisions; if these statutes are amended, the rule should be adapted to the new provisions during the period required to amend the rule.

Rule G is not completely self-contained. Subdivision (1) recognizes the need to rely at times on other Supplemental Rules and the place of the Supplemental Rules within the basic framework of the Civil Rules.

Supplemental Rules A, C, and E are amended to reflect the adoption of Rule G.

Subdivision (1). Rule G is designed to include the distinctive procedures that govern a civil forfeiture action. Some details, however, are better supplied by relying on Rules C and E. Subdivision (1) incorporates those rules for issues not addressed by Rule G. This general incorporation is at times made explicit — subdivision (7)(b)(v), for example, invokes the security provisions of Rule E. But Rules C and E are not to be invoked to create conflicts with Rule G. They are to be used only when Rule G, fairly construed, does not address the issue.

The Civil Rules continue to provide the procedural framework within which Rule G and the other Supplemental Rules operate. Both Rule G(1) and Rule A state this basic proposition. Rule G, for example, does not address pleadings amendments. Civil Rule 15 applies, in light of the circumstances of a forfeiture action.

Subdivision (2). Rule E(2)(a) requires that the complaint in an admiralty action “state the circumstances from which the claim arises with such particularity that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading.” Application of this standard to civil forfeiture actions has evolved to the standard stated in subdivision (2)(f). The complaint must state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial. *See U. S. v. Mondragon*, 313 F.3d 862 (4th Cir. 2002). Subdivision (2)(f) carries this forfeiture case law forward without change.

Subdivision (3). Subdivision (3) governs in rem process in a civil forfeiture action.

Paragraph (a). Paragraph (a) reflects the provisions of 18 U.S.C. § 985.

Paragraph (b). Paragraph (b) addresses arrest warrants when the defendant is not real property. Subparagraph (i) directs the clerk to issue a warrant if the property is in the government’s possession, custody, or control. If the property is not in the government’s possession, custody, or control and is not subject to a restraining order, subparagraph (ii) provides that a warrant issues only if the court finds probable cause to arrest the property. This provision departs from former Rule C(3)(a)(i), which authorized issuance of summons and warrant by the clerk without a probable-cause finding. The probable-cause finding better protects the interests of persons interested in the property. Subparagraph (iii) recognizes that a warrant is not necessary if the property is subject to a judicial restraining order. The government remains free, however, to seek a warrant if it anticipates that the restraining order may be modified or vacated.

Paragraph (c). Subparagraph (ii) requires that the warrant and any supplemental process be served as soon as practicable unless the property is already in the government’s possession, custody, or control. But it authorizes the court to order a different time. The authority to order a different time recognizes that the government may have secured orders sealing the complaint in a civil forfeiture action or have won a stay after filing. The seal or stay may be ordered for reasons, such as protection of an ongoing criminal investigation, that would be defeated by prompt service of the warrant. Subparagraph (ii) does not reflect any independent ground for ordering a seal or stay, but merely reflects the consequences for execution when sealing or a stay is ordered. A court also may order a different time for service if good cause is shown for reasons unrelated to a seal or stay. Subparagraph (iv) reflects the uncertainty surrounding service of an arrest

warrant on property not in the United States. It is not possible to identify in the rule the appropriate authority for serving process in all other countries. Transmission of the warrant to an appropriate authority, moreover, does not ensure that the warrant will be executed. The rule requires only that the warrant be transmitted to an appropriate authority.

Subdivision (4). Paragraph (a). Paragraph (a) reflects the traditional practice of publishing notice of an in rem action.

Subparagraph (i) recognizes two exceptions to the general publication requirement. Publication is not required if the defendant property is worth less than \$1,000 and direct notice is sent to all reasonably identifiable potential claimants as required by subdivision (4)(b). Publication also is not required if the cost would exceed the property’s value and the court finds that other means of notice would satisfy due process. Publication on a government-established internet forfeiture site, as contemplated by subparagraph (iv), would be at a low marginal publication cost, which would likely be the cost to compare to the property value.

Subparagraph (iv) states the basic criterion for selecting the means and method of publication. The purpose is to adopt a means reasonably calculated to reach potential claimants. The government should choose from among these means a method that is reasonably likely to reach potential claimants at a cost reasonable in the circumstances.

If the property is in the United States and newspaper notice is chosen, publication may be where the action is filed, where the property was seized, or — if the property was not seized — where the property is located. Choice among these places is influenced by the probable location of potential claimants.

If the property is not in the United States, account must be taken of the sensitivities that surround publication of legal notices in other countries. A foreign country may forbid local publication. If potential claimants are likely to be in the United States, publication in the district where the action is filed may be the best choice. If potential claimants are likely to be located abroad, the better choice may be publication by means generally circulated in the country where the property is located.

Newspaper publication is not a particularly effective means of notice for most potential claimants. Its traditional use is best defended by want of affordable alternatives. Paragraph (iv)(C) contemplates a government-created internet forfeiture site that would provide a single easily identified means of notice. Such a site could allow much

more direct access to notice as to any specific property than publication provides.

Paragraph (b). Paragraph (b) is entirely new. For the first time, Rule G expressly recognizes the due process obligation to send notice to any person who reasonably appears to be a potential claimant.

Subparagraph (i) states the obligation to send notice. Many potential claimants will be known to the government because they have filed claims during the administrative forfeiture stage. Notice must be sent, however, no matter what source of information makes it reasonably appear that a person is a potential claimant. The duty to send notice terminates when the time for filing a claim expires.

Notice of the action does not require formal service of summons in the manner required by Rule 4 to initiate a personal action. The process that begins an in rem forfeiture action is addressed by subdivision (3). This process commonly gives notice to potential claimants. Publication of notice is required in addition to this process. Due process requirements have moved beyond these traditional means of notice, but are satisfied by practical means that are reasonably calculated to accomplish actual notice.

Subparagraph (ii)(B) directs that the notice state a deadline for filing a claim that is at least 35 days after the notice is sent. This provision applies both in actions that fall within 18 U.S.C. § 983(a)(4)(A) and in other actions. Section 983(a)(4)(A) states that a claim should be filed no later than 30 days after service of the complaint. The variation introduced by subparagraph (ii)(B) reflects the procedure of § 983(a)(2)(B) for nonjudicial forfeiture proceedings. The nonjudicial procedure requires that a claim be filed “not later than the deadline set forth in a personal notice letter (which may be not earlier than 35 days after the date the letter is sent) * * *.” This procedure is as suitable in a civil forfeiture action as in a nonjudicial forfeiture proceeding. Thirty-five days after notice is sent ordinarily will extend the claim time by no more than a brief period; a claimant anxious to expedite proceedings can file the claim before the deadline; and the government has flexibility to set a still longer period when circumstances make that desirable.

Subparagraph (iii) begins by stating the basic requirement that notice must be sent by means reasonably calculated to reach the potential claimant. No attempt is made to list the various means that may be reasonable in different circumstances. It may be reasonable, for example, to rely on means that have already been established for communication with a particular potential claimant. The government’s interest in choosing a means likely

to accomplish actual notice is bolstered by its desire to avoid post-forfeiture challenges based on arguments that a different method would have been more likely to accomplish actual notice. Flexible rule language accommodates the rapid evolution of communications technology.

Notice may be directed to a potential claimant through counsel, but only to counsel already representing the claimant with respect to the seizure of the property, or in a related investigation, administrative forfeiture proceeding, or criminal case.

Subparagraph (iii)(C) reflects the basic proposition that notice to a potential claimant who is incarcerated must be sent to the place of incarceration. Notice directed to some other place, such as a pre-incarceration residence, is less likely to reach the potential claimant. This provision does not address due process questions that may arise if a particular prison has deficient procedures for delivering notice to prisoners. *See Dusenbery v. U.S.*, 534 U.S. 161 (2002).

Items (D) and (E) of subparagraph (iii) authorize the government to rely on an address given by a person who is not incarcerated. The address may have been given to the agency that arrested or released the person, or to the agency that seized the property. The government is not obliged to undertake an independent investigation to verify the address.

Subparagraph (iv) identifies the date on which notice is considered to be sent for some common means, without addressing the circumstances for choosing among the identified means or other means. The date of sending should be determined by analogy for means not listed. Facsimile transmission, for example, is sent upon transmission. Notice by personal delivery is sent on delivery.

Subparagraph (v), finally, reflects the purpose to effect actual notice by providing that a potential claimant who had actual notice of a forfeiture proceeding cannot oppose or seek relief from forfeiture because the government failed to comply with subdivision (4)(b).

Subdivision (5). Paragraph (a). Paragraph (a) establishes that the first step of contesting a civil forfeiture action is to file a claim. A claim is required by 18 U.S.C. § 983(a)(4)(A) for actions covered by § 983. Paragraph (a) applies this procedure as well to actions not covered by § 983. “Claim” is used to describe this first pleading because of the statutory references to claim and claimant. It functions in the same way as the statement of interest prescribed for an admiralty proceeding by Rule C(6),

and is not related to the distinctive meaning of “claim” in admiralty practice.

If the claimant states its interest in the property to be as bailee, the bailor must be identified. A bailee who files a claim on behalf of a bailor must state the bailee’s authority to do so.

The claim must be signed under penalty of perjury by the person making it. An artificial body that can act only through an agent may authorize an agent to sign for it. Excusable inability of counsel to obtain an appropriate signature may be grounds for an extension of time to file the claim.

Paragraph (a)(ii) sets the time for filing a claim. Item (C) applies in the relatively rare circumstance in which notice is not published and the government did not send direct notice to the claimant because it did not know of the claimant or did not have an address for the claimant.

Paragraph (b). Under 18 U.S.C. § 983(a)(4)(B), which governs many forfeiture proceedings, a person who asserts an interest by filing a claim “shall file an answer to the Government’s complaint for forfeiture not later than 20 days after the date of the filing of the claim.” Paragraph (b) recognizes that this statute works within the general procedures established by Civil Rule 12. Rule 12(a)(4) suspends the time to answer when a Rule 12 motion is served within the time allowed to answer. Continued application of this rule to proceedings governed by § 983(a)(4)(B) serves all of the purposes advanced by Rule 12(a)(4), *see U. S. v. \$8,221,877.16*, 330 F.3d 141 (3d Cir. 2003); permits a uniform procedure for all civil forfeiture actions; and recognizes that a motion under Rule 12 can be made only after a claim is filed that provides background for the motion.

Failure to present an objection to in rem jurisdiction or to venue by timely motion or answer waives the objection. Waiver of such objections is familiar. An answer may be amended to assert an objection initially omitted. But Civil Rule 15 should be applied to an amendment that for the first time raises an objection to in rem jurisdiction by analogy to the personal jurisdiction objection provision in Civil Rule 12(h)(1)(B). The amendment should be permitted only if it is permitted as a matter of course under Rule 15(a).

A claimant’s motion to dismiss the action is further governed by subdivisions (6)(c), (8)(b), and (8)(c).

Subdivision (6). Subdivision (6) illustrates the adaptation of an admiralty procedure to the different needs of civil forfeiture. Rule C(6) permits interrogatories to be served with the complaint in an in rem action without limiting the subjects of inquiry. Civil forfeiture practice does

not require such an extensive departure from ordinary civil practice. It remains useful, however, to permit the government to file limited interrogatories at any time after a claim is filed to gather information that bears on the claimant’s standing. Subdivisions (8)(b) and (c) allow a claimant to move to dismiss only if the claimant has standing, and recognize the government’s right to move to dismiss a claim for lack of standing. Subdivision (6) interrogatories are integrated with these provisions in that the interrogatories are limited to the claimant’s identity and relationship to the defendant property. If the claimant asserts a relationship to the property as bailee, the interrogatories can inquire into the bailor’s interest in the property and the bailee’s relationship to the bailor. The claimant can accelerate the time to serve subdivision (6) interrogatories by serving a motion to dismiss — the interrogatories must be served within 20 days after the motion is served. Integration is further accomplished by deferring the government’s obligation to respond to a motion to dismiss until 20 days after the claimant moving to dismiss has answered the interrogatories.

Special interrogatories served under Rule G(6) do not count against the presumptive 25-interrogatory limit established by Rule 33(a). Rule 33 procedure otherwise applies to these interrogatories.

Subdivision (6) supersedes the discovery “moratorium” of Rule 26(d) and the broader interrogatories permitted for admiralty proceedings by Rule C(6).

Subdivision (7). Paragraph (a). Paragraph (a) is adapted from Rule E(9)(b). It provides for preservation orders when the government does not have actual possession of the defendant property. It also goes beyond Rule E(9) by recognizing the need to prevent use of the defendant property in ongoing criminal offenses.

Paragraph (b). Paragraph (b)(i)(C) recognizes the authority, already exercised in some cases, to order sale of property subject to a defaulted mortgage or to defaulted taxes. The authority is narrowly confined to mortgages and tax liens; other lien interests may be addressed, if at all, only through the general good-cause provision. The court must carefully weigh the competing interests in each case.

Paragraph (b)(i)(D) establishes authority to order sale for good cause. Good cause may be shown when the property is subject to diminution in value. Care should be taken before ordering sale to avoid diminished value.

Paragraph (b)(iii) recognizes that if the court approves, the interests of all parties may be served by their agreement to sale, aspects of the sale, or sale procedures that depart from governing statutory procedures.

Paragraph (c) draws from Rule E(9)(a), (b), and (c). Disposition of the proceeds as provided by law may require resolution of disputed issues. A mortgagee's claim to the property or sale proceeds, for example, may be disputed on the ground that the mortgage is not genuine. An undisputed lien claim, on the other hand, may be recognized by payment after an interlocutory sale.

Subdivision (8). Subdivision (8) addresses a number of issues that are unique to civil forfeiture actions.

Paragraph (a). Standing to suppress use of seized property as evidence is governed by principles distinct from the principles that govern claim standing. A claimant with standing to contest forfeiture may not have standing to seek suppression. Rule G does not of itself create a basis of suppression standing that does not otherwise exist.

Paragraph (b). Paragraph (b)(i) is one element of the system that integrates the procedures for determining a claimant's standing to claim and for deciding a claimant's motion to dismiss the action. Under paragraph (c)(ii), a motion to dismiss the action cannot be addressed until the court has decided any government motion to strike the claim or answer. This procedure is reflected in the (b) (i) reminder that a motion to dismiss the forfeiture action may be made only by a claimant who establishes claim standing. The government, moreover, need not respond to a claimant's motion to dismiss until 20 days after the claimant has answered any subdivision (6) interrogatories.

Paragraph (b)(ii) mirrors 18 U.S.C. § 983(a)(3)(D). It applies only to an action independently governed by § 983(a)(3)(D), implying nothing as to actions outside § 983(a)(3)(D). The adequacy of the complaint is measured against the pleading requirements of subdivision (2), not against the quality of the evidence available to the government when the complaint was filed.

Paragraph (c). As noted with paragraph (b), paragraph (c) governs the procedure for determining whether a claimant has standing. It does not address the principles that govern claim standing.

Paragraph (c)(i)(A) provides that the government may move to strike a claim or answer for failure to comply with the pleading requirements of subdivision (5) or to answer subdivision (6) interrogatories. As with other pleadings, the court should strike a claim or answer only if satisfied that an opportunity should not be afforded to cure the defects under Rule 15. Not every failure to respond to subdivision (6) interrogatories warrants an order striking the claim. But the special role that subdivision (6) plays in the scheme for determining claim standing may justify a somewhat more demanding approach than the general approach to discovery sanctions under Rule 37.

Paragraph (c)(ii) directs that a motion to strike a claim or answer be decided before any motion by the claimant to dismiss the action. A claimant who lacks standing is not entitled to challenge the forfeiture on the merits.

Paragraph (c)(ii) further identifies three procedures for addressing claim standing. If a claim fails on its face to show facts that support claim standing, the claim can be dismissed by judgment on the pleadings. If the claim shows facts that would support claim standing, those facts can be tested by a motion for summary judgment. If material facts are disputed, precluding a grant of summary judgment, the court may hold an evidentiary hearing. The evidentiary hearing is held by the court without a jury. The claimant has the burden to establish claim standing at a hearing; procedure on a government summary judgment motion reflects this allocation of the burden.

Paragraph (d). The hardship release provisions of 18 U.S.C. § 983(f) do not apply to a civil forfeiture action exempted from § 983 by § 983(i).

Paragraph (d)(ii) reflects the venue provisions of 18 U.S.C. § 983(f)(3)(A) as a guide to practitioners. In addition, it makes clear the status of a civil forfeiture action as a "civil action" eligible for transfer under 28 U.S.C. § 1404. A transfer decision must be made on the circumstances of the particular proceeding. The district where the forfeiture action is filed has the advantage of bringing all related proceedings together, avoiding the waste that flows from consideration of different parts of the same forfeiture proceeding in the court where the warrant issued or the court where the property was seized. Transfer to that court would serve consolidation, the purpose that underlies nationwide enforcement of a seizure warrant. But there may be offsetting advantages in retaining the petition where it was filed. The claimant may not be able to litigate, effectively or at all, in a distant court. Issues relevant to the petition may be better litigated where the property was seized or where the warrant issued. One element, for example, is whether the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of trial. Another is whether continued government possession would prevent the claimant from working. Determining whether seizure of the claimant's automobile prevents work may turn on assessing the realities of local public transit facilities.

Paragraph (e). The Excessive Fines Clause of the Eighth Amendment forbids an excessive forfeiture. *U.S. v. Bajakajian*, 524 U.S. 321 (1998). 18 U.S.C. § 983(g) provides a "petition" "to determine whether the forfeiture was constitutionally excessive" based on finding "that the forfeiture is grossly disproportional to the offense." Paragraph (e) describes the procedure for § 983(g)

mitigation petitions and adopts the same procedure for forfeiture actions that fall outside § 983(g). The procedure is by motion, either for summary judgment or for mitigation after a forfeiture judgment is entered. The claimant must give notice of this defense by pleading, but failure to raise the defense in the initial answer may be cured by amendment under Rule 15. The issues that bear on mitigation often are separate from the issues that determine forfeiture. For that reason it may be convenient to resolve the issue by summary judgment before trial on the forfeiture issues. Often, however, it will be more convenient to determine first whether the property is to be forfeited. Whichever time is chosen to address mitigation, the parties must have had the opportunity to conduct civil discovery on the defense. The extent and timing of discovery are governed by the ordinary rules.

Subdivision (9). Subdivision (9) serves as a reminder of the need to demand jury trial under Rule 38. It does not expand the right to jury trial. *See U.S. v. One Parcel of Property Located at 32 Medley Lane*, 2005 WL 465421 (D.Conn.2005), ruling that the court, not the jury, determines whether a forfeiture is constitutionally excessive.

2009 Amendments

The times set in the former rule at 20 days have been revised to 21 days. See the Note to Rule 6.

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TITLE 18

18 U.S.C. § 981. Civil forfeiture.

(a)(1) 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 1956, 1957 or 1960 of this title, or any property traceable to such property.

(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, or any property used to facilitate such an offense, if the offense—

(i) involves trafficking in nuclear, chemical, biological, or radiological weapons technology or material, or the manufacture, importation, sale, or distribution of a controlled substance (as that term is defined for purposes of the Controlled Substances Act), or any other conduct described in section 1956(c)(7)(B);

(ii) would be punishable within the jurisdiction of the foreign nation by death or imprisonment for a term exceeding 1 year; and

(iii) would be punishable under the laws of the United States by imprisonment for a term exceeding 1 year, if the act or activity constituting the offense 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, 670, 842, 844, 1005, 1006, 1007, 1014, 1028, 1029, 1030, 1032, or 1344 of this title or any offense constituting “specified unlawful activity” (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

See Appendix A for a list of all violations of federal and state or foreign law identified as “specified unlawful activity” under 18 U.S.C. § 1956(c)(7). See also text of section 1956(c)(7) at page 55.

(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 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 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).

(G) All assets, foreign or domestic—

(i) of any individual, entity, or organization engaged in planning or perpetrating any any Federal crime of terrorism (as defined in section 2332b(g)(5)) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

(ii) acquired or maintained by any person with the intent and for the purpose of supporting, planning, conducting, or concealing any Federal crime of terrorism (as defined in section 2332b(g)(5) against

the United States, citizens or residents of the United States, or their property;

(iii) derived from, involved in, or used or intended to be used to commit any Federal crime of terrorism (as defined in section 2332b(g)(5)) against the United States, citizens or residents of the United States, or their property; or

(iv) of any individual, entity, or organization engaged in planning or perpetrating any act of international terrorism (as defined in section 2331) against any international organization (as defined in section 209 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4309(b)) or against any foreign Government. Where the property sought for forfeiture is located beyond the territorial boundaries of the United States, an act in further-ance of such planning or perpetration must have occurred within the jurisdiction of the United States.

18 U.S.C. § 981(a)(1)(G). Note.

[The following provision was enacted as section 316 of Pub. L. 107-56 but was not codified to any section of the United States Code.]

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

(1) the property is not subject to confiscation under such provision of law; or

(2) the innocent owner provisions of section 983(d) of title 18, United States Code, apply to the case.

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

(c) Clarifications.—

(1) Protection of rights.— The exclusion of certain provisions of Federal law from the definition of the term “civil forfeiture statute” in section 981(i) of title 18, United States Code, shall not be construed to deny an owner of property the right to contest the confiscation of assets of suspected international terrorists under —

(A) subsection (a) of this section;

(B) the Constitution; or

(C) subchapter II of chapter 5 of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

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

(H) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 2339C of this title.

(2) For purposes of paragraph (1), the term “proceeds” is defined as follows:

(A) In cases involving illegal goods, illegal services, unlawful activities, and telemarketing and health care fraud schemes, the term “proceeds” means property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

(B) In cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the term “proceeds” means the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. The claimant shall have the burden of proof with respect to the issue of direct costs. The direct costs shall not include any part of the overhead expenses of the entity providing the goods or services, or any part of the income taxes paid by the entity.

(C) In cases involving fraud in the process of obtaining a loan or extension of credit, the court shall allow the claimant a deduction from the forfeiture to the extent that the loan was repaid, or the debt was satisfied, without any financial loss to the victim.

(b)(1) Except as provided in section 985, any property subject to forfeiture to the United States under subsection (a) may be seized by the Attorney General and, in the case of property involved in a violation investigated by the Secretary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

(2) Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, except that a seizure may be made without a warrant if—

(A) a complaint for forfeiture has been filed in the United States district court and the court issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

(B) there is probable cause to believe that the property is subject to forfeiture and—

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

(ii) another exception to the Fourth Amendment warrant requirement would apply; or

(C) the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency.

(3) Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, and may be executed in any district in which the property is found, or transmitted to the central authority of any foreign state for service in accordance with any treaty or other international agreement. Any motion for the return of property seized under this section shall be filed in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(4)(A) If any person is arrested or charged in a foreign country in connection with an offense that would give rise to the forfeiture of property in the United States under this section or under the Controlled Substances Act, the Attorney General may apply to any Federal judge or magistrate judge in the district in which the property is located for an ex parte order restraining the property subject to forfeiture for not more than 30 days, except that the time may be extended for good cause shown at a hearing conducted in the manner provided in rule 43(e) of the Federal Rules of Civil Procedure.

(B) The application for the restraining order shall set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture, and shall contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection.

(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 such property under 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) as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity; 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)(1) Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a related criminal case.

(2) Upon the motion of a claimant, the court shall stay the civil forfeiture proceeding with respect to that claimant if the court determines that—

(A) the claimant is the subject of a related criminal investigation or case;

(B) the claimant has standing to assert a claim in the civil forfeiture proceeding; and

(C) continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case.

(3) With respect to the impact of civil discovery described in paragraphs (1) and (2), the court may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the opposing party to pursue the civil case. In no case, however, shall the court impose a protective order as an alternative to a stay if the effect of such protective order would be to allow one party to pursue discovery while the other party is substantially unable to do so.

(4) In this subsection, the terms “related criminal case” and “related criminal investigation” mean an actual prosecution or investigation in progress at the time at which the request for the stay, or any subsequent motion to lift the stay is made. In determining whether a criminal case or investigation is “related” to a civil forfeiture proceeding, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the two proceedings, without requiring an identity with respect to any one or more factors.

(5) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(6) Whenever a civil forfeiture proceeding is stayed pursuant to this subsection, the court shall enter any order necessary to preserve the value of the property or to protect the rights of lienholders or other persons with an interest in the property while the stay is in effect.

(7) A determination by the court that the claimant has standing to request a stay pursuant to paragraph (2) shall apply only to this subsection and shall not preclude the Government from objecting to the standing of the claimant by dispositive motion or at the time of trial.

(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 481(h) 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.

(k) Interbank accounts.—

(1) In general.—

(A) In general.—For the purpose of a forfeiture under this section or under the Controlled Substances Act (21 U.S.C. 801 et seq.), if funds are deposited into an account at a foreign financial institution (as defined in section 984(c)(2)(A) of this title), and that foreign financial institution (as defined in section 984(c)(2)(A) of this title) has an interbank account in the United States with a covered financial institution (as defined in section 5318(j)(1) of title 31), the funds shall be deemed to have been deposited into the interbank account in the United States, and any restraining order, seizure warrant, or arrest warrant in rem regarding the funds may be served on the covered financial institution, and funds in the interbank account, up to the value of the funds deposited into the account at the foreign financial institution (as defined in section 984(c)(2)(A) of this title), may be restrained, seized, or arrested.

(B) Authority to suspend.—The Attorney General, in consultation with the Secretary of the Treasury, may

suspend or terminate a forfeiture under this section if the Attorney General determines that a conflict of law exists between the laws of the jurisdiction in which the foreign financial institution (as defined in section 984(c)(2)(A) of this title) is located and the laws of the United States with respect to liabilities arising from the restraint, seizure, or arrest of such funds, and that such suspension or termination would be in the interest of justice and would not harm the national interests of the United States.

(2) No requirement for Government to trace funds.—If a forfeiture action is brought against funds that are re-strained, seized, or arrested under paragraph (1), it shall not be necessary for the Government to establish that the funds are directly traceable to the funds that were deposited into the foreign financial institution (as defined in section 984(c)(2)(A) of this title), nor shall it be necessary for the Government to rely on the application of section 984.

(3) Claims brought by owner of the funds.—If a forfeiture action is instituted against funds restrained, seized, or arrested under paragraph (1), the owner of the funds deposited into the account at the foreign financial institution (as defined in section 984(c)(2)(A) of this title) may contest the forfeiture by filing a claim under section 983.

(4) Definitions.—For purposes of this subsection, the following definitions shall apply:

(A) Interbank account.—The term “interbank account” has the same meaning as in section 984(c)(2)(B).

(B) Owner.—

(i) In general.—Except as provided in clause (ii), the term “owner” —

(I) means the person who was the owner, as that term is defined in section 983(d)(6), of the funds that were deposited into the foreign financial institution (as defined in section 984(c)(2)(A) of this title) at the time such funds were deposited; and

(II) does not include either the foreign financial institution (as defined in section 984(c)(2)(A) of this title) or any financial institution acting as an intermediary in the transfer of the funds into the interbank account.

(ii) Exception.—The foreign financial institution (as defined in section 984(c)(2)(A) of this title) may be considered the “owner” of the funds (and no other person shall qualify as the owner of such funds) only if—

(I) the basis for the forfeiture action is wrongdoing committed by the foreign financial institution (as defined in section 984(c)(2)(A) of this title); or

(II) the foreign financial institution (as defined in section 984(c)(2)(A) of this title) establishes, by a pre-ponderance of the evidence, that prior to the restraint, seizure, or arrest of the funds, the foreign financial institution (as defined in section 984(c)(2)(A) of this title) had discharged all or part of its obligation to the prior owner of the funds, in which case the foreign financial institution (as defined in section 984(c)(2)(A) of this title) shall be deemed the owner of the funds to the extent of such discharged obligation.

Amended: Strengthening and Focusing Enforcement to Deter Organized Stealing and Enhance Safety Act of 2012, Pub. L. 112-186, § 3, Oct. 5, 2012, 126 Stat. 1428.

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 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.

(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, 555, 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);

(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 the [FN1] 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 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.

(6)(A) The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, section 274(a), 274A(a)(1), or 274A(a)(2) of the Immigration and Nationality Act or section 555, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of this title, or a violation of, or conspiracy to violate, section 1028 of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States, regardless of any provision of State law—

(i) any conveyance, including any vessel, vehicle, or aircraft used in the commission of the offense of which the person is convicted; and

(ii) any property real or personal—

(I) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of the offense of which the person is convicted; or

(II) that is used to facilitate, or is intended to be used to facilitate, the commission of the offense of which the person is convicted.

(B) The court, in imposing sentence on a person described in subparagraph (A), shall order that the person forfeit to the United States all property described in that subparagraph.

(7) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

(8) The court, in sentencing a defendant convicted of an offense under section 1028, 1029, 1341, 1342, 1343, or 1344, or of a conspiracy to commit such an offense, if the offense involves telemarketing (as that term is defined in section 2325), shall order that the defendant forfeit to the United States any real or personal property—

(A) used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and

(B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.

(b)(1) The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).

(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.

Amended: Border Tunnel Prevention Act, Pub. L. 112-127, § 5, June 5, 2012, 126 Stat. 371.

18 U.S.C. § 983. General rules for civil forfeiture proceedings.

(a) Notice; claim; complaint.—

(1)(A)(i) Except as provided in clauses (ii) through (v), in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the Government is required to send written notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than 60 days after the date of the seizure.

(ii) No notice is required if, before the 60-day period expires, the Government files a civil judicial forfeiture action against the property and provides notice of that action as required by law.

(iii) If, before the 60-day period expires, the Government does not file a civil judicial forfeiture action, but does obtain a criminal indictment containing an allegation that the property is subject to forfeiture, the Government shall either—

(I) send notice within the 60 days and continue the nonjudicial civil forfeiture proceeding under this section; or

(II) terminate the nonjudicial civil forfeiture proceeding, and take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute.

(iv) In a case in which the property is seized by a State or local law enforcement agency and turned over to a Federal law enforcement agency for the purpose of forfeiture under Federal law, notice shall be sent not more than 90 days after the date of seizure by the State or local law enforcement agency.

(v) If the identity or interest of a party is not determined until after the seizure or turnover but is determined before a declaration of forfeiture is entered, notice shall be sent to such interested party not later than 60 days after the determination by the Government of the identity of the party or the party's interest.

(B) A supervisory official in the headquarters office of the seizing agency may extend the period for sending notice under subparagraph (A) for a period not to exceed 30 days (which period may not be further extended except by a court), if the official determines that the conditions in subparagraph (D) are present.

(C) Upon motion by the Government, a court may extend the period for sending notice under subparagraph (A) for a period not to exceed 60 days, which period may be further extended by the court for 60-day periods, as

necessary, if the court determines, based on a written certification of a supervisory official in the headquarters office of the seizing agency, that the conditions in subparagraph (D) are present.

(D) The period for sending notice under this paragraph may be extended only if there is reason to believe that notice may have an adverse result, including—

(i) endangering the life or physical safety of an individual;

(ii) flight from prosecution;

(iii) destruction of or tampering with evidence;

(iv) intimidation of potential witnesses; or

(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(E) Each of the Federal seizing agencies conducting nonjudicial forfeitures under this section shall report periodically to the Committees on the Judiciary of the House of Representatives and the Senate the number of occasions when an extension of time is granted under subparagraph (B).

(F) If the Government does not send notice of a seizure of property in accordance with subparagraph (A) to the person from whom the property was seized, and no extension of time is granted, the Government shall return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. The Government shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess.

(2)(A) Any person claiming property seized in a nonjudicial civil forfeiture proceeding under a civil forfeiture statute may file a claim with the appropriate official after the seizure.

(B) A claim under subparagraph (A) may be filed not later than the deadline set forth in a personal notice letter (which deadline may be not earlier than 35 days after the date the letter is mailed), except that if that letter is not received, then a claim may be filed not later than 30 days after the date of final publication of notice of seizure.

(C) A claim shall—

(i) identify the specific property being claimed;

(ii) state the claimant's interest in such property; and

(iii) be made under oath, subject to penalty of perjury.

(D) A claim need not be made in any particular form. Each Federal agency conducting nonjudicial forfeitures under this section shall make claim forms generally

available on request, which forms shall be written in easily understandable language.

(E) Any person may make a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

(3)(A) Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

(B) If the Government does not—

(i) file a complaint for forfeiture or return the property, in accordance with subparagraph (A); or

(ii) before the time for filing a complaint has expired—

(I) obtain a criminal indictment containing an allegation that the property is subject to forfeiture; and

(II) take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute,

the Government shall promptly release the property pursuant to regulations promulgated by the Attorney General, and may not take any further action to effect the civil forfeiture of such property in connection with the underlying offense.

(C) In lieu of, or in addition to, filing a civil forfeiture complaint, the Government may include a forfeiture allegation in a criminal indictment. If criminal forfeiture is the only forfeiture proceeding commenced by the Government, the Government's right to continued possession of the property shall be governed by the applicable criminal forfeiture statute.

(D) No complaint may be dismissed on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property.

(4)(A) In any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government's complaint

or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

(B) A person asserting an interest in seized property, in accordance with subparagraph (A), shall file an answer to the Government's complaint for forfeiture not later than 20 days after the date of the filing of the claim.

(b) Representation.—

(1)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

(B) In determining whether to authorize counsel to represent a person under subparagraph (A), the court shall take into account such factors as—

(i) the person's standing to contest the forfeiture; and

(ii) whether the claim appears to be made in good faith.

(2)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the property subject to forfeiture is real property that is being used by the person as a primary residence, the court, at the request of the person, shall insure that the person is represented by an attorney for the Legal Services Corporation with respect to the claim.

(B)(i) At appropriate times during a representation under subparagraph (A), the Legal Services Corporation shall submit a statement of reasonable attorney fees and costs to the court.

(ii) The court shall enter a judgment in favor of the Legal Services Corporation for reasonable attorney fees and costs submitted pursuant to clause (i) and treat such judgment as payable under section 2465 of title 28, United States Code, regardless of the outcome of the case.

(3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.

(c) Burden of proof.—In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property—

(1) the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture;

(2) the Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that property is subject to forfeiture; and

(3) if the Government's theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.

(d) Innocent owner defense.—

(1) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.

(2)(A) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term "innocent owner" means an owner who—

(i) did not know of the conduct giving rise to forfeiture; or

(ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

(B)(i) For the purposes of this paragraph, ways in which a person may show that such person did all that reasonably could be expected may include demonstrating that such person, to the extent permitted by law—

(I) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and

(II) in a timely fashion revoked or made a good faith attempt to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

(ii) A person is not required by this subparagraph to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

(3)(A) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term "innocent owner" means a person who, at the time that person acquired the interest in the property—

(i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and

(ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.

(B) An otherwise valid claim under subparagraph (A) shall not be denied on the ground that the claimant gave nothing of value in exchange for the property if—

(i) the property is the primary residence of the claimant;

(ii) depriving the claimant of the property would deprive the claimant of the means to maintain reasonable shelter in the community for the claimant and all dependents residing with the claimant;

(iii) the property is not, and is not traceable to, the proceeds of any criminal offense; and

(iv) the claimant acquired his or her interest in the property through marriage, divorce, or legal separation, or the claimant was the spouse or legal dependent of a person whose death resulted in the transfer of the property to the claimant through inheritance or probate,

except that the court shall limit the value of any real property interest for which innocent ownership is recognized under this subparagraph to the value necessary to maintain reasonable shelter in the community for such claimant and all dependents residing with the claimant.

(4) Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.

(5) If the court determines, in accordance with this section, that an innocent owner has a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court may enter an appropriate order—

(A) severing the property;

(B) transferring the property to the Government with a provision that the Government compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or

(C) permitting the innocent owner to retain the property subject to a lien in favor of the Government to the extent of the forfeitable interest in the property.

(6) In this subsection, the term "owner"—

(A) means a person with an ownership interest in the specific property sought to be forfeited, including a

leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest; and

(B) does not include—

(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

(iii) a nominee who exercises no dominion or control over the property.

(e) Motion to set aside forfeiture.—

(1) Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person's interest in the property, which motion shall be granted if—

(A) the Government knew, or reasonably should have known, of the moving party's interest and failed to take reasonable steps to provide such party with notice; and

(B) the moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim.

(2)(A) Notwithstanding the expiration of any applicable statute of limitations, if the court grants a motion under paragraph (1), the court shall set aside the declaration of forfeiture as to the interest of the moving party without prejudice to the right of the Government to commence a subsequent forfeiture proceeding as to the interest of the moving party.

(B) Any proceeding described in subparagraph (A) shall be commenced—

(i) if nonjudicial, within 60 days of the entry of the order granting the motion; or

(ii) if judicial, within 6 months of the entry of the order granting the motion.

(3) A motion under paragraph (1) may be filed not later than 5 years after the date of final publication of notice of seizure of the property.

(4) If, at the time a motion made under paragraph (1) is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government may institute proceedings against a substitute sum of money equal to the value of the moving party's interest in the property at the time the property was disposed of.

(5) A motion filed under this subsection shall be the exclusive remedy for seeking to set aside a declaration of forfeiture under a civil forfeiture statute.

(f) Release of seized property.—

(1) A claimant under subsection (a) is entitled to immediate release of seized property if—

(A) the claimant has a possessory interest in the property;

(B) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

(C) the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;

(D) the claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

(E) none of the conditions set forth in paragraph (8) applies.

(2) A claimant seeking release of property under this subsection must request possession of the property from the appropriate official, and the request must set forth the basis on which the requirements of paragraph (1) are met.

(3)(A) If not later than 15 days after the date of a request under paragraph (2) the property has not been released, the claimant may file a petition in the district court in which the complaint has been filed or, if no complaint has been filed, in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(B) The petition described in subparagraph (A) shall set forth—

(i) the basis on which the requirements of paragraph (1) are met; and

(ii) the steps the claimant has taken to secure release of the property from the appropriate official.

(4) If the Government establishes that the claimant's claim is frivolous, the court shall deny the petition. In responding to a petition under this subsection on other grounds, the Government may in appropriate cases submit evidence ex parte in order to avoid disclosing any matter that may

adversely affect an ongoing criminal investigation or pending criminal trial.

(5) The court shall render a decision on a petition filed under paragraph (3) not later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.

(6) If—

(A) a petition is filed under paragraph (3); and

(B) the claimant demonstrates that the requirements of paragraph (1) have been met,

the district court shall order that the property be returned to the claimant, pending completion of proceedings by the Government to obtain forfeiture of the property.

(7) If the court grants a petition under paragraph (3)—

(A) the court may enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including—

(i) permitting the inspection, photographing, and inventory of the property;

(ii) fixing a bond in accordance with rule E(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and

(iii) requiring the claimant to obtain or maintain insurance on the subject property; and

(B) the Government may place a lien against the property or file a *lis pendens* to ensure that the property is not transferred to another person.

(8) This subsection shall not apply if the seized property—

(A) is contraband, currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;

(B) is to be used as evidence of a violation of the law;

(C) by reason of design or other characteristic, is particularly suited for use in illegal activities; or

(D) is likely to be used to commit additional criminal acts if returned to the claimant.

(g) Proportionality.—

(1) The claimant under subsection (a)(4) may petition the court to determine whether the forfeiture was constitutionally excessive.

(2) In making this determination, the court shall compare the forfeiture to the gravity of the offense giving rise to the forfeiture.

(3) The claimant shall have the burden of establishing that the forfeiture is grossly disproportional by a preponderance of the evidence at a hearing conducted by the court without a jury.

(4) If the court finds that the forfeiture is grossly disproportional to the offense it shall reduce or eliminate the forfeiture as necessary to avoid a violation of the Excessive Fines Clause of the Eighth Amendment of the Constitution.

(h) Civil fine.—

(1) In any civil forfeiture proceeding under a civil forfeiture statute in which the Government prevails, if the court finds that the claimant's assertion of an interest in the property was frivolous, the court may impose a civil fine on the claimant of an amount equal to 10 percent of the value of the forfeited property, but in no event shall the fine be less than \$250 or greater than \$5,000.

(2) Any civil fine imposed under this subsection shall not preclude the court from imposing sanctions under rule 11 of the Federal Rules of Civil Procedure.

(3) In addition to the limitations of section 1915 of title 28, United States Code, in no event shall a prisoner file a claim under a civil forfeiture statute or appeal a judgment in a civil action or proceeding based on a civil forfeiture statute if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous or malicious, unless the prisoner shows extraordinary and exceptional circumstances.

(i) Civil forfeiture statute defined.—In this section, the term “civil forfeiture statute”—

(1) means any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense; and

(2) does not include—

(A) the Tariff Act of 1930 or any other provision of law codified in title 19;

(B) the Internal Revenue Code of 1986;

(C) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.);

(D) the Trading with the Enemy Act (50 U.S.C. App. § 1 et seq.) or the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. § 1701 et seq.); or

(E) section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. § 401).

(j) Restraining orders; protective orders.—

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of

satisfactory performance bonds, create receiverships, appoint conservators, custodians, appraisers, accountants, or trustees, or take any other action to seize, secure, maintain, or preserve the availability of property subject to civil forfeiture—

(A) upon the filing of a civil forfeiture complaint alleging that the property with respect to which the order is sought is subject to civil forfeiture; or

(B) prior to the filing of such a complaint, 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.

(2) An order entered pursuant to paragraph (1)(B) shall be effective for not more than 90 days, unless extended by the court for good cause shown, or unless a complaint described in paragraph (1)(A) has been filed.

(3) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when a complaint 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 is subject to civil forfeiture and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 14 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.

(4) 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.

Amended: Statutory Time-Periods Technical Amendments Act of 2009, Pub. L. 111-16, § 3(1), May 7, 2009, 123 Stat. 1607.

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

(a)(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 precious metals—

(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 (b), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

(b) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than 1 year from the date of the offense.

(c)(1) Subsection (a) does not apply to an action against funds held by a financial institution in an interbank account unless the account holder knowingly engaged in the offense that is the basis for the forfeiture.

(2) In this subsection—

(A) the term “financial institution” includes a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. § 3101(b)(7)); and

(B) the term “interbank account” means an account held by one financial institution at another financial institution primarily for the purpose of facilitating customer transactions.

(d) Nothing in this section may be construed to limit the ability of the Government to forfeit property under any provision of law if the property involved in the offense giving rise to the forfeiture or property traceable thereto is available for forfeiture.

Amended: Civil Asset Forfeiture Reform Act (CAFRA) of 2000, Pub. L. 106-185, § 13(a), Apr. 25, 2000, 114 Stat. 202, 218.

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 or 5324 of title 31, United States Code, or the Controlled Substances Act, any party may request the Clerk of the Court in the district in which the proceeding is pending to issue a subpoena duces tecum to any financial institution, as defined in section 5312(a) of title 31, United States Code, to produce books, records and any other documents at any place designated by the requesting party. All parties to the proceeding shall be notified of the issuance of any such subpoena. The procedures and limitations set forth in section 985 of this title shall apply to subpoenas issued under this section.

(b) Service of a subpoena issued pursuant to this section shall be by certified mail. Records produced in response to such a subpoena may be produced in person or by mail, common carrier, or such other method as may be agreed upon by the party requesting the subpoena and the custodian of records. The party requesting the subpoena may require the custodian of records to submit an affidavit certifying the authenticity and completeness of the records and explaining the omission of any record called for in the subpoena.

(c) Nothing in this section shall preclude any party from pursuing any form of discovery pursuant to the Federal Rules of Civil Procedure.

(d) Access to records in bank secrecy jurisdictions.—

(1) In general.—In any civil forfeiture case, or in any ancillary proceeding in any criminal forfeiture case governed by section 413(n) of the Controlled Substances Act (21 U.S.C. § 853(n)), in which—

(A) financial records located in a foreign country may be material—

(i) to any claim or to the ability of the Government to respond to such claim; or

(ii) in a civil forfeiture case, to the ability of the Government to establish the forfeitability of the property; and

(B) it is within the capacity of the claimant to waive the claimant's rights under applicable financial secrecy laws, or to obtain the records so that such records can be made available notwithstanding such secrecy laws,

the refusal of the claimant to provide the records in response to a discovery request or to take the action necessary otherwise to make the records available shall be grounds for judicial sanctions, up to and including dismissal of the claim with prejudice.

(2) Privilege.—This subsection shall not affect the right of the claimant to refuse production on the basis of any privilege guaranteed by the Constitution of the United States or any other provision of Federal law.

Amended: Civil Asset Forfeiture Reform Act (CAFRA) of 2000, Pub. L. 106-185, § 17, Apr. 25, 2000, 114 Stat. 202, 221.

18 U.S.C. § 1956. Laundering of monetary instruments.

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity

and knowing that such transportation, transmission, or transfer is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent—

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term “represented” means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Penalties.—

(1) In general.—Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) \$10,000.

(2) Jurisdiction over foreign persons.—For purposes of adjudicating an action filed or enforcing a penalty ordered

under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and—

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

(3) Court authority over assets.—A court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(4) Federal receiver.—

(A) In general.—A court may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982, or a criminal sentence under section 1957 or subsection (a) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) Appointment and authority.—A Federal Receiver described in subparagraph (A)—

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant—

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or

other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section—

(1) the term “knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity” means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term “conducts” includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term “financial transaction” means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term “monetary instruments” means (i) coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term “financial institution” includes—

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101);

(7) the term “specified unlawful activity” means—

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16);

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978));

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving—

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730-774);

(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or

(vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, re-recruiting or harboring a person, including a child, for commercial sex acts;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at inter-national airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating

to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), section 555 (relating to border tunnels), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(1) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to fraudulent Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2252A (relating to child pornography) where the child pornography contains a visual depiction of an actual minor en-gaging in sexually explicit conduct, section 2260 (production of certain child pornography for importation into the United States), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b

(relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 2008 [7 U.S.C.A. § 2024] (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than \$5,000, any violation of section 543(a)(1) of the Housing Act of 1949 [42 U.S.C.A. § 1490s(a)(1)] (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons)

(E) Environmental crimes. A felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.); or

(F) any act or activity constituting an offense involving a Federal health care offense;

(8) the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term “proceeds” means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding \$10,000.

(g) Notice of conviction of financial institutions.—If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(i) Venue.—

(1) Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in—

(A) any district in which the financial or monetary transaction is conducted; or

(B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted.

(2) A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place.

(3) For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.

Amended: Border Tunnel Prevention Act of 2012, Pub. L. 112-127, § 6, June 5, 2012, 126 Stat. 371.

18 U.S.C. § 1957. Engaging in monetary transactions in property derived from specified unlawful activity.

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both. If the offense involves a pre-retail medical product (as defined in section 670) the punishment for the offense shall be the same as the punishment for an offense under section 670 unless the punishment under this subsection is greater.

(2) The court may impose an alternate fine to that imposed under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

(d) The circumstances referred to in subsection (a) are—

(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General.

(f) As used in this section—

(1) the term “monetary transaction” means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in section 1956(c)(5) of this title) by, through, or to a financial institution (as defined in section 1956 of this title), including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title, but such term does not include any transaction necessary to preserve a person’s right to representation as guaranteed by the sixth amendment to the Constitution;

(2) the term “criminally derived property” means any property constituting, or derived from, proceeds obtained from a criminal offense; and

(3) the terms “specified unlawful activity” and “proceeds” shall have the meaning given those terms in section 1956 of this title.

Amended: Strengthening and Focusing Enforcement to Deter Organized Stealing and Enhance Safety Act of 2012, Pub. L. 112-186, § 4(b)(2), Oct. 5, 2012, 126 Stat. 1429.

18 U.S.C. § 1960. Prohibition of unlicensed money transmitting businesses.

(a) Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

(b) As used in this section—

(1) the term “unlicensed money transmitting business” means a money transmitting business which affects interstate or foreign commerce in any manner or degree and—

(A) is operated without an appropriate money transmitting license in a State where such operation is punishable as a

misdemeanor or a felony under State law, whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable;

(B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section; or

(C) otherwise involves the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity;

(2) the term “money transmitting” includes transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier; and

(3) the term “State” means any State of the United States, the District of Columbia, the Northern Mariana Islands, and any commonwealth, territory, or possession of the United States.

Amended: Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, Title XI, § 1171(a)(2), Jan. 5, 2006, 119 Stat. 2960, 3123.

18 U.S.C. § 1961(1). Definitions.

As used in this chapter—

(1) “racketeering activity” means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers),

sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1592 (relating to peonage, slavery, and trafficking in persons), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), sections 175-178 (relating to biological weapons), sections 229-229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) an act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain

aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B).

Amended: Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, Title XII, § 1211(a), March 7, 2013, 127 Stat. 142.

18 U.S.C. § 2339A. Providing material support to terrorists.

(a) Offense. Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 229, 351, 831, 842 (m) or (n), 844 (f) or (i), 930(c), 956, 1091, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332f, 2340A, or 2442 of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), section 46502 or 60123(b) of title 49, or any offense listed in section 2332b(g)(5)(B) (except for sections 2339A and 2339B) or in preparation for, or in carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.

(b) Definitions. As used in this section—

(1) the term “material support or resources” means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials;

(2) the term “training” means instruction or teaching designed to impart a specific skill, as opposed to general knowledge; and

(3) the term “expert advice or assistance” means advice or assistance derived from scientific, technical or other specialized knowledge.

Amended: Human Rights Enforcement Act of 2009, Pub. L. 111-122, § 3(d), Dec. 22, 2009, 123 Stat. 3481.

18 U.S.C. § 2339B. Providing material support or resources to designated foreign terrorist organizations.

(a) Prohibited activities.—

(1) Unlawful conduct.—Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

(2) Financial institutions.—Except as authorized by the Secretary, any financial institution that becomes aware that it has possession of, or control over, any funds in which a foreign terrorist organization, or its agent, has an interest, shall—

(A) retain possession of, or maintain control over, such funds; and

(B) report to the Secretary the existence of such funds in accordance with regulations issued by the Secretary.

(b) Civil penalty.—Any financial institution that knowingly fails to comply with subsection (a)(2) shall be subject to a civil penalty in an amount that is the greater of—

(A) \$50,000 per violation; or

(B) twice the amount of which the financial institution was required under subsection (a)(2) to retain possession or control.

(c) Injunction.—Whenever it appears to the Secretary or the Attorney General that any person is engaged in, or is about to engage in, any act that constitutes, or would constitute, a violation of this section, the Attorney General may initiate civil action in a district court of the United States to enjoin such violation.

(d) Extraterritorial jurisdiction.—

(1) In general.—There is jurisdiction over an offense under subsection (a) if—

(A) an offender is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(22))) or an alien lawfully admitted for permanent residence in the United

States (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(20)));

(B) an offender is a stateless person whose habitual residence is in the United States;

(C) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States;

(D) the offense occurs in whole or in part within the United States;

(E) the offense occurs in or affects interstate or foreign commerce; or

(F) an offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a) or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).

(2) Extraterritorial jurisdiction.—There is extraterritorial Federal jurisdiction over an offense under this section.

(e) Investigations.—

(1) In general.—The Attorney General shall conduct any investigation of a possible violation of this section, or of any license, order, or regulation issued pursuant to this section.

(2) Coordination with the Department of the Treasury.—The Attorney General shall work in coordination with the Secretary in investigations relating to—

(A) the compliance or noncompliance by a financial institution with the requirements of subsection (a)(2); and

(B) civil penalty proceedings authorized under subsection (b).

(3) Referral.—Any evidence of a criminal violation of this section arising in the course of an investigation by the Secretary or any other Federal agency shall be referred immediately to the Attorney General for further investigation. The Attorney General shall timely notify the Secretary of any action taken on referrals from the Secretary, and may refer investigations to the Secretary for remedial licensing or civil penalty action.

(f) Classified information in civil proceedings brought by the United States.—

(1) Discovery of classified information by defendants.—

(A) Request by United States.—In any civil proceeding under this section, upon request made ex parte and in writing by the United States, a court, upon a sufficient showing, may authorize the United States to—

(i) redact specified items of classified information from documents to be introduced into evidence or made available to the defendant through discovery under the Federal Rules of Civil Procedure;

(ii) substitute a summary of the information for such classified documents; or

(iii) substitute a statement admitting relevant facts that the classified information would tend to prove.

(B) Order granting request.—If the court enters an order granting a request under this paragraph, the entire text of the documents to which the request relates shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(C) Denial of request.—If the court enters an order denying a request of the United States under this paragraph, the United States may take an immediate, interlocutory appeal in accordance with paragraph (5). For purposes of such an appeal, the entire text of the documents to which the request relates, together with any transcripts of arguments made *ex parte* to the court in connection therewith, shall be maintained under seal and delivered to the appellate court.

(2) Introduction of classified information; precautions by court.—

(A) Exhibits.—To prevent unnecessary or inadvertent disclosure of classified information in a civil proceeding brought by the United States under this section, the United States may petition the court *ex parte* to admit, in lieu of classified writings, recordings, or photographs, one or more of the following:

(i) Copies of items from which classified information has been redacted.

(ii) Stipulations admitting relevant facts that specific classified information would tend to prove.

(iii) A declassified summary of the specific classified information.

(B) Determination by court.—The court shall grant a request under this paragraph if the court finds that the redacted item, stipulation, or summary is sufficient to allow the defendant to prepare a defense.

(3) Taking of trial testimony.—

(A) Objection.—During the examination of a witness in any civil proceeding brought by the United States under this subsection, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible.

(B) Action by court.—In determining whether a response is admissible, the court shall take precautions to guard against the compromise of any classified information, including—

(i) permitting the United States to provide the court, *ex parte*, with a proffer of the witness's response to the question or line of inquiry; and

(ii) requiring the defendant to provide the court with a proffer of the nature of the information that the defendant seeks to elicit.

(C) Obligation of defendant.—In any civil proceeding under this section, it shall be the defendant's obligation to establish the relevance and materiality of any classified information sought to be introduced.

(4) Appeal.—If the court enters an order denying a request of the United States under this subsection, the United States may take an immediate interlocutory appeal in accordance with paragraph (5).

(5) Interlocutory appeal.—

(A) Subject of appeal.—An interlocutory appeal by the United States shall lie to a court of appeals from a decision or order of a district court—

(i) authorizing the disclosure of classified information;

(ii) imposing sanctions for nondisclosure of classified information; or

(iii) refusing a protective order sought by the United States to prevent the disclosure of classified information.

(B) Expedited consideration.—

(i) In general.—An appeal taken pursuant to this paragraph, either before or during trial, shall be expedited by the court of appeals.

(ii) Appeals prior to trial.—If an appeal is of an order made prior to trial, an appeal shall be taken not later than 14 days after the decision or order appealed from, and the trial shall not commence until the appeal is resolved.

(iii) Appeals during trial.—If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved, and the court of appeals—

(I) shall hear argument on such appeal not later than 14 days after the adjournment of the trial, excluding intermediate weekends and holidays;

(II) may dispense with written briefs other than the supporting materials previously submitted to the trial court;

(III) shall render its decision not later than 4 days after argument on appeal, excluding intermediate weekends and holidays; and

(IV) may dispense with the issuance of a written opinion in rendering its decision.

(C) Effect of ruling.—An interlocutory appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a final judgment, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

(6) Construction.—Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and State secrets privilege.

(g) Definitions.—As used in this section—

(1) the term “classified information” has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. § App.);

(2) the term “financial institution” has the same meaning as in section 5312(a)(2) of title 31, United States Code;

(3) the term “funds” includes coin or currency of the United States or any other country, traveler’s checks, personal checks, bank checks, money orders, stocks, bonds, debentures, drafts, letters of credit, any other negotiable instrument, and any electronic representation of any of the foregoing;

(4) the term “material support or resources” has the same meaning given that term in section 2339A (including the definitions of “training” and “expert advice or assistance” in that section);

(5) the term “Secretary” means the Secretary of the Treasury; and

(6) the term “terrorist organization” means an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act.

(h) Provision of personnel.—No person may be prosecuted under this section in connection with the term “personnel” unless that person has knowingly provided, attempted to provide, or conspired to provide a foreign terrorist organization with 1 or more individuals (who may be or include himself) to work under that terrorist organization’s direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization. Individuals who act entirely independently of the foreign terrorist organization to advance its goals or objectives shall not be considered to be working under the foreign terrorist organization’s direction and control.

(i) Rule of construction.—Nothing in this section shall be construed or applied so as to abridge the exercise of rights

guaranteed under the First Amendment to the Constitution of the United States.

(j) Exception.—No person may be prosecuted under this section in connection with the term “personnel”, “training”, or “expert advice or assistance” if the provision of that material support or resources to a foreign terrorist organization was approved by the Secretary of State with the concurrence of the Attorney General. The Secretary of State may not approve the provision of any material support that may be used to carry out terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act).

Amended: Statutory Time-Periods Technical Amendments Act of 2009, Pub. L. 111-16, § 3(6) to (8), May 7, 2009, 123 Stat. 1608.

18 U.S.C. § 2339C. Prohibitions against the financing of terrorism.

(a) Offenses.

(1) In general. Whoever, in a circumstance described in subsection (b), by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out—

(A) an act which constitutes an offense within the scope of a treaty specified in subsection (e)(7), as implemented by the United States, or

(B) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act,

shall be punished as prescribed in subsection (d)(1).

(2) Attempts and conspiracies. Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (d)(1).

(3) Relationship to predicate act. For an act to constitute an offense set forth in this subsection, it shall not be necessary that the funds were actually used to carry out a predicate act.

(b) Jurisdiction. There is jurisdiction over the offenses in subsection (a) in the following circumstances—

(1) the offense takes place in the United States and—

(A) a perpetrator was a national of another state or a stateless person;

(B) on board a vessel flying the flag of another state or an aircraft which is registered under the laws of another state at the time the offense is committed;

(C) on board an aircraft which is operated by the government of another state;

(D) a perpetrator is found outside the United States;

(E) was directed toward or resulted in the carrying out of a predicate act against—

(i) a national of another state; or

(ii) another state or a government facility of such state, including its embassy or other diplomatic or consular premises of that state;

(F) was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel another state or international organization to do or abstain from doing any act; or

(G) was directed toward or resulted in the carrying out of a predicate act—

(i) outside the United States; or

(ii) within the United States, and either the offense or the predicate act was conducted in, or the results thereof affected, interstate or foreign commerce;

(2) the offense takes place outside the United States and—

(A) a perpetrator is a national of the United States or is a stateless person whose habitual residence is in the United States;

(B) a perpetrator is found in the United States; or

(C) was directed toward or resulted in the carrying out of a predicate act against—

(i) any property that is owned, leased, or used by the United States or by any department or agency of the United States, including an embassy or other diplomatic or consular premises of the United States;

(ii) any person or property within the United States;

(iii) any national of the United States or the property of such national; or

(iv) any property of any legal entity organized under the laws of the United States, including any of its States, districts, commonwealths, territories, or possessions;

(3) the offense is committed on board a vessel flying the flag of the United States or an aircraft which is registered under the laws of the United States at the time the offense is committed;

(4) the offense is committed on board an aircraft which is operated by the United States; or

(5) the offense was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel the United States to do or abstain from doing any act.

(c) Concealment. Whoever—

(1)(A) is in the United States; or

(B) is outside the United States and is a national of the United States or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions); and

(2) knowingly conceals or disguises the nature, location, source, ownership, or control of any material support or resources, or any funds or proceeds of such funds—

(A) knowing or intending that the support or resources are to be provided, or knowing that the support or resources were provided, in violation of section 2339B of this title; or

(B) knowing or intending that any such funds are to be provided or collected, or knowing that the funds were provided or collected, in violation of subsection (a),

shall be punished as prescribed in subsection (d)(2).

(d) Penalties.

(1) Subsection (a). Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 20 years, or both.

(2) Subsection (c). Whoever violates subsection (c) shall be fined under this title, imprisoned for not more than 10 years, or both.

(e) Definitions. In this section—

(1) the term “funds” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including coin, currency, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit;

(2) the term “government facility” means any permanent or temporary facility or conveyance that is used or occupied by representatives of a state, members of a government, the legislature, or the judiciary, or by officials or employees of a state or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties;

(3) the term “proceeds” means any funds derived from or obtained, directly or indirectly, through the commission of an offense set forth in subsection (a);

(4) the term “provides” includes giving, donating, and transmitting;

(5) the term “collects” includes raising and receiving;

(6) the term “predicate act” means any act referred to in subparagraph (A) or (B) of subsection (a)(1);

(7) the term “treaty” means—

(A) the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970;

(B) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971;

(C) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973;

(D) the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979;

(E) the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980;

(F) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988;

(G) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988;

(H) the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on March 10, 1988; or

(I) the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997;

(8) the term “intergovernmental organization” includes international organizations;

(9) the term “international organization” has the same meaning as in section 1116(b)(5) of this title;

(10) the term “armed conflict” does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature;

(11) the term “serious bodily injury” has the same meaning as in section 1365(g)(3) of this title;

(12) the term “national of the United States” has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(13) the term “material support or resources” has the same meaning given that term in section 2339B(g)(4) of this title; and

(14) the term “state” has the same meaning as that term has under international law, and includes all political subdivisions thereof.

(f) Civil penalty. In addition to any other criminal, civil, or administrative liability or penalty, any legal entity located within the United States or organized under the laws of the United States, including any of the laws of its States, districts, commonwealths, territories, or possessions, shall be liable to the United States for the sum of at least \$10,000, if a person responsible for the management or control of that legal entity has, in that capacity, committed an offense set forth in subsection (a).

Amended: USA Patriot Improvement and Reauthorization Act of 2005, Pub. L. 109-177, Title IV, § 408, Mar. 9, 2006, 120 Stat. 192, 245.

TITLE 21

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

(a) Property subject to criminal forfeiture. Any person convicted of a violation of this title or title III 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 408 of this title (21 U.S.C. 848), 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 title or title III, 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) 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) 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 title or title III 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 title or title III or within a reasonable time after such period; and

(2) there was no likely source for such property other than the violation of this title or title III.

(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) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of this title or title III 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 fourteen 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.

(4) Order to repatriate and deposit.

(A) In general. Pursuant to its authority to enter a pretrial restraining order under this section, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

(B) Failure to comply. Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.

(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) 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 title, 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 511(e) of this title (21 U.S.C. 881(e)), 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 511(d) of this title (21 U.S.C. 881(d)) shall apply to a criminal forfeiture under this section.

(k) Bar on intervention. Except as provided in subsection (n), 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.

(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 reasonable 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.

(1) In general. Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant—

(A) cannot be located upon the exercise of due diligence;

(B) has been transferred or sold to, or deposited with, a third party;

(C) has been placed beyond the jurisdiction of the court;

(D) has been substantially diminished in value; or

(E) has been commingled with other property which cannot be divided without difficulty.

(2) Substitute property. In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

(3) Return of property to jurisdiction. In the case of property described in paragraph (1)(C), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.

(q) Restitution for cleanup of clandestine laboratory sites. The court, when sentencing a defendant convicted of an offense under this title or title III involving the manufacture,

the possession, or the possession with intent to distribute, of amphetamine or methamphetamine, shall—

(1) order restitution as provided in sections 3612 and 3664 of title 18, United States Code;

(2) order the defendant to reimburse the United States, the State or local government concerned, or both the United States and the State or local government concerned for the costs incurred by the United States or the State or local government concerned, as the case may be, for the cleanup associated with the manufacture of amphetamine or methamphetamine by the defendant, or on premises or in property that the defendant owns, resides, or does business in; and

(3) order restitution to any person injured as a result of the offense as provided in section 3663A of title 18, United States Code.

Amended: Statutory Time-Periods Amendments Act of 2009, Pub. L. 111-16, § 5, May 7, 2009, 123 Stat. 1608.

TITLE 26

26 U.S.C. § 60501. Returns relating to cash received in trade or business, etc.

(a) Cash receipts of more than 10,000.—Any person—

(1) who is engaged in a trade or business, and

(2) who, in the course of such trade or business, receives more than \$10,000 in cash in 1 transaction (or 2 or more related transactions),

shall make the return described in subsection (b) with respect to such transaction (or related transactions) at such time as the Secretary may by regulations prescribe.

(b) Form and manner of returns.—A return is described in this subsection if such return—

(1) is in such form as the Secretary may prescribe,

(2) contains—

(A) the name, address, and TIN of the person from whom the cash was received,

(B) the amount of cash received,

(C) the date and nature of the transaction, and

(D) such other information as the Secretary may prescribe.

(c) Exceptions.—

(1) Cash received by financial institutions.— Subsection (a) shall not apply to—

(A) cash received in a transaction reported under title 31, United States Code, if the Secretary determines that reporting under this section would duplicate the reporting to the Treasury under title 31, United States Code, or

(B) cash received by any financial institution (as defined in subparagraphs (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of section 5312(a)(2) of title 31, United States Code).

(2) Transactions occurring outside the United States.— Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

(d) Cash includes foreign currency and certain monetary transactions.—For the purposes of this section, the term “cash” includes—

(1) foreign currency, and

(2) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than \$10,000.

Paragraph (2) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subsection (c)(1)(B).

(e) Statements to be furnished to persons with respect to whom information is required.—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the name, address and phone number of the information contact of the person required to make such return, and

(2) the aggregate amount of cash described in subsection (a) received by the person required to make such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(f) Structuring transactions to evade reporting requirements prohibited.—

(1) In general.—No person shall for the purpose of evading the return requirements of this section—

(A) cause or attempt to cause a trade or business to fail to file a return required under this section;

(B) cause or attempt to cause a trade or business to file a return required under this section that contains a material omission or misstatement of fact, or

(C) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more trades or businesses.

(2) Penalties.—A person violating paragraph (1) of this subsection shall be subject to the same civil and criminal sanctions applicable to a person which fails to file or completes a false or incorrect return under this section.

(g) Cash received by criminal court clerks.—

(1) In general.—Every clerk of a Federal or State criminal court who receives more than \$10,000 in cash as bail or any individual charged with specified in paragraph (2) (at such time as the Secretary may by regulations prescribe) with respect to the receipt of such bail.

(2) Return.—A return is described in this paragraph if such return—

(A) is in such form as the Secretary may prescribe, and

(B) contains—

(i) The name, address, and TIN of—

(I) the individual charged with the specified criminal offense, and

(II) each person posting the bail (other than a person licensed as a bail bondsman),

(ii) the amount of cash received,

(iii) the date the cash was received, and

(iv) such other information as the Secretary may prescribe.

(3) Specified criminal offense.—For purposes of this subsection, the term “specified criminal offense” means—

(A) any Federal criminal offense involving a controlled substance,

(B) racketeering (as defined in section 1951, 1952, or 1955 of title 18, United States Code),

(C) money laundering (as defined in section 1956 or 1957 of such title), and

(D) any State criminal offense substantially similar to an offense described in subparagraph (A), (B), or (C).

(4) Information to Federal prosecutors.—Each clerk required to include a return under paragraph (1) the information described in paragraph (2)(B) with respect to an individual described in paragraph (2)(B)(i)(I) shall furnish (at such time as the Secretary may by regulations prescribe) a written statement showing such information to the United States Attorney for the jurisdiction in which such individual resides and the jurisdiction in which the specified criminal offense occurred.

(5) Information to payors of bail.—Each clerk required to make a return under paragraph (1) shall furnish (at such time as the Secretary may by regulations prescribe) to each person whose name is required to be set forth in such return by reason of paragraph (2)(B)(i)(II) a written statement showing—

(A) the name and address of the clerk’s office required to make the return, and

(B) the aggregate amount of cash described in paragraph (1) received by such clerk.

Amended: Taxpayer Bill of Rights 2, Pub. L. 104-168, Title XII, § 1201(a)(9), July 30, 1996, 110 Stat. 1452, 1469.

26 U.S.C. § 60501. Note.

In some cases, Tax Division approval is required before a case can be brought under 26 U.S.C. § 60501, and the statute does not authorize forfeiture. We recommend using 31 U.S.C. § 5331 instead. When charged in conjunction with 31 U.S.C. § 5324 (structuring), section 5331 carries civil and criminal forfeiture authority pursuant to 31 U.S.C. § 5317.

TITLE 31

31 U.S.C. § 5312. Definitions and application.

(a) In this subchapter—

(1) “financial agency” means a person acting for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

(2) “financial institution” means—

(A) an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(h)));

(B) a commercial bank or trust company;

(C) a private banker;

(D) an agency or branch of a foreign bank in the United States;

(E) any credit union;

(F) a thrift institution;

(G) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.);

(H) a broker or dealer in securities or commodities;

(I) an investment banker or investment company;

(J) a currency exchange;

(K) an issuer, redeemer, or cashier of travelers’ checks, checks, money orders, or similar instruments;

(L) an operator of a credit card system;

(M) an insurance company;

(N) a dealer in precious metals, stones, or jewels;

(O) a pawnbroker;

(P) a loan or finance company;

(Q) a travel agency;

(R) a licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system;

(S) a telegraph company;

(T) a business engaged in vehicle sales, including automobile, airplane, and boat sales;

(U) persons involved in real estate closings and settlements;

(V) the United States Postal Service;

(W) an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this paragraph;

(X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than \$1,000,000 which;

(i) is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or

(ii) is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act);

(Y) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or

(Z) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

(3) “monetary instruments” means—

(A) United States coins and currency;

(B) as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers’ checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material; and

(C) as the Secretary of the Treasury shall provide by regulation for purposes of sections 5316 and 5331, checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form.

(4) Nonfinancial trade or business.—The term “nonfinancial trade or business” means any trade or business other than a financial institution that is subject to the reporting requirements of section 5313 and regulations prescribed under such section.

(5) “person“, in addition to its meaning under section 1 of title 1, includes a trustee, a representative of an estate and, when the Secretary prescribes, a governmental entity.

(6) “United States” means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, a territory or possession of the United States, or a military or diplomatic establishment.

(b) In this subchapter—

(1) “domestic financial agency” and “domestic financial institution” apply to an action in the United States of a financial agency or institution.

(2) “foreign financial agency” and “foreign financial institution” apply to an action outside the United States of a financial agency or institution.

(c) Additional definitions.—For purposes of this subchapter, the following definitions shall apply:

(1) Certain institutions included in definition.—The term “financial institution” (as defined in subsection (a)) includes the following:

(A) Any futures commission merchant, commodity trading advisor, or commodity pool operator registered, or required to register, under the Commodity Exchange Act [7 U.S.C.A. § 1 et seq.].

Amended: Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, Title VI, §§ 6202(g), 6203(b), Dec. 17, 2004, 118 Stat. 3638, 3746.

31 U.S.C. § 5313. Reports on domestic coins and currency transaction.

(a) When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

(b) The Secretary may designate a domestic financial institution as an agent of the United States Government to receive a report under this section. However, the Secretary may designate a domestic financial institution that is not insured, chartered, examined, or registered as a domestic financial institution only if the institution consents. The Secretary may suspend or revoke a designation for a violation

of this subchapter or a regulation under this subchapter (except a violation of section 5315 of this title or a regulation prescribed under section 5315), section 411 of the National Housing Act (12 U.S.C. § 1730d), or section 21 of the Federal Deposit Insurance Act (12 U.S.C. § 1829b).

(c)(1) A person (except a domestic financial institution designated under subsection (b) of this section) required to file a report under this section shall file the report—

(A) with the institution involved in the transaction if the institution was designated;

(B) in the way the Secretary prescribes when the institution was not designated; or

(C) with the Secretary.

(2) The Secretary shall prescribe—

(A) the filing procedure for a domestic financial institution designated under subsection (b) of this section; and

(B) the way the institution shall submit reports filed with it.

(d) Mandatory exemptions from reporting requirements.—

(1) In general.—The Secretary of the Treasury shall exempt, pursuant to section 5318(a)(6), a depository institution from the reporting requirements of subsection (a) with respect to transactions between the depository institution and the following categories of entities:

(A) Another depository institution.

(B) A department or agency of the United States, any State, or any political subdivision of any State.

(C) Any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact between 2 or more States, which exercises governmental authority on behalf of the United States or any such State or political subdivision.

(D) Any business or category of business the law reports on which have little or no value for law enforcement purposes.

(2) Notice of exemption.—The Secretary of the Treasury shall publish in the Federal Register at such times as the Secretary determines to be appropriate (but not less frequently than once each year) a list of all the entities whose transactions with a depository institution are exempt under this subsection from the reporting requirements of subsection (a).

(e) Discretionary exemptions from reporting requirements.—

(1) In general.—The Secretary of the Treasury may exempt, pursuant to section 5318(a)(6), a depository institution from the reporting requirements of subsection

(a) with respect to transactions between the depository institution and a qualified business customer of the institution on the basis of information submitted to the Secretary by the institution in accordance with procedures which the Secretary shall establish.

(2) Qualified business customer defined.— For purposes of this subsection, the term “qualified business customer” means a business which—

(A) maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act) at the depository institution;

(B) frequently engages in transactions with the depository institution which are subject to the reporting requirements of subsection (a); and

(C) meets criteria which the Secretary determines are sufficient to ensure that the purposes of this subchapter are carried out without requiring a report with respect to such transactions.

(3) Criteria for exemption.— The Secretary of the Treasury shall establish, by regulation, the criteria for granting and maintaining an exemption under paragraph (1).

(4) Guidelines.—

(A) In general.—The Secretary of the Treasury shall establish guidelines for depository institutions to follow in selecting customers for an exemption under this subsection.

(B) Contents.—The guidelines may include a description of the types of businesses or an itemization of specific businesses for which no exemption will be granted under this subsection to any depository institution.

(5) Annual review.—The Secretary of the Treasury shall prescribe regulations requiring each depository institution to—

(A) review, at least once each year, the qualified business customers of such institution with respect to whom an exemption has been granted under this subsection; and

(B) upon the completion of such review, resubmit information about such customers, with such modifications as the institution determines to be appropriate, to the Secretary for the Secretary’s approval.

(6) 2-Year phase-in provision.—During the 2-year period beginning on the date of enactment of the Money Laundering Suppression Act of 1994, this subsection shall be applied by the Secretary on the basis of such criteria as the Secretary determines to be appropriate to achieve an orderly implementation of the requirements of this subsection.

(f) Provisions applicable to mandatory and discretionary exemptions.—

(1) Limitation on liability of depository institutions.— No depository institution shall be subject to any penalty which may be imposed under this subchapter for the failure of the institution to file a report with respect to a transaction with a customer for whom an exemption has been granted under subsection (d) or (e) unless the institution—

(A) knowingly files false or incomplete information to the Secretary with respect to the transaction or the customer engaging in the transaction; or

(B) has reason to believe at the time the exemption is granted or the transaction is entered into that the customer or the transaction does not meet the criteria established for granting such exemption.

(2) Coordination with other provisions.—Any exemption granted by the Secretary of the Treasury under section 5318(a) in accordance with this section, and any transaction which is subject to such exemption, shall be subject to any other provision of law applicable to such exemption, including—

(A) the authority of the Secretary, under section 5318(a)(6), to revoke such exemption to any time; and

(B) any requirement to report, or any authority to require a report on, any possible violation of any law or regulation or any suspected criminal activity.

(g) Depository institution defined.—For purposes of this section, the term “depository institution”—

(1) has the meaning given to such term in section 19(b)(1)(A) of the Federal Reserve Act; and

(2) includes—

(A) any branch, agency, or commercial lending company (as such terms are defined in section 1(b) of the International Banking Act of 1978);

(B) any corporation chartered under section 25A of the Federal Reserve Act; and

(C) any corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act.

Amended: Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, Title IV, § 402(a), Sept. 23, 1994, 108 Stat. 2160, 2243.

31 U.S.C. § 5316. Reports on exporting and importing monetary instruments.

(a) Except as provided in subsection (c) of this section, a person or an agent or bailee of the person shall file a report under subsection (b) of this section when the person, agent, or bailee knowingly—

(1) transports, is about to transport, or has transported, monetary instruments of more than \$10,000 at one time—

(A) from a place in the United States to or through a place outside the United States; or

(B) to a place in the United States from or through a place outside the United States; or

(2) receives monetary instruments of more than \$10,000 at one time transported into the United States from or through a place outside the United States.

(b) A report under this section shall be filed at the time and place the Secretary of the Treasury prescribes. The report shall contain the following information to the extent the Secretary prescribes:

(1) the legal capacity in which the person filing the report is acting.

(2) the origin, destination, and route of the monetary instruments.

(3) when the monetary instruments are not legally and beneficially owned by the person transporting the instruments, or if the person transporting the instruments personally is not going to use them, the identity of the person that gave the instruments to the person transporting them, the identity of the person who is to receive them, or both.

(4) the amount and kind of monetary instruments transported.

(5) additional information.

(c) This section or a regulation under this section does not apply to a common carrier of passengers when a passenger possesses a monetary instrument, or to a common carrier of goods if the shipper does not declare the instrument.

(d) Cumulation of closely related events.— The Secretary of the Treasury may prescribe regulations under this section defining the term “at one time” for purposes of subsection (a). Such regulations may permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for the purposes of subsection (a).

Amended: Anti-Drug Abuse Act of 1986, Pub. L. 99-570, Title I, § 1358, Title III, § 3153, Oct. 27, 1986, 100 Stat. 3207-26 and 3207-94.

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) Forfeiture.—

(1) Criminal forfeiture.—

(A) In general.—The court in imposing sentence for any violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit such violation, shall order the defendant to forfeit all property, real or personal, involved in the offense and any property traceable thereto.

(B) Procedure.—Forfeitures under this paragraph shall be governed by the procedures established in section 413 of the Controlled Substances Act.

(2) Civil forfeiture.—Any property involved in a violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy, may be seized and forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title III, §§ 365(b)(2)(B), 372(a), Oct. 26, 2001, 115 Stat. 272, 335, 338.

31 U.S.C. § 5318. Compliance, exemptions, and summons authority.

(a) General powers of Secretary.—The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)—

(1) except as provided in subsection (b)(2), delegate duties and powers under this subchapter to an appropriate supervising agency and the United States Postal Service;

(2) require a class of domestic financial institutions or nonfinancial trades or businesses to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter or to guard against money laundering;

(3) examine any books, papers, records, or other data of domestic financial institutions or nonfinancial trades or businesses relevant to the recordkeeping or reporting requirements of this subchapter;

(4) summon a financial institution or nonfinancial trade or business, an officer or employee of a financial institution or nonfinancial trade or business (including a former officer or employee), or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b);

(5) exempt from the requirements of this subchapter any class of transactions within any State if the Secretary determines that—

(A) under the laws of such State, that class of transactions is subject to requirements substantially similar to those imposed under this subchapter; and

(B) there is adequate provision for the enforcement of such requirements; and

(6) rely on examinations conducted by a State supervisory agency of a category of financial institution, if the Secretary determines that—

(A) the category of financial institution is required to comply with this subchapter and regulations prescribed under this subchapter; and

(B) the State supervisory agency examines the category of financial institution for compliance with this subchapter and regulations prescribed under this subchapter; and

(7) prescribe an appropriate exemption from a requirement under this subchapter and regulations prescribed under this subchapter. The Secretary may revoke an exemption under

this paragraph or paragraph (5) by actually or constructively notifying the parties affected. A revocation is effective during judicial review.

(b) Limitations on summons power.—

(1) Scope of power.—The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91-508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

(2) Authority to issue.—A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

(c) Administrative aspects of summons.—

(1) Production at designated site.—A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution or nonfinancial trade or business operates or conducts business in the United States.

(2) Fees and travel expenses.—Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States.

(3) No liability for expenses.—The United States shall not be liable for any expense, other than an expense described in paragraph (2), incurred in connection with the production of books, papers, records, or other data under this section.

(d) Service of summons.—Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

(e) Contumacy or refusal.—

(1) Referral to Attorney General.—In case of contumacy by a person issued a summons under paragraph (3) or (4) of subsection (a) or a refusal by such person to obey such summons, the Secretary of the Treasury shall refer the matter to the Attorney General.

(2) Jurisdiction of court.—The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which—

(A) the investigation which gave rise to the summons is being or has been carried on;

(B) the person summoned is an inhabitant; or

(C) the person summoned carries on business or may be found, to compel compliance with the summons.

(3) Court order.—The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding.

(4) Failure to comply with order.—Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(5) Service of process.—All process in any case under this subsection may be served in any judicial district in which such person may be found.

(f) Written and signed statement required.—No person shall qualify for an exemption under subsection (a)(5) unless the relevant financial institution or nonfinancial trade or business prepares and maintains a statement which—

(1) describes in detail the reasons why such person is qualified for such exemption; and

(2) contains the signature of such person.

(g) Reporting of suspicious transactions.—

(1) In general.—The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

(2) Notification prohibited.—

(A) In general.—If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—

(i) neither the financial institution, director, officer, employee, or agent of such institution (whether or not any such person is still employed by the institution), nor any other current or former director, officer, or employee of, or contractor for, the financial institution or other reporting person, may notify any person involved in the transaction that the transaction has been reported; and

(ii) no current or former officer or employee of or contractor for the Federal Government or of or for any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other

than as necessary to fulfill the official duties of such officer or employee.

(B) Disclosures in certain employment references.—

(i) Rule of construction.—Notwithstanding the application of subparagraph (A) in any other context, subparagraph (A) shall not be construed as prohibiting any financial institution, or any director, officer, employee, or agent of such institution, from including information that was included in a report to which subparagraph (A) applies—

(I) in a written employment reference that is provided in accordance with section 18(w) of the Federal Deposit Insurance Act in response to a request from another financial institution; or

(II) in a written termination notice or employment reference that is provided in accordance with the rules of a self-regulatory organization registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission,

except that such written reference or notice may not disclose that such information was also included in any such report, or that such report was made.

(ii) Information not required.—Clause (i) shall not be construed, by itself, to create any affirmative duty to include any information described in clause (i) in any employment reference or termination notice referred to in clause (i).

(3) Liability for disclosures.—

(A) In general.—Any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution who makes, or requires another to make any such disclosure, shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

(B) Rule of construction.—Subparagraph (A) shall not be construed as creating—

(i) any inference that the term “person”, as used in such subparagraph, may be construed more broadly than its ordinary usage so as to include any government or agency of government; or

(ii) any immunity against, or otherwise affecting, any civil or criminal action brought by any government or agency of government to enforce any constitution, law, or regulation of such government or agency.

(4) Single designee for reporting suspicious transactions.—

(A) In general.—In requiring reports under paragraph (1) of suspicious transactions, the Secretary of the Treasury shall designate, to the extent practicable and appropriate, a single officer or agency of the United States to whom such reports shall be made.

(B) Duty of designee.—The officer or agency of the United States designated by the Secretary of the Treasury pursuant to subparagraph (A) shall refer any report of a suspicious transaction to any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.

(C) Coordination with other reporting requirements.—Subparagraph (A) shall not be construed as precluding any supervisory agency for any financial institution from requiring the financial institution to submit any information or report to the agency or another agency pursuant to any other applicable provision of law.

(h) Anti-money laundering programs.—

(1) In general.—In order to guard against money laundering through financial institutions, each financial institution shall establish anti-money laundering programs, including, at a minimum—

(A) the development of internal policies, procedures, and controls;

(B) the designation of a compliance officer;

(C) an ongoing employee training program; and

(D) an independent audit function to test programs.

(2) Regulations.—The Secretary of the Treasury, after consultation with the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act), may prescribe minimum standards for programs established under paragraph (1), and may exempt from the application of those standards any financial institution that is not subject to the provisions of the rules contained in part 103 of title 31, of the Code of Federal Regulations, or any successor rule thereto, for so long as such financial institution is not subject to the provisions of such rules.

(3) Concentration accounts.—The Secretary may prescribe regulations under this subsection that govern maintenance of concentration accounts by financial institutions, in order to ensure that such accounts are not used to prevent association

of the identity of an individual customer with the movement of funds of which the customer is the direct or beneficial owner, which regulations shall, at a minimum—

(A) prohibit financial institutions from allowing clients to direct transactions that move their funds into, out of, or through the concentration accounts of the financial institution;

(B) prohibit financial institutions and their employees from informing customers of the existence of, or the means of identifying, the concentration accounts of the institution; and

(C) require each financial institution to establish written procedures governing the documentation of all transactions involving a concentration account, which procedures shall ensure that, any time a transaction involving a concentration account commingles funds belonging to 1 or more customers, the identity of, and specific amount belonging to, each customer is documented.

(i) Due diligence for United States private banking and correspondent bank accounts involving foreign persons.—

(1) In general.—Each financial institution that establishes, maintains, administers, or manages a private banking account or a correspondent account in the United States for a non-United States person, including a foreign individual visiting the United States, or a representative of a non-United States person shall establish appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts.

(2) Additional standards for certain correspondent accounts.—

(A) In general.—Subparagraph (B) shall apply if a correspondent account is requested or maintained by, or on behalf of, a foreign bank operating—

(i) under an offshore banking license; or

(ii) under a banking license issued by a foreign country that has been designated—

(I) as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member, with which designation the United States representative to the group or organization concurs; or

(II) by the Secretary of the Treasury as warranting special measures due to money laundering concerns.

(B) Policies, procedures, and controls.—The enhanced due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution in the United States takes reasonable steps—

(i) to ascertain for any such foreign bank, the shares of which are not publicly traded, the identity of each of the owners of the foreign bank, and the nature and extent of the ownership interest of each such owner;

(ii) to conduct enhanced scrutiny of such account to guard against money laundering and report any suspicious transactions under subsection (g); and

(iii) to ascertain whether such foreign bank provides correspondent accounts to other foreign banks and, if so, the identity of those foreign banks and related due diligence information, as appropriate under paragraph (1).

(3) Minimum standards for private banking accounts.—If a private banking account is requested or maintained by, or on behalf of, a non-United States person, then the due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution takes reasonable steps—

(A) to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, such account as needed to guard against money laundering and report any suspicious transactions under subsection (g); and

(B) to conduct enhanced scrutiny of any such account that is requested or maintained by, or on behalf of, a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure, that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

(4) Definitions.—For purposes of this subsection, the following definitions shall apply:

(A) Offshore banking license.—The term “offshore banking license” means a license to conduct banking activities which, as a condition of the license, prohibits the licensed entity from conducting banking activities with the citizens of, or with the local currency of, the country which issued the license.

(B) Private banking account.—The term “private banking account” means an account (or any combination of accounts) that—

(i) requires a minimum aggregate deposits of funds or other assets of not less than \$1,000,000;

(ii) is established on behalf of 1 or more individuals who have a direct or beneficial ownership interest in the account; and

(iii) is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a financial institution acting as a liaison between the

financial institution and the direct or beneficial owner of the account.

(j) Prohibition on United States correspondent accounts with foreign shell banks.—

(1) In general.—A financial institution described in subparagraphs (A) through (G) of section 5312(a)(2) (in this subsection referred to as a “covered financial institution”) shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign bank that does not have a physical presence in any country.

(2) Prevention of indirect service to foreign shell banks.—A covered financial institution shall take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to another foreign bank that does not have a physical presence in any country. The Secretary of the Treasury shall, by regulation, delineate the reasonable steps necessary to comply with this paragraph.

(3) Exception.—Paragraphs (1) and (2) do not prohibit a covered financial institution from providing a correspondent account to a foreign bank, if the foreign bank—

(A) is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

(B) is subject to supervision by a banking authority in the country regulating the affiliated depository institution, credit union, or foreign bank described in subparagraph (A), as applicable.

(4) Definitions.—For purposes of this subsection—

(A) the term “affiliate” means a foreign bank that is controlled by or is under common control with a depository institution, credit union, or foreign bank; and

(B) the term “physical presence” means a place of business that—

(i) is maintained by a foreign bank;

(ii) is located at a fixed address (other than solely an electronic address) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank—

(I) employs 1 or more individuals on a full-time basis; and

(II) maintains operating records related to its banking activities; and

(iii) is subject to inspection by the banking authority which licensed the foreign bank to conduct banking activities.

(k) Bank records related to anti-money laundering programs.—

(1) Definitions.—For purposes of this subsection, the following definitions shall apply:

(A) Appropriate Federal banking agency.—The term “appropriate Federal banking agency” has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(B) Incorporated term.—The term “correspondent account” has the same meaning as in section 5318A(e)(1)(B).

(2) 120-hour rule.—Not later than 120 hours after receiving a request by an appropriate Federal banking agency for information related to anti-money laundering compliance by a covered financial institution or a customer of such institution, a covered financial institution shall provide to the appropriate Federal banking agency, or make available at a location specified by the representative of the appropriate Federal banking agency, information and account documentation for any account opened, maintained, administered or managed in the United States by the covered financial institution.

(3) Foreign bank records.—

(A) Summons or subpoena of records.—

(i) In general.—The Secretary of the Treasury or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank.

(ii) Service of summons or subpoena.—A summons or subpoena referred to in clause (i) may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

(B) Acceptance of service.—

(i) Maintaining records in the United States.—Any covered financial institution which maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of such foreign bank and the name and address of a person who resides in the United States and is authorized to accept service of legal process for records regarding the correspondent account.

(ii) Law enforcement request.—Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained under this paragraph, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

(C) Termination of correspondent relationship.—

(i) Termination upon receipt of notice.—A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed—

(I) to comply with a summons or subpoena issued under subparagraph (A); or

(II) to initiate proceedings in a United States court contesting such summons or subpoena.

(ii) Limitation on liability.—A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with this subsection.

(iii) Failure to terminate relationship.—Failure to terminate a correspondent relationship in accordance with this subsection shall render the covered financial institution liable for a civil penalty of up to \$10,000 per day until the correspondent relationship is so terminated.

(l) Identification and verification of accountholders.—

(1) In general.—Subject to the requirements of this subsection, the Secretary of the Treasury shall prescribe regulations setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.

(2) Minimum requirements.—The regulations shall, at a minimum, require financial institutions to implement, and customers (after being given adequate notice) to comply with, reasonable procedures for—

(A) verifying the identity of any person seeking to open an account to the extent reasonable and practicable;

(B) maintaining records of the information used to verify a person’s identity, including name, address, and other identifying information; and

(C) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution

by any government agency to determine whether a person seeking to open an account appears on any such list.

(3) Factors to be considered.—In prescribing regulations under this subsection, the Secretary shall take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

(4) Certain financial institutions.—In the case of any financial institution the business of which is engaging in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (including financial activities subject to the jurisdiction of the Commodity Futures Trading Commission), the regulations prescribed by the Secretary under paragraph (1) shall be prescribed jointly with each Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act, including the Commodity Futures Trading Commission) appropriate for such financial institution.

(5) Exemptions.—The Secretary (and, in the case of any financial institution described in paragraph (4), any Federal agency described in such paragraph) may, by regulation or order, exempt any financial institution or type of account from the requirements of any regulation prescribed under this subsection in accordance with such standards and procedures as the Secretary may prescribe.

(6) Effective date.—Final regulations prescribed under this subsection shall take effect before the end of the 1-year period beginning on the date of enactment of the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001.

(m) Applicability of rules.—Any rules promulgated pursuant to the authority contained in section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b) shall apply, in addition to any other financial institution to which such rules apply, to any person that engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.

(n) Reporting of certain cross-border transmittals of funds.—

(1) In general.—Subject to paragraphs (3) and (4), the Secretary shall prescribe regulations requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing.

(2) Limitation on reporting requirements.—Information required to be reported by the regulations prescribed under paragraph (1) shall not exceed the information required to be retained by the reporting financial institution pursuant to section 21 of the Federal Deposit Insurance Act and the regulations promulgated thereunder, unless—

(A) the Board of Governors of the Federal Reserve System and the Secretary jointly determine that a particular item or items of information are not currently required to be retained under such section or such regulations; and

(B) the Secretary determines, after consultation with the Board of Governors of the Federal Reserve System, that the reporting of such information is reasonably necessary to conduct the efforts of the Secretary to identify cross-border money laundering and terrorist financing.

(3) Form and manner of reports.—In prescribing the regulations required under paragraph (1), the Secretary shall, subject to paragraph (2), determine the appropriate form, manner, content, and frequency of filing of the required reports.

(4) Feasibility report.—

(A) In general.—Before prescribing the regulations required under paragraph (1), and as soon as is practicable after the date of enactment of the Intelligence Reform and Terrorism Prevention Act of 2004, the Secretary shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that—

(i) identifies the information in cross-border electronic transmittals of funds that may be found in particular cases to be reasonably necessary to conduct the efforts of the Secretary to identify money laundering and terrorist financing, and outlines the criteria to be used by the Secretary to select the situations in which reporting under this subsection may be required;

(ii) outlines the appropriate form, manner, content, and frequency of filing of the reports that may be required under such regulations;

(iii) identifies the technology necessary for the Financial Crimes Enforcement Network to receive, keep, exploit, protect the security of, and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement and other entities engaged in efforts against money laundering and terrorist financing; and

(iv) discusses the information security protections required by the exercise of the Secretary's authority under this sub-section.

(B) Consultation.—In reporting the feasibility report under subparagraph (A), the Secretary may consult with the Bank Secrecy Act Advisory Group established by the Secretary, and any other group considered by the Secretary to be relevant.

(5) Regulations.—

(A) In general.—Subject to subparagraph (B), the regulations required by paragraph (1) shall be prescribed in final form by the Secretary, in consultation with the Board of Governors of the Federal Reserve System, before the end of the 3-year period beginning on the date of enactment of the National Intelligence Reform Act of 2004.

(B) Technological feasibility.—No regulations shall be prescribed under this subsection before the Secretary certifies to the Congress that the Financial Crimes Enforcement Network has the technological systems in place to effectively and efficiently receive, keep, exploit, protect the security of, and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement and other entities engaged in efforts against money laundering and terrorist financing.

Amended: Money Remittances Improvement Act of 2014, Pub. L. 113-156, § 2(a), Aug. 8, 2014, 128 Stat. 1829.

31 U.S.C. § 5318A. Special measures for jurisdictions, financial institutions, international transactions, or types of accounts of primary money laundering concern.

(a) International counter-money laundering requirements.—

(1) In general.—The Secretary of the Treasury may require domestic financial institutions and domestic financial agencies to take 1 or more of the special measures described in subsection (b) if the Secretary finds that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern, in accordance with subsection (c).

(2) Form of requirement.—The special measures described in—

(A) subsection (b) may be imposed in such sequence or combination as the Secretary shall determine;

(B) paragraphs (1) through (4) of subsection (b) may be imposed by regulation, order, or otherwise as permitted by law; and

(C) subsection (b)(5) may be imposed only by regulation.

(3) Duration of orders; rulemaking.—Any order by which a special measure described in paragraphs (1) through (4) of subsection (b) is imposed (other than an order described in section 5326)—

(A) shall be issued together with a notice of proposed rulemaking relating to the imposition of such special measure; and

(B) may not remain in effect for more than 120 days, except pursuant to a rule promulgated on or before the end of the 120-day period beginning on the date of issuance of such order.

(4) Process for selecting special measures.—In selecting which special measure or measures to take under this subsection, the Secretary of the Treasury—

(A) shall consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act), the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration Board, and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find to be appropriate; and

(B) shall consider—

(i) whether similar action has been or is being taken by other nations or multilateral groups;

(ii) whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;

(iii) the extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction, institution, class of transactions, or type of account; and

(iv) the effect of the action on United States national security and foreign policy.

(5) No limitation on other authority.—This section shall not be construed as superseding or otherwise restricting any other authority granted to the Secretary, or to any other agency, by this subchapter or otherwise.

(b) Special measures.—The special measures referred to in subsection (a), with respect to a jurisdiction outside of the United States, financial institution operating outside of the United States, class of transaction within, or involving, a

jurisdiction outside of the United States, or 1 or more types of accounts are as follows:

(1) Recordkeeping and reporting of certain financial transactions.—

(A) In general.—The Secretary of the Treasury may require any domestic financial institution or domestic financial agency to maintain records, file reports, or both, concerning the aggregate amount of transactions, or concerning each transaction, with respect to a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, class of transactions, or type of account to be of primary money laundering concern.

(B) Form of records and reports.—Such records and reports shall be made and retained at such time, in such manner, and for such period of time, as the Secretary shall determine, and shall include such information as the Secretary may determine, including—

(i) the identity and address of the participants in a transaction or relationship, including the identity of the originator of any funds transfer;

(ii) the legal capacity in which a participant in any transaction is acting;

(iii) the identity of the beneficial owner of the funds involved in any transaction, in accordance with such procedures as the Secretary determines to be reasonable and practicable to obtain and retain the information; and

(iv) a description of any transaction.

(2) Information relating to beneficial ownership.—In addition to any other requirement under any other provision of law, the Secretary may require any domestic financial institution or domestic financial agency to take such steps as the Secretary may determine to be reasonable and practicable to obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person (other than a foreign entity whose shares are subject to public reporting requirements or are listed and traded on a regulated exchange or trading market), or a representative of such a foreign person, that involves a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, or transaction or type of account to be of primary money laundering concern.

(3) Information relating to certain payable-through accounts.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a payable-through account in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside of the United States, or a payable through account through which any such transaction may be conducted, as a condition of opening or maintaining such account—

(A) to identify each customer (and representative of such customer) of such financial institution who is permitted to use, or whose transactions are routed through, such payable-through account; and

(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

(4) Information relating to certain correspondent accounts.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a correspondent account in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside of the United States, or a correspondent account through which any such transaction may be conducted, as a condition of opening or maintaining such account—

(A) to identify each customer (and representative of such customer) of any such financial institution who is permitted to use, or whose transactions are routed through, such correspondent account; and

(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

(5) Prohibitions or conditions on opening or maintaining certain correspondent or payable-through accounts.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to

be of primary money laundering concern, the Secretary, in consultation with the Secretary of State, the Attorney General, and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit, or impose conditions upon, the opening or maintaining in the United States of a correspondent account or payable-through account by any domestic financial institution or domestic financial agency for or on behalf of a foreign banking institution, if such correspondent account or payable-through account involves any such jurisdiction or institution, or if any such transaction may be conducted through such correspondent account or payable-through account.

(c) Consultations and information to be considered in finding jurisdictions, institutions, types of accounts, or transactions to be of primary money laundering concern.—

(1) In general.—In making a finding that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern so as to authorize the Secretary of the Treasury to take 1 or more of the special measures described in subsection (b), the Secretary shall consult with the Secretary of State and the Attorney General.

(2) Additional considerations.—In making a finding described in paragraph (1), the Secretary shall consider in addition such information as the Secretary determines to be relevant, including the following potentially relevant factors:

(A) Jurisdictional factors.—In the case of a particular jurisdiction—

(i) evidence that organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction or missiles, have transacted business in that jurisdiction;

(ii) the extent to which that jurisdiction or financial institutions operating in that jurisdiction offer bank secrecy or special regulatory advantages to nonresidents or nondomiciliaries of that jurisdiction;

(iii) the substance and quality of administration of the bank supervisory and counter-money laundering laws of that jurisdiction;

(iv) the relationship between the volume of financial transactions occurring in that jurisdiction and the size of the economy of the jurisdiction;

(v) the extent to which that jurisdiction is characterized as an offshore banking or secrecy haven by credible international organizations or multilateral expert groups;

(vi) whether the United States has a mutual legal assistance treaty with that jurisdiction, and the experience of United States law enforcement officials and regulatory officials in obtaining information about transactions originating in or routed through or to such jurisdiction; and

(vii) the extent to which that jurisdiction is characterized by high levels of official or institutional corruption.

(B) Institutional factors.—In the case of a decision to apply 1 or more of the special measures described in subsection (b) only to a financial institution or institutions, or to a transaction or class of transactions, or to a type of account, or to all 3, within or involving a particular jurisdiction—

(i) the extent to which such financial institutions, transactions, or types of accounts are used to facilitate or promote money laundering in or through the jurisdiction, including any money laundering activity by organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction or missiles;

(ii) the extent to which such institutions, transactions, or types of accounts are used for legitimate business purposes in the jurisdiction; and

(iii) the extent to which such action is sufficient to ensure, with respect to transactions involving the jurisdiction and institutions operating in the jurisdiction, that the purposes of this subchapter continue to be fulfilled, and to guard against international money laundering and other financial crimes.

(d) Notification of special measures invoked by the Secretary.—Not later than 10 days after the date of any action taken by the Secretary of the Treasury under subsection (a) (1), the Secretary shall notify, in writing, the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of any such action.

(e) Definitions.—Notwithstanding any other provision of this subchapter, for purposes of this section and subsections (i) and (j) of section 5318, the following definitions shall apply:

(1) Bank definitions.—The following definitions shall apply with respect to a bank:

(A) Account.—The term “account”—

(i) means a formal banking or business relationship established to provide regular services, dealings, and other financial transactions; and

(ii) includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.

(B) Correspondent account.—The term “correspondent account” means an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution.

(C) Payable-through account.—The term “payable-through account” means an account, including a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act), opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

(2) Definitions applicable to institutions other than banks.—With respect to any financial institution other than a bank, the Secretary shall, after consultation with the appropriate Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act), define by regulation the term “account”, and shall include within the meaning of that term, to the extent, if any, that the Secretary deems appropriate, arrangements similar to payable-through and correspondent accounts.

(3) Regulatory definition of beneficial ownership.—The Secretary shall promulgate regulations defining beneficial ownership of an account for purposes of this section and subsections (i) and (j) of section 5318. Such regulations shall address issues related to an individual’s authority to fund, direct, or manage the account (including, without limitation, the power to direct payments into or out of the account), and an individual’s material interest in the income or corpus of the account, and shall ensure that the identification of individuals under this section or subsection (i) or (j) of section 5318 does not extend to any individual whose beneficial interest in the income or corpus of the account is immaterial.

(4) Other terms.—The Secretary may, by regulation, further define the terms in paragraphs (1), (2), and (3), and define other terms for the purposes of this section, as the Secretary deems appropriate.

(f) Classified information.—In any judicial review of a finding of the existence of a primary money laundering concern, or of the requirement for 1 or more special measures with respect to a primary money laundering concern, made under this section, if the designation or imposition, or both, were based on classified information (as defined in section 1(a) of the Classified Information Procedures Act), such information may be submitted by the Secretary to the

reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review of any finding made or any requirement imposed under this section.

Amended: Iran Freedom Support Act, Pub. L. 109-293, Title V, § 501, Sept. 30, 2006, 120 Stat. 1350.

31 U.S.C. § 5321. Civil penalties.

(a)(1) A domestic financial institution or nonfinancial trade or business, and a partner, director, officer, or employee of a domestic financial institution or nonfinancial trade or business, willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except sections 5314 and 5315 of this title or a regulation prescribed under sections 5314 and 5315), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, is liable to the United States Government for a civil penalty of not more than the greater of the amount (not to exceed \$100,000) involved in the transaction (if any) or \$25,000. For a violation of section 5318(a)(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

(2) The Secretary of the Treasury may impose an additional civil penalty on a person not filing a report, or filing a report containing a material omission or misstatement, under section 5316 of this title or a regulation prescribed under section 5316. A civil penalty under this paragraph may not be more than the amount of the monetary instrument for which the report was required. A civil penalty under this paragraph is reduced by an amount forfeited under section 5317(b) of this title.

(3) A person not filing a report under a regulation prescribed under section 5315 of this title or not complying with an injunction under section 5320 of this title enjoining a violation of, or enforcing compliance with, section 5315 or a regulation prescribed under section 5315, is liable to the Government for a civil penalty of not more than \$10,000.

(4) Structured transaction violation.—

(A) Penalty authorized.—The Secretary of the Treasury may impose a civil money penalty on any person who violates any provision of section 5324.

(B) Maximum amount limitation.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transaction with respect to which such penalty is imposed.

(C) Coordination with forfeiture provision.—The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States in connection with the transaction with respect to which such penalty is imposed.

(5) Foreign financial agency transaction violation.—

(A) Penalty authorized.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

(B) Amount of penalty.—

(i) In general.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed \$10,000.

(ii) Reasonable cause exception.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

(I) such violation was due to reasonable cause, and

(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

(C) Willful violations.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

(I) \$100,000, or

(II) 50 percent of the amount determined under subparagraph (D), and

(ii) subparagraph (B)(ii) shall not apply.

(D) Amount.—The amount determined under this subparagraph is—

(i) in the case of a violation involving a transaction, the amount of the transaction, or

(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.

(6) Negligence.—

(A) In general.—The Secretary of the Treasury may impose a civil money penalty of not more than \$500 on any financial institution or nonfinancial trade or business

which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter.

(B) Pattern of negligent activity.—If any financial institution or nonfinancial trade or business engages in a pattern of negligent violations of any provision of this subchapter or any regulation prescribed under this subchapter, the Secretary of the Treasury may, in addition to any penalty imposed under subparagraph (A) with respect to any such violation, impose a civil money penalty of not more than \$50,000 on the financial institution or nonfinancial trade or business.

(7) Penalties for international counter money laundering violations.—The Secretary may impose a civil money penalty in an amount equal to not less than 2 times the amount of the transaction, but not more than \$1,000,000, on any financial institution or agency that violates any provision of subsection (i) or (j) of section 5318 or any special measures imposed under section 5318A.

(b) Time limitations for assessments and commencement of civil actions.—

(1) Assessments.—The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

(2) Civil actions.—The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the 2-year period beginning on the later of—

(A) the date the penalty was assessed; or

(B) the date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.

(c) The Secretary may remit any part of a forfeiture under subsection (c) or (d) of section 5317 of this title or civil penalty under subsection (a)(2) of this section.

(d) Criminal penalty not exclusive of civil penalty.—A civil money penalty may be imposed under subsection (a) with respect to any violation of this subchapter notwithstanding the fact that a criminal penalty is imposed with respect to the same violation.

(e) Delegation of assessment authority to banking agencies.—

(1) In general.—The Secretary of the Treasury shall delegate, in accordance with section 5318(a)(1) and subject to such terms and conditions as the Secretary may impose in accordance with paragraph (3), any authority of the Secretary to assess a civil money penalty under this section on depository institutions (as defined in section 3 of the

Federal Deposit Insurance Act) to the appropriate Federal banking agencies (as defined in such section 3).

(2) Authority of agencies.—Subject to any term or condition imposed by the Secretary of the Treasury under paragraph (3), the provisions of this section shall apply to an appropriate Federal banking agency to which is delegated any authority of the Secretary under this section in the same manner such provisions apply to the Secretary.

(3) Terms and conditions.—

(A) In general.—The Secretary of the Treasury shall prescribe by regulation the terms and conditions which shall apply to any delegation under paragraph (1).

(B) Maximum dollar amount.—The terms and conditions authorized under subparagraph (A) may include, in the Secretary's sole discretion, a limitation on the amount of any civil penalty which may be assessed by an appropriate Federal banking agency pursuant to a delegation under paragraph (1).

Amended: American Jobs Creation Act of 2004, Pub. L. 108-357, Title VIII, § 821(a), Oct. 22, 2004, 118 Stat. 1418, 1586.

31 U.S.C. § 5322. Criminal penalties.

(a) A person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, shall be fined not more than \$250,000, or imprisoned for not more than five years, or both.

(b) A person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period, shall be fined not more than \$500,000, imprisoned for not more than 10 years, or both.

(c) For a violation of section 5318(a)(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

(d) A financial institution or agency that violates any provision of subsection (i) or (j) of section 5318, or any special measures imposed under section 5318A, or any regulation prescribed

under subsection (i) or (j) of section 5318 or section 5318A, shall be fined in an amount equal to not less than 2 times the amount of the transaction, but not more than \$1,000,000.

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title III, §§ 353(b), 363(b), Oct. 26, 2001, 115 Stat. 272, 323, 332.

31 U.S.C. § 5324. Structuring transactions involving financial institutions to evade reporting requirement prohibited.¹

(a) Domestic coin and currency transactions involving financial institutions.—No person shall, for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508—

(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by an order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508;

(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by any order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, that contains a material omission or misstatement of fact; or

¹ Section 5324 makes it an offense to engage in certain conduct with respect to four different reporting or recordkeeping requirements: section 5313 (currency transaction reports); section 5325 (recordkeeping requirement pertaining to purchase of monetary instruments such as bank checks, cashier's checks, traveler's checks, and money orders); section 5326 (special recordkeeping and reporting requirements pursuant to a geographic targeting order); and section 21 of the Federal Deposit Insurance Act (codified at 12 U.S.C. § 1829b), pertaining to recordkeeping requirements involving wire transfers. The regulations covering recordkeeping requirements for wire transfers can be found at 31 C.F.R. §§ 103.33(e)-(g).

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

(b) Domestic coin and currency transactions involving nonfinancial trades or businesses.—No person shall, for the purpose of evading the report requirements of section 5331 or any regulation prescribed under such section—

(1) cause or attempt to cause a nonfinancial trade or business to fail to file a report required under section 5331 or any regulation prescribed under such section;

(2) cause or attempt to cause a nonfinancial trade or business to file a report required under section 5331 or any regulation prescribed under such section that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with 1 or more nonfinancial trades or businesses.

(c) International monetary instrument transactions.—No person shall, for the purpose of evading the reporting requirements of section 5316—

(1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report;

(2) file or cause or attempt to cause a person to file a report required under section 5316 that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of monetary instruments.

(d) Criminal penalty.—

(1) In general.—Whoever violates this section shall be fined in accordance with title 18, United States Code, imprisoned for not more than 5 years, or both.

(2) Enhanced penalty for aggravated cases.—Whoever violates this section while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

Amended: Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, Title VI, § 6203(g), Dec. 17, 2004, 118 Stat. 3638, 3747.

31 U.S.C. § 5325. Identification required to purchase certain monetary instruments.

(a) In general.—No financial institution may issue or sell a bank check, cashier’s check, traveler’s check, or money order to any individual in connection with a transaction or group of such contemporaneous transactions which involves United States coins or currency (or such other monetary instruments as the Secretary may prescribe) in amounts or denominations of \$3,000 or more unless—

(1) the individual has a transaction account with such financial institution and the financial institution—

(A) verifies that fact through a signature card or other information maintained by such institution in connection with the account of such individual; and

(B) records the method of verification in accordance with regulations which the Secretary of the Treasury shall prescribe; or

(2) the individual furnishes the financial institution with such forms of identification as the Secretary of the Treasury may require in regulations which the Secretary shall prescribe and the financial institution verifies and records such information in accordance with regulations which such Secretary shall prescribe.

(b) Report to secretary upon request.—Any information required to be recorded by any financial institution under paragraph (1) or (2) of subsection (a) shall be reported by such institution to the Secretary of the Treasury at the request of such Secretary.

(c) Transaction account defined.—For purposes of this section, the term “transaction account” has the meaning given to such term in section 19(b)(1)(C) of the Federal Reserve Act.

Enacted: Anti-Drug Abuse Act of 1988, Pub. L. 100-690, Title VI, § 6185(b), Nov. 18, 1988, 102 Stat. 4181, 4355.

31 U.S.C. § 5326. Records of certain domestic coin and currency transactions.

(a) In general.—If the Secretary of the Treasury finds, upon the Secretary’s own initiative or at the request of an appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and reporting requirements are necessary to carry out the purposes of this subtitle and prevent evasions thereof, the Secretary may issue an order requiring any domestic financial institution or nonfinancial trade or business or group of domestic financial institutions or nonfinancial trades or businesses in a geographic area—

(1) to obtain such information as the Secretary may describe in such order concerning—

(A) any transaction in which such financial institution or nonfinancial trade or business is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe; and

(B) any other person participating in such transaction;

(2) to maintain a record of such information for such period of time as the Secretary may require; and

(3) to file a report with respect to any transaction described in paragraph (1)(A) in the manner and to the extent specified in the order.

(b) Authority to order depository institutions to obtain reports from customers.—

(1) In general.—The Secretary of the Treasury may, by regulation or order, require any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)—

(A) to request any financial institution or nonfinancial trade or business (other than a depository institution) which engages in any reportable transaction with the depository institution to provide the depository institution with a copy of any report filed by the financial institution or nonfinancial trade or business under this subtitle with respect to any prior transaction (between such financial institution or nonfinancial trade or business and any other person) which involved any portion of the coins or currency (or monetary instruments) which are involved in the reportable transaction with the depository institution; and

(B) if no copy of any report described in subparagraph (A) is received by the depository institution in connection with any reportable transaction to which such subparagraph applies, to submit (in addition to any report required under this subtitle with respect to the reportable transaction) a written notice to the Secretary that the financial institution or nonfinancial trade or business failed to provide any copy of such report.

(2) Reportable transaction defined.—For purposes of this subsection, the term “reportable transaction” means any transaction involving coins or currency (or such other monetary instruments as the Secretary may describe in the regulation or order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.

(c) Nondisclosure of orders.—No financial institution or nonfinancial trade or business or officer, director, employee

or agent of a financial institution or nonfinancial trade or business subject to an order under this section may disclose the existence of, or terms of, the order to any person except as prescribed by the Secretary.

(d) Maximum effective period for order.—No order issued under subsection (a) shall be effective for more than 180 days unless renewed pursuant to the requirements of subsection (a).

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title III, §§ 353(d), 365(c)(2)(B), Oct. 26, 2001, 115 Stat. 272, 323, 335.

31 U.S.C. § 5330. Registration of money transmitting businesses.

(a) Registration with Secretary of the Treasury required.—

(1) In general.—Any person who owns or controls a money transmitting business shall register the business (whether or not the business is licensed as a money transmitting business in any State) with the Secretary of the Treasury not later than the end of the 180-day period beginning on the later of—

(A) the date of enactment of the Money Laundering Suppression Act of 1994; or

(B) the date on which the business is established.

(2) Form and manner of registration.—Subject to the requirements of subsection (b), the Secretary of the Treasury shall prescribe, by regulation, the form and manner for registering a money transmitting business pursuant to paragraph (1).

(3) Businesses remain subject to State law.—This section shall not be construed as superseding any requirement of State law relating to money transmitting businesses operating in such State.

(4) False and incomplete information.—The filing of false or materially incomplete information in connection with the registration of a money transmitting business shall be considered as a failure to comply with the requirements of this subchapter.

(b) Contents of registration.—The registration of a money transmitting business under subsection (a) shall include the following information:

(1) The name and location of the business.

(2) The name and address of each person who—

(A) owns or controls the business;

(B) is a director or officer of the business; or

(C) otherwise participates in the conduct of the affairs of the business.

(3) The name and address of any depository institution at which the business maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act).

(4) An estimate of the volume of business in the coming year (which shall be reported annually to the Secretary).

(5) Such other information as the Secretary of the Treasury may require.

(c) Agents of money transmitting businesses.—

(1) Maintenance of lists of agents of money transmitting businesses.—Pursuant to regulations which the Secretary of the Treasury shall prescribe, each money transmitting business shall—

(A) maintain a list containing the names and addresses of all persons authorized to act as an agent for such business in connection with activities described in subsection (d)(1)(A) and such other information about such agents as the Secretary may require; and

(B) make the list and other information available on request to any appropriate law enforcement agency.

(2) Treatment of agent as money transmitting business.—The Secretary of the Treasury shall prescribe regulations establishing, on the basis of such criteria as the Secretary determines to be appropriate, a threshold point for treating an agent of a money transmitting business as a money transmitting business for purposes of this section.

(d) Definitions.—For purposes of this section, the following definitions shall apply:

(1) Money transmitting business.—The term “money transmitting business” means any business other than the United States Postal Service which—

(A) provides check cashing, currency exchange, or money transmitting or remittance services, or issues or redeems money orders, travelers’ checks, and other similar instruments or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system;

(B) is required to file reports under section 5313; and

(C) is not a depository institution (as defined in section 5313(g)).

(2) Money transmitting service.—The term “money transmitting service” includes accepting currency or funds

denominated in the currency of any country and transmitting the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal reserve bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network.

(e) Civil penalty for failure to comply with registration requirements.—

(1) In general.—Any person who fails to comply with any requirement of this section or any regulation prescribed under this section shall be liable to the United States for a civil penalty of \$5,000 for each such violation.

(2) Continuing violation.—Each day a violation described in paragraph (1) continues shall constitute a separate violation for purposes of such paragraph.

(3) Assessments.—Any penalty imposed under this subsection shall be assessed and collected by the Secretary of the Treasury in the manner provided in section 5321 and any such assessment shall be subject to the provisions of such section.

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title III, § 359(b), Oct. 26, 2001, 115 Stat. 328.

31 U.S.C. § 5331. Reports relating to coins and currency received in nonfinancial trade or business.

(a) Coin and currency receipts of more than \$10,000.—Any person—

(1)(A) who is engaged in a trade or business, and

(B) who, in the course of such trade or business, receives more than \$10,000 in coins or currency in 1 transaction (or 2 or more related transactions), or

(2) who is required to file a report under section 6050I(g) of the Internal Revenue Code of 1986,

shall file a report described in subsection (b) with respect to such transaction (or related transactions) with the Financial Crimes Enforcement Network at such time and in such manner as the Secretary may, by regulation, prescribe.

(b) Form and manner of reports.—A report is described in this subsection if such report—

(1) is in such form as the Secretary may prescribe;

(2) contains—

(A) the name and address, and such other identification information as the Secretary may require, of the person from whom the coins or currency was received;

(B) the amount of coins or currency received;

(C) the date and nature of the transaction; and

(D) such other information, including the identification of the person filing the report, as the Secretary may prescribe.

(c) Exceptions.—

(1) Amounts received by financial institutions.—Subsection (a) shall not apply to amounts received in a transaction reported under section 5313 and regulations prescribed under such section.

(2) Transactions occurring outside the United States.—Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

(d) Currency includes foreign currency and certain monetary instruments.—

(1) In general.—For purposes of this section, the term “currency” includes—

(A) foreign currency; and

(B) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than \$10,000.

(2) Scope of application.—Paragraph (1)(B) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), or (S) of section 5312(a)(2).

Amended: Consolidated Appropriations Act, 2012, Pub. L. 112-74, Div. C, Title I, § 120, Dec. 23, 2011, 125 Stat. 891.

31 U.S.C. § 5332. Bulk cash smuggling into or out of the United States.

(a) Criminal offense.—

(1) In general.—Whoever, with the intent to evade a currency reporting requirement under section 5316, knowingly conceals more than \$10,000 in currency or other monetary instruments on the person of such individual or in any conveyance, article of luggage, merchandise, or other container, and transports or transfers or attempts to transport or transfer such currency or monetary instruments from a place within the United States to a place outside of the United States, or from a place outside the United States to a place within the

United States, shall be guilty of a currency smuggling offense and subject to punishment pursuant to subsection (b).

(2) Concealment on person.—For purposes of this section, the concealment of currency on the person of any individual includes concealment in any article of clothing worn by the individual or in any luggage, backpack, or other container worn or carried by such individual.

(b) Penalty.—

(1) Term of imprisonment.—A person convicted of a currency smuggling offense under subsection (a), or a conspiracy to commit such offense, shall be imprisoned for not more than 5 years.

(2) Forfeiture.—In addition, the court, in imposing sentence under paragraph (1), shall order that the defendant forfeit to the United States, any property, real or personal, involved in the offense, and any property traceable to such property.

(3) Procedure.—The seizure, restraint, and forfeiture of property under this section shall be governed by section 413 of the Controlled Substances Act.

(4) Personal money judgment.—If the property subject to forfeiture under paragraph (2) is unavailable, and the defendant has insufficient substitute property that may be forfeited pursuant to section 413(p) of the Controlled Substances Act, the court shall enter a personal money judgment against the defendant for the amount that would be subject to forfeiture.

(c) Civil forfeiture.—

(1) In general.—Any property involved in a violation of subsection (a), or a conspiracy to commit such violation, and any property traceable to such violation or conspiracy, may be seized and forfeited to the United States.

(2) Procedure.—The seizure and forfeiture shall be governed by the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

(3) Treatment of certain property as involved in the offense.—For purposes of this subsection and subsection (b), any currency or other monetary instrument that is concealed or intended to be concealed in violation of subsection (a) or a conspiracy to commit such violation, any article, container, or conveyance used, or intended to be used, to conceal or transport the currency or other monetary instrument, and any other property used, or intended to be used, to facilitate the offense, shall be considered property involved in the offense.

Amended: Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, Title VI, § 6203(h), Dec. 17, 2004, 118 Stat. 3638, 3747.

31 U.S.C. § 5332. Note.

[The following “findings” and “purposes” are part of section 371 of Pub. L. 107-56, but are not codified to any section of the United States Code.]

(a) FINDINGS.- Congress finds that—

(1) Effective enforcement of the currency reporting requirements of subchapter II of chapter 53 of title 31, United States Code [commonly referred to as the Bank Secrecy Act], and the regulations prescribed under such subchapter, has forced drug dealers and other criminals engaged in cash-based businesses to avoid using traditional financial institutions.

(2) In their effort to avoid using traditional financial institutions, drug dealers and other criminals are forced to move large quantities of currency in bulk form to and through the airports, border crossings, and other ports of entry where the currency can be smuggled out of the United States and placed in a foreign financial institution or sold on the black market.

(3) The transportation and smuggling of cash in bulk form may now be the most common form of money laundering, and the movement of large sums of cash is one of the most reliable warning signs of drug trafficking, terrorism, money laundering, racketeering, tax evasion and similar crimes.

(4) The intentional transportation into or out of the United States of large amounts of currency or monetary instruments, in a manner designed to circumvent the mandatory reporting provisions of subchapter II of chapter 53 of title 31, United States Code, [sic] is the equivalent of, and creates the same harm as, the smuggling of goods.

(5) The arrest and prosecution of bulk cash smugglers are important parts of law enforcement’s effort to stop the laundering of criminal proceeds, but the couriers who attempt to smuggle the cash out of the United States are typically low-level employees of large criminal organizations, and thus are easily replaced. Accordingly, only the confiscation of the smuggled bulk cash can effectively break the cycle of criminal activity of which the laundering of the bulk cash is a critical part.

(6) The current penalties for violations of the currency reporting requirements are insufficient to provide a deterrent to the laundering of criminal proceeds. In particular, in cases where the only criminal violation under current law is a reporting offense, the law does not adequately provide for the confiscation of smuggled currency. In contrast, if the smuggling of bulk cash were itself an offense, the cash could be confiscated as the corpus delicti of the smuggling offense.

(b) PURPOSES—The purposes of this section are—

(1) to make the act of smuggling bulk cash itself a criminal offense;

(2) to authorize forfeiture of any cash or instruments of the smuggling offense;

(3) to emphasize the seriousness of the act of bulk cash smuggling.

31 C.F.R. CHAPTER X CROSS REFERENCE INDEX

<u>31 CFR Part 103</u>	<u>31 CFR Chapter X</u>	<u>31 CFR Part 103</u>	<u>31 CFR Chapter X</u>
103.11.....	1010.100	103.121(a)(1)	1020.100(a)
103.15(a)–(g)	1024.320(a)–(g)	103.121(a)(2)	1020.100(b)
103.16(a).....	Deleted	103.121(a)(3)	1020.100(c)
103.16(b)–(i)	1025.320(a)–(h)	103.121(a)(4)	Deleted
103.18(a)–(f).....	1020.320(a)–(f)	103.121(a)(5)	1020.100(d)(2)
103.19(a)–(h)	1023.320(a)–(h)	103.121(a)(6)	1010.100(yy)
103.20(a)–(f).....	1022.320(a)–(f)	103.121(a)(7)	1010.100(iii)
103.21(a)–(g)	1021.320(a)–(g)	103.121(a)(8)	1010.100(iii)
103.22(a).....	Deleted	103.121(b)–(d)	1020.220(a)–(c)
103.22(b)(1)	1010.311	103.125(a)–(e).....	1022.210(a)–(e)
103.22(b)(2)(i)–(iii)	1021.311(a)–(c)	103.176(a)–(g)	1010.610(a)–(g)
103.22(c)(1) & (2).....	1010.313(a) & (b)	103.178(a)–(e).....	1010.620(a)–(e)
103.22(c)(3)	1021.313		
103.22(d)(1) sentences 1 and 3	1020.315(a)		
103.22(d)(1) sentence 2	1010.315		
103.22(d)(2)–(9).....	1020.315(b)–(i)		
103.23(a)–(d)	1010.340(a)–(d)		
103.24.....	1010.350		
103.26(a)–(d)	1010.370(a)–(d)		
103.27(a)(1)	1010.306(a)(1)		
103.27(a)(2)	Deleted		
103.27(a)(3) & (4).....	1010.306(a)(2) & (3)		
103.27(b)–(e)	1010.306(b)–(e)		
103.28.....	1010.312		
103.29(a)–(c).....	1010.415(a)–(c)		
103.30(a)–(c).....	1010.330(a)–(c)		
103.30(d)(1)(i)–(iv).....	1021.330(a)–(d)		
103.30(d)(2)	1010.330(d)(2)		
103.30(d)(3)	1010.330(d)(1)		
103.30(e).....	1010.330(e)		
103.33(a)–(d)	1010.410(a)–(d)		
103.33(e).....	1020.410(a)		
103.33(f) & (g).....	1010.410(e) & (f)		
103.41(a)–(f).....	1022.380(a)–(f)		

31 C.F.R. CHAPTER X SUBJECT MATTER INDEX

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31 C.F.R. CHAPTER X. FINANCIAL CRIMES ENFORCEMENT NETWORK, DEPARTMENT OF THE TREASURY

31 C.F.R. § 1010.100. General definitions.

*To be used for violations occurring on or after
March 1, 2011.*

When used in this chapter and in forms prescribed under this chapter, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this subpart. Terms applicable to a particular type of financial institution or specific part or subpart of this chapter are located in that part or subpart. Terms may have different meanings in different parts or subparts.

(a) **Accept.** A receiving financial institution, other than the recipient's financial institution, accepts a transmittal order by executing the transmittal order. A recipient's financial institution accepts a transmittal order by paying the recipient, by notifying the recipient of the receipt of the order or by otherwise becoming obligated to carry out the order.

(b) **At one time.** For purposes of § 1010.340 of this part, a person who transports, mails, ships or receives; is about to or attempts to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:

(1) That person either alone, in conjunction with or on behalf of others;

(2) Transports, mails, ships or receives in any manner; is about to transport, mail or ship in any manner; or causes the transportation, mailing, shipment or receipt in any manner of;

(3) Monetary instruments;

(4) Into the United States or out of the United States;

(5) Totaling more than \$10,000;

(6)(i) On one calendar day; or

(ii) If for the purpose of evading the reporting requirements of § 1010.340, on one or more days.

(c) **Attorney General.** The Attorney General of the United States.

(d) **Bank.** Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A commercial bank or trust company organized under the laws of any State or of the United States;

(2) A private bank;

(3) A savings and loan association or a building and loan association organized under the laws of any State or of the United States;

(4) An insured institution as defined in section 401 of the National Housing Act;

(5) A savings bank, industrial bank or other thrift institution;

(6) A credit union organized under the law of any State or of the United States;

(7) Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a State;

(8) A bank organized under foreign law;

(9) Any national banking association or corporation acting under the provisions of section 25(a) of the Act of Dec. 23, 1913, as added by the Act of Dec. 24, 1919, ch. 18, 41 Stat. 378, as amended (12 U.S.C. 611–32).

(e) **Bank Secrecy Act.** The Currency and Foreign Transactions Reporting Act, its amendments, and the other statutes relating to the subject matter of that Act, have come to be referred to as the Bank Secrecy Act. These statutes are codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto.

(f) **Beneficiary.** The person to be paid by the beneficiary's bank.

(g) **Beneficiary's bank.** The bank or foreign bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(h) **Broker or dealer in securities.** A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

(i) **Business day.** As used in this chapter with respect to banks, business day means that day, as normally communicated to its depository customers, on which a bank routinely posts a particular transaction to its customer's account.

(j) **Commodity.** Any good, article, service, right, or interest described in section 1a(4) of the Commodity Exchange Act (“CEA”), 7 U.S.C. 1a(4).

(k) **Common carrier.** Any person engaged in the business of transporting individuals or goods for a fee who holds himself out as ready to engage in such transportation for hire and who undertakes to do so indiscriminately for all persons who are prepared to pay the fee for the particular service offered.

(l) **Contract of sale.** Any sale, agreement of sale, or agreement to sell as described in section 1a(7) of the CEA, 7 U.S.C. 1a(7).

(m) **Currency.** The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

(n) **Deposit account.** Deposit accounts include transaction accounts described in paragraph(ccc) of this section, savings accounts, and other time deposits.

(o) **Domestic.** When used herein, refers to the doing of business within the United States, and limits the applicability of the provision where it appears to the performance by such institutions or agencies of functions within the United States.

(p) **Established customer.** A person with an account with the financial institution, including a loan account or deposit or other asset account, or a person with respect to which the financial institution has obtained and maintains on file the person’s name and address, as well as taxpayer identification number(e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information.

(q) **Execution date.** The day on which the receiving financial institution may properly issue a transmittal order in execution of the sender’s order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received, and, unless otherwise determined, is the day the order is received. If the sender’s instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the recipient on the payment date.

(r) **Federal functional regulator.**

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Office of Thrift Supervision;

(5) The National Credit Union Administration;

(6) The Securities and Exchange Commission; or

(7) The Commodity Futures Trading Commission.

(s) **FinCEN.** FinCEN means the Financial Crimes Enforcement Network, a bureau of the Department of the Treasury.

(t) **Financial institution.** Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed below:

(1) A bank (except bank credit card systems);

(2) A broker or dealer in securities;

(3) A money services business as defined in paragraph(ff) of this section;

(4) A telegraph company;

(5)(i) **Casino.** A casino or gambling casino that: Is duly licensed or authorized to do business as such in the United States, whether under the laws of a State or of a Territory or Insular Possession of the United States, or under the Indian Gaming Regulatory Act or other Federal, State, or tribal law or arrangement affecting Indian lands(including, without limitation, a casino operating on the assumption or under the view that no such authorization is required for casino operation on Indian lands); and has gross annual gaming revenue in excess of \$1 million. The term includes the principal headquarters and every domestic branch or place of business of the casino.

(ii) For purposes of this paragraph(t)(5), “gross annual gaming revenue” means the gross gaming revenue received by a casino, during either the previous business year or the current business year of the casino. A casino or gambling casino which is a casino for purposes of this chapter solely because its gross annual gaming revenue exceeds \$1,000,000 during its current business year, shall not be considered a casino for purposes of this chapter prior to the time in its current business year that its gross annual gaming revenue exceeds \$1,000,000.

(iii) Any reference in this chapter, other than in this paragraph(t)(5) and in paragraph(t)(6) of this section, to a casino shall also include a reference to a card club, unless the provision in question contains specific language varying its application to card clubs or excluding card clubs from its application;

(6)(i) **Card club.** A card club, gaming club, card room, gaming room, or similar gaming establishment that is duly licensed or authorized to do business as such in the United States, whether under the laws of a State, of a Territory or Insular Possession of the United States, or of a political

subdivision of any of the foregoing, or under the Indian Gaming Regulatory Act or other Federal, State, or tribal law or arrangement affecting Indian lands (including, without limitation, an establishment operating on the assumption or under the view that no such authorization is required for operation on Indian lands for an establishment of such type), and that has gross annual gaming revenue in excess of \$1,000,000. The term includes the principal headquarters and every domestic branch or place of business of the establishment. The term “casino,” as used in this chapter shall include a reference to “card club” to the extent provided in paragraph(t)(5)(iii) of this section.

(ii) For purposes of this paragraph(t)(6), “gross annual gaming revenue” means the gross revenue derived from or generated by customer gaming activity (whether in the form of per-game or per-table fees, however computed, rentals, or otherwise) and received by an establishment, during either the establishment’s previous business year or its current business year. A card club that is a financial institution for purposes of this chapter solely because its gross annual revenue exceeds \$1,000,000 during its current business year, shall not be considered a financial institution for purposes of this chapter prior to the time in its current business year when its gross annual revenue exceeds \$1,000,000;

(7) A person subject to supervision by any state or Federal bank supervisory authority;

(8) A futures commission merchant;

(9) An introducing broker in commodities; or

(10) A mutual fund.

(u) Foreign bank. A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

(v) Foreign financial agency. A person acting outside the United States for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

(w) Funds transfer. The series of transactions, beginning with the originator’s payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator’s bank or an intermediary bank intended to carry out the originator’s payment order. A funds transfer is completed by acceptance by the beneficiary’s bank of a payment order for the benefit of the beneficiary of the originator’s payment order. Funds transfers

governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub.L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(x) Futures commission merchant. Any person registered or required to be registered as a futures commission merchant with the Commodity Futures Trading Commission (“CFTC”) under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(y) Indian Gaming Regulatory Act. The Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. 2701–2721 and 18 U.S.C. 1166–68.

(z) Intermediary bank. A receiving bank other than the originator’s bank or the beneficiary’s bank.

(aa) Intermediary financial institution. A receiving financial institution, other than the transmitter’s financial institution or the recipient’s financial institution. The term intermediary financial institution includes an intermediary bank.

(bb) Introducing broker-commodities. Any person registered or required to be registered as an introducing broker with the CFTC under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(cc) Investment security. An instrument which:

(1) Is issued in bearer or registered form;

(2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;

(3) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(4) Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(dd) Monetary instruments.

(1) Monetary instruments include:

(i) Currency;

(ii) Traveler’s checks in any form;

(iii) All negotiable instruments (including personal checks, business checks, official bank checks, cashier’s checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee (for the purposes of § 1010.340), or otherwise in such form that title thereto passes upon delivery;

(iv) Incomplete instruments (including personal checks, business checks, official bank checks, cashier’s checks,

third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) signed but with the payee's name omitted; and

(v) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.

(2) Monetary instruments do not include warehouse receipts or bills of lading.

(ee) [Reserved]

(ff) Money services business. A person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(7) of this section. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States.

(1) Dealer in foreign exchange. A person that accepts the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more countries in exchange for the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more other countries in an amount greater than \$1,000 for any other person on any day in one or more transactions, whether or not for same-day delivery.

(2) Check casher—

(i) In general. A person that accepts checks (as defined in the Uniform Commercial Code), or monetary instruments (as defined at § 1010.100(dd)(1)(ii),(iii),(iv), and (v)) in return for currency or a combination of currency and other monetary instruments or other instruments, in an amount greater than \$1,000 for any person on any day in one or more transactions.

(ii) Facts and circumstances; Limitations. Whether a person is a check casher as described in this section is a matter of facts and circumstances. The term “check casher” shall not include:

(A) A person that sells prepaid access in exchange for a check (as defined in the Uniform Commercial Code), monetary instrument or other instrument;

(B) A person that solely accepts monetary instruments as payment for goods or services other than check cashing services;

(C) A person that engages in check cashing for the verified maker of the check who is a customer otherwise buying goods and services;

(D) A person that redeems its own checks; or

(E) A person that only holds a customer's check as collateral for repayment by the customer of a loan.

(3) Issuer or seller of traveler's checks or money orders. A person that

(i) Issues traveler's checks or money orders that are sold in an amount greater than \$1,000 to any person on any day in one or more transactions; or

(ii) Sells traveler's checks or money orders in an amount greater than \$1,000 to any person on any day in one or more transactions.

(4) Provider of prepaid access—

(i) In general. A provider of prepaid access is the participant within a prepaid program that agrees to serve as the principal conduit for access to information from its fellow program participants. The participants in each prepaid access program must determine a single participant within the prepaid program to serve as the provider of prepaid access.

(ii) Considerations for provider determination. In the absence of registration as the provider of prepaid access for a prepaid program by one of the participants in a prepaid access program, the provider of prepaid access is the person with principal oversight and control over the prepaid program. Which person exercises “principal oversight and control” is a matter of facts and circumstances. Activities that indicate “principal oversight and control” include:

(A) Organizing the prepaid program;

(B) Setting the terms and conditions of the prepaid program and determining that the terms have not been exceeded;

(C) Determining the other businesses that will participate in the prepaid program, which may include the issuing bank, the payment processor, or the distributor;

(D) Controlling or directing the appropriate party to initiate, freeze, or terminate prepaid access; and

(E) Engaging in activity that demonstrates oversight and control of the prepaid program.

(iii) Prepaid program. A prepaid program is an arrangement under which one or more persons acting together provide(s) prepaid access. However, an arrangement is not a prepaid program if:

(A) It provides closed loop prepaid access to funds not to exceed \$2,000 maximum value that can be associated with a prepaid access device or vehicle on any day;

(B) It provides prepaid access solely to funds provided by a Federal, State, local, Territory and Insular Possession, or Tribal government agency;

(C) It provides prepaid access solely to funds from pre-tax flexible spending arrangements for health care and dependent care expenses, or from Health Reimbursement Arrangements (as defined in 26 U.S.C. 105(b) and 125) for health care expenses; or

(D)(1) It provides prepaid access solely to:

(i) Employment benefits, incentives, wages or salaries; or

(ii) Funds not to exceed \$1,000 maximum value and from which no more than \$1,000 maximum value can be initially or subsequently loaded, used, or withdrawn on any day through a device or vehicle; and

(2) It does not permit:

(i) Funds or value to be transmitted internationally;

(ii) Transfers between or among users of prepaid access within a prepaid program; or

(iii) Loading additional funds or the value of funds from non-depository sources.

(5) Money transmitter—

(i) In general.

(A) A person that provides money transmission services. The term “money transmission services” means the acceptance of currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. “Any means” includes, but is not limited to, through a financial agency or institution; a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both; an electronic funds transfer network; or an informal value transfer system; or

(B) Any other person engaged in the transfer of funds.

(ii) Facts and circumstances; Limitations. Whether a person is a money transmitter as described in this section is a matter of facts and circumstances. The term “money transmitter” shall not include a person that only:

(A) Provides the delivery, communication, or network access services used by a money transmitter to support money transmission services;

(B) Acts as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller;

(C) Operates a clearance and settlement system or otherwise acts as an intermediary solely between BSA regulated institutions. This includes but is not limited to the Fedwire system, electronic funds transfer networks, certain registered clearing agencies regulated by the Securities and Exchange Commission (“SEC”), and derivatives clearing organizations, or other clearinghouse arrangements established by a financial agency or institution;

(D) Physically transports currency, other monetary instruments, other commercial paper, or other value that substitutes for currency as a person primarily engaged in such business, such as an armored car, from one person to the same person at another location or to an account belonging to the same person at a financial institution, provided that the person engaged in physical transportation has no more than a custodial interest in the currency, other monetary instruments, other commercial paper, or other value at any point during the transportation;

(E) Provides prepaid access; or

(F) Accepts and transmits funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds.

(6) U.S. Postal Service. The United States Postal Service, except with respect to the sale of postage or philatelic products.

(7) Seller of prepaid access. Any person that receives funds or the value of funds in exchange for an initial loading or subsequent loading of prepaid access if that person:

(i) Sells prepaid access offered under a prepaid program that can be used before verification of customer identification under § 1022.210(d)(1)(iv); or

(ii) Sells prepaid access (including closed loop prepaid access) to funds that exceed \$10,000 to any person during any one day, and has not implemented policies and procedures reasonably adapted to prevent such a sale.

(8) Limitation. For the purposes of this section, the term “money services business” shall not include:

(i) A bank or foreign bank;

(ii) A person registered with, and functionally regulated or examined by, the SEC or the CFTC, or a foreign financial agency that engages in financial activities

that, if conducted in the United States, would require the foreign financial agency to be registered with the SEC or CFTC; or

(iii) A natural person who engages in an activity identified in paragraphs(ff) (1) through(ff)(5) of this section on an infrequent basis and not for gain or profit.

(gg) Mutual fund. An “investment company” (as the term is defined in section 3 of the Investment Company Act(15 U.S.C. 80a–3)) that is an “open-end company” (as that term is defined in section 5 of the Investment Company Act(15 U.S.C. 80a–5)) that is registered or is required to register with the Commission under section 8 of the Investment Company Act(15 U.S.C. 80a–8).

(hh) Option on a commodity. Any agreement, contract, or transaction described in section 1a(26) of the CEA, 7 U.S.C. 1a(26).

(ii) Originator. The sender of the first payment order in a funds transfer.

(jj) Originator’s bank. The receiving bank to which the payment order of the originator is issued if the originator is not a bank or foreign bank, or the originator if the originator is a bank or foreign bank.

(kk) Payment date. The day on which the amount of the transmittal order is payable to the recipient by the recipient’s financial institution. The payment date may be determined by instruction of the sender, but cannot be earlier than the day the order is received by the recipient’s financial institution and, unless otherwise prescribed by instruction, is the date the order is received by the recipient’s financial institution.

(ll) Payment order. An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of money to a beneficiary if:

(1) The instruction does not state a condition to payment to the beneficiary other than time of payment;

(2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

(mm) Person. An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

(nn) Receiving bank. The bank or foreign bank to which the sender’s instruction is addressed.

(oo) Receiving financial institution. The financial institution or foreign financial agency to which the sender’s instruction is addressed. The term receiving financial institution includes a receiving bank.

(pp) Recipient. The person to be paid by the recipient’s financial institution. The term recipient includes a beneficiary, except where the recipient’s financial institution is a financial institution other than a bank.

(qq) Recipient’s financial institution. The financial institution or foreign financial agency identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient’s financial institution includes a beneficiary’s bank, except where the beneficiary is a recipient’s financial institution.

(rr) Secretary. The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

(ss) Security. Security means any instrument or interest described in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10).

(tt) Self-regulatory organization:

(1) Shall have the same meaning as provided in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)); and

(2) Means a “registered entity” or a “registered futures association” as provided in section 1a(29) or 17, respectively, of the Commodity Exchange Act (7 U.S.C. 1a(29), 21).

(uu) Sender. The person giving the instruction to the receiving financial institution.

(vv) State. The States of the United States and, wherever necessary to carry out the provisions of this chapter, the District of Columbia.

(ww) Prepaid access. Access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification number.

(xx) Structure (structuring). For purposes of § 1010.314, a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under §§ 1010.311, 1010.313,

1020.315, 1021.311 and 1021.313 of this chapter. “In any manner” includes, but is not limited to, the breaking down of a single sum of currency exceeding \$10,000 into smaller sums, including sums at or below \$10,000, or the conduct of a transaction, or series of currency transactions at or below \$10,000. The transaction or transactions need not exceed the \$10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition.

(yy) Taxpayer Identification Number. Taxpayer Identification Number (“TIN”) is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (e.g., social security number or employer identification number).

(zz) Territories and Insular Possessions. The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and all other territories and possessions of the United States other than the Indian lands and the District of Columbia.

(aaa) [Reserved]

(bbb) Transaction.

(1) Except as provided in paragraph (bbb)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, security, contract of sale of a commodity for future delivery, option on any contract of sale of a commodity for future delivery, option on a commodity, purchase or redemption of any money order, payment or order for any money remittance or transfer, purchase or redemption of casino chips or tokens, or other gaming instruments or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(2) For purposes of §§ 1010.311, 1010.313, 1020.315, 1021.311, 1021.313, and other provisions of this chapter relating solely to the report required by those sections, the term “transaction in currency” shall mean a transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency, is not a transaction in currency for this purpose.

(ccc) Transaction account. Transaction accounts include those accounts described in 12 U.S.C. 461(b)(1)(C), money market accounts and similar accounts that take deposits and are subject to withdrawal by check or other negotiable order.

(ddd) Transmittal of funds. A series of transactions beginning with the transmittor’s transmittal order, made for the purpose of making payment to the recipient of the order. The term

includes any transmittal order issued by the transmittor’s financial institution or an intermediary financial institution intended to carry out the transmittor’s transmittal order. The term transmittal of funds includes a funds transfer. A transmittal of funds is completed by acceptance by the recipient’s financial institution of a transmittal order for the benefit of the recipient of the transmittor’s transmittal order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub.L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(eee) Transmittal order. The term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of money to a recipient if:

(1) The instruction does not state a condition to payment to the recipient other than time of payment;

(2) The receiving financial institution is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving financial institution or to an agent or communication system for transmittal to the receiving financial institution.

(fff) Transmittor. The sender of the first transmittal order in a transmittal of funds. The term transmittor includes an originator, except where the transmittor’s financial institution is a financial institution or foreign financial agency other than a bank or foreign bank.

(ggg) Transmittor’s financial institution. The receiving financial institution to which the transmittal order of the transmittor is issued if the transmittor is not a financial institution or foreign financial agency, or the transmittor if the transmittor is a financial institution or foreign financial agency. The term transmittor’s financial institution includes an originator’s bank, except where the originator is a transmittor’s financial institution other than a bank or foreign bank.

(hhh) United States. The States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.

(iii) U.S. person.

(1) A United States citizen; or

(2) A person other than an individual (such as a corporation, partnership or trust), that is established or organized under the

laws of a State or the United States. Non–U.S. person means a person that is not a U.S. person.

(jjj) U.S. Postal Service. The United States Postal Service, except with respect to the sale of postage or philatelic products.

(kkk) Closed loop prepaid access. Prepaid access to funds or the value of funds that can be used only for goods or services in transactions involving a defined merchant or location (or set of locations), such as a specific retailer or retail chain, a college campus, or a subway system.

(lll) Loan or finance company. A person engaged in activities that take place wholly or in substantial part within the United States in one or more of the capacities listed below, whether or not on a regular basis or as an organized business concern. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States. For the purposes of this paragraph (lll), the term “loan or finance company” shall include a sole proprietor acting as a loan or finance company, and shall not include: A bank, a person registered with and functionally regulated or examined by the Securities and Exchange Commission or the Commodity Futures Trading Commission, any government sponsored enterprise regulated by the Federal Housing Finance Agency, any Federal or state agency or authority administering mortgage or housing assistance, fraud prevention or foreclosure prevention programs, or an individual employed by a loan or finance company or financial institution under this part. A loan or finance company is not a financial institution as defined in the regulations in this part at 1010.100(t).

(1) Residential mortgage lender or originator. A residential mortgage lender or originator includes:

(i) Residential mortgage lender. The person to whom the debt arising from a residential mortgage loan is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement, or to whom the obligation is initially assigned at or immediately after settlement. The term “residential mortgage lender” shall not include an individual who finances the sale of the individual’s own dwelling or real property.

(ii) Residential mortgage originator. A person who accepts a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.

(iii) Residential mortgage loan. A loan that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on:

(A) A residential structure that contains one to four units, including, if used as a residence, an individual condominium unit, cooperative unit, mobile home or trailer; or

(B) Residential real estate upon which such a structure is constructed or intended to be constructed.

(2) [Reserved]

Note: §1010.100 was previously §103.11. §1010.100(yy) was previously §103.21(a)(6). §1010.100(iii) was previously §103.121(a)(7) & (8).

This section was further amended on Feb. 14, 2012. The changes went into effect April 16, 2012.

31 C.F.R. § 1010.306. Filing of reports.

To be used for violations occurring on or after March 1, 2011.

(a)(1) A report required by § 1010.311 or § 1021.311, shall be filed by the financial institution within 15 days following the day on which the reportable transaction occurred.

(2) A copy of each report filed pursuant to §§ 1010.311, 1010.313, 1020.315, 1021.311 and 1021.313, shall be retained by the financial institution for a period of five years from the date of the report.

(3) All reports required to be filed by §§ 1010.311, 1010.313, 1020.315, 1021.311 and 1021.313, shall be filed with the Commissioner of Internal Revenue, unless otherwise specified.

(b)(1) A report required by § 1010.340(a) shall be filed at the time of entry into the United States or at the time of departure, mailing or shipping from the United States, unless otherwise specified by the Commissioner of Customs and Border Protection.

(2) A report required by § 1010.340(b) shall be filed within 15 days after receipt of the currency or other monetary instruments.

(3) All reports required by § 1010.340 shall be filed with the Customs officer in charge at any port of entry or departure, or as otherwise specified by the Commissioner of Customs and Border Protection. Reports required by § 1010.340(a) for currency or other monetary instruments not physically accompanying a person entering or departing from the United States, may be filed by mail on or before the date of entry, departure, mailing or shipping. All reports required by § 1010.340(b) may also be filed by mail. Reports filed by mail shall be addressed to the Commissioner of Customs and Border Protection, Attention: Currency Transportation Reports, Washington, DC 20229.

(c) Reports required to be filed by § 1010.350 shall be filed with the Commissioner of Internal Revenue on or before June 30 of each calendar year with respect to foreign financial accounts exceeding \$10,000 maintained during the previous calendar year.

(d) Reports required by § 1010.311, § 1010.313, § 1010.340, § 1010.350, § 1020.315, § 1021.311 or § 1021.313 of this chapter shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.

(e) Forms to be used in making the reports required by § 1010.311, § 1010.313, § 1010.350, § 1020.315, § 1021.311 or § 1021.313 of this chapter may be obtained from the Internal Revenue Service. Forms to be used in making the reports required by § 1010.340 may be obtained from the U.S. Customs and Border Protection.

Note: §1010.306(a)(1) was previously §103.27(a)(1).
§1010.306(a)(2) & (3) was previously §103.27(a)(3) & (4).

31 C.F.R. § 1010.311. Filing obligations for reports of transactions in currency.

*To be used for violations occurring on or after
March 1, 2011.*

Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than \$10,000, except as otherwise provided in this section. In the case of the U.S. Postal Service, the obligation contained in the preceding sentence shall not apply to payments or transfers made solely in connection with the purchase of postage or philatelic products.

Note: §1010.311 was previously §103.22(b)(1).

31 C.F.R. § 1010.312. Identification required.

*To be used for violations occurring on or after
March 1, 2011.*

Before concluding any transaction with respect to which a report is required under § 1010.311, § 1010.313, § 1020.315, § 1021.311 or § 1021.313 of this chapter, a financial institution shall verify and record the name and address of the individual presenting a transaction, as well as record the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity on whose behalf such transaction is to be effected. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence (e.g., a Provincial driver's license with indication of home address). Verification of identity in any other case shall be made by examination of a document, other than a bank signature card, that is normally acceptable

within the banking community as a means of identification when cashing checks for nondepositors (e.g., a driver's license or credit card). A bank signature card may be relied upon only if it was issued after documents establishing the identity of the individual were examined and notation of the specific information was made on the signature card. In each instance, the specific identifying information (i.e., the account number of the credit card, the driver's license number, etc.) used in verifying the identity of the customer shall be recorded on the report, and the mere notation of "known customer" or "bank signature card on file" on the report is prohibited.

Note: §1010.312 was previously §103.28

31 C.F.R. § 1010.313. Aggregation.

*To be used for violations occurring on or after
March 1, 2011.*

(a) Multiple branches. A financial institution includes all of its domestic branch offices, and any recordkeeping facility, wherever located, that contains records relating to the transactions of the institution's domestic offices, for purposes of the transactions in currency reporting requirements in this chapter.

(b) Multiple transactions. In the case of financial institutions other than casinos, for purposes of the transactions in currency reporting requirements in this chapter, multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any one business day (or in the case of the U.S. Postal Service, any one day). Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit..

Note: §1010.313(a)–(b) was previously §103.22(c)(1)–(2).

31 C.F.R. § 1010.314. Structured transactions.

*To be used for violations occurring on or after
March 1, 2011.*

No person shall for the purpose of evading the transactions in currency reporting requirements of this chapter with respect to such transaction:

(a) Cause or attempt to cause a domestic financial institution to fail to file a report required under the transactions in currency reporting requirements of this chapter;

(b) Cause or attempt to cause a domestic financial institution to file a report required under the transactions in currency

reporting requirements of this chapter that contains a material omission or misstatement of fact; or

(c) Structure (as that term is defined in § 1010.100(xx)) or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

31 C.F.R. § 1010.315. Exemptions for non-bank financial institutions.

*To be used for violations occurring on or after
March 1, 2011.*

A non-bank financial institution is not required to file a report otherwise required by § 1010.311 with respect to a transaction in currency between the institution and a commercial bank.

Note: § 1010.315 was previously § 103.22(d)(1) sentence 2.

31 C.F.R. § 1010.330. Reports relating to currency in excess of \$10,000 received in a trade or business.

*To be used for violations occurring on or after
March 1, 2011.*

(a) Reporting requirement—

(1) Reportable transactions—

(i) In general. Any person (solely for purposes of section 5331 of title 31, United States Code and this section, “person” shall have the same meaning as under 26 U.S.C. 7701(a)(1)) who, in the course of a trade or business in which such person is engaged, receives currency in excess of \$10,000 in 1 transaction (or 2 or more related transactions) shall, except as otherwise provided, make a report of information with respect to the receipt of currency. This section does not apply to amounts received in a transaction reported under 31 U.S.C. 5313 and §§ 1010.311, 1010.313, 1020.315, 1021.311 or 1021.313 of this chapter.

(ii) Certain financial transactions. Section 6050I of title 26 of the United States Code requires persons to report information about financial transactions to the IRS, and 31 U.S.C. 5331 requires persons to report the same information to the Financial Crimes Enforcement Network. This information shall be reported on the same form as prescribed by the Secretary.

(2) Currency received for the account of another. Currency in excess of \$10,000 received by a person for the account of another must be reported under this section. Thus, for

example, a person who collects delinquent accounts receivable for an automobile dealer must report with respect to the receipt of currency in excess of \$10,000 from the collection of a particular account even though the proceeds of the collection are credited to the account of the automobile dealer (i.e., where the rights to the proceeds from the account are retained by the automobile dealer and the collection is made on a fee-for-service basis).

(3) Currency received by agents—

(i) General rule. Except as provided in paragraph (a)(3)(ii) of this section, a person who in the course of a trade or business acts as an agent (or in some other similar capacity) and receives currency in excess of \$10,000 from a principal must report the receipt of currency under this section.

(ii) Exception. An agent who receives currency from a principal and uses all of the currency within 15 days in a currency transaction (the “second currency transaction”) which is reportable under section 5312 of title 31, or 31 U.S.C. 5331 and this section, and who discloses the name, address, and TIN of the principal to the recipient in the second currency transaction need not report the initial receipt of currency under this section. An agent will be deemed to have met the disclosure requirements of this paragraph (a)(3)(ii) if the agent discloses only the name of the principal and the agent knows that the recipient has the principal’s address and taxpayer identification number.

(iii) Example. The following example illustrates the application of the rules in paragraphs (a)(3)(i) and (ii) of this section:

Example. B, the principal, gives D, an attorney, \$75,000 in currency to purchase real property on behalf of B. Within 15 days D purchases real property for currency from E, a real estate developer, and discloses to E, B’s name, address, and taxpayer identification number. Because the transaction qualifies for the exception provided in paragraph (a)(3)(ii) of this section, D need not report with respect to the initial receipt of currency under this section. The exception does not apply, however, if D pays E by means other than currency, or effects the purchase more than 15 days following receipt of the currency from B, or fails to disclose B’s name, address, and taxpayer identification number (assuming D does not know that E already has B’s address and taxpayer identification number), or purchases the property from a person whose sale of the property is not in the course of that person’s trade or business. In any such case, D is required to report the receipt of currency from B under this section.

(b) Multiple payments. The receipt of multiple currency deposits or currency installment payments (or other similar payments or prepayments) relating to a single transaction (or

two or more related transactions), is reported as set forth in paragraphs (b)(1) through (b)(3) of this section.

(1) Initial payment in excess of \$10,000. If the initial payment exceeds \$10,000, the recipient must report the initial payment within 15 days of its receipt.

(2) Initial payment of \$10,000 or less. If the initial payment does not exceed \$10,000, the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until the aggregate amount exceeds \$10,000, and report with respect to the aggregate amount within 15 days after receiving the payment that causes the aggregate amount to exceed \$10,000.

(3) Subsequent payments. In addition to any other required report, a report must be made each time that previously unreportable payments made within a 12-month period with respect to a single transaction (or two or more related transactions), individually or in the aggregate, exceed \$10,000. The report must be made within 15 days after receiving the payment in excess of \$10,000 or the payment that causes the aggregate amount received in the 12-month period to exceed \$10,000. (If more than one report would otherwise be required for multiple currency payments within a 15-day period that relate to a single transaction (or two or more related transactions), the recipient may make a single combined report with respect to the payments. The combined report must be made no later than the date by which the first of the separate reports would otherwise be required to be made.)

(4) Example. The following example illustrates the application of the rules in paragraphs (b)(1) through (b)(3) of this section:

Example. On January 10, Year 1, M receives an initial payment in currency of \$11,000 with respect to a transaction. M receives subsequent payments in currency with respect to the same transaction of \$4,000 on February 15, Year 1, \$6,000 on March 20, Year 1, and \$12,000 on May 15, Year 1. M must make a report with respect to the payment received on January 10, Year 1, by January 25, Year 1. M must also make a report with respect to the payments totaling \$22,000 received from February 15, Year 1, through May 15, Year 1. This report must be made by May 30, Year 1, that is, within 15 days of the date that the subsequent payments, all of which were received within a 12-month period, exceeded \$10,000.

(c) Meaning of terms. The following definitions apply for purposes of this section—

(1) Currency. The term currency means—

(i) The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued; and

(ii) A cashier's check (by whatever name called, including "treasurer's check" and "bank check"), bank draft, traveler's check, or money order having a face amount of not more than \$10,000—

(A) Received in a designated reporting transaction as defined in paragraph (c)(2) of this section (except as provided in paragraphs (c)(3), (4), and (5) of this section), or

(B) Received in any transaction in which the recipient knows that such instrument is being used in an attempt to avoid the reporting of the transaction under section 5331 and this section.

(2) Designated reporting transaction. A designated reporting transaction is a retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of—

(i) A consumer durable,

(ii) A collectible, or

(iii) A travel or entertainment activity.

(3) Exception for certain loans. A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument constitutes the proceeds of a loan from a bank. The recipient may rely on a copy of the loan document, a written statement from the bank, or similar documentation (such as a written lien instruction from the issuer of the instrument) to substantiate that the instrument constitutes loan proceeds.

(4) Exception for certain installment sales. A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument is received in payment on a promissory note or an installment sales contract (including a lease that is considered to be a sale for Federal income tax purposes). However, the preceding sentence applies only if—

(i) Promissory notes or installment sales contracts with the same or substantially similar terms are used in the ordinary course of the recipient's trade or business in connection with sales to ultimate consumers; and

(ii) The total amount of payments with respect to the sale that are received on or before the 60th day after the date of the sale does not exceed 50 percent of the purchase price of the sale.

(5) Exception for certain down payment plans. A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument is received pursuant to a payment plan requiring one or more down payments and the payment of the balance of the purchase price by a date no later than the date of the sale (in the case of an item of travel or entertainment, a date no later than the earliest date that any item of travel or entertainment pertaining to the same trip or event is furnished). However, the preceding sentence applies only if—

(i) The recipient uses payment plans with the same or substantially similar terms in the ordinary course of its trade or business in connection with sales to ultimate consumers; and

(ii) The instrument is received more than 60 days prior to the date of the sale (in the case of an item of travel or entertainment, the date on which the final payment is due).

(6) Examples. The following examples illustrate the definition of "currency" set forth in paragraphs (c)(1) through (c)(5) of this section:

Example 1. D, an individual, purchases gold coins from M, a coin dealer, for \$13,200. D tenders to M in payment United States currency in the amount of \$6,200 and a cashier's check in the face amount of \$7,000 which D had purchased. Because the sale is a designated reporting transaction, the cashier's check is treated as currency for purposes of 31 U.S.C. 5331 and this section. Therefore, because M has received more than \$10,000 in currency with respect to the transaction, M must make the report required by 31 U.S.C. 5331 and this section.

Example 2. E, an individual, purchases an automobile from Q, an automobile dealer, for \$11,500. E tenders to Q in payment United States currency in the amount of \$2,000 and a cashier's check payable to E and Q in the amount of \$9,500. The cashier's check constitutes the proceeds of a loan from the bank issuing the check. The origin of the proceeds is evident from provisions inserted by the bank on the check that instruct the dealer to cause a lien to be placed on the vehicle as security for the loan. The sale of the automobile is a designated reporting transaction. However, under paragraph (c)(3) of this section, because E has furnished Q documentary information establishing that the cashier's check constitutes the proceeds of a loan from the bank issuing the check, the cashier's check is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section.

Example 3. F, an individual, purchases an item of jewelry from S, a retail jeweler, for \$12,000. F gives S traveler's checks totaling \$2,400 and pays the balance with a personal check payable to S in the amount of \$9,600. Because the sale is a designated reporting transaction, the traveler's checks are treated as currency for purposes of section 5331 and this

section. However, because the personal check is not treated as currency for purposes of section 5331 and this section, S has not received more than \$10,000 in currency in the transaction and no report is required to be filed under section 5331 and this section.

Example 4. G, an individual, purchases a boat from T, a boat dealer, for \$16,500. G pays T with a cashier's check payable to T in the amount of \$16,500. The cashier's check is not treated as currency because the face amount of the check is more than \$10,000. Thus, no report is required to be made by T under section 5331 and this section.

Example 5. H, an individual, arranges with W, a travel agent, for the chartering of a passenger aircraft to transport a group of individuals to a sports event in another city. H also arranges with W for hotel accommodations for the group and for admission tickets to the sports event. In payment, H tenders to W money orders which H had previously purchased. The total amount of the money orders, none of which individually exceeds \$10,000 in face amount, exceeds \$10,000. Because the transaction is a designated reporting transaction, the money orders are treated as currency for purposes of section 5331 and this section. Therefore, because W has received more than \$10,000 in currency with respect to the transaction, W must make the report required by section 5331 and this section.

(7) Consumer durable. The term consumer durable means an item of tangible personal property of a type that is suitable under ordinary usage for personal consumption or use, that can reasonably be expected to be useful for at least 1 year under ordinary usage, and that has a sales price of more than \$10,000. Thus, for example, a \$20,000 automobile is a consumer durable (whether or not it is sold for business use), but a \$20,000 dump truck or a \$20,000 factory machine is not.

(8) Collectible. The term collectible means an item described in paragraphs (A) through (D) of section 408 (m) (2) of title 26 of the United States Code (determined without regard to section 408 (m)(3) of title 26 of the United States Code).

(9) Travel or entertainment activity. The term travel or entertainment activity means an item of travel or entertainment (within the meaning of 26 CFR 1.274-2(b)(1)) pertaining to a single trip or event where the aggregate sales price of the item and all other items pertaining to the same trip or event that are sold in the same transaction (or related transactions) exceeds \$10,000.

(10) Retail sale. The term retail sale means any sale (whether for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers.

(11) Trade or business. The term trade or business has the same meaning as under section 162 of title 26, United States Code.

(12) Transaction.

(i) Solely for purposes of 31 U.S.C. 5331 and this section, the term transaction means the underlying event precipitating the payer's transfer of currency to the recipient. In this context, transactions include (but are not limited to) a sale of goods or services; a sale of real property; a sale of intangible property; a rental of real or personal property; an exchange of currency for other currency; the establishment or maintenance of or contribution to a custodial, trust, or escrow arrangement; a payment of a preexisting debt; a conversion of currency to a negotiable instrument; a reimbursement for expenses paid; or the making or repayment of a loan. A transaction may not be divided into multiple transactions in order to avoid reporting under this section.

(ii) The term related transactions means any transaction conducted between a payer (or its agent) and a recipient of currency in a 24-hour period. Additionally, transactions conducted between a payer (or its agent) and a currency recipient during a period of more than 24 hours are related if the recipient knows or has reason to know that each transaction is one of a series of connected transactions.

(iii) The following examples illustrate the definition of paragraphs (c)(12)(i) and (ii) of this section:

Example 1. A person has a tacit agreement with a gold dealer to purchase \$36,000 in gold bullion. The \$36,000 purchase represents a single transaction under paragraph (c)(12)(i) of this section and the reporting requirements of this section cannot be avoided by recasting the single sales transaction into 4 separate \$9,000 sales transactions.

Example 2. An attorney agrees to represent a client in a criminal case with the attorney's fee to be determined on an hourly basis. In the first month in which the attorney represents the client, the bill for the attorney's services comes to \$8,000 which the client pays in currency. In the second month in which the attorney represents the client, the bill for the attorney's services comes to \$4,000, which the client again pays in currency. The aggregate amount of currency paid (\$12,000) relates to a single transaction as defined in paragraph (c)(12)(i) of this section, the sale of legal services relating to the criminal case, and the receipt of currency must be reported under this section.

Example 3. A person intends to contribute a total of \$45,000 to a trust fund, and the trustee of the fund knows or has reason to know of that intention. The \$45,000 contribution is a single transaction under paragraph (c)(12)(i) of this section and the reporting requirement of

this section cannot be avoided by the grantor's making five separate \$9,000 contributions of currency to a single fund or by making five \$9,000 contributions of currency to five separate funds administered by a common trustee.

Example 4. K, an individual, attends a one day auction and purchases for currency two items, at a cost of \$9,240 and \$1,732.50 respectively (tax and buyer's premium included). Because the transactions are related transactions as defined in paragraph (c)(12)(ii) of this section, the auction house is required to report the aggregate amount of currency received from the related sales (\$10,972.50), even though the auction house accounts separately on its books for each item sold and presents the purchaser with separate bills for each item purchased.

Example 5. F, a coin dealer, sells for currency \$9,000 worth of gold coins to an individual on three successive days. Under paragraph (c)(12)(ii) of this section the three \$9,000 transactions are related transactions aggregating \$27,000 if F knows, or has reason to know, that each transaction is one of a series of connected transactions.

(13) Recipient.

(i) The term recipient means the person receiving the currency. Except as provided in paragraph (c)(13)(ii) of this section, each store, division, branch, department, headquarters, or office ("branch") (regardless of physical location) comprising a portion of a person's trade or business shall for purposes of this section be deemed a separate recipient.

(ii) A branch that receives currency payments will not be deemed a separate recipient if the branch (or a central unit linking such branch with other branches) would in the ordinary course of business have reason to know the identity of payers making currency payments to other branches of such person.

(iii) Examples. The following examples illustrate the application of the rules in paragraphs (c)(13)(i) and (ii) of this section:

Example 1. N, an individual, purchases regulated futures contracts at a cost of \$7,500 and \$5,000, respectively, through two different branches of Commodities Broker X on the same day. N pays for each purchase with currency. Each branch of Commodities Broker X transmits the sales information regarding each of N's purchases to a central unit of Commodities Broker X (which settles the transactions against N's account). Under paragraph (c)(13)(ii) of this section the separate branches of Commodities Broker X are not deemed to be separate recipients; therefore, Commodities Broker X must report with respect to the two related regulated futures contracts sales in accordance with this section.

Example 2. P, a corporation, owns and operates a racetrack. P's racetrack contains 100 betting windows at which pari-mutuel wagers may be made. R, an individual, places currency wagers of \$3,000 each at five separate betting windows. Assuming that in the ordinary course of business each betting window (or a central unit linking windows) does not have reason to know the identity of persons making wagers at other betting windows, each betting window would be deemed to be a separate currency recipient under paragraph (c)(13)(i) of this section. As no individual recipient received currency in excess of \$10,000, no report need be made by P under this section.

(d) Exceptions to the reporting requirements of 31 U.S.C. 5331—

(1) Receipt is made with respect to a foreign currency transaction—

(i) In general. Generally, there is no requirement to report with respect to a currency transaction if the entire transaction occurs outside the United States (the fifty states and the District of Columbia). An entire transaction consists of both the transaction as defined in paragraph (c)(12)(i) of this section and the receipt of currency by the recipient. If, however, any part of an entire transaction occurs in the Commonwealth of Puerto Rico or a possession or territory of the United States and the recipient of currency in that transaction is subject to the general jurisdiction of the Internal Revenue Service under title 26 of the United States Code, the recipient is required to report the transaction under this section.

(ii) Example. The following example illustrates the application of the rules in paragraph (d)(1)(i) of this section:

Example. W, an individual engaged in the trade or business of selling aircraft, reaches an agreement to sell an airplane to a U.S. citizen living in Mexico. The agreement, no portion of which is formulated in the United States, calls for a purchase price of \$125,000 and requires delivery of and payment for the airplane to be made in Mexico. Upon delivery of the airplane in Mexico, W receives \$125,000 in currency. W is not required to report under 31 U.S.C. 5331 or this section because the exception provided in paragraph (d)(1)(i) of this section (“foreign transaction exception”) applies. If, however, any part of the agreement to sell had been formulated in the United States, the foreign transaction exception would not apply and W would be required to report the receipt of currency under 31 U.S.C. 5331 and this section.

(2) Receipt of currency not in the course of the recipient's trade or business. The receipt of currency in excess of \$10,000 by a person other than in the course of the person's trade or business is not reportable under 31 U.S.C. 5331. Thus, for

example, F, an individual in the trade or business of selling real estate, sells a motorboat for \$12,000, the purchase price of which is paid in currency. F did not use the motorboat in any trade or business in which F was engaged. F is not required to report under 31 U.S.C. 5331 or this section because the exception provided in this paragraph (d)(2) applies.

(e) Time, manner, and form of reporting—

(1) In general. The reports required by paragraph (a) of this section must be made by filing a Form 8300, as specified in 26 CFR 1.6050I-1(e)(2). The reports must be filed at the time and in the manner specified in 26 CFR 1.6050I-1(e)(1) and (3) respectively.

(2) Verification. A person making a report of information under this section must verify the identity of the person from whom the reportable currency is received. Verification of the identity of a person who purports to be an alien must be made by examination of such person's passport, alien identification card, or other official document evidencing nationality or residence. Verification of the identity of any other person may be made by examination of a document normally acceptable as a means of identification when cashing or accepting checks (for example, a driver's license or a credit card). In addition, a report will be considered incomplete if the person required to make a report knows (or has reason to know) that an agent is conducting the transaction for a principal, and the return does not identify both the principal and the agent.

(3) Retention of reports. A person required to make a report under this section must keep a copy of each report filed for five years from the date of filing.

Note: §1010.330(a)–(c) was previously §103.30(a)–(c).
 §1010.330(d)(1) was previously §103.30(d)(3).
 §1010.330(d)(2) was previously §103.30(d)(2).
 §1010.330(e) was previously §103.30(e).

This section was further amended on June 7, 2012. The changes went into effect on July 9, 2012.

31 C.F.R. § 1010.340. Reports of transportation of currency or monetary instruments.

*To be used for violations occurring on or after
 March 1, 2011.*

(a) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped, or attempts to physically transport, mail or ship, or attempts to cause to be physically transported, mailed or shipped, currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time from the United States to any place outside the United States, or into the

United States from any place outside the United States, shall make a report thereof. A person is deemed to have caused such transportation, mailing or shipping when he aids, abets, counsels, commands, procures, or requests it to be done by a financial institution or any other person.

(b) Each person who receives in the U.S. currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time which have been transported, mailed, or shipped to such person from any place outside the United States with respect to which a report has not been filed under paragraph (a) of this section, whether or not required to be filed thereunder, shall make a report thereof, stating the amount, the date of receipt, the form of monetary instruments, and the person from whom received.

(c) This section shall not require reports by:

(1) A Federal Reserve;

(2) A bank, a foreign bank, or a broker or dealer in securities, in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier;

(3) A commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned;

(4) A person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier;

(5) A common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers;

(6) A common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper;

(7) A travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public;

(8) By a person with respect to a restrictively endorsed traveler's check that is in the collection and reconciliation process after the traveler's check has been negotiated;

(9) Nor by a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between

established offices of banks or brokers or dealers in securities and foreign persons.

(d) A transfer of funds through normal banking procedures which does not involve the physical transportation of currency or monetary instruments is not required to be reported by this section. This section does not require that more than one report be filed covering a particular transportation, mailing or shipping of currency or other monetary instruments with respect to which a complete and truthful report has been filed by a person. However, no person required by paragraph (a) or (b) of this section to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed.

Note: §1010.340(a)–(d). was previously §103.23(a)–(d).

31 C.F.R. § 1010.350. Reports of foreign financial accounts.

To be used for violations occurring on or after March 1, 2011.

(a) In general. Each United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists and shall provide such information as shall be specified in a reporting form prescribed under 31 U.S.C. 5314 to be filed by such persons. The form prescribed under section 5314 is the Report of Foreign Bank and Financial Accounts (TD-F 90–22.1), or any successor form. See paragraphs (g)(1) and (g)(2) of this section for a special rule for persons with a financial interest in 25 or more accounts, or signature or other authority over 25 or more accounts.

(b) United States person. For purposes of this section, the term “United States person” means—

(1) A citizen of the United States;

(2) A resident of the United States. A resident of the United States is an individual who is a resident alien under 26 U.S.C. 7701(b) and the regulations thereunder but using the definition of “United States” provided in 31 CFR 1010.100(hhh) rather than the definition of “United States” in 26 CFR 301.7701(b)–1(c)(2)(ii); and

(3) An entity, including but not limited to, a corporation, partnership, trust, or limited liability company created, organized, or formed under the laws of the United States, any State, the District of Columbia, the Territories and Insular Possessions of the United States, or the Indian Tribes.

(c) Types of reportable accounts. For purposes of this section—

(1) Bank account. The term “bank account” means a savings deposit, demand deposit, checking, or any other account maintained with a person engaged in the business of banking.

(2) Securities account. The term “securities account” means an account with a person engaged in the business of buying, selling, holding or trading stock or other securities.

(3) Other financial account. The term “other financial account” means—

(i) An account with a person that is in the business of accepting deposits as a financial agency;

(ii) An account that is an insurance or annuity policy with a cash value;

(iii) An account with a person that acts as a broker or dealer for futures or options transactions in any commodity on or subject to the rules of a commodity exchange or association; or

(iv) An account with—

(A) Mutual fund or similar pooled fund. A mutual fund or similar pooled fund which issues shares available to the general public that have a regular net asset value determination and regular redemptions; or

(B) Other investment fund. [Reserved]

(4) Exceptions for certain accounts.

(i) An account of a department or agency of the United States, an Indian Tribe, or any State or any political subdivision of a State, or a wholly-owned entity, agency or instrumentality of any of the foregoing is not required to be reported. In addition, reporting is not required with respect to an account of an entity established under the laws of the United States, of an Indian Tribe, of any State, or of any political subdivision of any State, or under an intergovernmental compact between two or more States or Indian Tribes, that exercises governmental authority on behalf of the United States, an Indian Tribe, or any such State or political subdivision. For this purpose, an entity generally exercises governmental authority on behalf of the United States, an Indian Tribe, a State, or a political subdivision only if its authorities include one or more of the powers to tax, to exercise the power of eminent domain, or to exercise police powers with respect to matters within its jurisdiction.

(ii) An account of an international financial institution of which the United States government is a member is not required to be reported.

(iii) An account in an institution known as a “United States military banking facility” (or “United States military finance facility”) operated by a United States financial institution designated by the United States Government to serve United States government installations abroad is not required to be reported even though the United States military banking facility is located in a foreign country.

(iv) Correspondent or nostro accounts that are maintained by banks and used solely for bank-to-bank settlements are not required to be reported.

(d) Foreign country. A foreign country includes all geographical areas located outside of the United States as defined in 31 CFR 1010.100(hhh).

(e) Financial interest. A financial interest in a bank, securities or other financial account in a foreign country means an interest described in this paragraph (e):

(1) Owner of record or holder of legal title. A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which he is the owner of record or has legal title whether the account is maintained for his own benefit or for the benefit of others. If an account is maintained in the name of more than one person, each United States person in whose name the account is maintained has a financial interest in that account.

(2) Other financial interest. A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which the owner of record or holder of legal title is—

(i) A person acting as an agent, nominee, attorney or in some other capacity on behalf of the United States person with respect to the account;

(ii) A corporation in which the United States person owns directly or indirectly more than 50 percent of the voting power or the total value of the shares, a partnership in which the United States person owns directly or indirectly more than 50 percent of the interest in profits or capital, or any other entity (other than an entity in paragraphs (e)(2)(iii) through (iv) of this section) in which the United States person owns directly or indirectly more than 50 percent of the voting power, total value of the equity interest or assets, or interest in profits;

(iii) A trust, if the United States person is the trust grantor and has an ownership interest in the trust for United States Federal tax purposes. See 26 U.S.C. 671–679 and the regulations thereunder to determine if a grantor has an ownership interest in the trust for the year; or

(iv) A trust in which the United States person either has a present beneficial interest in more than 50 percent of the assets or from which such person receives more than 50 percent of the current income.

(3) Anti-avoidance rule. A United States person that causes an entity, including but not limited to a corporation, partnership, or trust, to be created for a purpose of evading this section shall have a financial interest in any bank, securities, or other financial account in a foreign country for which the entity is the owner of record or holder of legal title.

(f) Signature or other authority—

(1) In general. Signature or other authority means the authority of an individual (alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained.

(2) Exceptions—

(i) An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration need not report that he has signature or other authority over a foreign financial account owned or maintained by the bank if the officer or employee has no financial interest in the account.

(ii) An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission need not report that he has signature or other authority over a foreign financial account owned or maintained by such financial institution if the officer or employee has no financial interest in the account.

(iii) An officer or employee of an Authorized Service Provider need not report that he has signature or other authority over a foreign financial account owned or maintained by an investment company that is registered with the Securities and Exchange Commission if the officer or employee has no financial interest in the account. “Authorized Service Provider” means an entity that is registered with and examined by the Securities and Exchange Commission and that provides services to an investment company registered under the Investment Company Act of 1940.

(iv) An officer or employee of an entity with a class of equity securities listed (or American depository receipts listed) on any United States national securities exchange need not report that he has signature or other authority over a foreign financial account of such entity if the officer or employee has no financial interest in the account. An officer or employee of a United States subsidiary of a United States entity with a class of equity securities listed on a United States national securities exchange need not

file a report concerning signature or other authority over a foreign financial account of the subsidiary if he has no financial interest in the account and the United States subsidiary is included in a consolidated report of the parent filed under this section.

(v) An officer or employee of an entity that has a class of equity securities registered (or American depository receipts in respect of equity securities registered) under section 12(g) of the Securities Exchange Act need not report that he has signature or other authority over the foreign financial accounts of such entity or if he has no financial interest in the accounts.

(g) Special rules—

(1) Financial interest in 25 or more foreign financial accounts. A United States person having a financial interest in 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

(2) Signature or other authority over 25 or more foreign financial accounts. A United States person having signature or other authority over 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

(3) Consolidated reports. An entity that is a United States person and which owns directly or indirectly more than a 50 percent interest in one or more other entities required to report under this section will be permitted to file a consolidated report on behalf of itself and such other entities.

(4) Participants and beneficiaries in certain retirement plans. Participants and beneficiaries in retirement plans under sections 401(a), 403(a) or 403(b) of the Internal Revenue Code as well as owners and beneficiaries of individual retirement accounts under section 408 of the Internal Revenue Code or Roth IRAs under section 408A of the Internal Revenue Code are not required to file an FBAR with respect to a foreign financial account held by or on behalf of the retirement plan or IRA.

(5) Certain trust beneficiaries. A beneficiary of a trust described in paragraph (e)(2)(iv) of this section is not required to report the trust’s foreign financial accounts if the trust, trustee of the trust, or agent of the trust is a United States person that files a report under this section disclosing the trust’s foreign financial accounts.

Note: §1010.350 was previously §103.24.

This section was further amended on June 24, 2011. The changes went into effect on June 24, 2011.

31 C.F.R. § 1010.370. Reports of certain domestic coin and currency transactions.

To be used for violations occurring on or after March 1, 2011.

(a) If the Secretary of the Treasury finds, upon the Secretary's own initiative or at the request of an appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and/or reporting requirements are necessary to carry out the purposes of this chapter and to prevent persons from evading the reporting/recordkeeping requirements of this chapter, the Secretary may issue an order requiring any domestic financial institution or group of domestic financial institutions in a geographic area and any other person participating in the type of transaction to file a report in the manner and to the extent specified in such order. The order shall contain such information as the Secretary may describe concerning any transaction in which such financial institution is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.

(b) An order issued under paragraph (a) of this section shall be directed to the Chief Executive Officer of the financial institution and shall designate one or more of the following categories of information to be reported: Each deposit, withdrawal, exchange of currency or other payment or transfer, by, through or to such financial institution specified in the order, which involves all or any class of transactions in currency and/or monetary instruments equal to or exceeding an amount to be specified in the order.

(c) In issuing an order under paragraph (a) of this section, the Secretary will prescribe:

- (1) The dollar amount of transactions subject to the reporting requirement in the order;
- (2) The type of transaction or transactions subject to or exempt from a reporting requirement in the order;
- (3) The appropriate form for reporting the transactions required in the order;
- (4) The address to which reports required in the order are to be sent or from which they will be picked up;
- (5) The starting and ending dates by which such transactions specified in the order are to be reported;
- (6) The name of a Treasury official to be contacted for any additional information or questions;

(7) The amount of time the reports and records of reports generated in response to the order will have to be retained by the financial institution; and

(8) Any other information deemed necessary to carry out the purposes of the order.

(d)(1) No order issued pursuant to paragraph (a) of this section shall prescribe a reporting period of more than 60 days unless renewed pursuant to the requirements of paragraph (a).

(2) Any revisions to an order issued under this section will not be effective until made in writing by the Secretary.

(3) Unless otherwise specified in the order, a bank receiving an order under this section may continue to use the exemptions granted under § 1020.315 of this chapter prior to the receipt of the order, but may not grant additional exemptions.

(4) For purposes of this section, the term geographic area means any area in one or more States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, the territories and possessions of the United States, and/or political subdivision or subdivisions thereof, as specified in an order issued pursuant to paragraph (a) of this section.

Note: § 1010.370(a)–(d) was previously § 103.26(a)–(d).

31 C.F.R. § 1010.410. Records to be made and retained by financial institutions.

To be used for violations occurring on or after March 1, 2011.

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

- (a) A record of each extension of credit in an amount in excess of \$10,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;
- (b) A record of each advice, request, or instruction received or given regarding any transaction resulting (or intended to result and later canceled if such a record is normally made) in the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit, of more than \$10,000 to or from any person, account, or place outside the United States.
- (c) A record of each advice, request, or instruction given to another financial institution or other person located within or

without the United States, regarding a transaction intended to result in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than \$10,000 to a person, account or place outside the United States.

(d) A record of such information for such period of time as the Secretary may require in an order issued under § 1010.370(a), not to exceed five years.

(e) Nonbank financial institutions. Each agent, agency, branch, or office located within the United States of a financial institution other than a bank is subject to the requirements of this paragraph (e) with respect to a transmittal of funds in the amount of \$3,000 or more:

(1) Recordkeeping requirements.

(i) For each transmittal order that it accepts as a transmitter's financial institution, a financial institution shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the transmittal order:

- (A) The name and address of the transmitter;
- (B) The amount of the transmittal order;
- (C) The execution date of the transmittal order;
- (D) Any payment instructions received from the transmitter with the transmittal order;
- (E) The identity of the recipient's financial institution;
- (F) As many of the following items as are received with the transmittal order:
 - (1) The name and address of the recipient;
 - (2) The account number of the recipient; and
 - (3) Any other specific identifier of the recipient; and
- (G) Any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.

(ii) For each transmittal order that it accepts as an intermediary financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(iii) For each transmittal order that it accepts as a recipient's financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(2) Transmitters other than established customers. In the case of a transmittal order from a transmitter that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(i) of this section:

(i) If the transmittal order is made in person, prior to acceptance the transmitter's financial institution shall verify the identity of the person placing the transmittal order. If it accepts the transmittal order, the transmitter's financial institution shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the transmitter's financial institution has knowledge that the person placing the transmittal order is not the transmitter, the transmitter's financial institution shall obtain and retain a record of the transmitter's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(ii) If the transmittal order accepted by the transmitter's financial institution is not made in person, the transmitter's financial institution shall obtain and retain a record of the name and address of the person placing the transmittal order, as well as the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (e.g., check or credit card transaction) for the transmittal of funds. If the transmitter's financial institution has knowledge that the person placing the transmittal order is not the transmitter, the transmitter's financial institution shall obtain and retain a record of the transmitter's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(3) Recipients other than established customers. For each transmittal order that it accepts as a recipient's financial institution for a recipient that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(iii) of this section:

(i) If the proceeds are delivered in person to the recipient or its representative or agent, the recipient's financial institution shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or,

if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the recipient's financial institution has knowledge that the person receiving the proceeds is not the recipient, the recipient's financial institution shall obtain and retain a record of the recipient's name and address, as well as the recipient's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) If the proceeds are delivered other than in person, the recipient's financial institution shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) **Retrievability.** The information that a transmitter's financial institution must retain under paragraphs (e)(1)(i) and (e)(2) of this section shall be retrievable by the transmitter's financial institution by reference to the name of the transmitter. If the transmitter is an established customer of the transmitter's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. The information that a recipient's financial institution must retain under paragraphs (e)(1)(iii) and (e)(3) of this section shall be retrievable by the recipient's financial institution by reference to the name of the recipient. If the recipient is an established customer of the recipient's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the financial institution is able to retrieve the information required by this paragraph, either by accessing transmittal of funds records directly or through reference to some other record maintained by the financial institution.

(5) **Verification.** Where verification is required under paragraphs (e)(2) and (e)(3) of this section, a financial institution shall verify a person's identity by examination of a document (other than a customer signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (e.g., a foreign driver's license with indication of home address).

(6) **Exceptions.** The following transmittals of funds are not subject to the requirements of this section:

(i) Transmittals of funds where the transmitter and the recipient are any of the following:

- (A) A bank;
- (B) A wholly-owned domestic subsidiary of a bank chartered in the United States;
- (C) A broker or dealer in securities;
- (D) A wholly-owned domestic subsidiary of a broker or dealer in securities;
- (E) A futures commission merchant or an introducing broker in commodities;
- (F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;
- (G) The United States;
- (H) A state or local government; or
- (I) A Federal, State or local government agency or instrumentality; or
- (J) A mutual fund; and

(ii) Transmittals of funds where both the transmitter and the recipient are the same person and the transmitter's financial institution and the recipient's financial institution are the same broker or dealer in securities.

(f) Any transmitter's financial institution or intermediary financial institution located within the United States shall include in any transmittal order for a transmittal of funds in the amount of \$3,000 or more, information as required in this paragraph (f):

(1) A transmitter's financial institution shall include in a transmittal order, at the time it is sent to a receiving financial institution, the following information:

- (i) The name and, if the payment is ordered from an account, the account number of the transmitter;
- (ii) The address of the transmitter, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;
- (iii) The amount of the transmittal order;
- (iv) The execution date of the transmittal order;
- (v) The identity of the recipient's financial institution;
- (vi) As many of the following items as are received with the transmittal order:
 - (A) The name and address of the recipient;
 - (B) The account number of the recipient;
 - (C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmitter's financial institution.

(2) A receiving financial institution that acts as an intermediary financial institution, if it accepts a transmittal order, shall include in a corresponding transmittal order at the time it is sent to the next receiving financial institution, the following information, if received from the sender:

(i) The name and the account number of the transmitter;

(ii) The address of the transmitter, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order:

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmitter's financial institution.

(3) Safe harbor for transmittals of funds prior to conversion to the expanded Fedwire message format. The following provisions apply to transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system or otherwise by a financial institution before the bank that sends the order to the Federal Reserve Bank or otherwise completes its conversion to the expanded Fedwire message format.

(i) Transmitter's financial institution. A transmitter's financial institution will be deemed to be in compliance with the provisions of paragraph (f)(1) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (f)(1)(iii) through (v), and the information specified in paragraph (f)(1)(vi) of this section to the extent that such information has been received by the financial institution, and

(B) Provides the information specified in paragraphs (f)(1)(i), (ii) and (vii) of this section to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful

request for such information from a Federal, State, or local law enforcement or financial regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(ii) Intermediary financial institution. An intermediary financial institution will be deemed to be in compliance with the provisions of paragraph (f)(2) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (f)(2)(iii) through (f)(2)(vi) of this section, to the extent that such information has been received by the intermediary financial institution; and

(B) Provides the information specified in paragraphs (f)(2)(i), (ii) and (vii) of this section, to the extent that such information has been received by the intermediary financial institution, to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a Federal, State, or local law enforcement or regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(iii) Obligation of requesting financial institution. Any information requested under paragraph (f)(3)(i)(B) or (f)(3)(ii)(B) of this section shall be treated by the requesting institution, once received, as if it had been included in the transmittal order to which such information relates.

(4) Exceptions. The requirements of this paragraph (f) shall not apply to transmittals of funds that are listed in paragraph (e)(6) of this section or § 1020.410(a)(6) of this chapter.

Note: § 1010.410(a)–(d) was previously § 103.33(a)–(d). § 1010.410(e) & (f) was previously § 103.33(f) & (g).

31 C.F.R. § 1010.415. Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks.

To be used for violations occurring on or after March 1, 2011.

(a) No financial institution may issue or sell a bank check or draft, cashier's check, money order or traveler's check for \$3,000 or more in currency unless it maintains records of the following information, which must be obtained for each issuance or sale of one or more of these instruments to any individual purchaser which involves currency in amounts of \$3,000–\$10,000 inclusive:

(1) If the purchaser has a deposit account with the financial institution:

- (i)(A) The name of the purchaser;
- (B) The date of purchase;
- (C) The type(s) of instrument(s) purchased;
- (D) The serial number(s) of each of the instrument(s) purchased; and
- (E) The amount in dollars of each of the instrument(s) purchased.

(ii) In addition, the financial institution must verify that the individual is a deposit accountholder or must verify the individual's identity. Verification may be either through a signature card or other file or record at the financial institution provided the deposit accountholder's name and address were verified previously and that information was recorded on the signature card or other file or record; or by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser. If the deposit accountholder's identity has not been verified previously, the financial institution shall verify the deposit accountholder's identity by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (e.g., State of issuance and number of driver's license).

(2) If the purchaser does not have a deposit account with the financial institution:

- (i)(A) The name and address of the purchaser;
- (B) The social security number of the purchaser, or if the purchaser is an alien and does not have a social security number, the alien identification number;
- (C) The date of birth of the purchaser;
- (D) The date of purchase;
- (E) The type(s) of instrument(s) purchased;
- (F) The serial number(s) of the instrument(s) purchased; and
- (G) The amount in dollars of each of the instrument(s) purchased.

(ii) In addition, the financial institution shall verify the purchaser's name and address by examination of a document which is normally acceptable within the banking community as a means of identification when cashing

checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (e.g., State of issuance and number of driver's license).

(b) Contemporaneous purchases of the same or different types of instruments totaling \$3,000 or more shall be treated as one purchase. Multiple purchases during one business day totaling \$3,000 or more shall be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred.

(c) Records required to be kept shall be retained by the financial institution for a period of five years and shall be made available to the Secretary upon request at any time.

Note: §1010.415(a)–(c) was previously §103.29(a)–(c).

31 C.F.R. § 1010.610. Due diligence programs for correspondent accounts for foreign financial institutions.

To be used for violations occurring on or after March 1, 2011.

(a) In general. A covered financial institution shall establish a due diligence program that includes appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures, and controls that are reasonably designed to enable the covered financial institution to detect and report, on an ongoing basis, any known or suspected money laundering activity conducted through or involving any correspondent account established, maintained, administered, or managed by such covered financial institution in the United States for a foreign financial institution. The due diligence program required by this section shall be a part of the anti-money laundering program otherwise required by this chapter. Such policies, procedures, and controls shall include:

(1) Determining whether any such correspondent account is subject to paragraph (b) of this section;

(2) Assessing the money laundering risk presented by such correspondent account, based on a consideration of all relevant factors, which shall include, as appropriate:

(i) The nature of the foreign financial institution's business and the markets it serves;

(ii) The type, purpose, and anticipated activity of such correspondent account;

(iii) The nature and duration of the covered financial institution's relationship with the foreign financial institution (and any of its affiliates);

(iv) The anti-money laundering and supervisory regime of the jurisdiction that issued the charter or license to the foreign financial institution, and, to the extent that information regarding such jurisdiction is reasonably available, of the jurisdiction in which any company that is an owner of the foreign financial institution is incorporated or chartered; and

(v) Information known or reasonably available to the covered financial institution about the foreign financial institution's anti-money laundering record; and

(3) Applying risk-based procedures and controls to each such correspondent account reasonably designed to detect and report known or suspected money laundering activity, including a periodic review of the correspondent account activity sufficient to determine consistency with information obtained about the type, purpose, and anticipated activity of the account.

(b) Enhanced due diligence for certain foreign banks. In the case of a correspondent account established, maintained, administered, or managed in the United States for a foreign bank described in paragraph (c) of this section, the due diligence program required by paragraph (a) of this section shall include enhanced due diligence procedures designed to ensure that the covered financial institution, at a minimum, takes reasonable steps to:

(1) Conduct enhanced scrutiny of such correspondent account to guard against money laundering and to identify and report any suspicious transactions in accordance with applicable law and regulation. This enhanced scrutiny shall reflect the risk assessment of the account and shall include, as appropriate:

(i) Obtaining and considering information relating to the foreign bank's anti-money laundering program to assess the risk of money laundering presented by the foreign bank's correspondent account;

(ii) Monitoring transactions to, from, or through the correspondent account in a manner reasonably designed to detect money laundering and suspicious activity; and

(iii)(A) Obtaining information from the foreign bank about the identity of any person with authority to direct transactions through any correspondent account that is a payable-through account, and the sources and beneficial owner of funds or other assets in the payable-through account.

(B) For purposes of paragraph (b)(1)(iii)(A) of this section, a payable-through account means a correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking

activities usual in connection with the business of banking in the United States.

(2) Determine whether the foreign bank for which the correspondent account is established or maintained in turn maintains correspondent accounts for other foreign banks that use the foreign correspondent account established or maintained by the covered financial institution and, if so, take reasonable steps to obtain information relevant to assess and mitigate money laundering risks associated with the foreign bank's correspondent accounts for other foreign banks, including, as appropriate, the identity of those foreign banks.

(3)(i) Determine, for any correspondent account established or maintained for a foreign bank whose shares are not publicly traded, the identity of each owner of the foreign bank and the nature and extent of each owner's ownership interest.

(ii) For purposes of paragraph (b)(3)(i) of this section:

(A) Owner means any person who directly or indirectly owns, controls, or has the power to vote 10 percent or more of any class of securities of a foreign bank. For purposes of this paragraph (b)(3)(ii)(A):

(1) Members of the same family shall be considered to be one person; and

(2) Same family has the meaning provided in § 1010.605(j)(2)(ii).

(B) Publicly traded means shares that are traded on an exchange or an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

(c) Foreign banks to be accorded enhanced due diligence. The due diligence procedures described in paragraph (b) of this section are required for any correspondent account maintained for a foreign bank that operates under:

(1) An offshore banking license;

(2) A banking license issued by a foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative to the group or organization concurs; or

(3) A banking license issued by a foreign country that has been designated by the Secretary as warranting special measures due to money laundering concerns.

(d) Special procedures when due diligence or enhanced due diligence cannot be performed. The due diligence program required by paragraphs (a) and (b) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence

or enhanced due diligence with respect to a correspondent account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

(e) Applicability rules for general due diligence. The provisions of paragraph (a) of this section apply to covered financial institutions as follows:

(1) General rules—

(i) Correspondent accounts established on or after July 5, 2006. Effective July 5, 2006, the requirements of paragraph (a) of this section shall apply to each correspondent account established on or after that date.

(ii) Correspondent accounts established before July 5, 2006. Effective October 2, 2006, the requirements of paragraph (a) of this section shall apply to each correspondent account established before July 5, 2006.

(2) Special rules for certain banks. Until the requirements of paragraph (a) of this section become applicable as set forth in paragraph (e)(1) of this section, the due diligence requirements of 31 U.S.C. 5318(i)(1) shall continue to apply to any covered financial institution listed in § 1010.605(e)(1)(i) through (vi).

(3) Special rules for all other covered financial institutions. The due diligence requirements of 31 U.S.C. 5318(i)(1) shall not apply to a covered financial institution listed in § 1010.605(e)(1)(vii) through (x) until the requirements of paragraph (a) of this section become applicable as set forth in paragraph (e)(1) of this section.

(f) Applicability rules for enhanced due diligence. The provisions of paragraph (b) of this section apply to covered financial institutions as follows:

(1) General rules—

(i) Correspondent accounts established on or after February 5, 2008. Effective February 5, 2008, the requirements of paragraph (b) of this section shall apply to each correspondent account established on or after such date.

(ii) Correspondent accounts established before February 5, 2008. Effective May 5, 2008, the requirements of paragraph (b) of this section shall apply to each correspondent account established before February 5, 2008.

(2) Special rules for certain banks. Until the requirements of paragraph (b) of this section become applicable as set forth in paragraph (f)(1) of this section, the enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall continue to apply to any covered financial institutions listed in § 1010.605(e)(1)(i) through (vi).

(3) Special rules for all other covered financial institutions. The enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall not apply to a covered financial institution listed in § 1010.605(e)(1)(vii) through (x) until the requirements of paragraph (b) of this section become applicable, as set forth in paragraph (f)(1) of this section.

(g) Exemptions—

(1) Exempt financial institutions. Except as provided in this section, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1), or § 1010.100(t) is exempt from the requirements of 31 U.S.C. 5318(i)(1) and (i)(2) pertaining to correspondent accounts.

(2) Other compliance obligations of financial institutions unaffected. Nothing in paragraph (g) of this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31, United States Code, and this chapter.

Note: § 1010.610(a)–(g) was previously § 103.176(a)–(g).

31 C.F.R. § 1010.620. Due diligence programs for private banking accounts.

*To be used for violations occurring on or after
March 1, 2011.*

(a) In general. A covered financial institution shall maintain a due diligence program that includes policies, procedures, and controls that are reasonably designed to detect and report any known or suspected money laundering or suspicious activity conducted through or involving any private banking account that is established, maintained, administered, or managed in the United States by such financial institution. The due diligence program required by this section shall be a part of the anti-money laundering program otherwise required by this chapter.

(b) Minimum requirements. The due diligence program required by paragraph (a) of this section shall be designed to ensure, at a minimum, that the financial institution takes reasonable steps to:

(1) Ascertain the identity of all nominal and beneficial owners of a private banking account;

(2) Ascertain whether any person identified under paragraph (b)(1) of this section is a senior foreign political figure;

(3) Ascertain the source(s) of funds deposited into a private banking account and the purpose and expected use of the account; and

(4) Review the activity of the account to ensure that it is consistent with the information obtained about the client's source of funds, and with the stated purpose and expected use of the account, as needed to guard against money laundering, and to report, in accordance with applicable law and regulation, any known or suspected money laundering or suspicious activity conducted to, from, or through a private banking account.

(c) Special requirements for senior foreign political figures.

(1) In the case of a private banking account for which a senior foreign political figure is a nominal or beneficial owner, the due diligence program required by paragraph (a) of this section shall include enhanced scrutiny of such account that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

(2) For purposes of this paragraph (c), the term proceeds of foreign corruption means any asset or property that is acquired by, through, or on behalf of a senior foreign political figure through misappropriation, theft, or embezzlement of public funds, the unlawful conversion of property of a foreign government, or through acts of bribery or extortion, and shall include any other property into which any such assets have been transformed or converted.

(d) Special procedures when due diligence cannot be performed. The due diligence program required by paragraph (a) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence with respect to a private banking account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

(e) Applicability rules. The provisions of this section apply to covered financial institutions as follows:

(1) General rules—

(i) Private banking accounts established on or after July 5, 2006. Effective July 5, 2006, the requirements of this section shall apply to each private banking account established on or after such date.

(ii) Private banking accounts established before July 5, 2006. Effective October 2, 2006, the requirements of this section shall apply to each private banking account established before July 5, 2006.

(2) Special rules for certain banks and for brokers or dealers in securities, futures commission merchants, and introducing brokers. Until the requirements of this section become applicable as set forth in paragraph (e)(1) of this section, the requirements of 31 U.S.C. 5318(i)(3) shall continue to apply to a covered financial institution listed in § 1010.605(e)(1)(i) through (vi), (viii), or (ix).

(3) Special rules for federally regulated trust banks or trust companies, and mutual funds. Until the requirements of this section become applicable as set forth in paragraph (e)(1) of this section, the requirements of 31 U.S.C. 5318(i)(3) shall not apply to a covered financial institution listed in § 1010.605(e)(1)(vii) or (x).

(4) Exemptions—

(i) Exempt financial institutions. Except as provided in this section, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1) or § 1010.100(t) is exempt from the requirements of 31 U.S.C. 5318(i)(3) pertaining to private banking accounts.

(ii) Other compliance obligations of financial institutions unaffected. Nothing in paragraph (e)(4) of this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31, United States Code, and this chapter.

Note: § 1010.620(a)–(e) was previously § 103.178(a)–(e).

31 C.F.R. § 1020.100. Definitions.

To be used for violations occurring on or after March 1, 2011.

Refer to § 1010.100 of this Chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this Chapter, the definition in this Section is what applies to Part 1020. Unless otherwise indicated, for purposes of this Part:

(a) Account. For purposes of § 1020.220:

(1) Account means a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. Account also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services.

(2) Account does not include:

(i) A product or service where a formal banking relationship is not established with a person, such as check-cashing, wire transfer, or sale of a check or money order;

(ii) An account that the bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities; or

(iii) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(b) Bank. For the purposes of § 1020.220, means:

(1) A bank, as that term is defined in § 1010.100(d), that is subject to regulation by a Federal functional regulator; and

(2) A credit union, private bank, and trust company, as set forth in § 1010.100(d) of this Chapter, that does not have a Federal functional regulator.

(c) Customer. For the purposes of § 1020.220:

(1) Customer means:

(i) A person that opens a new account; and

(ii) An individual who opens a new account for:

(A) An individual who lacks legal capacity, such as a minor; or

(B) An entity that is not a legal person, such as a civic club.

(2) Customer does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator;

(ii) A person described in § 1020.315(b)(2) through (b)(4); or

(iii) A person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.

(d) Financial institution means:

(1) For the purposes of § 1020.210, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1) that is subject to regulation by a Federal functional regulator or a self-regulatory organization.

(2) For the purposes of § 1020.220, financial institution is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

Note: § 1020.100(a) was previously § 103.121(a)(1). § 1020.100(b) was previously § 103.121(a)(2). § 1020.100(c) was previously § 103.121(a)(3). § 103.121(a)(4) was deleted. § 1020.100(d)(2) was previously § 103.121(a)(5).

This section was further amended on Feb. 25, 2011. The changes went into effect on March 1, 2011.

31 C.F.R. § 1020.220. Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

To be used for violations occurring on or after March 1, 2011.

(a) Customer Identification Program: minimum requirements—

(1) In general. A bank must implement a written Customer Identification Program (CIP) appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. If a bank is required to have an anti-money laundering compliance program under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), or 12 U.S.C. 1786(q)(1), then the CIP must be a part of the anti-money laundering compliance program. Until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

(2) Identity verification procedures. The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer. These procedures must be based on the bank's assessment of the relevant risks, including those presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank's size, location, and customer base. At a minimum, these procedures must contain the elements described in this paragraph (a)(2).

(i) Customer information required—

(A) In general. The CIP must contain procedures for opening an account that specify the identifying information that will be obtained from each customer. Except as permitted by paragraphs (a)(2)(i)(B) and (C) of this section, the bank must obtain, at a minimum, the following information from the customer prior to opening an account:

(1) Name;

(2) Date of birth, for an individual;

(3) Address, which shall be:

(i) For an individual, a residential or business street address;

(ii) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post

Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(iii) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office, or other physical location; and

(4) Identification number, which shall be:

(i) For a U.S. person, a taxpayer identification number; or

(ii) For a non-U.S. person, one or more of the following: A taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to Paragraph(a)(2)(i)(A)(4)(ii): When opening an account for a foreign business or enterprise that does not have an identification number, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) Exception for persons applying for a taxpayer identification number. Instead of obtaining a taxpayer identification number from a customer prior to opening the account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(C) Credit card accounts. In connection with a customer who opens a credit card account, a bank may obtain the identifying information about a customer required under paragraph (a)(2)(i)(A) by acquiring it from a third-party source prior to extending credit to the customer.

(ii) Customer verification. The CIP must contain procedures for verifying the identity of the customer, using information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (a)(2)(ii).

(A) Verification through documents. For a bank relying on documents, the CIP must contain procedures that set forth the documents that the bank will use. These documents may include:

(1) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(2) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) Verification through non-documentary methods. For a bank relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

(1) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(2) The bank's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the bank; and where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents.

(C) Additional verification for certain customers. The CIP must address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This verification method applies only when the bank cannot verify the customer's true identity using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) Lack of verification. The CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the bank should not open an account;

(B) The terms under which a customer may use an account while the bank attempts to verify the customer's identity;

(C) When the bank should close an account, after attempts to verify a customer's identity have failed; and

(D) When the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) Recordkeeping. The CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (a) of this section.

(i) Required records. At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance and, if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (a)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) Retention of records. The bank must retain the information in paragraph (a)(3)(i)(A) of this section for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. The bank must retain the information in paragraphs (a)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) Comparison with government lists. The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the bank to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the bank to follow all Federal directives issued in connection with such lists.

(5)(i) Customer notice. The CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities.

(ii) Adequate notice. Notice is adequate if the bank generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a bank may post a notice in the lobby or on its Web site, include the notice on its account applications, or use any other form of written or oral notice.

(iii) Sample notice. If appropriate, a bank may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) Reliance on another financial institution. The CIP may include procedures specifying when a bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP, with respect to any customer of the bank that is opening, or has opened, an account or has established a similar formal banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

(b) Exemptions. The appropriate Federal functional regulator, with the concurrence of the Secretary, may, by order or regulation, exempt any bank or type of account from the

requirements of this section. The Federal functional regulator and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and with safe and sound banking, and may consider other appropriate factors. The Secretary will make these determinations for any bank or type of account that is not subject to the authority of a Federal functional regulator.

(c) Other requirements unaffected. Nothing in this section relieves a bank of its obligation to comply with any other provision in this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Note: § 1020.220(a)–(c) was previously § 103.121(b)–(d).

This section was further amended on Feb. 25, 2011. The changes went into effect on March 1, 2011.

31 C.F.R. § 1020.315. Transactions of exempt persons.

To be used for violations occurring on or after March 1, 2011.

(a) General. No bank is required to file a report otherwise required by § 1010.311 with respect to any transaction in currency between an exempt person and such bank, or, to the extent provided in paragraph (e)(6) of this section, between such exempt person and other banks affiliated with such bank. (A limitation on the exemption described in this paragraph (a) is set forth in paragraph (f) of this section.)

(b) Exempt person. For purposes of this section, an exempt person is:

(1) A bank, to the extent of such bank’s domestic operations;

(2) A department or agency of the United States, of any State, or of any political subdivision of any State;

(3) Any entity established under the laws of the United States, of any State, or of any political subdivision of any State, or under an interstate compact between two or more States, that exercises governmental authority on behalf of the United States or any such State or political subdivision;

(4) Any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a NASDAQ National Market Security listed on the NASDAQ Stock Market (except stock or interests listed under the separate “NASDAQ Capital Markets Companies” heading), provided that, for purposes of this paragraph (b)(4), a person

that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(5) Any subsidiary, other than a bank, of any entity described in paragraph (b)(4) of this section (a “listed entity”) that is organized under the laws of the United States or of any State and at least 51 percent of whose common stock or analogous equity interest is owned by the listed entity, provided that, for purposes of this paragraph (b)(5), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(6) To the extent of its domestic operations and only with respect to transactions conducted through its exemptible accounts, any other commercial enterprise (for purposes of this section, a “non-listed business”), other than an enterprise specified in paragraph (e)(8) of this section, that:

(i) Maintains a transaction account, as defined in paragraph (e)(9) of this section, at the bank for at least two months, except as provided in paragraph (c)(2)(ii) of this section;

(ii) Frequently engages in transactions in currency with the bank in excess of \$10,000; and

(iii) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State; or

(7) With respect solely to withdrawals for payroll purposes from existing exemptible accounts, any other person (for purposes of this section, a “payroll customer”) that:

(i) Maintains a transaction account, as defined in paragraph (e)(9) of this section, at the bank for at least two months, except as provided in paragraph (c)(2)(ii) of this section;

(ii) Operates a firm that frequently withdraws more than \$10,000 in order to pay its United States employees in currency; and

(iii) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State.

(c) Designation of certain exempt persons—

(1) General. Except as provided in paragraph (c)(2) of this section, a bank must designate an exempt person by filing FinCEN Form 110. Such designation must occur by the close of the 30–calendar day period beginning after the day of the first reportable transaction in currency with that person sought to be exempted from reporting under the terms of this section. The designation must be made separately by each bank that treats the customer as an exempt person, except as provided in paragraph (e)(6) of this section.

(2) Special rules.

(i) A bank is not required to file a FinCEN Form 110 with respect to the transfer of currency to or from:

(A) Any of the twelve Federal Reserve Banks; or

(B) Any exempt person as described in paragraphs (b)(1) to (3) of this section.

(ii) Notwithstanding subparagraphs (b)(6)(i) and (b)(7)(i) of this section, and if the requirements under this section are otherwise satisfied, a bank may designate a non-listed business or a payroll customer, as described in paragraphs (b)(6) and (7) of this section, as an exempt person before the customer has maintained a transaction account at the bank for at least two months if the bank conducts and documents a risk-based assessment of the customer and forms a reasonable belief that the customer has a legitimate business purpose for conducting frequent transactions in currency.

(d) Annual review. At least once each year, a bank must review the eligibility of an exempt person described in paragraphs (b)(4) to (7) of this section to determine whether such person remains eligible for an exemption. As part of its annual review, a bank must review the application of the monitoring system required to be maintained by paragraph (h)(2) of this section to each existing account of an exempt person described in paragraphs (b)(6) or (b)(7) of this section.

(e) Operating rules—

(1) General rule. Subject to the specific rules of this section, a bank must take such steps to assure itself that a person is an exempt person (within the meaning of the applicable provision of paragraph (b) of this section), to document the basis for its conclusions, and document its compliance, with the terms of this section, that a reasonable and prudent bank would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status, and in the case of the monitoring system requirement set forth in paragraph (h)(2) of this section, such steps that a reasonable and prudent bank would take and document to identify suspicious transactions as required by paragraph (h)(2) of this section.

(2) Governmental departments and agencies. A bank may treat a person as a governmental department, agency, or entity if the name of such person reasonably indicates that it is described in paragraph (b)(2) or (b)(3) of this section, or if such person is known generally in the community to be a State, the District of Columbia, a tribal government, a Territory or Insular Possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any of the foregoing. An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision, for purposes of paragraph (b)(3) of this section, only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters within its jurisdiction. Examples of entities that exercise

governmental authority include, but are not limited to, the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey.

(3) Stock exchange listings. In determining whether a person is described in paragraph (b)(4) of this section, a bank may rely on any New York, American, or NASDAQ Stock Market listing published in a newspaper of general circulation, on any commonly accepted or published stock symbol guide, on any information contained in the Securities and Exchange Commission "EDGAR" System, or on any information contained on an Internet site or sites maintained by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ.

(4) Listed company subsidiaries. In determining whether a person is described in paragraph (b)(5) of this section, a bank may rely upon:

(i) Any reasonably authenticated corporate officer's certificate;

(ii) Any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year; or

(iii) A person's Annual Report or Form 10-K, as filed in each case with the Securities and Exchange Commission.

(5) Aggregated accounts. In determining the qualification of a customer as a non-listed business or a payroll customer, a bank may treat all exemptible accounts of the customer as a single account. If a bank elects to treat all exemptible accounts of a customer as a single account, the bank must continue to treat such accounts consistently as a single account for purposes of determining the qualification of the customer as a non-listed business or payroll customer.

(6) Affiliated banks. The designation required by paragraph (c) of this section may be made by a parent bank holding company or one of its bank subsidiaries on behalf of all bank subsidiaries of the holding company, so long as the designation lists each bank subsidiary to which the designation shall apply.

(7) Sole proprietorships. A sole proprietorship may be treated as a non-listed business if it otherwise meets the requirements of paragraph (b)(6) of this section, as applicable. In addition, a sole proprietorship may be treated as a payroll customer if it otherwise meets the requirements of paragraph (b)(7) of this section, as applicable.

(8) Ineligible businesses. A business engaged primarily in one or more of the following activities may not be treated as a non-listed business for purposes of this section: Serving as financial institutions or agents of financial institutions of any type; purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; the practice of law, accountancy, or medicine; auctioning of goods; chartering or operation of ships, buses, or aircraft;

gaming of any kind (other than licensed parimutuel betting at race tracks); investment advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and any other activities that may be specified by FinCEN. A business that engages in multiple business activities may be treated as a non-listed business so long as no more than 50% of its gross revenues are derived from one or more of the ineligible business activities listed in this paragraph (e)(8).

(9) Exemptible accounts of a non-listed business or payroll customer. The exemptible accounts of a non-listed business or payroll customer include transaction accounts and money market deposit accounts. However, money market deposit accounts maintained other than in connection with a commercial enterprise are not exemptible accounts. A transaction account, for purposes of this section, is any account described in section 19(b)(1)(C) of the Federal Reserve Act, 12 U.S.C. 461(b)(1)(C), and its implementing regulations (12 CFR part 204). A money market deposit account, for purposes of this section, is any interest-bearing account that is described as a money market deposit account in 12 CFR 204.2(d)(2).

(10) Documentation. The records maintained by a bank to document its compliance with and administration of the rules of this section shall be maintained in accordance with the provisions of § 1010.430.

(f) Limitation on exemption. A transaction carried out by an exempt person as an agent for another person who is the beneficial owner of the funds that are the subject of a transaction in currency is not subject to the exemption from reporting contained in paragraph (a) of this section.

(g) Limitation on liability.

(1) No bank shall be subject to penalty under this chapter for failure to file a report required by § 1010.311 with respect to a transaction in currency by an exempt person with respect to which the requirements of this section have been satisfied, unless the bank:

(i) Knowingly files false or incomplete information with respect to the transaction or the customer engaging in the transaction; or

(ii) Has reason to believe that the customer does not meet the criteria established by this section for treatment of the transactor as an exempt person or that the transaction is not a transaction of the exempt person.

(2) Subject to the specific terms of this section, and absent any specific knowledge of information indicating that a customer no longer meets the requirements of an exempt person, a bank satisfies the requirements of this section to the extent it continues to treat that customer as an exempt person until the completion of that customer's next required periodic review, which as required by paragraph (d) of this section for

an exempt person described in paragraph (b)(4) to (7) of this section, shall occur no less than once each year.

(3) A bank that files a report with respect to a currency transaction by an exempt person rather than treating such person as exempt shall remain subject, with respect to each such report, to the rules for filing reports, and the penalties for filing false or incomplete reports that are applicable to reporting of transactions in currency by persons other than exempt persons.

(h) Obligations to file suspicious activity reports and maintain system for monitoring transactions in currency.

(1) Nothing in this section relieves a bank of the obligation, or reduces in any way such bank's obligation, to file a report required by § 1020.320 with respect to any transaction, including any transaction in currency that a bank knows, suspects, or has reason to suspect is a transaction or attempted transaction that is described in § 1020.320(a)(2)(i), (ii), or (iii), or relieves a bank of any reporting or recordkeeping obligation imposed by this chapter (except the obligation to report transactions in currency pursuant to this chapter to the extent provided in this section). Thus, for example, a sharp increase from one year to the next in the gross total of currency transactions made by an exempt customer, or similarly anomalous transactions trends or patterns, may trigger the obligation of a bank under § 1020.320.

(2) Consistent with its annual review obligations under paragraph (d) of this section, a bank shall establish and maintain a monitoring system that is reasonably designed to detect, for each account of a non-listed business or payroll customer, those transactions in currency involving such account that would require a bank to file a suspicious transaction report. The statement in the preceding sentence with respect to accounts of non-listed business and payroll customers does not limit the obligation of banks generally to take the steps necessary to satisfy the terms of paragraph (h)(1) of this section and § 1020.320 with respect to all exempt persons.

(i) Revocation. Without any action on the part of the Department of the Treasury and subject to the limitation on liability contained in paragraph (g)(2) of this section:

(1) The status of an entity as an exempt person under paragraph (b)(4) of this section ceases once such entity ceases to be listed on the applicable stock exchange; and

(2) The status of a subsidiary as an exempt person under paragraph (b)(5) of this section ceases once such subsidiary ceases to have at least 51 per cent of its common stock or analogous equity interest owned by a listed entity.

Note: § 1020.315(a) was previously § 103.22(d)(1) sentences 1 and 3. § 1021.315(b)–(i) was previously § 103.22(d)(2)–(9).

This section was further amended on June 7, 2012. The changes went into effect on June 7, 2012.

31 C.F.R. § 1020.320. Reports by banks of suspicious transactions.

To be used for violations occurring on or after March 1, 2011.

(a) General.

(1) Every bank shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A bank may also file with the Treasury Department by using the Suspicious Activity Report specified in paragraph (b)(1) of this section or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through the bank, it involves or aggregates at least \$5,000 in funds or other assets, and the bank knows, suspects, or has reason to suspect that:

(i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) The transaction is designed to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act; or

(iii) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(b) Filing procedures—

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report (“SAR”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) Where to file. The SAR shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR.

(3) When to file. A bank is required to file a SAR no later than 30 calendar days after the date of initial detection by the

bank of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of the detection of the incident requiring the filing, a bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations that require immediate attention, such as, for example, ongoing money laundering schemes, the bank shall immediately notify, by telephone, an appropriate law enforcement authority in addition to filing timely a SAR.

(c) Exceptions. A bank is not required to file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the bank files a report pursuant to the reporting requirements of 17 CFR 240.17f-1.

(d) Retention of records. A bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR. Supporting documentation shall be identified, and maintained by the bank as such, and shall be deemed to have been filed with the SAR. A bank shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the bank for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the bank to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the institution complies with the Bank Secrecy Act, upon request.

(e) Confidentiality of SARs. A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) Prohibition on disclosures by banks—

(i) General rule. No bank, and no director, officer, employee, or agent of any bank, shall disclose a SAR or any information that would reveal the existence of a SAR. Any bank, and any director, officer, employee, or agent of any bank that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) Rules of Construction. Provided that no person involved in any reported suspicious transaction is notified

that the transaction has been reported, this paragraph (e) (1) shall not be construed as prohibiting:

(A) The disclosure by a bank, or any director, officer, employee, or agent of a bank, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the bank for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the bank to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the bank complies with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(i) To another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(ii) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by a bank, or any director, officer, employee, or agent of the bank, of a SAR, or any information that would reveal the existence of a SAR, within the bank's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) Prohibition on disclosures by government authorities. A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) Limitation on liability. A bank, and any director, officer, employee, or agent of any bank, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure

to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) Compliance. Banks shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter. Such failure may also violate provisions of Title 12 of the Code of Federal Regulations.

Note: § 1020.320(a)–(f) was previously § 103.18(a)–(f).

This section was further amended on Feb. 25, 2011. The changes went into effect on March 1, 2011.

31 C.F.R. § 1020.410. Records to be made and retained by banks.

To be used for violations occurring on or after March 1, 2011.

(a) Each agent, agency, branch, or office located within the United States of a bank is subject to the requirements of this paragraph (a) with respect to a funds transfer in the amount of \$3,000 or more, and is required to retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Recordkeeping requirements.

(i) For each payment order that it accepts as an originator's bank, a bank shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the payment order:

(A) The name and address of the originator;

(B) The amount of the payment order;

(C) The execution date of the payment order;

(D) Any payment instructions received from the originator with the payment order;

(E) The identity of the beneficiary's bank; and

(F) As many of the following items as are received with the payment order:

(1) The name and address of the beneficiary;

(2) The account number of the beneficiary; and

(3) Any other specific identifier of the beneficiary.

(ii) For each payment order that it accepts as an intermediary bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(iii) For each payment order that it accepts as a beneficiary's bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(2) Originators other than established customers. In the case of a payment order from an originator that is not an established customer, in addition to obtaining and retaining the information required in paragraph (a)(1)(i) of this section:

(i) If the payment order is made in person, prior to acceptance the originator's bank shall verify the identity of the person placing the payment order. If it accepts the payment order, the originator's bank shall obtain and retain a record of the name and address, the type of identification reviewed, the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(ii) If the payment order accepted by the originator's bank is not made in person, the originator's bank shall obtain and retain a record of name and address of the person placing the payment order, as well as the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (e.g., check or credit card transaction) for the funds transfer. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(3) Beneficiaries other than established customers. For each payment order that it accepts as a beneficiary's bank for a beneficiary that is not an established customer, in addition to obtaining and retaining the information required in paragraph (a)(1)(iii) of this section:

(i) If the proceeds are delivered in person to the beneficiary or its representative or agent, the beneficiary's bank shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the beneficiary's bank has knowledge that the person receiving the proceeds is not the beneficiary, the beneficiary's bank shall obtain and retain a record of the beneficiary's name and address, as well as the beneficiary's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) If the proceeds are delivered other than in person, the beneficiary's bank shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) Retrievability. The information that an originator's bank must retain under paragraphs (a)(1)(i) and (a)(2) of this section shall be retrievable by the originator's bank by reference to the name of the originator. If the originator is an established customer of the originator's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. The information that a beneficiary's bank must retain under paragraphs (a)(1)(iii) and (a)(3) of this section shall be retrievable by the beneficiary's bank by reference to the name of the beneficiary. If the beneficiary is an established customer of the beneficiary's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the bank is able to retrieve the information required by this paragraph, either by accessing funds transfer records directly or through reference to some other record maintained by the bank.

(5) Verification. Where verification is required under paragraphs (a)(2) and (a)(3) of this section, a bank shall verify a person's identity by examination of a document (other than a bank signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other

official document evidencing nationality or residence (e.g., a foreign driver's license with indication of home address).

(6) Exceptions. The following funds transfers are not subject to the requirements of this section:

(i) Funds transfers where the originator and beneficiary are any of the following:

(A) A bank;

(B) A wholly owned domestic subsidiary of a bank chartered in the United States;

(C) A broker or dealer in securities;

(D) A wholly owned domestic subsidiary of a broker or dealer in securities;

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

(G) The United States;

(H) A state or local government;

(I) A Federal, State or local government agency or instrumentality; or

(J) A mutual fund; and

(ii) Funds transfers where both the originator and the beneficiary are the same person and the originator's bank and the beneficiary's bank are the same bank.

(b)(1) With respect to each certificate of deposit sold or redeemed after May 31, 1978, and before October 1, 2003, or each deposit or share account opened with a bank after June 30, 1972, and before October 1, 2003, a bank shall, within 30 days from the date such a transaction occurs or an account is opened, secure and maintain a record of the taxpayer identification number of the customer involved; or where the account or certificate is in the names of two or more persons, the bank shall secure the taxpayer identification number of a person having a financial interest in the certificate or account. In the event that a bank has been unable to secure, within the 30-day period specified, the required identification, it shall nevertheless not be deemed to be in violation of this section if it has made a reasonable effort to secure such identification, and it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him. A bank acting as an agent for another person in the purchase or redemption of a certificate of deposit issued by another bank is responsible for obtaining and recording the required taxpayer identification, as well

as for maintaining the records referred to in paragraphs (c) (11) and (12) of this section. The issuing bank can satisfy the recordkeeping requirement by recording the name and address of the agent together with a description of the instrument and the date of the transaction. Where a person is a non-resident alien, the bank shall also record the person's passport number or a description of some other government document used to verify his identity.

(2) The 30-day period provided for in paragraph (b)(1) of this section shall be extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS-4 or SS-5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the bank.

(3) A taxpayer identification number required under paragraph (b)(1) of this section need not be secured for accounts or transactions with the following:

(i) Agencies and instrumentalities of Federal, State, local or foreign governments;

(ii) Judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court;

(iii) Aliens who are ambassadors, ministers, career diplomatic or consular officers, or naval, military or other attaches of foreign embassies and legations, and for the members of their immediate families;

(iv) Aliens who are accredited representatives of international organizations which are entitled to enjoy privileges, exemptions and immunities as an international organization under the International Organization Immunities Act of December 29, 1945 (22 U.S.C. 288), and the members of their immediate families;

(v) Aliens temporarily residing in the United States for a period not to exceed 180 days;

(vi) Aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government;

(vii) Unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter,

(viii) A person under 18 years of age with respect to an account opened as a part of a school thrift savings program, provided the annual interest is less than \$10;

(ix) A person opening a Christmas club, vacation club and similar installment savings programs, provided the annual interest is less than \$10; and

(x) Non-resident aliens who are not engaged in a trade or business in the United States.

(4) In instances described in paragraphs (b)(3)(viii) and (ix) of this section, the bank shall, within 15 days following the end of any calendar year in which the interest accrued in that year is \$10 or more use its best effort to secure and maintain the appropriate taxpayer identification number or application form therefor.

(5) The rules and regulations issued by the Internal Revenue Service under section 6109 of the Internal Revenue Code of 1954 shall determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(c) Each bank shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature authority over each deposit or share account, including any notations, if such are normally made, of specific identifying information verifying the identity of the signer (such as a driver's license number or credit card number);

(2) Each statement, ledger card or other record on each deposit or share account, showing each transaction in, or with respect to, that account;

(3) Each check, clean draft, or money order drawn on the bank or issued and payable by it, except those drawn for \$100 or less or those drawn on accounts which can be expected to have drawn on them an average of at least 100 checks per month over the calendar year or on each occasion on which such checks are issued, and which are:

- (i) Dividend checks,
- (ii) Payroll checks,
- (iii) Employee benefit checks,
- (iv) Insurance claim checks,
- (v) Medical benefit checks,
- (vi) Checks drawn on government agency accounts,
- (vii) Checks drawn by brokers or dealers in securities,
- (viii) Checks drawn on fiduciary accounts,
- (ix) Checks drawn on other financial institutions, or
- (x) Pension or annuity checks;

(4) Each item in excess of \$100 (other than bank charges or periodic charges made pursuant to agreement with the customer), comprising a debit to a customer's deposit or share account, not required to be kept, and not specifically exempted, under paragraph (c)(3) of this section;

(5) Each item, including checks, drafts, or transfers of credit, of more than \$10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than \$10,000 to a person, account or place outside the United States;

(7) Each check or draft in an amount in excess of \$10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a nonbank drawee for payment;

(8) Each item, including checks, drafts or transfers of credit, of more than \$10,000 received directly and not through a domestic financial institution, by letter, cable or any other means, from a bank, broker or dealer in foreign exchange outside the United States;

(9) A record of each receipt of currency, other monetary instruments, investment securities or checks, and of each transfer of funds or credit, of more than \$10,000 received on any one occasion directly and not through a domestic financial institution, from a bank, broker or dealer in foreign exchange outside the United States; and

(10) Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a transaction account and to trace a check in excess of \$100 deposited in such account through its domestic processing system or to supply a description of a deposited check in excess of \$100. This subparagraph shall be applicable only with respect to demand deposits.

(11) A record containing the name, address, and taxpayer identification number as determined under section 6109 of the Internal Revenue Code of 1986, if available, of the purchaser of each certificate of deposit, as well as a description of the instrument, a notation of the method of payment, and the date of the transaction.

(12) A record containing the name, address and taxpayer identification number as determined under section 6109 of the Internal Revenue Code of 1986, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and the date of the transaction.

(13) Each deposit slip or credit ticket reflecting a transaction in excess of \$100 or the equivalent record for direct deposit or other wire transfer deposit transactions. The slip or ticket shall record the amount of any currency involved.

Note: §1020.410(a) was previously §103.33(e).

This section was further amended on Feb. 25, 2011. The changes went into effect on March 1, 2011.

31 C.F.R. § 1021.311. Filing obligations.

To be used for violations occurring on or after March 1, 2011.

Each casino shall file a report of each transaction in currency, involving either cash in or cash out, of more than \$10,000.

(a) Transactions in currency involving cash in include, but are not limited to:

- (1) Purchases of chips, tokens, and other gaming instruments;
- (2) Front money deposits;
- (3) Safekeeping deposits;
- (4) Payments on any form of credit, including markers and counter checks;
- (5) Bets of currency, including money plays;
- (6) Currency received by a casino for transmittal of funds through wire transfer for a customer;
- (7) Purchases of a casino's check;
- (8) Exchanges of currency for currency, including foreign currency; and
- (9) Bills inserted into electronic gaming devices.

(b) Transactions in currency involving cash out include, but are not limited to:

- (1) Redemptions of chips, tokens, tickets, and other gaming instruments;
- (2) Front money withdrawals;
- (3) Safekeeping withdrawals;
- (4) Advances on any form of credit, including markers and counter checks;
- (5) Payments on bets;
- (6) Payments by a casino to a customer based on receipt of funds through wire transfers;
- (7) Cashing of checks or other negotiable instruments;
- (8) Exchanges of currency for currency, including foreign currency;
- (9) Travel and complimentary expenses and gaming incentives; and
- (10) Payment for tournament, contests, and other promotions.

(c) Other provisions of this chapter notwithstanding, casinos are exempted from the reporting obligations found in this section and § 1021.313 for the following transactions in currency or currency transactions:

(1) Transactions between a casino and a dealer in foreign exchange, or between a casino and a check cashier, as those terms are defined in § 1010.100(ff) of this Chapter, so long as such transactions are conducted pursuant to a contractual or other arrangement with a casino covering the financial services in paragraphs (a)(8), (b)(7), and (b)(8) of this section;

(2) Cash out transactions to the extent the currency is won in a money play and is the same currency the customer wagered in the money play, or cash in transactions to the extent the currency is the same currency the customer previously wagered in a money play on the same table game without leaving the table;

(3) Bills inserted into electronic gaming devices in multiple transactions (unless a casino has knowledge pursuant to § 1021.313 in which case this exemption would not apply); and

(4) Jackpots from slot machines or video lottery terminals.

Note: §1021.311(a)–(c) was previously §103.22(b)(2)(i)–(iii).

This section was further amended on July 21, 2011. The changes went into effect on Sept. 19, 2011.

31 C.F.R. § 1021.313. Aggregation.

To be used for violations occurring on or after March 1, 2011.

In the case of a casino, multiple currency transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any gaming day. For purposes of this section, a casino shall be deemed to have the knowledge described in the preceding sentence, if: Any sole proprietor, partner, officer, director, or employee of the casino, acting within the scope of his or her employment, has knowledge that such multiple currency transactions have occurred, including knowledge from examining the books, records, logs, information retained on magnetic disk, tape or other machine-readable media, or in any manual system, and similar documents and information, which the casino maintains pursuant to any law or regulation or within the ordinary course of its business, and which contain information that such multiple currency transactions have occurred.

Note: §1021.313 was previously §103.22(c)(3).

This section was further amended on Feb. 25, 2011. The changes went into effect on March 1, 2011.

31 C.F.R. § 1021.320. Reports by casinos of suspicious transactions.

To be used for violations occurring on or after March 1, 2011.

(a) General.

(1) Every casino shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A casino may also file with FinCEN, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a casino, and involves or aggregates at least \$5,000 in funds or other assets, and the casino knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the casino to facilitate criminal activity.

(b) Filing procedures—

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report by Casinos (“SARC”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) Where to file. The SARC shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SARC.

(3) When to file. A SARC shall be filed no later than 30 calendar days after the date of the initial detection by the casino of facts that may constitute a basis for filing a SARC under this section. If no suspect is identified on the date of such initial detection, a casino may delay filing a SARC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the casino shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SARC. Casinos wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN’s Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SARC if required by this section.

(c) Exceptions. A casino is not required to file a SARC for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(d) Retention of records. A casino shall maintain a copy of any SARC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SARC. Supporting documentation shall be identified as such and maintained by the casino, and shall be deemed to have been filed with the SARC. A casino shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the casino for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the casino complies with the Bank Secrecy Act, or any tribal regulatory authority administering a tribal law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the tribal regulatory authority to ensure that the casino complies with the Bank Secrecy Act, upon request.

(e) Confidentiality of SARs. A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) Prohibition on disclosures by casinos—

(i) General rule. No casino, and no director, officer, employee, or agent of any casino, shall disclose a SAR or any information that would reveal the existence of a SAR. Any casino, and any director, officer, employee, or agent of any casino that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or

such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) Rules of Construction. Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by a casino, or any director, officer, employee, or agent of a casino, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the casino for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the casino complies with the Bank Secrecy Act, or any tribal regulatory authority administering a tribal law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the tribal regulatory authority to ensure that casino complies with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by a casino, or any director, officer, employee, or agent of the casino, of a SAR, or any information that would reveal the existence of a SAR, within the casino's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) Prohibition on disclosures by government authorities. A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act (BSA). For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) Limitation on liability. A casino, and any director, officer, employee, or agent of any casino, that makes a voluntary disclosure of any possible violation of law or regulation to

a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) Compliance. Casinos shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(h) Applicability date. This section applies to transactions occurring after March 25, 2003.

Note: §1021.320(a)–(g) was previously §103.21(a)–(g).

This section was further amended on Feb. 25, 2011. The changes went into effect on March 1, 2011.

31 C.F.R. § 1021.330. Exceptions to the reporting requirements of 31 U.S.C. 5331.

To be used for violations occurring on or after March 1, 2011.

(a) Receipt of currency by certain casinos having gross annual gaming revenue in excess of \$1,000,000—In general. If a casino receives currency in excess of \$10,000 and is required to report the receipt of such currency directly to the Treasury Department under § 1010.306, § 1021.311, or § 1021.313 and is subject to the recordkeeping requirements of § 1021.410, then the casino is not required to make a report with respect to the receipt of such currency under 31 U.S.C. 5331 and this section.

(b) Casinos exempt under § 1010.970(c). Pursuant to § 1010.970, the Secretary may exempt from the reporting and recordkeeping requirements under § 1010.306, § 1021.311, § 1021.313 or § 1021.410 casinos in any state whose regulatory system substantially meets the reporting and recordkeeping requirements of this chapter. Such casinos shall not be required to report receipt of currency under 31 U.S.C. 5331 and this section.

(c) Reporting of currency received in a non-gaming business. Non-gaming businesses (such as shops, restaurants, entertainment, and hotels) at casino hotels and resorts are separate trades or businesses in which the receipt of currency in excess of \$10,000 is reportable under section 5331 and these regulations. Thus, a casino exempt under paragraph (a) or (b) of this section must report with respect to currency in excess of \$10,000 received in its non-gaming businesses.

(d) Example. The following example illustrates the application of the rules in paragraphs (a) and (c) of this section:

Example. A and B are casinos having gross annual gaming revenue in excess of \$1,000,000. C is a casino with gross annual gaming revenue of less than \$1,000,000. Casino A receives \$15,000 in currency from a customer with respect to a gaming transaction which the casino reports to the Treasury Department under §§ 1010.306, 1021.311, and 1021.313. Casino B receives \$15,000 in currency from a customer in payment for accommodations provided to that customer at Casino B's hotel. Casino C receives \$15,000 in currency from a customer with respect to a gaming transaction. Casino A is not required to report the transaction under 31 U.S.C. 5331 or this section because the exception for certain casinos provided in paragraph (a) of this section ("the casino exception") applies. Casino B is required to report under 31 U.S.C. 5331 and this section because the casino exception does not apply to the receipt of currency from a nongaming activity. Casino C is required to report under 31 U.S.C. 5331 and this section because the casino exception does not apply to casinos having gross annual gaming revenue of \$1,000,000 or less which do not have to report to the Treasury Department under §§ 1010.306, 1021.311, and 1021.313.

Note: §1021.330(a)–(d) was previously §103.30(d)(1)(i)–(iv).

This section was further amended on Feb. 25, 2011. The changes went into effect on March 1, 2011.

31 C.F.R. § 1022.210. Anti-money laundering programs for money services businesses.

To be used for violations occurring on or after March 1, 2011.

(a) Each money services business, as defined by § 1010.100(ff) of this Chapter, shall develop, implement, and maintain an effective anti-money laundering program. An effective anti-money laundering program is one that is reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities.

(b) The program shall be commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the money services business.

(c) The program shall be in writing, and a money services business shall make copies of the anti-money laundering program available for inspection to the Department of the Treasury upon request.

(d) At a minimum, the program shall:

(1) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with this chapter.

(i) Policies, procedures, and internal controls developed and implemented under this section shall include provisions for complying with the requirements of this chapter including, to the extent applicable to the money services business, requirements for:

(A) Verifying customer identification, including as set forth in paragraph (d)(1)(iv) of this section;

(B) Filing Reports;

(C) Creating and retaining records;

(D) Responding to law enforcement requests.

(ii) Money services businesses that have automated data processing systems should integrate their compliance procedures with such systems.

(iii) A person that is a money services business solely because it is an agent for another money services business as set forth in § 1022.380(a)(3), and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of policies, procedures, and internal controls required by this paragraph (d)(1). Each money services business shall remain solely responsible for implementation of the requirements set forth in this section, and nothing in this paragraph (d)(1) relieves any money services business from its obligation to establish and maintain an effective anti-money laundering program.

(iv) A money services business that is a provider or seller of prepaid access must establish procedures to verify the identity of a person who obtains prepaid access under a prepaid program and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Sellers of prepaid access must also establish procedures to verify the identity of a person who obtains prepaid access to funds that exceed \$10,000 during any one day and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Providers of prepaid access must retain access to such identifying information for five years after the last use of the prepaid access device or vehicle; such information obtained by sellers of prepaid access must be retained for five years from the date of the sale of the prepaid access device or vehicle.

(2) Designate a person to assure day to day compliance with the program and this chapter. The responsibilities of such person shall include assuring that:

(i) The money services business properly files reports, and creates and retains records, in accordance with applicable requirements of this chapter;

(ii) The compliance program is updated as necessary to reflect current requirements of this chapter, and related guidance issued by the Department of the Treasury; and

(iii) The money services business provides appropriate training and education in accordance with paragraph (d) (3) of this section.

(3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the money services business is required to report such transactions under this chapter.

(4) Provide for independent review to monitor and maintain an adequate program. The scope and frequency of the review shall be commensurate with the risk of the financial services provided by the money services business. Such review may be conducted by an officer or employee of the money services business so long as the reviewer is not the person designated in paragraph (d)(2) of this section.

(e) Compliance date. A money services business must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the later of July 24, 2002, and the end of the 90-day period beginning on the day following the date the business is established.

Note: §1022.210(a)–(e) was previously §103.125(a)–(e).

This section was further amended on July 29, 2011. The changes went into effect on Sept. 27, 2011.

31 C.F.R. § 1022.320. Reports by money services businesses of suspicious transactions.

To be used for violations occurring on or after March 1, 2011.

(a) General.

(1) Every money services business described in § 1010.100(ff)(1), (3), (4), (5), (6), and (7) of this chapter, shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. Any money services business may also file with the Treasury Department, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a money services business, involves or aggregates funds or other assets of at least \$2,000 (except as provided in paragraph (a) (3) of this section), and the money services business knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act; or

(iii) Serves no business or apparent lawful purpose, and the reporting money services business knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(iv) Involves use of the money services business to facilitate criminal activity.

(3) To the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed, an issuer of money orders or traveler's checks shall only be required to report a transaction or pattern of transactions that involves or aggregates funds or other assets of at least \$5,000.

(4) The obligation to identify and properly and timely to report a suspicious transaction rests with each money services business involved in the transaction, provided that no more than one report is required to be filed by the money services businesses involved in a particular transaction (so long as the report filed contains all relevant facts). Whether, in addition to any liability on its own for failure to report, a money services business that issues the instrument or provides the funds transfer service involved in the transaction may be liable for the failure of another money services business involved in the transaction to report that transaction depends upon the nature of the contractual or other relationship between the businesses, and the legal effect of the facts and circumstances of the relationship and transaction involved, under general principles of the law of agency.

(b) Filing procedures—

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report–MSB (“SAR–MSB”), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) Where to file. The SAR–MSB shall be filed in a central location to be determined by FinCEN, as indicated in the instructions to the SAR–MSB.

(3) When to file. A money services business subject to this section is required to file each SAR–MSB no later than 30 calendar days after the date of the initial detection by the money services business of facts that may constitute a basis for filing a SAR–MSB under this section. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the money services business shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a SAR–MSB. Money services businesses wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN’s Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–MSB if required by this section.

(c) Retention of records. A money services business shall maintain a copy of any SAR–MSB filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–MSB. Supporting documentation shall be identified as such and maintained by the money services business, and shall be deemed to have been filed with the SAR–MSB. A money services business shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the money services business for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the money services business to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the money services business complies with the Bank Secrecy Act.

(d) Confidentiality of SARs. A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (d). For purposes of this paragraph (d) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) Prohibition on disclosures by money services businesses—

(i) General rule. No money services business, and no director, officer, employee, or agent of any money services business, shall disclose a SAR or any information that would reveal the existence of a SAR. Any money services business, and any director, officer, employee, or agent of any money services business that is subpoenaed or

otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) Rules of Construction. Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (d) (1) shall not be construed as prohibiting:

(A) The disclosure by a money services business, or any director, officer, employee, or agent of a money services business, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the money services business for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the money services business to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the money services business complies with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by a money services business, or any director, officer, employee, or agent of the money services business, of a SAR, or any information that would reveal the existence of a SAR, within the money services business’s corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) Prohibition on disclosures by government authorities. A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, “official duties” shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(e) Limitation on liability. A money services business, and any director, officer, employee, or agent of any money services

business, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) Compliance. Money services businesses shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(g) Applicability date. This section applies to transactions occurring after December 31, 2001.

Note: §1022.320(a)–(f) was previously §103.20(a)–(f).

This section was further amended on July 29, 2011. The changes went into effect on Sept. 27, 2011.

31 C.F.R. § 1022.380. Registration of money services businesses.

To be used for violations occurring on or after March 1, 2011.

(a) Registration requirement—

(1) In general. Except as provided in paragraph (a)(3) of this section, relating to agents, and except for sellers of prepaid access as defined in § 1010.100(ff)(7) of this chapter to the extent that they are not already agents, each money services business (whether or not licensed as a money services business by any State) must register with FinCEN. Each provider of prepaid access must identify each prepaid program for which it is the provider of prepaid access. Each money services business must, as part of its registration, maintain a list of its agents as required by 31 U.S.C. 5330 and this section. This section does not apply to the United States Postal Service, to agencies of the United States, of any State, or of any political subdivision of a State.

(2) Foreign-located Money Services Business. Each foreign-located person doing business, whether or not on a regular basis or as an organized or licensed business concern, in the United States as a money services business shall designate the name and address of a person who resides in the United States and is authorized, and has agreed, to be an agent to accept service of legal process with respect to compliance with this chapter, and shall identify the address of the location within the United States for records pertaining to paragraph (b)(1)(iii) of this section.

(3) Agents. A person that is a money services business solely because that person serves as an agent of another money services business, see § 1010.100(ff) of this Chapter, is not required to register under this section, but a money services business that engages in activities described in § 1010.100(ff) of this Chapter both on its own behalf and as an agent for others must register under this section. For example, a supermarket corporation that acts as an agent for an issuer of money orders and performs no other services of a nature and value that would cause the corporation to be a money services business, is not required to register; the answer would be the same if the supermarket corporation served as an agent both of a money order issuer and of a money transmitter. However, registration would be required if the supermarket corporation, in addition to acting as an agent of an issuer of money orders, cashed checks or exchanged currencies (other than as an agent for another business) in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day, in one or more transactions.

(4) Agency status. The determination whether a person is an agent depends on all the facts and circumstances.

(b) Registration procedures—

(1) In general.

(i) A money services business must be registered by filing such form as FinCEN may specify with the Enterprise Computing Center in Detroit of the Internal Revenue Service (or such other location as the form may specify). The information required by 31 U.S.C. 5330(b) and any other information required by the form must be reported in the manner and to the extent required by the form.

(ii) A branch office of a money services business is not required to file its own registration form. A money services business must, however, report information about its branch locations or offices as provided by the instructions to the registration form.

(iii) A money services business must retain a copy of any registration form filed under this section and any registration number that may be assigned to the business at a location in the United States and for the period specified in § 1010.430(d) of this Chapter.

(2) Registration period. A money services business must be registered for the initial registration period and each renewal period. The initial registration period is the two-calendar-year period beginning with the calendar year in which the money services business is first required to be registered. However, the initial registration period for a money services business required to register by December 31, 2001 (see paragraph (b)(3) of this section) is the two-calendar year period beginning 2002. Each two-calendar-year period following the initial registration period is a renewal period.

(3) Due date. The registration form for the initial registration period must be filed on or before the end of the 180-day period beginning on the day following the date the business is established. The registration form for a renewal period must be filed on or before the last day of the calendar year preceding the renewal period.

(4) Events requiring re-registration. If a money services business registered as such under the laws of any State experiences a change in ownership or control that requires the business to be re-registered under State law, the money services business must also be re-registered under this section. In addition, if there is a transfer of more than 10 percent of the voting power or equity interests of a money services business (other than a money services business that must report such transfer to the Securities and Exchange Commission), the money services business must be re-registered under this section. Finally, if a money services business experiences a more than 50-per cent increase in the number of its agents during any registration period, the money services business must be re-registered under this section. The registration form must be filed not later than 180 days after such change in ownership, transfer of voting power or equity interests, or increase in agents. The calendar year in which the change, transfer, or increase occurs is treated as the first year of a new two-year registration period.

(c) Persons required to file the registration form. Under 31 U.S.C. 5330(a), any person who owns or controls a money services business is responsible for registering the business; however, only one registration form is required to be filed for each registration period. A person is treated as owning or controlling a money services business for purposes of filing the registration form only to the extent provided by the form. If more than one person owns or controls a money services business, the owning or controlling persons may enter into an agreement designating one of them to register the business. The failure of the designated person to register the money services business does not, however, relieve any of the other persons who own or control the business of liability for the failure to register the business. See paragraph (e) of this section, relating to consequences of the failure to comply with 31 U.S.C. 5330 or this section.

(d) List of agents—

(1) In general. A money services business must prepare and maintain a list of its agents. The initial list of agents must be prepared by January 1, 2002, and must be revised each January 1, for the immediately preceding 12 month period; for money services businesses established after December 31, 2001, the initial agent list must be prepared by the due date of the initial registration form and must be revised each January 1 for the immediately preceding 12-month period. The list is not filed with the registration form but must be maintained at the location in the United States reported on the registration

form under paragraph (b)(1) of this section. Upon request, a money services business must make its list of agents available to FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). Requests for information made pursuant to the preceding sentence shall be coordinated through FinCEN in the manner and to the extent determined by FinCEN. The original list of agents and any revised list must be retained for the period specified in § 1010.430(d) of this Chapter.

(2) Information included on the list of agents—

(i) In general. Except as provided in paragraph (d)(2)(ii) of this section, a money services business must include the following information with respect to each agent on the list (including any revised list) of its agents—

(A) The name of the agent, including any trade names or doing-business-as names;

(B) The address of the agent, including street address, city, state, and ZIP code;

(C) The telephone number of the agent;

(D) The type of service or services (money orders, traveler's checks, check sales, check cashing, currency exchange, and money transmitting) the agent provides;

(E) A listing of the months in the 12 months immediately preceding the date of the most recent agent list in which the gross transaction amount of the agent with respect to financial products or services issued by the money services business maintaining the agent list exceeded \$100,000. For this purpose, the money services gross transaction amount is the agent's gross amount (excluding fees and commissions) received from transactions of one or more businesses described in § 1010.100(ff) of this Chapter;

(F) The name and address of any depository institution at which the agent maintains a transaction account (as defined in 12 U.S.C. 461(b)(1)(C)) for all or part of the funds received in or for the financial products or services issued by the money services business maintaining the list, whether in the agent's or the business principal's name;

(G) The year in which the agent first became an agent of the money services business; and

(H) The number of branches or subagents the agent has.

(ii) Special rules. Information about agent volume must be current within 45 days of the due date of the agent list. The information described by paragraphs (d)(2)(i)(G) and (d)(2)

(i)(H) of this section is not required to be included in an agent list with respect to any person that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000 so long as the information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is made available upon the request of FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority).

(e) Consequences of failing to comply with 31 U.S.C. 5330 or the regulations thereunder. It is unlawful to do business without complying with 31 U.S.C. 5330 and this section. A failure to comply with the requirements of 31 U.S.C. 5330 or this section includes the filing of false or materially incomplete information in connection with the registration of a money services business. Any person who fails to comply with any requirement of 31 U.S.C. 5330 or this section shall be liable for a civil penalty of \$5,000 for each violation. Each day a violation of 31 U.S.C. 5330 or this section continues constitutes a separate violation. In addition, under 31 U.S.C. 5320, the Secretary of the Treasury may bring a civil action to enjoin the violation. See 18 U.S.C. 1960 for a criminal penalty for failure to comply with the registration requirements of 31 U.S.C. 5330 or this section.

(f) Applicability date. This section is applicable as of September 20, 1999. Registration of money services businesses under this section will not be required prior to December 31, 2001.

Note: §1022.380(a)–(f) was previously §103.41(a)–(f).

This section was further amended on July 29, 2011. The changes went into effect on Sept. 27, 2011.

31 C.F.R. § 1023.320. Reports by brokers or dealers in securities of suspicious transactions.

To be used for violations occurring on or after March 1, 2011.

(a) General.

(1) Every broker or dealer in securities within the United States (for purposes of this section, a “broker-dealer”) shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A broker-dealer may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. Filing a report of a suspicious transaction does not

relieve a broker-dealer from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission or a self-regulatory organization (“SRO”) (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least \$5,000, and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the broker-dealer to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each broker-dealer involved in the transaction, provided that no more than one report is required to be filed by the broker-dealers involved in a particular transaction (so long as the report filed contains all relevant facts).

(b) Filing procedures—

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report by the Securities and Futures Industry (“SAR–SF”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) Where to file. The SAR–SF shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR–SF.

(3) When to file. A SAR–SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting broker-dealer of facts that may constitute a basis for filing a SAR–SF under this section. If no suspect is identified on the date of such initial detection, a broker-dealer may delay

filing a SAR–SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the broker-dealer shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR–SF. Broker-dealers wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN’s Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–SF if required by this section. The broker-dealer may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) Exceptions.

(1) A broker-dealer is not required to file a SAR–SF to report:

(i) A robbery or burglary committed or attempted of the broker-dealer that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the broker-dealer files a report pursuant to the reporting requirements of 17 CFR 240.17f–1;

(ii) A violation otherwise required to be reported under this section of any of the Federal securities laws or rules of an SRO by the broker-dealer or any of its officers, directors, employees, or other registered representatives, other than a violation of 17 CFR 240.17a–8 or 17 CFR 405.4, so long as such violation is appropriately reported to the SEC or an SRO.

(2) A broker-dealer may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form RE–3, Form U–4, or Form U–5 concerning the transaction is filed consistent with the SRO rules, a copy of that form will be a sufficient record for purposes of this paragraph (c)(2).

(3) For the purposes of this paragraph (c) the term “Federal securities laws” means the “securities laws,” as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47), and the rules and regulations promulgated by the Securities and Exchange Commission under such laws.

(d) Retention of records. A broker-dealer shall maintain a copy of any SAR–SF filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–SF. Supporting documentation shall be identified as such and maintained by the broker-dealer, and shall be deemed to have been filed with the SAR–SF. A broker-dealer shall make all supporting documentation available to FinCEN or any Federal, State,

or local law enforcement agency, or any Federal regulatory authority that examines the broker-dealer for compliance with the Bank Secrecy Act, upon request; or to any SRO that examines the broker-dealer for compliance with the requirements of this section, upon the request of the Securities and Exchange Commission.

(e) Confidentiality of SARs. A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) Prohibition on disclosures by brokers or dealers in securities.

(i) General rule. No broker-dealer, and no director, officer, employee, or agent of any broker-dealer, shall disclose a SAR or any information that would reveal the existence of a SAR. Any broker-dealer, and any director, officer, employee, or agent of any broker-dealer that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) Rules of Construction. Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e) (1) shall not be construed as prohibiting:

(A) The disclosure by a broker-dealer, or any director, officer, employee, or agent of a broker-dealer, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the broker-dealer for compliance with the Bank Secrecy Act; or to any SRO that examines the broker-dealer for compliance with the requirements of this section, upon the request of the Securities Exchange Commission; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(i) To another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(ii) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by a broker-dealer, or any director, officer, employee, or agent of the broker-dealer, of a SAR, or any information that would reveal the existence of a SAR, within the broker-dealer's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) Prohibition on disclosures by government authorities. A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(3) Prohibition on disclosures by Self-Regulatory Organizations. Any self-regulatory organization registered with the Securities and Exchange Commission, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR except as necessary to fulfill self-regulatory duties with the consent of the Securities Exchange Commission, in a manner consistent with Title II of the Bank Secrecy Act. For purposes of this section, "self-regulatory duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding.

(f) Limitation on liability. A broker-dealer, and any director, officer, employee, or agent of any broker-dealer, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) Compliance. Broker-dealers shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(h) Applicability date. This section applies to transactions occurring after December 30, 2002.

Note: §1023.320(a)–(h) was previously §103.19(a)–(h).

This section was further amended on Feb. 25, 2011. The changes went into effect on March 1, 2011.

31 C.F.R. § 1024.320. Reports by mutual funds of suspicious transactions.

To be used for violations occurring on or after March 1, 2011.

(a) General.

(1) Every investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) ("Investment Company Act") that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to that Act (for purposes of this section, a "mutual fund"), shall file with the Financial Crimes Enforcement Network, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A mutual fund may also file with the Financial Crimes Enforcement Network a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation, but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve a mutual fund from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at, or through a mutual fund, it involves or aggregates funds or other assets of at least \$5,000, and the mutual fund knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the mutual fund knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the mutual fund to facilitate criminal activity.

(3) More than one mutual fund may have an obligation to report the same transaction under this section, and other financial institutions may have separate obligations to report suspicious activity with respect to the same transaction pursuant to other provisions of this chapter. In those instances, no more than one report is required to be filed by the mutual fund(s) and other financial institution(s) involved in the transaction, provided that the report filed contains all relevant facts, including the name of each financial institution and the words “joint filing” in the narrative section, and each institution maintains a copy of the report filed, along with any supporting documentation.

(b) Filing and notification procedures—

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report by Securities and Futures Industries (“SAR–SF”), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) Where to file. Form SAR–SF shall be filed with the Financial Crimes Enforcement Network in accordance with the instructions to the Form SAR–SF.

(3) When to file. A Form SAR–SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting mutual fund of facts that may constitute a basis for filing a Form SAR–SF under this section. If no suspect is identified on the date of such initial detection, a mutual fund may delay filing a Form SAR–SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection.

(4) Mandatory notification to law enforcement. In situations involving violations that require immediate attention, such as suspected terrorist financing or ongoing money laundering schemes, a mutual fund shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a Form SAR–SF.

(5) Voluntary notification to the Financial Crimes Enforcement Network or the Securities and Exchange Commission. Mutual funds wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call the Financial Crimes Enforcement Network’s Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a Form SAR–SF if required by this section. The mutual fund may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) Retention of records. A mutual fund shall maintain a copy of any Form SAR–SF filed by the fund or on its behalf (including joint reports), and the original (or business record equivalent) of any supporting documentation concerning any Form SAR–SF that it files (or is filed on its behalf), for a period of five years from the date of filing the Form SAR–SF.

Supporting documentation shall be identified as such and maintained by the mutual fund, and shall be deemed to have been filed with the Form SAR–SF. The mutual fund shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the mutual fund for compliance with the Bank Secrecy Act, upon request.

(d) Confidentiality of SARs. A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (d). For purposes of this paragraph (d) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) Prohibition on disclosures by mutual funds—

(i) General rule. No mutual fund, and no director, officer, employee, or agent of any mutual fund, shall disclose a SAR or any information that would reveal the existence of a SAR. Any mutual fund, and any director, officer, employee, or agent of any mutual fund that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) Rules of construction. Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (d)(1) shall not be construed as prohibiting:

(A) The disclosure by a mutual fund, or any director, officer, employee, or agent of a mutual fund, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the mutual fund for compliance with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(B) The sharing by a mutual fund, or any director, officer, employee, or agent of the mutual fund, of a SAR, or any information that would reveal the existence of a SAR, within the mutual fund’s corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) Prohibition on disclosures by government authorities. A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, “official duties” shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(e) Limitation on liability. A mutual fund, and any director, officer, employee, or agent of any mutual fund, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) Compliance. Mutual funds shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(g) Applicability date. This section applies to transactions occurring after October 31, 2006.

Note: § 1024.320(a)–(g) was previously § 103.15(a)–(g).

This section was further amended on Feb. 25, 2011. The changes went into effect on March 1, 2011.

31 C.F.R. § 1025.320. Reports by insurance companies of suspicious transactions.

To be used for violations occurring on or after March 1, 2011.

(a) General.

(1) Each insurance company shall file with the Financial Crimes Enforcement Network, to the extent and in the manner required by this section, a report of any suspicious transaction involving a covered product that is relevant to a possible violation of law or regulation. An insurance company may also file with the Financial Crimes Enforcement Network by using the form specified in paragraph (b)(1) of this section or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but the reporting of which is not required by this section.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at, or through an insurance company, and involves or aggregates at least \$5,000 in funds or other assets, and the insurance company knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the insurance company knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the insurance company to facilitate criminal activity.

(3)(i) An insurance company is responsible for reporting suspicious transactions conducted through its insurance agents and insurance brokers. Accordingly, an insurance company shall establish and implement policies and procedures reasonably designed to obtain customer-related information necessary to detect suspicious activity from all relevant sources, including from its insurance agents and insurance brokers, and shall report suspicious activity based on such information.

(ii) Certain insurance agents may have a separate obligation to report suspicious activity pursuant to other provisions of this chapter. In those instances, no more than one report is required to be filed by the financial institutions involved in the transaction, as long as the report filed contains all relevant facts, including the names of both institutions and the words “joint filing” in the narrative section, and both institutions maintain a copy of the report filed, along with any supporting documentation.

(iii) An insurance company that issues variable insurance products funded by separate accounts that meet the definition of a mutual fund in § 1024.320(a)(1) of this Chapter shall file reports of suspicious transactions pursuant to § 1024.320 of this Chapter.

(b) Filing procedures—

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report by Insurance

Companies (SAR–IC), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) Where to file. The SAR–IC shall be filed with the Financial Crimes Enforcement Network as indicated in the instructions to the SAR–IC.

(3) When to file. A SAR–IC shall be filed no later than 30 calendar days after the date of the initial detection by the insurance company of facts that may constitute a basis for filing a SAR–IC under this section. If no suspect is identified on the date of such initial detection, an insurance company may delay filing a SAR–IC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the insurance company shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR–IC. Insurance companies wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call the Financial Crimes Enforcement Network’s Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–IC if required by this section.

(c) Exception. An insurance company is not required to file a SAR–IC to report the submission to it of false or fraudulent information to obtain a policy or make a claim, unless the company has reason to believe that the false or fraudulent submission relates to money laundering or terrorist financing.

(d) Retention of records. An insurance company shall maintain a copy of any SAR–IC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–IC. Supporting documentation shall be identified as such and maintained by the insurance company and shall be deemed to have been filed with the SAR–IC. When an insurance company has filed or is identified as a filer in a joint Suspicious Activity Report, the insurance company shall maintain a copy of such joint report (together with copies of any supporting documentation) for a period of five years from the date of filing. An insurance company shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the insurance company for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the insurance company to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the institution complies with the Bank Secrecy Act, upon request.

(e) Confidentiality of SARs. A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include

any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) Prohibition on disclosures by insurance companies—

(i) General rule. No insurance company, and no director, officer, employee, or agent of any insurance company, shall disclose a SAR or any information that would reveal the existence of a SAR. Any insurance company, and any director, officer, employee, or agent of any insurance company that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) Rules of Construction. Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by an insurance company, or any director, officer, employee, or agent of an insurance company, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the insurance company for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the insurance company to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the institution complies with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by an insurance company, or any director, officer, employee, or agent of the insurance company, of a SAR, or any information that would reveal the existence of a SAR, within the insurance company’s corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) Prohibition on disclosures by government authorities. A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank

Secrecy Act. For purposes of this section, “official duties” shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) Limitation on liability. An insurance company, and any director, officer, employee, or agent of any insurance company, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) Compliance. Insurance companies shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(h) Suspicious transaction reporting requirements for insurance companies registered or required to register with the Securities and Exchange Commission as broker-dealers in securities. An insurance company that is registered or required to register with the Securities and Exchange Commission as a broker-dealer in securities shall be deemed to have satisfied the requirements of this section for its broker-dealer activities to the extent that the company complies with the reporting requirements applicable to such activities pursuant to § 1023.320 of this Chapter.

(i) Applicability date. This section applies to transactions occurring after May 2, 2006.

Note: §1025.320(a)–(h) was previously §103.16(b)–(i). §103.16(a) was deleted.

This section was further amended on Feb. 25, 2011. The changes went into effect on March 1, 2011.

See the Cross Reference Index on page 53.

31 C.F.R. PART 103. FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

31 C.F.R. § 103.11. Meaning of terms.

*To be used for violations occurring before
March 1, 2011.*

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section.

(a) Accept. A receiving financial institution, other than the recipient's financial institution, accepts a transmittal order by executing the transmittal order. A recipient's financial institution accepts a transmittal order by paying the recipient, by notifying the recipient of the receipt of the order or by otherwise becoming obligated to carry out the order.

(b) At one time. For purposes of Sec. 103.23 of this part, a person who transports, mails, ships or receives; is about to or attempts to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:

(1) That person either alone, in conjunction with or on behalf of others;

(2) Transports, mails, ships or receives in any manner; is about to transport, mail or ship in any manner; or causes the transportation, mailing, shipment or receipt in any manner of;

(3) Monetary instruments;

(4) Into the United States or out of the United States;

(5) Totaling more than \$10,000;

(6)(i) On one calendar day or (ii) if for the purpose of evading the reporting requirements of Sec. 103.23, on one or more days.

(c) Bank. Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A commercial bank or trust company organized under the laws of any State or of the United States;

(2) A private bank;

(3) A savings and loan association or a building and loan association organized under the laws of any State or of the United States;

(4) An insured institution as defined in section 401 of the National Housing Act;

(5) A savings bank, industrial bank or other thrift institution;

(6) A credit union organized under the law of any State or of the United States;

(7) Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a State;

(8) A bank organized under foreign law;

(9) Any national banking association or corporation acting under the provisions of section 25(a) of the Act of Dec. 23, 1913, as added by the Act of Dec. 24, 1919, ch. 18, 41 Stat. 378, as amended (12 U.S.C. 611-32).

(d) Beneficiary. The person to be paid by the beneficiary's bank.

(e) Beneficiary's bank. The bank or foreign bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(f) Broker or dealer in securities. A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

(g) Common carrier. Any person engaged in the business of transporting individuals or goods for a fee who holds himself out as ready to engage in such transportation for hire and who undertakes to do so indiscriminately for all persons who are prepared to pay the fee for the particular service offered.

(h) Currency. The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

(i) [Reserved]

(j) Deposit account. Deposit accounts include transaction accounts described in paragraph (hh) of this section, savings accounts, and other time deposits.

(k) Domestic. When used herein, refers to the doing of business within the United States, and limits the applicability of the provision where it appears to the performance by such institutions or agencies of functions within the United States.

(l) Established customer. A person with an account with the financial institution, including a loan account or deposit or other asset account, or a person with respect to which the financial institution has obtained and maintains on file the person's name and address, as well as taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information.

(m) Execution date. The day on which the receiving financial institution may properly issue a transmittal order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received, and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the recipient on the payment date.

(n) Financial institution. Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed below:

- (1) A bank (except bank credit card systems);
- (2) A broker or dealer in securities;
- (3) A money services business as defined in paragraph (uu) of this section;
- (4) A telegraph company;

(5)(i) Casino. A casino or gambling casino that: Is duly licensed or authorized to do business as such in the United States, whether under the laws of a State or of a Territory or Insular Possession of the United States, or under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands (including, without limitation, a casino operating on the assumption or under the view that no such authorization is required for casino operation on Indian lands); and has gross annual gaming revenue in excess of \$1 million. The term includes the principal headquarters and every domestic branch or place of business of the casino.

(ii) For purposes of this paragraph (n)(5), "gross annual gaming revenue" means the gross gaming revenue received by a casino, during either the previous business year or the current business year of the casino. A casino or gambling casino which is a casino for purposes of

this part solely because its gross annual gaming revenue exceeds \$1,000,000 during its current business year, shall not be considered a casino for purposes of this part prior to the time in its current business year that its gross annual gaming revenue exceeds \$1,000,000.

(iii) Any reference in this part, other than in this paragraph (n)(5) and in paragraph (n)(6) of this section, to a casino shall also include a reference to a card club, unless the provision in question contains specific language varying its application to card clubs or excluding card clubs from its application;

(6)(i) Card club. A card club, gaming club, card room, gaming room, or similar gaming establishment that is duly licensed or authorized to do business as such in the United States, whether under the laws of a State, of a Territory or Insular Possession of the United States, or of a political subdivision of any of the foregoing, or under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands (including, without limitation, an establishment operating on the assumption or under the view that no such authorization is required for operation on Indian lands for an establishment of such type), and that has gross annual gaming revenue in excess of \$1,000,000. The term includes the principal headquarters and every domestic branch or place of business of the establishment. The term "casino," as used in this Part shall include a reference to "card club" to the extent provided in paragraph (n)(5)(iii) of this section.

(ii) For purposes of this paragraph (n)(6), gross annual gaming revenue means the gross revenue derived from or generated by customer gaming activity (whether in the form of per-game or per-table fees, however computed, rentals, or otherwise) and received by an establishment, during either the establishment's previous business year or its current business year. A card club that is a financial institution for purposes of this Part solely because its gross annual revenue exceeds \$1,000,000 during its current business year, shall not be considered a financial institution for purposes of this Part prior to the time in its current business year when its gross annual revenue exceeds \$1,000,000;

(7) A person subject to supervision by any state or federal bank supervisory authority.

(8) A futures commission merchant;

(9) An introducing broker in commodities.

(o) Foreign bank. A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

(p) Foreign financial agency. A person acting outside the United States for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

(q) Funds transfer. The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(r) Intermediary bank. A receiving bank other than the originator's bank or the beneficiary's bank.

(s) Intermediary financial institution. A receiving financial institution, other than the transmitter's financial institution or the recipient's financial institution. The term intermediary financial institution includes an intermediary bank.

(t) Investment security. An instrument which:

(1) Is issued in bearer or registered form;

(2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;

(3) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(4) Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(u) Monetary instruments.

(1) Monetary instruments include:

(i) Currency;

(ii) Traveler's checks in any form;

(iii) All negotiable instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee (for the purposes

of Sec. 103.23), or otherwise in such form that title thereto passes upon delivery;

(iv) Incomplete instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) signed but with the payee's name omitted; and

(v) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.

(2) Monetary instruments do not include warehouse receipts or bills of lading.

(v) Originator. The sender of the first payment order in a funds transfer.

(w) Originator's bank. The receiving bank to which the payment order of the originator is issued if the originator is not a bank or foreign bank, or the originator if the originator is a bank or foreign bank.

(x) Payment date. The day on which the amount of the transmittal order is payable to the recipient by the recipient's financial institution. The payment date may be determined by instruction of the sender, but cannot be earlier than the day the order is received by the recipient's financial institution and, unless otherwise prescribed by instruction, is the date the order is received by the recipient's financial institution.

(y) Payment order. An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of money to a beneficiary if:

(1) The instruction does not state a condition to payment to the beneficiary other than time of payment;

(2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

(z) Person. An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

(aa) Receiving bank. The bank or foreign bank to which the sender's instruction is addressed.

(bb) Receiving financial institution. The financial institution or foreign financial agency to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.

(cc) Recipient. The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary, except where the recipient's financial institution is a financial institution other than a bank.

(dd) Recipient's financial institution. The financial institution or foreign financial agency identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient's financial institution includes a beneficiary's bank, except where the beneficiary is a recipient's financial institution.

(ee) Secretary. The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

(ff) Sender. The person giving the instruction to the receiving financial institution.

(gg) Structure (structuring). For purposes of section 103.53, a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under section 103.22 of this part. "In any manner" includes, but is not limited to, the breaking down of a single sum of currency exceeding \$10,000 into smaller sums, including sums at or below \$10,000, or the conduct of a transaction, or series of currency transactions, including transactions at or below \$10,000. The transaction or transactions need not exceed the \$10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition.

(hh) Transaction account. Transaction accounts include those accounts described in 12 U.S.C. 461(b)(1)(C), money market accounts and similar accounts that take deposits and are subject to withdrawal by check or other negotiable order.

(ii) Transaction.

(1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, security, contract of sale of a commodity for future delivery, option on any contract of sale of a commodity for future delivery, option on a commodity, purchase or redemption of any money order, payment or order for any money remittance or transfer, purchase or redemption of casino chips or tokens, or other gaming instruments or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(2) For purposes of Sec. 103.22, and other provisions of this part relating solely to the report required by that section, the term "transaction in currency" shall mean a transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency, is not a transaction in currency for this purpose.

(jj) Transmittal of funds. A series of transactions beginning with the transmittor's transmittal order, made for the purpose of making payment to the recipient of the order. The term includes any transmittal order issued by the transmittor's financial institution or an intermediary financial institution intended to carry out the transmittor's transmittal order. The term transmittal of funds includes a funds transfer. A transmittal of funds is completed by acceptance by the recipient's financial institution of a transmittal order for the benefit of the recipient of the transmittor's transmittal order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(kk) Transmittal order. The term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of money to a recipient if:

(1) The instruction does not state a condition to payment to the recipient other than time of payment;

(2) The receiving financial institution is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving financial institution or to an agent or communication system for transmittal to the receiving financial institution.

(ll) Transmittor. The sender of the first transmittal order in a transmittal of funds. The term transmittor includes an originator, except where the transmittor's financial institution is a financial institution or foreign financial agency other than a bank or foreign bank.

(mm) Transmittor's financial institution. The receiving financial institution to which the transmittal order of the transmittor is issued if the transmittor is not a financial institution or foreign financial agency, or the transmittor if the transmittor is a financial institution or foreign financial agency. The term transmittor's financial institution includes an originator's bank, except where the originator is a transmittor's financial institution other than a bank or foreign bank.

(nn) United States. The States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.

(oo) Business day. Business day, as used in this part with respect to banks, means that day, as normally communicated to its depository customers, on which a bank routinely posts a particular transaction to its customer's account.

(pp) Postal Service. The United States Postal Service.

(qq) FinCEN. FinCEN means the Financial Crimes Enforcement Network, an office within the Office of the Under Secretary (Enforcement) of the Department of the Treasury.

(rr) Indian Gaming Regulatory Act. The Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. 2701-2721 and 18 U.S.C. 1166-68.

(ss) State. The States of the United States and, wherever necessary to carry out the provisions of this part, the District of Columbia.

(tt) Territories and Insular Possessions. The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and all other territories and possessions of the United States other than the Indian lands and the District of Columbia.

(uu) Money services business. Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in paragraphs (uu)(1) through (uu)(6) of this section. Notwithstanding the preceding sentence, the term "money services business" shall not include a bank, nor shall it include a person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(1) Currency dealer or exchanger. A currency dealer or exchanger (other than a person who does not exchange currency in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(2) Check casher. A person engaged in the business of a check casher (other than a person who does not cash checks in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(3) Issuer of traveler's checks, money orders, or stored value. An issuer of traveler's checks, money orders, or stored value (other than a person who does not issue such checks or money orders or stored value in an amount greater than \$1,000 in currency or monetary or other instruments to any person on any day in one or more transactions).

(4) Seller or redeemer of traveler's checks, money orders, or stored value. A seller or redeemer of traveler's checks, money orders, or stored value (other than a person who does not sell such checks or money orders or stored value in an amount greater than \$1,000 in currency or monetary or other instruments to or redeem such instruments for an amount greater than \$1,000 in currency or monetary or other instruments from, any person on any day in one or more transactions).

(5) Money transmitter—

(i) In general. Money transmitter:

(A) Any person, whether or not licensed or required to be licensed, who engages as a business in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or

(B) Any other person engaged as a business in the transfer of funds.

(ii) Facts and circumstances; Limitation. Whether a person "engages as a business" in the activities described in paragraph (uu)(5)(i) of this section is a matter of facts and circumstances. Generally, the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission itself (for example, in connection with a bona fide sale of securities or other property), will not cause a person to be a money transmitter within the meaning of paragraph (uu)(5)(i) of this section.

(6) United States Postal Service. The United States Postal Service, except with respect to the sale of postage or philatelic products.

(vv) Stored value. Funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

(ww) Security. Security means any instrument or interest described in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10).

(xx) Commodity. Any good, article, service, right, or interest described in section 1a(4) of the Commodity Exchange Act ("CEA"), 7 U.S.C. 1a(4).

(yy) Contract of sale. Any sale, agreement of sale, or agreement to sell as described in section 1a(7) of the CEA, 7 U.S.C. 1a(7).

(zz) Futures commission merchant. Any person registered or required to be registered as a futures commission merchant with the Commodity Futures Trading Commission (“CFTC”) under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(aaa) Introducing broker-commodities. Any person registered or required to be registered as an introducing broker with the CFTC under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(bbb) Option on a commodity. Any agreement, contract, or transaction described in section 1a(26) of the CEA, 7 U.S.C. 1a(26).

31 C.F.R. § 103.15. Reports by mutual funds of suspicious transactions.

*To be used for violations occurring before
March 1, 2011.*

(a) General.

(1) Every investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3) (“Investment Company Act”) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a-5)) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to that Act (for purposes of this section, a “mutual fund”), shall file with the Financial Crimes Enforcement Network, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A mutual fund may also file with the Financial Crimes Enforcement Network a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation, but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve a mutual fund from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at, or through a mutual fund, it involves or aggregates funds or other assets of at least \$5,000, and the mutual fund knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or any other regulations promulgated under the Bank Secrecy Act, Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314, 5316-5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the mutual fund knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the mutual fund to facilitate criminal activity.

(3) More than one mutual fund may have an obligation to report the same transaction under this section, and other financial institutions may have separate obligations to report suspicious activity with respect to the same transaction pursuant to other provisions of this part. In those instances, no more than one report is required to be filed by the mutual fund(s) and other financial institution(s) involved in the transaction, provided that the report filed contains all relevant facts, including the name of each financial institution and the words “joint filing” in the narrative section, and each institution maintains a copy of the report filed, along with any supporting documentation.

(b) Filing and notification procedures—

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report by Securities and Futures Industries (“SAR-SF”), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) Where to file. Form SAR-SF shall be filed with the Financial Crimes Enforcement Network in accordance with the instructions to the Form SAR-SF.

(3) When to file. A Form SAR-SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting mutual fund of facts that may constitute a basis for filing a Form SAR-SF under this section. If no suspect is identified on the date of such initial detection, a mutual fund may delay filing a Form SAR-SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection.

(4) Mandatory notification to law enforcement. In situations involving violations that require immediate attention, such as suspected terrorist financing or ongoing money laundering schemes, a mutual fund shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a Form SAR-SF.

(5) Voluntary notification to the Financial Crimes Enforcement Network or the Securities and Exchange Commission. Mutual funds wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call the Financial Crimes Enforcement Network's Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a Form SAR-SF if required by this section. The mutual fund may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) Retention of records. A mutual fund shall maintain a copy of any Form SAR-SF filed by the fund or on its behalf (including joint reports), and the original (or business record equivalent) of any supporting documentation concerning any Form SAR-SF that it files (or is filed on its behalf), for a period of five years from the date of filing the Form SAR-SF. Supporting documentation shall be identified as such and maintained by the mutual fund, and shall be deemed to have been filed with the Form SAR-SF. The mutual fund shall make all supporting documentation available to the Financial Crimes Enforcement Network, any other appropriate law enforcement agencies or federal or state securities regulators, and for purposes of an examination of a broker-dealer pursuant to Sec. 103.19(g) regarding a joint report, to a self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)) registered with the Securities and Exchange Commission, upon request.

(d) Confidentiality of reports. No mutual fund, and no director, officer, employee, or agent of any mutual fund, who reports a suspicious transaction under this part (whether such a report is required by this section or made voluntarily), may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Any person subpoenaed or otherwise required to disclose a Form SAR-SF or the information contained in a Form SAR-SF, including a Form SAR-SF filed jointly with another financial institution involved in the same transaction (except where such disclosure is requested by the Financial Crimes Enforcement Network, the Securities and Exchange Commission, another appropriate law enforcement or regulatory agency, or, in the case of a joint report involving a broker-dealer, a self-regulatory organization registered with the Securities and Exchange Commission conducting an examination of such broker-dealer pursuant to Sec. 103.19(g)), shall decline to produce Form SAR-SF or to provide any information that would disclose that a Form SAR-SF has been prepared or filed, citing this paragraph (d) and 31 U.S.C. 5318(g)(2), and shall notify the Financial Crimes Enforcement Network of any such request and its response thereto.

(e) Limitation of liability. A mutual fund, and any director, officer, employee, or agent of such mutual fund, that makes a report of any possible violation of law or regulation pursuant to this section, including a joint report (whether such report is

required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided in 31 U.S.C. 5318(g)(3).

(f) Examinations and enforcement. Compliance with this section shall be examined by the Department of the Treasury, through the Financial Crimes Enforcement Network or its delegees, under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(g) Effective date. This section applies to transactions occurring after October 31, 2006.

31 C.F.R. § 103.16. Reports by insurance companies of suspicious transactions.

To be used for violations occurring before March 1, 2011.

(a) Definitions. For purposes of this section:

(1) Annuity contract means any agreement between the insurer and the contract owner whereby the insurer promises to pay out a fixed or variable income stream for a period of time.

(2) Bank has the same meaning as provided in Sec. 103.11(c).

(3) Broker-dealer in securities has the same meaning as provided in Sec. 103.11(f).

(4) Covered product means:

(i) A permanent life insurance policy, other than a group life insurance policy;

(ii) An annuity contract, other than a group annuity contract; or

(iii) Any other insurance product with features of cash value or investment.

(5) Group annuity contract means a master contract providing annuities to a group of persons under a single contract.

(6) Group life insurance policy means any life insurance policy under which a number of persons and their dependents, if appropriate, are insured under a single policy.

(7) Insurance agent means a sales and/or service representative of an insurance company. The term "insurance agent" encompasses any person that sells, markets, distributes, or services an insurance company's covered products, including, but not limited to, a person who represents only one insurance company, a person who represents more than one insurance company, and a bank or broker-dealer in securities that sells any covered product of an insurance company.

(8) Insurance broker means a person who, by acting as the customer's representative, arranges and/or services covered products on behalf of the customer.

(9) Insurance company or insurer.

(i) Except as provided in paragraph (a)(9)(ii) of this section, the term "insurance company" or "insurer" means any person engaged within the United States as a business in the issuing or underwriting of any covered product.

(ii) The term "insurance company" or "insurer" does not include an insurance agent or insurance broker.

(10) Permanent life insurance policy means an agreement that contains a cash value or investment element and that obligates the insurer to indemnify or to confer a benefit upon the insured or beneficiary to the agreement contingent upon the death of the insured.

(11) Person has the same meaning as provided in Sec. 103.11(z).

(12) United States has the same meaning as provided in Sec. 103.11(mn).

(b) General.

(1) Each insurance company shall file with the Financial Crimes Enforcement Network, to the extent and in the manner required by this section, a report of any suspicious transaction involving a covered product that is relevant to a possible violation of law or regulation. An insurance company may also file with the Financial Crimes Enforcement Network by using the form specified in paragraph

(c)(1) of this section or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but the reporting of which is not required by this section.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at, or through an insurance company, and involves or aggregates at least \$5,000 in funds or other assets, and the insurance company knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy

Act, Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314; 5316-5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the insurance company knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the insurance company to facilitate criminal activity.

(3)(i) An insurance company is responsible for reporting suspicious transactions conducted through its insurance agents and insurance brokers. Accordingly, an insurance company shall establish and implement policies and procedures reasonably designed to obtain customer-related information necessary to detect suspicious activity from all relevant sources, including from its insurance agents and insurance brokers, and shall report suspicious activity based on such information.

(ii) Certain insurance agents may have a separate obligation to report suspicious activity pursuant to other provisions of this part. In those instances, no more than one report is required to be filed by the financial institutions involved in the transaction, as long as the report filed contains all relevant facts, including the names of both institutions and the words "joint filing" in the narrative section, and both institutions maintain a copy of the report filed, along with any supporting documentation.

(iii) An insurance company that issues variable insurance products funded by separate accounts that meet the definition of a mutual fund in Sec. 103.15(a)(1) shall file reports of suspicious transactions pursuant to Sec. 103.15.

(c) Filing procedures—

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report by Insurance Companies (SAR-IC), and collecting and maintaining supporting documentation as required by paragraph (e) of this section.

(2) Where to file. The SAR-IC shall be filed with the Financial Crimes Enforcement Network as indicated in the instructions to the SAR-IC.

(3) When to file. A SAR-IC shall be filed no later than 30 calendar days after the date of the initial detection by the insurance company of facts that may constitute a basis for filing a SAR-IC under this section. If no suspect is identified on the date of such initial detection, an insurance company may delay filing a SAR-IC for an additional 30 calendar days

to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the insurance company shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR-IC. Insurance companies wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call the Financial Crimes Enforcement Network's Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a SAR-IC if required by this section.

(d) Exception. An insurance company is not required to file a SAR-IC to report the submission to it of false or fraudulent information to obtain a policy or make a claim, unless the company has reason to believe that the false or fraudulent submission relates to money laundering or terrorist financing.

(e) Retention of records. An insurance company shall maintain a copy of any SAR-IC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR-IC. Supporting documentation shall be identified as such and maintained by the insurance company and shall be deemed to have been filed with the SAR-IC. When an insurance company has filed or is identified as a filer in a joint Suspicious Activity Report, the insurance company shall maintain a copy of such joint report (together with copies of any supporting documentation) for a period of five years from the date of filing. An insurance company shall make all supporting documentation available to the Financial Crimes Enforcement Network and any other appropriate law enforcement agencies or supervisory agencies upon request.

(f) Confidentiality of reports; limitation of liability. No insurance company, and no director, officer, employee, agent, or broker of any insurance company, who reports a suspicious transaction under this part (whether such a report is required by this section or made voluntarily), may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (b)(3) of this section. Thus, any insurance company subpoenaed or otherwise requested to disclose a SAR-IC or the information contained in a SAR-IC (or a copy of a joint Suspicious Activity Report filed with another financial institution involved in the same transaction, including an insurance agent), except where such disclosure is requested by the Financial Crimes Enforcement Network or another appropriate law enforcement or supervisory agency, shall decline to produce the Suspicious Activity Report or to provide any information that would disclose that a Suspicious Activity Report has been prepared or filed, citing as authority 31 CFR 103.16 and 31 U.S.C. 5318(g)(2), and shall notify the Financial Crimes Enforcement Network of any such request and its response thereto. An insurance company, and any director, officer, employee, agent,

or broker of such insurance company, that makes a report pursuant to this section, including a joint report (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(g) Compliance. Compliance with this section shall be examined by the Department of the Treasury, through the Financial Crimes Enforcement Network or its delegees, under the terms of the Bank Secrecy Act. Failure to comply with the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(h) Suspicious transaction reporting requirements for insurance companies registered or required to register with the Securities and Exchange Commission as broker-dealers in securities. An insurance company that is registered or required to register with the Securities and Exchange Commission as a broker-dealer in securities shall be deemed to have satisfied the requirements of this section for its broker-dealer activities to the extent that the company complies with the reporting requirements applicable to such activities pursuant to Sec. 103.19.

(i) Applicability date. This section applies to transactions occurring after May 2, 2006.

31 C.F.R. § 103.18. Reports by banks of suspicious transactions.

To be used for violations occurring before March 1, 2011.

(a) General.

(1) Every bank shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A bank may also file with the Treasury Department by using the Suspicious Activity Report specified in paragraph (b)(1) of this section or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through the bank, it involves or aggregates at least \$5,000 in funds or other assets, and the bank knows, suspects, or has reason to suspect that:

(i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part

of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) The transaction is designed to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330; or

(iii) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(b) Filing procedures—

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report (“SAR”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) Where to file. The SAR shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR.

(3) When to file. A bank is required to file a SAR no later than 30 calendar days after the date of initial detection by the bank of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of the detection of the incident requiring the filing, a bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations that require immediate attention, such as, for example, ongoing money laundering schemes, the bank shall immediately notify, by telephone, an appropriate law enforcement authority in addition to filing timely a SAR.

(c) Exceptions. A bank is not required to file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the bank files a report pursuant to the reporting requirements of 17 CFR 240.17f-1.

(d) Retention of records. A bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR. Supporting documentation shall be identified, and maintained by the bank as such, and shall be deemed to have been filed with the SAR. A bank shall make all supporting documentation available to FinCEN and any appropriate law enforcement agencies or bank supervisory agencies upon request.

(e) Confidentiality of reports; limitation of liability. No bank or other financial institution, and no director, officer, employee, or agent of any bank or other financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR, except where such disclosure is requested by FinCEN or an appropriate law enforcement or bank supervisory agency, shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A bank, and any director, officer, employee, or agent of such bank, that makes a report pursuant to this section (whether such report is required by this section or is made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of such report, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) Compliance. Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegates under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may be a violation of the reporting rules of the Bank Secrecy Act and of this part. Such failure may also violate provisions of Title 12 of the Code of Federal Regulations.

31 C.F.R. § 103.19. Reports by brokers or dealers in securities of suspicious transactions.

To be used for violations occurring before March 1, 2011.

(a) General.

(1) Every broker or dealer in securities within the United States (for purposes of this section, a “broker-dealer”) shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A broker-dealer may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve a broker-dealer from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission or a self-regulatory organization (“SRO”) (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets

of at least \$5,000, and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the broker-dealer to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each broker-dealer involved in the transaction, provided that no more than one report is required to be filed by the broker-dealers involved in a particular transaction (so long as the report filed contains all relevant facts).

(b) Filing procedures—

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report—Brokers or Dealers in Securities (“SAR-S-F”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) Where to file. The SAR-BD shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR-S-F.

(3) When to file. A SAR-S-F shall be filed no later than 30 calendar days after the date of the initial detection by the reporting broker-dealer of facts that may constitute a basis for filing a SAR-S-F under this section. If no suspect is identified on the date of such initial detection, a broker-dealer may delay filing a SAR-S-F for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the broker-dealer shall immediately

notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR-S-F. Broker-dealers wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN’s Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a SAR-S-F if required by this section. The broker-dealer may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) Exceptions.

(1) A broker-dealer is not required to file a SAR-S-F to report:

(i) A robbery or burglary committed or attempted of the broker-dealer that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the broker-dealer files a report pursuant to the reporting requirements of 17 CFR 240.17f-1;

(ii) A violation otherwise required to be reported under this section of any of the federal securities laws or rules of an SRO by the broker-dealer or any of its officers, directors, employees, or other registered representatives, other than a violation of 17 CFR 240.17a-8 or 17 CFR 405.4, so long as such violation is appropriately reported to the SEC or an SRO.

(2) A broker-dealer may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form RE-3, Form U-4, or Form U-5 concerning the transaction is filed consistent with the SRO rules, a copy of that form will be a sufficient record for purposes of this paragraph (c)(2).

(3) For the purposes of this paragraph (c) the term “federal securities laws” means the “securities laws,” as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47), and the rules and regulations promulgated by the Securities and Exchange Commission under such laws.

(d) Retention of records. A broker-dealer shall maintain a copy of any SAR-S-F filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR-S-F. Supporting documentation shall be identified as such and maintained by the broker-dealer, and shall be deemed to have been filed with the SAR-S-F. A broker-dealer shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies or federal or state securities regulators, and for purposes of paragraph (g) of this section, to an SRO registered with the Securities and Exchange Commission, upon request.

(e) Confidentiality of reports. No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Thus, any person subpoenaed or otherwise requested to disclose a SAR-S-F or the information contained in a SAR-S-F, except where such disclosure is requested by FinCEN, the Securities and Exchange Commission, or another appropriate law enforcement or regulatory agency, or for purposes of paragraph (g) of this section, an SRO registered with the Securities and Exchange Commission, shall decline to produce the SAR-S-F or to provide any information that would disclose that a SAR-S-F has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto.

(f) Limitation of liability. A broker-dealer, and any director, officer, employee, or agent of such broker-dealer, that makes a report of any possible violation of law or regulation pursuant to this section or any other authority (or voluntarily) shall not be liable to any person under any law or regulation of the United States (or otherwise to the extent also provided in 31 U.S.C. 5318(g)(3), including in any arbitration proceeding) for any disclosure contained in, or for failure to disclose the fact of, such report.

(g) Examination and enforcement. Compliance with this section shall be examined by the Department of the Treasury, through FinCEN or its delegates, under the terms of the Bank Secrecy Act. Reports filed under this section shall be made available to an SRO registered with the Securities and Exchange Commission examining a broker-dealer for compliance with the requirements of this section. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(h) Effective date. This section applies to transactions occurring after December 30, 2002.

31 C.F.R. § 103.20. Reports by money services businesses of suspicious transactions.

*To be used for violations occurring before
March 1, 2011.*

(a) General.

(1) Every money services business, described in Sec. 103.11(uu) (1), (3), (4), (5), or (6), shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. Any money services

business may also file with the Treasury Department, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a money services business, involves or aggregates funds or other assets of at least \$2,000 (except as provided in paragraph (a)(3) of this section), and the money services business knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330; or

(iii) Serves no business or apparent lawful purpose, and the reporting money services business knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(iv) Involves use of the money services business to facilitate criminal activity.

(3) To the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed, an issuer of money orders or traveler's checks shall only be required to report a transaction or pattern of transactions that involves or aggregates funds or other assets of at least \$5,000.

(4) The obligation to identify and properly and timely to report a suspicious transaction rests with each money services business involved in the transaction, provided that no more than one report is required to be filed by the money services businesses involved in a particular transaction (so long as the report filed contains all relevant facts). Whether, in addition to any liability on its own for failure to report, a money services business that issues the instrument or provides the funds transfer service involved in the transaction may be liable for the failure of another money services business involved in the transaction to report that transaction depends upon the

nature of the contractual or other relationship between the businesses, and the legal effect of the facts and circumstances of the relationship and transaction involved, under general principles of the law of agency.

(5) Notwithstanding the provisions of this section, a transaction that involves solely the issuance, or facilitation of the transfer of stored value, or the issuance, sale, or redemption of stored value, shall not be subject to reporting under this paragraph (a), until the promulgation of rules specifically relating to such reporting.

(b) Filing procedures—

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report-MSB (“SAR-MSB”), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) Where to file. The SAR-MSB shall be filed in a central location to be determined by FinCEN, as indicated in the instructions to the SAR-MSB.

(3) When to file. A money services business subject to this section is required to file each SAR-MSB no later than 30 calendar days after the date of the initial detection by the money services business of facts that may constitute a basis for filing a SAR-MSB under this section. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the money services business shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a SAR-MSB. Money services businesses wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN’s Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a SAR-MSB if required by this section.

(c) Retention of records. A money services business shall maintain a copy of any SAR-MSB filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR-MSB. Supporting documentation shall be identified as such and maintained by the money services business, and shall be deemed to have been filed with the SAR-MSB. A money services business shall make all supporting documentation available to FinCEN and any other appropriate law enforcement agencies or supervisory agencies upon request.

(d) Confidentiality of reports; limitation of liability. No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR-MSB or the information contained in a SAR-MSB, except where such disclosure is requested by FinCEN or

an appropriate law enforcement or supervisory agency, shall decline to produce the SAR-MSB or to provide any information that would disclose that a SAR-MSB has been prepared or filed, citing this paragraph (d) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A reporting money services business, and any director, officer, employee, or agent of such reporting money services business, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(e) Compliance. Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegates under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(f) Effective date. This section applies to transactions occurring after December 31, 2001.

31 C.F.R. § 103.21 Reports by casinos of suspicious transactions.

To be used for violations occurring before March 1, 2011.

(a) General.

(1) Every casino shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A casino may also file with FinCEN, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a casino, and involves or aggregates at least \$5,000 in funds or other assets, and the casino knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the casino to facilitate criminal activity.

(b) Filing procedures—

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report by Casinos (“SARC”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) Where to file. The SARC shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SARC.

(3) When to file. A SARC shall be filed no later than 30 calendar days after the date of the initial detection by the casino of facts that may constitute a basis for filing a SARC under this section. If no suspect is identified on the date of such initial detection, a casino may delay filing a SARC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the casino shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SARC. Casinos wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN’s Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a SARC if required by this section.

(c) Exceptions. A casino is not required to file a SARC for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(d) Retention of records. A casino shall maintain a copy of any SARC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SARC. Supporting documentation shall be identified as such and maintained by the casino, and shall be deemed to have been filed with the SARC. A casino shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies or federal, state, local, or tribal gaming regulators upon request.

(e) Confidentiality of reports; limitation of liability. No casino, and no director, officer, employee, or agent of any casino, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SARC or the information contained in a SARC, except where such disclosure is requested by FinCEN or another appropriate law enforcement or regulatory agency, shall decline to produce the SARC or to provide any information that would disclose that a SARC has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A casino, and any director, officer, employee, or agent of such casino, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(f) Compliance. Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees, under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(g) Effective date. This section applies to transactions occurring after March 25, 2003.

31 C.F.R. § 103.22. Reports of transactions in currency.

To be used for violations occurring before March 1, 2011.

(a) General. This section sets forth the rules for the reporting by financial institutions of transactions in currency. The reporting obligations themselves are stated in paragraph (b) of this section. The reporting rules relating to aggregation are stated in paragraph (c) of this section. Rules permitting banks to exempt certain transactions from the reporting obligations appear in paragraph (d) of this section.

(b) Filing obligations—

(1) Financial institutions other than casinos. Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than \$10,000, except as otherwise provided in this section. In the case of the Postal Service, the obligation contained in the preceding sentence shall not apply to payments or transfers made solely in connection with the purchase of postage or philatelic products.

(2) Casinos. Each casino shall file a report of each transaction in currency, involving either cash in or cash out, of more than \$10,000.

(i) Transactions in currency involving cash in include, but are not limited to:

- (A) Purchases of chips, tokens, and other gaming instruments;
- (B) Front money deposits;
- (C) Safekeeping deposits;
- (D) Payments on any form of credit, including markers and counter checks;
- (E) Bets of currency, including money plays;
- (F) Currency received by a casino for transmittal of funds through wire transfer for a customer;
- (G) Purchases of a casino's check;
- (H) Exchanges of currency for currency, including foreign currency; and
- (I) Bills inserted into electronic gaming devices.

(ii) Transactions in currency involving cash out include, but are not limited to:

- (A) Redemptions of chips, tokens, tickets, and other gaming instruments;
- (B) Front money withdrawals;
- (C) Safekeeping withdrawals;
- (D) Advances on any form of credit, including markers and counter checks;
- (E) Payments on bets;
- (F) Payments by a casino to a customer based on receipt of funds through wire transfers;
- (G) Cashing of checks or other negotiable instruments;
- (H) Exchanges of currency for currency, including foreign currency;
- (I) Travel and complimentary expenses and gaming incentives; and
- (J) Payment for tournament, contests, and other promotions.

(iii) Other provisions of this part notwithstanding, casinos are exempted from the reporting obligations found in Sec. 103.22(b)(2) and (c)(3) for the following transactions in currency or currency transactions:

(A) Transactions between a casino and a currency dealer or exchanger, or between a casino and a check cashier, as those terms are defined in Sec. 103.11(uu), so long as such transactions are conducted pursuant to a contractual or other arrangement with a casino covering the financial services in Sec. 103.22(b)(2)(i)(H), 103.22(b)(2)(ii)(G), and 103.22(b)(2)(ii)(H);

(B) Cash out transactions to the extent the currency is won in a money play and is the same currency the customer wagered in the money play, or cash in transactions to the extent the currency is the same currency the customer previously wagered in a money play on the same table game without leaving the table;

(C) Bills inserted into electronic gaming devices in multiple transactions (unless a casino has knowledge pursuant to Sec. 103.22(c)(3) in which case this exemption would not apply); and

(D) Jackpots from slot machines or video lottery terminals.

(c) Aggregation—

(1) Multiple branches. A financial institution includes all of its domestic branch offices, and any recordkeeping facility, wherever located, that contains records relating to the transactions of the institution's domestic offices, for purposes of this section's reporting requirements.

(2) Multiple transactions—general. In the case of financial institutions other than casinos, for purposes of this section, multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any one business day (or in the case of the Postal Service, any one day). Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.

(3) Multiple transactions—casinos. In the case of a casino, multiple currency transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any gaming day. For purposes of this paragraph (c)(3), a casino shall be deemed to have the knowledge described in the preceding sentence, if: any sole proprietor, partner, officer, director, or employee of the casino, acting within the scope of his or her employment, has knowledge that such multiple currency transactions have occurred, including knowledge from examining the books, records, logs, information retained on magnetic disk, tape or other machine-readable media, or in any manual system, and similar documents and information, which the casino maintains pursuant to any law or regulation or within the ordinary course of its business, and which contain information that such multiple currency transactions have occurred.

(d) Transactions of exempt persons—

(1) General. No bank is required to file a report otherwise required by paragraph (b) of this section with respect to any transaction in currency between an exempt person and such bank, or, to the extent provided in paragraph (d)(5)(vi) of this section, between such exempt person and other banks affiliated with such bank. In addition, a non-bank financial institution is not required to file a report otherwise required by paragraph (b) of this section with respect to a transaction in currency between the institution and a commercial bank. (A limitation on the exemption described in this paragraph (d)(1) is set forth in paragraph (d)(6) of this section.)

(2) Exempt person. For purposes of this section, an exempt person is:

(i) A bank, to the extent of such bank's domestic operations;

(ii) A department or agency of the United States, of any State, or of any political subdivision of any State;

(iii) Any entity established under the laws of the United States, of any State, or of any political subdivision of any State, or under an interstate compact between two or more States, that exercises governmental authority on behalf of the United States or any such State or political subdivision;

(iv) Any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a NASDAQ National Market Security listed on the NASDAQ Stock Market (except stock or interests listed under the separate "NASDAQ Capital Markets Companies" heading), provided that, for purposes of this paragraph (d)(2)(iv), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(v) Any subsidiary, other than a bank, of any entity described in paragraph (d)(2)(iv) of this section (a "listed entity") that is organized under the laws of the United States or of any State and at least 51 percent of whose common stock or analogous equity interest is owned by the listed entity, provided that, for purposes of this paragraph (d)(2)(v), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(vi) To the extent of its domestic operations and only with respect to transactions conducted through its exemptible accounts, any other commercial enterprise (for purposes of this paragraph (d), a "non-listed business"), other than an enterprise specified in paragraph (d)(5)(viii) of this section, that:

(A) Maintains a transaction account, as defined in paragraph (d)(5)(ix) of this section, at the bank for at least two months, except as provided in paragraph (d)(3)(ii)(B) of this section;

(B) Frequently engages in transactions in currency with the bank in excess of \$10,000; and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State; or

(vii) With respect solely to withdrawals for payroll purposes from existing exemptible accounts, any other person (for purposes of this paragraph (d), a "payroll customer") that:

(A) Maintains a transaction account, as defined in paragraph (d)(5)(ix) of this section, at the bank for at least two months, except as provided in paragraph (d)(3)(ii)(B) of this section;

(B) Operates a firm that regularly withdraws more than \$10,000 in order to pay its United States employees in currency; and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State.

(3) Designation of certain exempt persons—

(i) General. Except as provided in paragraph (d)(3)(ii) of this section, a bank must designate an exempt person by filing FinCEN Form 110. Such designation must occur by the close of the 30-calendar day period beginning after the day of the first reportable transaction in currency with that person sought to be exempted from reporting under the terms of this paragraph (d). The designation must be made separately by each bank that treats the customer as an exempt person, except as provided in paragraph (d)(5)(vi) of this section.

(ii) Special rules.—

(A) A bank is not required to file a FinCEN Form 110 with respect to the transfer of currency to or from:

(1) Any of the twelve Federal Reserve Banks; or

(2) Any exempt person as described in paragraphs (d)(2)(i) to (iii) of this section.

(B) Notwithstanding subparagraphs (d)(2)(vi)(A) and (d)(2)(vii)(A) of this section, and if the requirements under this paragraph (d) of this section are otherwise satisfied, a bank may designate a non-listed business or a payroll customer, as described in paragraphs (d)(2)(vi)

and (vii) of this section, as an exempt person before the customer has maintained a transaction account at the bank for at least two months if the bank conducts and documents a risk-based assessment of the customer and forms a reasonable belief that the customer has a legitimate business purpose for conducting frequent transactions in currency.

(4) Annual review. At least once each year, a bank must review the eligibility of an exempt person described in paragraphs (d)(2)(iv) to (vii) of this section to determine whether such person remains eligible for an exemption. As part of its annual review, a bank must review the application of the monitoring system required to be maintained by paragraph (d)(8)(ii) of this section to each existing account of an exempt person described in paragraphs (d)(2)(vi) or (d)(2)(vii) of this section.

(5) Operating rules—

(i) General rule. Subject to the specific rules of this paragraph (d), a bank must take such steps to assure itself that a person is an exempt person (within the meaning of the applicable provision of paragraph (d)(2) of this section), to document the basis for its conclusions, and document its compliance, with the terms of this paragraph (d), that a reasonable and prudent bank would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status, and in the case of the monitoring system requirement set forth in paragraph (d)(8)(ii) of this section, such steps that a reasonable and prudent bank would take and document to identify suspicious transactions as required by paragraph (d)(8)(ii) of this section.

(ii) Governmental departments and agencies. A bank may treat a person as a governmental department, agency, or entity if the name of such person reasonably indicates that it is described in paragraph (d)(2)(ii) or (d)(2)(iii) of this section, or if such person is known generally in the community to be a State, the District of Columbia, a tribal government, a Territory or Insular Possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any of the foregoing. An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision, for purposes of paragraph (d)(2)(iii) of this section, only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters within its jurisdiction. Examples of entities that exercise governmental authority include, but are not limited to, the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey.

(iii) Stock exchange listings. In determining whether a person is described in paragraph (d)(2)(iv) of this section, a bank may rely on any New York, American, or NASDAQ

Stock Market listing published in a newspaper of general circulation, on any commonly accepted or published stock symbol guide, on any information contained in the Securities and Exchange Commission "EDGAR" System, or on any information contained on an Internet site or sites maintained by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ.

(iv) Listed company subsidiaries. In determining whether a person is described in paragraph (d)(2)(v) of this section, a bank may rely upon:

(A) Any reasonably authenticated corporate officer's certificate;

(B) Any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year; or

(C) A person's Annual Report or Form 10-K, as filed in each case with the Securities and Exchange Commission.

(v) Aggregated accounts. In determining the qualification of a customer as a non-listed business or a payroll customer, a bank may treat all exemptible accounts of the customer as a single account. If a bank elects to treat all exemptible accounts of a customer as a single account, the bank must continue to treat such accounts consistently as a single account for purposes of determining the qualification of the customer as a non-listed business or payroll customer.

(vi) Affiliated banks. The designation required by paragraph (d)(3) of this section may be made by a parent bank holding company or one of its bank subsidiaries on behalf of all bank subsidiaries of the holding company, so long as the designation lists each bank subsidiary to which the designation shall apply.

(vii) Sole proprietorships. A sole proprietorship may be treated as a non-listed business if it otherwise meets the requirements of paragraph (d)(2)(vi) of this section, as applicable. In addition, a sole proprietorship may be treated as a payroll customer if it otherwise meets the requirements of paragraph (d)(2)(vii) of this section, as applicable.

(viii) Ineligible businesses. A business engaged primarily in one or more of the following activities may not be treated as a non-listed business for purposes of this paragraph (d): serving as financial institutions or agents of financial institutions of any type; purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; the practice of law, accountancy, or medicine; auctioning of goods; chartering or operation of ships, buses, or aircraft; gaming of any kind (other than licensed parimutuel betting at race tracks); investment

advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and any other activities that may be specified by FinCEN. A business that engages in multiple business activities may be treated as a non-listed business so long as no more than 50% of its gross revenues are derived from one or more of the ineligible business activities listed in this paragraph (d)(5)(viii).

(ix) Exemptible accounts of a non-listed business or payroll customer. The exemptible accounts of a non-listed business or payroll customer include transaction accounts and money market deposit accounts. However, money market deposit accounts maintained other than in connection with a commercial enterprise are not exemptible accounts. A transaction account, for purposes of this paragraph (d), is any account described in section 19(b)(1)(C) of the Federal Reserve Act, 12 U.S.C. 461(b)(1)(C), and its implementing regulations (12 CFR part 204). A money market deposit account, for purposes of this paragraph (d), is any interest-bearing account that is described as a money market deposit account in 12 CFR 204.2(d)(2).

(x) Documentation. The records maintained by a bank to document its compliance with and administration of the rules of this paragraph (d) shall be maintained in accordance with the provisions of Sec. 103.38.

(6) Limitation on exemption. A transaction carried out by an exempt person as an agent for another person who is the beneficial owner of the funds that are the subject of a transaction in currency is not subject to the exemption from reporting contained in paragraph (d)(1) of this section.

(7) Limitation on liability.

(i) No bank shall be subject to penalty under this part for failure to file a report required by paragraph (b) of this section with respect to a transaction in currency by an exempt person with respect to which the requirements of this paragraph (d) have been satisfied, unless the bank:

(A) Knowingly files false or incomplete information with respect to the transaction or the customer engaging in the transaction; or

(B) Has reason to believe that the customer does not meet the criteria established by this paragraph (d) for treatment of the transactor as an exempt person or that the transaction is not a transaction of the exempt person.

(ii) Subject to the specific terms of this paragraph (d), and absent any specific knowledge of information indicating that a customer no longer meets the requirements of an exempt person, a bank satisfies the requirements of this paragraph (d) to the extent it continues to treat that customer as an exempt person until the completion of

that customer's next required periodic review, which as required by paragraph (d)(4) of this section for an exempt person described in paragraph (d)(2)(iv) to (vii) of this section, shall occur no less than once each year.

(iii) A bank that files a report with respect to a currency transaction by an exempt person rather than treating such person as exempt shall remain subject, with respect to each such report, to the rules for filing reports, and the penalties for filing false or incomplete reports that are applicable to reporting of transactions in currency by persons other than exempt persons.

(8) Obligations to file suspicious activity reports and maintain system for monitoring transactions in currency.

(i) Nothing in this paragraph (d) relieves a bank of the obligation, or reduces in any way such bank's obligation, to file a report required by Sec. 103.18 with respect to any transaction, including any transaction in currency that a bank knows, suspects, or has reason to suspect is a transaction or attempted transaction that is described in Sec. 103.18(a)(2)(i), (ii), or (iii), or relieves a bank of any reporting or recordkeeping obligation imposed by this part (except the obligation to report transactions in currency pursuant to this section to the extent provided in this paragraph (d)). Thus, for example, a sharp increase from one year to the next in the gross total of currency transactions made by an exempt customer, or similarly anomalous transactions trends or patterns, may trigger the obligation of a bank under Sec. 103.18.

(ii) Consistent with its annual review obligations under paragraph (d)(4) of this section, a bank shall establish and maintain a monitoring system that is reasonably designed to detect, for each account of a non-listed business or payroll customer, those transactions in currency involving such account that would require a bank to file a suspicious transaction report. The statement in the preceding sentence with respect to accounts of non-listed business and payroll customers does not limit the obligation of banks generally to take the steps necessary to satisfy the terms of paragraph (d)(8)(i) of this section and Sec. 103.18 with respect to all exempt persons.

(9) Revocation. Without any action on the part of the Department of the Treasury and subject to the limitation on liability contained in paragraph (d)(7)(ii) of this section:

(i) The status of an entity as an exempt person under paragraph (d)(2)(iv) of this section ceases once such entity ceases to be listed on the applicable stock exchange; and

(ii) The status of a subsidiary as an exempt person under paragraph (d)(2)(v) of this section ceases once such subsidiary ceases to have at least 51 per cent of its common stock or analogous equity interest owned by a listed entity.

31 C.F.R. § 103.23. Reports of transportation of currency or monetary instruments.

To be used for violations occurring before March 1, 2011.

(a) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped, or attempts to physically transport, mail or ship, or attempts to cause to be physically transported, mailed or shipped, currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time from the United States to any place outside the United States, or into the United States from any place outside the United States, shall make a report thereof. A person is deemed to have caused such transportation, mailing or shipping when he aids, abets, counsels, commands, procures, or requests it to be done by a financial institution or any other person.

(b) Each person who receives in the U.S. currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time which have been transported, mailed, or shipped to such person from any place outside the United States with respect to which a report has not been filed under paragraph (a) of this section, whether or not required to be filed thereunder, shall make a report thereof, stating the amount, the date of receipt, the form of monetary instruments, and the person from whom received.

(c) This section shall not require reports by:

(1) A Federal Reserve;

(2) A bank, a foreign bank, or a broker or dealer in securities, in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier;

(3) A commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned;

(4) A person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier;

(5) A common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers;

(6) A common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper;

(7) A travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public;

(8) By a person with respect to a restrictively endorsed traveler's check that is in the collection and reconciliation process after the traveler's check has been negotiated,

(9) Nor by a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

(d) A transfer of funds through normal banking procedures which does not involve the physical transportation of currency or monetary instruments is not required to be reported by this section. This section does not require that more than one report be filed covering a particular transportation, mailing or shipping of currency or other monetary instruments with respect to which a complete and truthful report has been filed by a person. However, no person required by paragraph (a) or (b) of this section to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed.

31 C.F.R. § 103.24. Reports of foreign financial accounts.

To be used for violations occurring before March 1, 2011.

(a) Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the Commissioner of the Internal Revenue for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons. Persons having a financial interest in 25 or more foreign financial accounts need only note that fact on the form. Such persons will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

31 C.F.R. § 103.26. Reports of certain domestic coin and currency transactions.

To be used for violations occurring before March 1, 2011.

(a) If the Secretary of the Treasury finds, upon the Secretary's own initiative or at the request of an appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and/or reporting requirements are necessary to carry out the purposes of this part and to prevent persons from evading the reporting/recordkeeping requirements of this part, the Secretary may issue an order requiring any domestic financial institution or group of domestic financial institutions in a geographic area and any other person participating in the type of transaction to file a report in the manner and to the extent specified in such order. The order shall contain such information as the Secretary may describe concerning any transaction in which such financial institution is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.

(b) An order issued under paragraph (a) of this section shall be directed to the Chief Executive Officer of the financial institution and shall designate one or more of the following categories of information to be reported: Each deposit, withdrawal, exchange of currency or other payment or transfer, by, through or to such financial institution specified in the order, which involves all or any class of transactions in currency and/or monetary instruments equal to or exceeding an amount to be specified in the order.

(c) In issuing an order under paragraph (a) of this section, the Secretary will prescribe:

- (1) The dollar amount of transactions subject to the reporting requirement in the order;
- (2) The type of transaction or transactions subject to or exempt from a reporting requirement in the order;
- (3) The appropriate form for reporting the transactions required in the order;
- (4) The address to which reports required in the order are to be sent or from which they will be picked up;
- (5) The starting and ending dates by which such transactions specified in the order are to be reported;
- (6) The name of a Treasury official to be contacted for any additional information or questions;

(7) The amount of time the reports and records of reports generated in response to the order will have to be retained by the financial institution; and

(8) Any other information deemed necessary to carry out the purposes of the order.

(d)(1) No order issued pursuant to paragraph (a) of this section shall prescribe a reporting period of more than 60 days unless renewed pursuant to the requirements of paragraph (a).

(2) Any revisions to an order issued under this section will not be effective until made in writing by the Secretary.

(3) Unless otherwise specified in the order, a bank receiving an order under this section may continue to use the exemptions granted under Sec. 103.22 of this part prior to the receipt of the order, but may not grant additional exemptions.

(4) For purposes of this section, the term geographic area means any area in one or more States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, the territories and possessions of the United States, and/or political subdivision or subdivisions thereof, as specified in an order issued pursuant to paragraph (a) of this section.

31 C.F.R. § 103.27. Filing of reports.

To be used for violations occurring before March 1, 2011.

(a)(1) A report required by Sec. 103.22(a) shall be filed by the financial institution within 15 days following the day on which the reportable transaction occurred.

(2) A report required by Sec. 103.22(g) shall be filed by the bank within 15 days after receiving a request for the report.

(3) A copy of each report filed pursuant to Sec. 103.22 shall be retained by the financial institution for a period of five years from the date of the report.

(4) All reports required to be filed by Sec. 103.22 shall be filed with the Commissioner of Internal Revenue, unless otherwise specified.

(b)(1) A report required by Sec. 103.23(a) shall be filed at the time of entry into the United States or at the time of departure, mailing or shipping from the United States, unless otherwise specified by the Commissioner of Customs.

(2) A report required by Sec. 103.23(b) shall be filed within 15 days after receipt of the currency or other monetary instruments.

(3) All reports required by Sec. 103.23 shall be filed with the Customs officer in charge at any port of entry or

departure, or as otherwise specified by the Commissioner of Customs. Reports required by Sec. 103.23(a) for currency or other monetary instruments not physically accompanying a person entering or departing from the United States, may be filed by mail on or before the date of entry, departure, mailing or shipping. All reports required by Sec. 103.23(b) may also be filed by mail. Reports filed by mail shall be addressed to the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, DC 20229.

(c) Reports required to be filed by Sec. 103.24 shall be filed with the Commissioner of Internal Revenue on or before June 30 of each calendar year with respect to foreign financial accounts exceeding \$10,000 maintained during the previous calendar year.

(d) Reports required by Sec. 103.22, Sec. 103.23 or Sec. 103.24 shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.

(e) Forms to be used in making the reports required by Sec. 103.22 and 103.24 may be obtained from the Internal Revenue Service. Forms to be used in making the reports required by Sec. 103.23 may be obtained from the U.S. Customs Service.

31 C.F.R. § 103.28. Identification required.

To be used for violations occurring before March 1, 2011.

Before concluding any transaction with respect to which a report is required under Sec. 103.22, a financial institution shall verify and record the name and address of the individual presenting a transaction, as well as record the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity on whose behalf such transaction is to be effected. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence (e.g., a Provincial driver's license with indication of home address). Verification of identity in any other case shall be made by examination of a document, other than a bank signature card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (e.g., a drivers license or credit card). A bank signature card may be relied upon only if it was issued after documents establishing the identity of the individual were examined and notation of the specific information was made on the signature card. In each instance, the specific identifying information (i.e., the account number of the credit card, the driver's license number, etc.) used in verifying the identity of the customer shall be recorded on the report, and the mere notation of "known customer" or "bank signature card on file" on the report is prohibited.

31 C.F.R. § 103.29. Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks.

To be used for violations occurring before March 1, 2011.

(a) No financial institution may issue or sell a bank check or draft, cashier's check, money order or traveler's check for \$3,000 or more in currency unless it maintains records of the following information, which must be obtained for each issuance or sale of one or more of these instruments to any individual purchaser which involves currency in amounts of \$3,000-\$10,000 inclusive:

(1) If the purchaser has a deposit account with the financial institution:

- (i)(A) The name of the purchaser;
- (B) The date of purchase;
- (C) The type(s) of instrument(s) purchased;
- (D) The serial number(s) of each of the instrument(s) purchased; and
- (E) The amount in dollars of each of the instrument(s) purchased.

(ii) In addition, the financial institution must verify that the individual is a deposit accountholder or must verify the individual's identity. Verification may be either through a signature card or other file or record at the financial institution provided the deposit accountholder's name and address were verified previously and that information was recorded on the signature card or other file or record; or by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser. If the deposit accountholder's identity has not been verified previously, the financial institution shall verify the deposit accountholder's identity by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (e.g., State of issuance and number of driver's license).

(2) If the purchaser does not have a deposit account with the financial institution:

- (i)(A) The name and address of the purchaser;
- (B) The social security number of the purchaser, or if the purchaser is an alien and does not have a social security number, the alien identification number;

- (C) The date of birth of the purchaser;
- (D) The date of purchase;
- (E) The type(s) of instrument(s) purchased;
- (F) The serial number(s) of the instrument(s) purchased; and
- (G) The amount in dollars of each of the instrument(s) purchased.

(ii) In addition, the financial institution shall verify the purchaser's name and address by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (e.g., State of issuance and number of driver's license).

(b) Contemporaneous purchases of the same or different types of instruments totaling \$3,000 or more shall be treated as one purchase. Multiple purchases during one business day totaling \$3,000 or more shall be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred.

(c) Records required to be kept shall be retained by the financial institution for a period of five years and shall be made available to the Secretary upon request at any time.

31 C.F.R. § 103.30. Reports relating to currency in excess of \$10,000 received in a trade or business.

To be used for violations occurring before March 1, 2011.

(a) Reporting requirement—

(1) Reportable transactions—

(i) In general. Any person (solely for purposes of section 5331 of title 31, United States Code and this section, "person" shall have the same meaning as under 26 U.S.C. 7701 (a)(1)) who, in the course of a trade or business in which such person is engaged, receives currency in excess of \$10,000 in 1 transaction (or 2 or more related transactions) shall, except as otherwise provided, make a report of information with respect to the receipt of currency. This section does not apply to amounts received in a transaction reported under 31 U.S.C. 5313 and Sec. 103.22.

(ii) Certain financial transactions. Section 6050I of title 26 of the United States Code requires persons to report information about financial transactions to the IRS,

and 31 U.S.C. 5331 requires persons to report similar information about certain transactions to the Financial Crimes Enforcement Network. This information shall be reported on the same form as prescribed by the Secretary.

(2) Currency received for the account of another. Currency in excess of \$10,000 received by a person for the account of another must be reported under this section. Thus, for example, a person who collects delinquent accounts receivable for an automobile dealer must report with respect to the receipt of currency in excess of \$10,000 from the collection of a particular account even though the proceeds of the collection are credited to the account of the automobile dealer (i.e., where the rights to the proceeds from the account are retained by the automobile dealer and the collection is made on a fee-for-service basis).

(3) Currency received by agents—(i) General rule. Except as provided in paragraph (a)(3)(ii) of this section, a person who in the course of a trade or business acts as an agent (or in some other similar capacity) and receives currency in excess of \$10,000 from a principal must report the receipt of currency under this section.

(ii) Exception. An agent who receives currency from a principal and uses all of the currency within 15 days in a currency transaction (the "second currency transaction") which is reportable under section 5312 of title 31, or 31 U.S.C. 5331 and this section, and who discloses the name, address, and taxpayer identification number of the principal to the recipient in the second currency transaction need not report the initial receipt of currency under this section. An agent will be deemed to have met the disclosure requirements of this paragraph (a)(3)(ii) if the agent discloses only the name of the principal and the agent knows that the recipient has the principal's address and taxpayer identification number.

(iii) Example. The following example illustrates the application of the rules in paragraphs (a)(3)(i) and (ii) of this section:

Example. B, the principal, gives D, an attorney, \$75,000 in currency to purchase real property on behalf of B. Within 15 days D purchases real property for currency from E, a real estate developer, and discloses to E, B's name, address, and taxpayer identification number. Because the transaction qualifies for the exception provided in paragraph (a)(3)(ii) of this section, D need not report with respect to the initial receipt of currency under this section. The exception does not apply, however, if D pays E by means other than currency, or effects the purchase more than 15 days following receipt of the currency from B, or fails to disclose B's name, address, and taxpayer identification number (assuming D does not know that E already has B's address and taxpayer identification

number), or purchases the property from a person whose sale of the property is not in the course of that person's trade or business. In any such case, D is required to report the receipt of currency from B under this section.

(b) Multiple payments. The receipt of multiple currency deposits or currency installment payments (or other similar payments or prepayments) relating to a single transaction (or two or more related transactions), is reported as set forth in paragraphs (b)(1) through (b)(3) of this section.

(1) Initial payment in excess of \$10,000. If the initial payment exceeds \$10,000, the recipient must report the initial payment within 15 days of its receipt.

(2) Initial payment of \$10,000 or less. If the initial payment does not exceed \$10,000, the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until the aggregate amount exceeds \$10,000, and report with respect to the aggregate amount within 15 days after receiving the payment that causes the aggregate amount to exceed \$10,000.

(3) Subsequent payments. In addition to any other required report, a report must be made each time that previously unreportable payments made within a 12-month period with respect to a single transaction (or two or more related transactions), individually or in the aggregate, exceed \$10,000. The report must be made within 15 days after receiving the payment in excess of \$10,000 or the payment that causes the aggregate amount received in the 12-month period to exceed \$10,000. (If more than one report would otherwise be required for multiple currency payments within a 15-day period that relate to a single transaction (or two or more related transactions), the recipient may make a single combined report with respect to the payments. The combined report must be made no later than the date by which the first of the separate reports would otherwise be required to be made.)

(4) Example. The following example illustrates the application of the rules in paragraphs (b)(1) through (b)(3) of this section:

Example. On January 10, Year 1, M receives an initial payment in currency of \$11,000 with respect to a transaction. M receives subsequent payments in currency with respect to the same transaction of \$4,000 on February 15, Year 1, \$6,000 on March 20, Year 1, and \$12,000 on May 15, Year 1. M must make a report with respect to the payment received on January 10, Year 1, by January 25, Year 1. M must also make a report with respect to the payments totaling \$22,000 received from February 15, Year 1, through May 15, Year 1. This report must be made by May 30, Year 1, that is, within 15 days of the date that the subsequent payments, all of which were received within a 12-month period, exceeded \$10,000.

(c) Meaning of terms. The following definitions apply for purposes of this section—

(1) Currency. Solely for purposes of 31 U.S.C. 5331 and this section, currency means—

(i) The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued; and

(ii) A cashier's check (by whatever name called, including "treasurer's check" and "bank check"), bank draft, traveler's check, or money order having a face amount of not more than \$10,000—

(A) Received in a designated reporting transaction as defined in paragraph (c)(2) of this section (except as provided in paragraphs (c)(3), (4), and (5) of this section), or

(B) Received in any transaction in which the recipient knows that such instrument is being used in an attempt to avoid the reporting of the transaction under section 5331 and this section.

(2) Designated reporting transaction. A designated reporting transaction is a retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of—

(i) A consumer durable, (ii) A collectible, or

(iii) A travel or entertainment activity.

(3) Exception for certain loans. A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument constitutes the proceeds of a loan from a bank. The recipient may rely on a copy of the loan document, a written statement from the bank, or similar documentation (such as a written lien instruction from the issuer of the instrument) to substantiate that the instrument constitutes loan proceeds.

(4) Exception for certain installment sales. A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument is received in payment on a promissory note or an installment sales contract (including a lease that is considered to be a sale for Federal income tax purposes). However, the preceding sentence applies only if—

(i) Promissory notes or installment sales contracts with the same or substantially similar terms are used in the ordinary course of the recipient's trade or business in connection with sales to ultimate consumers; and

(ii) The total amount of payments with respect to the sale that are received on or before the 60th day after the date of the sale does not exceed 50 percent of the purchase price of the sale.

(5) Exception for certain down payment plans. A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument is received pursuant to a payment plan requiring one or more down payments and the payment of the balance of the purchase price by a date no later than the date of the sale (in the case of an item of travel or entertainment, a date no later than the earliest date that any item of travel or entertainment pertaining to the same trip or event is furnished). However, the preceding sentence applies only if—

(i) The recipient uses payment plans with the same or substantially similar terms in the ordinary course of its trade or business in connection with sales to ultimate consumers; and

(ii) The instrument is received more than 60 days prior to the date of the sale (in the case of an item of travel or entertainment, the date on which the final payment is due).

(6) Examples. The following examples illustrate the definition of "currency" set forth in paragraphs (c)(1) through (c)(5) of this section:

Example 1. D, an individual, purchases gold coins from M, a coin dealer, for \$13,200. D tenders to M in payment United States currency in the amount of \$6,200 and a cashier's check in the face amount of \$7,000 which D had purchased. Because the sale is a designated reporting transaction, the cashier's check is treated as currency for purposes of 31 U.S.C. 5331 and this section. Therefore, because M has received more than \$10,000 in currency with respect to the transaction, M must make the report required by 31 U.S.C. 5331 and this section.

Example 2. E, an individual, purchases an automobile from Q, an automobile dealer, for \$11,500. E tenders to Q in payment United States currency in the amount of \$2,000 and a cashier's check payable to E and Q in the amount of \$9,500. The cashier's check constitutes the proceeds of a loan from the bank issuing the check. The origin of the proceeds is evident from provisions inserted by the bank on the check that instruct the dealer to cause a lien to be placed on the vehicle as security for the loan. The sale of the automobile is a designated reporting transaction. However, under paragraph (c)(3) of this section, because E has furnished Q documentary information establishing that the cashier's check constitutes the proceeds of a loan from the bank issuing the check, the cashier's check is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section.

Example 3. F, an individual, purchases an item of jewelry from S, a retail jeweler, for \$12,000. F gives S traveler's checks totaling \$2,400 and pays the balance with a personal check payable to S in the amount of \$9,600. Because the sale is a designated reporting transaction, the traveler's checks are treated as currency for purposes of section 5331 and this

section. However, because the personal check is not treated as currency for purposes of section 5331 and this section, S has not received more than \$10,000 in currency in the transaction and no report is required to be filed under section 5331 and this section.

Example 4. G, an individual, purchases a boat from T, a boat dealer, for \$16,500. G pays T with a cashier's check payable to T in the amount of \$16,500. The cashier's check is not treated as currency because the face amount of the check is more than \$10,000. Thus, no report is required to be made by T under section 5331 and this section.

Example 5. H, an individual, arranges with W, a travel agent, for the chartering of a passenger aircraft to transport a group of individuals to a sports event in another city. H also arranges with W for hotel accommodations for the group and for admission tickets to the sports event. In payment, H tenders to W money orders which H had previously purchased. The total amount of the money orders, none of which individually exceeds \$10,000 in face amount, exceeds \$10,000. Because the transaction is a designated reporting transaction, the money orders are treated as currency for purposes of section 5331 and this section. Therefore, because W has received more than \$10,000 in currency with respect to the transaction, W must make the report required by section 5331 and this section.

(7) Consumer durable. The term consumer durable means an item of tangible personal property of a type that is suitable under ordinary usage for personal consumption or use, that can reasonably be expected to be useful for at least 1 year under ordinary usage, and that has a sales price of more than \$10,000. Thus, for example, a \$20,000 automobile is a consumer durable (whether or not it is sold for business use), but a \$20,000 dump truck or a \$20,000 factory machine is not.

(8) Collectible. The term collectible means an item described in paragraphs (A) through (D) of section 408 (m)(2) of title 26 of the United States Code (determined without regard to section 408 (m)(3) of title 26 of the United States Code).

(9) Travel or entertainment activity. The term travel or entertainment activity means an item of travel or entertainment (within the meaning of 26 CFR 1.274-2(b)(1)) pertaining to a single trip or event where the aggregate sales price of the item and all other items pertaining to the same trip or event that are sold in the same transaction (or related transactions) exceeds \$10,000.

(10) Retail sale. The term retail sale means any sale (whether for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers.

(11) Trade or business. The term trade or business has the same meaning as under section 162 of title 26, United States Code.

(12) Transaction.

(i) Solely for purposes of 31 U.S.C. 5331 and this section, the term transaction means the underlying event precipitating the payer's transfer of currency to the recipient. In this context, transactions include (but are not limited to) a sale of goods or services; a sale of real property; a sale of intangible property; a rental of real or personal property; an exchange of currency for other currency; the establishment or maintenance of or contribution to a custodial, trust, or escrow arrangement; a payment of a preexisting debt; a conversion of currency to a negotiable instrument; a reimbursement for expenses paid; or the making or repayment of a loan. A transaction may not be divided into multiple transactions in order to avoid reporting under this section.

(ii) The term related transactions means any transaction conducted between a payer (or its agent) and a recipient of currency in a 24-hour period. Additionally, transactions conducted between a payer (or its agent) and a currency recipient during a period of more than 24 hours are related if the recipient knows or has reason to know that each transaction is one of a series of connected transactions.

(iii) The following examples illustrate the definition of paragraphs (c)(12) (i) and (ii) of this section:

Example 1. A person has a tacit agreement with a gold dealer to purchase \$36,000 in gold bullion. The \$36,000 purchase represents a single transaction under paragraph (c)(12)(i) of this section and the reporting requirements of this section cannot be avoided by recasting the single sales transaction into 4 separate \$9,000 sales transactions.

Example 2. An attorney agrees to represent a client in a criminal case with the attorney's fee to be determined on an hourly basis. In the first month in which the attorney represents the client, the bill for the attorney's services comes to \$8,000 which the client pays in currency. In the second month in which the attorney represents the client, the bill for the attorney's services comes to \$4,000, which the client again pays in currency. The aggregate amount of currency paid (\$12,000) relates to a single transaction as defined in paragraph (c)(12)(i) of this section, the sale of legal services relating to the criminal case, and the receipt of currency must be reported under this section.

Example 3. A person intends to contribute a total of \$45,000 to a trust fund, and the trustee of the fund knows or has reason to know of that intention. The \$45,000 contribution is a single transaction under paragraph (c)(12)(i) of this section and the reporting requirement of

this section cannot be avoided by the grantor's making five separate \$9,000 contributions of currency to a single fund or by making five \$9,000 contributions of currency to five separate funds administered by a common trustee.

Example 4. K, an individual, attends a one day auction and purchases for currency two items, at a cost of \$9,240 and \$1,732.50 respectively (tax and buyer's premium included). Because the transactions are related transactions as defined in paragraph (c)(12)(ii) of this section, the auction house is required to report the aggregate amount of currency received from the related sales (\$10,972.50), even though the auction house accounts separately on its books for each item sold and presents the purchaser with separate bills for each item purchased.

Example 5. F, a coin dealer, sells for currency \$9,000 worth of gold coins to an individual on three successive days. Under paragraph (c)(12)(ii) of this section the three \$9,000 transactions are related transactions aggregating \$27,000 if F knows, or has reason to know, that each transaction is one of a series of connected transactions.

(13) Recipient. (i) The term recipient means the person receiving the currency. Except as provided in paragraph (c)(13)(ii) of this section, each store, division, branch, department, headquarters, or office ("branch") (regardless of physical location) comprising a portion of a person's trade or business shall for purposes of this section be deemed a separate recipient.

(ii) A branch that receives currency payments will not be deemed a separate recipient if the branch (or a central unit linking such branch with other branches) would in the ordinary course of business have reason to know the identity of payers making currency payments to other branches of such person.

(iii) Examples. The following examples illustrate the application of the rules in paragraphs (c)(13)(i) and (ii) of this section:

Example 1. N, an individual, purchases regulated futures contracts at a cost of \$7,500 and \$5,000, respectively, through two different branches of Commodities Broker X on the same day. N pays for each purchase with currency. Each branch of Commodities Broker X transmits the sales information regarding each of N's purchases to a central unit of Commodities Broker X (which settles the transactions against N's account). Under paragraph (c)(13)(ii) of this section the separate branches of Commodities Broker X are not deemed to be separate recipients; therefore, Commodities Broker X must report with respect to the two related regulated futures contracts sales in accordance with this section.

Example 2. P, a corporation, owns and operates a racetrack. P's racetrack contains 100 betting windows at which pari-mutuel wagers may be made. R, an individual, places currency wagers of \$3,000 each at five separate betting windows. Assuming that in the ordinary course of business each betting window (or a central unit linking windows) does not have reason to know the identity of persons making wagers at other betting windows, each betting window would be deemed to be a separate currency recipient under paragraph (c)(13)(i) of this section. As no individual recipient received currency in excess of \$10,000, no report need be made by P under this section.

(d) Exceptions to the reporting requirements of 31 U.S.C. 5331—

(1) Receipt of currency by certain casinos having gross annual gaming revenue in excess of \$1,000,000—

(i) In general. If a casino receives currency in excess of \$10,000 and is required to report the receipt of such currency directly to the Treasury Department under Sec. 103.22 (a)(2) and 103.25 and is subject to the recordkeeping requirements of Sec. 103.36, then the casino is not required to make a report with respect to the receipt of such currency under 31 U.S.C. 5331 and this section.

(ii) Casinos exempt under Sec. 103.55(c). Pursuant to Sec. 103.55, the Secretary may exempt from the reporting and recordkeeping requirements under Sec. 103.22, 103.25 and 103.36 casinos in any state whose regulatory system substantially meets the reporting and recordkeeping requirements of this part. Such casinos shall not be required to report receipt of currency under 31 U.S.C. 5331 and this section.

(iii) Reporting of currency received in a nongaming business. Nongaming businesses (such as shops, restaurants, entertainment, and hotels) at casino hotels and resorts are separate trades or businesses in which the receipt of currency in excess of \$10,000 is reportable under section 5331 and these regulations. Thus, a casino exempt under paragraph (d)(1)(i) or (ii) of this section must report with respect to currency in excess of \$10,000 received in its nongaming businesses.

(iv) Example. The following example illustrates the application of the rules in paragraphs (d)(2) (i) and (iii) of this section:

Example. A and B are casinos having gross annual gaming revenue in excess of \$1,000,000. C is a casino with gross annual gaming revenue of less than \$1,000,000. Casino A receives \$15,000 in currency from a customer with respect to a gaming transaction which the casino reports to the Treasury Department under Sec. 103.22(a) (2) and 103.25. Casino B receives \$15,000 in currency

from a customer in payment for accommodations provided to that customer at Casino B's hotel. Casino C receives \$15,000 in currency from a customer with respect to a gaming transaction. Casino A is not required to report the transaction under 31 U.S.C. 5331 or this section because the exception for certain casinos provided in paragraph (d)(1)(i) of this section ("the casino exception") applies. Casino B is required to report under 31 U.S.C. 5331 and this section because the casino exception does not apply to the receipt of currency from a nongaming activity. Casino C is required to report under 31 U.S.C. 5331 and this section because the casino exception does not apply to casinos having gross annual gaming revenue of \$1,000,000 or less which do not have to report to the Treasury Department under Sec. 103.22(a)(2) and 103.25.

(2) Receipt of currency not in the course of the recipient's trade or business. The receipt of currency in excess of \$10,000 by a person other than in the course of the person's trade or business is not reportable under 31 U.S.C. 5331. Thus, for example, F, an individual in the trade or business of selling real estate, sells a motorboat for \$12,000, the purchase price of which is paid in currency. F did not use the motorboat in any trade or business in which F was engaged. F is not required to report under 31 U.S.C. 5331 or this section because the exception provided in this paragraph (d)(2) applies.

(3) Receipt is made with respect to a foreign currency transaction—

(i) In general. Generally, there is no requirement to report with respect to a currency transaction if the entire transaction occurs outside the United States (the fifty states and the District of Columbia). An entire transaction consists of both the transaction as defined in paragraph (c)(12)(i) of this section and the receipt of currency by the recipient. If, however, any part of an entire transaction occurs in the Commonwealth of Puerto Rico or a possession or territory of the United States and the recipient of currency in that transaction is subject to the general jurisdiction of the Internal Revenue Service under title 26 of the United States Code, the recipient is required to report the transaction under this section.

(ii) Example. The following example illustrates the application of the rules in paragraph (d)(3)(i) of this section:

Example. W, an individual engaged in the trade or business of selling aircraft, reaches an agreement to sell an airplane to a U.S. citizen living in Mexico. The agreement, no portion of which is formulated in the United States, calls for a purchase price of \$125,000 and requires delivery of and payment for the airplane to be made in Mexico. Upon delivery of the airplane in Mexico, W receives \$125,000 in currency. W is not required to report under 31 U.S.C. 5331

or this section because the exception provided in paragraph (d)(3)(i) of this section (“foreign transaction exception”) applies. If, however, any part of the agreement to sell had been formulated in the United States, the foreign transaction exception would not apply and W would be required to report the receipt of currency under 31 U.S.C. 5331 and this section.

(e) Time, manner, and form of reporting—

(1) In general. The reports required by paragraph (a) of this section must be made by filing a Form 8300, as specified in 26 CFR 1.6050I-1(e)(2). The reports must be filed at the time and in the manner specified in 26 CFR 1.6050I-1(e)(1) and (3) respectively.

(2) Verification. A person making a report of information under this section must verify the identity of the person from whom the reportable currency is received. Verification of the identity of a person who purports to be an alien must be made by examination of such person’s passport, alien identification card, or other official document evidencing nationality or residence. Verification of the identity of any other person may be made by examination of a document normally acceptable as a means of identification when cashing or accepting checks (for example, a driver’s license or a credit card). In addition, a report will be considered incomplete if the person required to make a report knows (or has reason to know) that an agent is conducting the transaction for a principal, and the return does not identify both the principal and the agent.

(3) Retention of reports. A person required to make a report under this section must keep a copy of each report filed for five years from the date of filing.

31 C.F.R. § 103.33. Records to be made and retained by financial institutions.

*To be used for violations occurring before
March 1, 2011.*

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(a) A record of each extension of credit in an amount in excess of \$10,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;

(b) A record of each advice, request, or instruction received or given regarding any transaction resulting (or intended to result and later canceled if such a record is normally made) in the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit, of more than \$10,000 to or from any person, account, or place outside the United States.

(c) A record of each advice, request, or instruction given to another financial institution or other person located within or without the United States, regarding a transaction intended to result in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than \$10,000 to a person, account or place outside the United States.

(d) A record of such information for such period of time as the Secretary may require in an order issued under Sec. 103.26(a), not to exceed five years.

(e) Banks. Each agent, agency, branch, or office located within the United States of a bank is subject to the requirements of this paragraph (e) with respect to a funds transfer in the amount of \$3,000 or more:

(1) Recordkeeping requirements.

(i) For each payment order that it accepts as an originator’s bank, a bank shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the payment order:

(A) The name and address of the originator;

(B) The amount of the payment order;

(C) The execution date of the payment order;

(D) Any payment instructions received from the originator with the payment order;

(E) The identity of the beneficiary’s bank; and

(F) As many of the following items as are received with the payment order:¹

(1) The name and address of the beneficiary;

(2) The account number of the beneficiary; and

(3) Any other specific identifier of the beneficiary.

(ii) For each payment order that it accepts as an intermediary bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(iii) For each payment order that it accepts as a beneficiary’s bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(2) Originators other than established customers. In the case of a payment order from an originator that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(i) of this section:

¹ For funds transfers effected through the Federal Reserve’s Fedwire funds transfer system, only one of the items is required to be retained, if received with the payment order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

(i) If the payment order is made in person, prior to acceptance the originator's bank shall verify the identity of the person placing the payment order. If it accepts the payment order, the originator's bank shall obtain and retain a record of the name and address, the type of identification reviewed, the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(ii) If the payment order accepted by the originator's bank is not made in person, the originator's bank shall obtain and retain a record of name and address of the person placing the payment order, as well as the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (e.g., check or credit card transaction) for the funds transfer. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(3) Beneficiaries other than established customers. For each payment order that it accepts as a beneficiary's bank for a beneficiary that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(iii) of this section:

(i) if the proceeds are delivered in person to the beneficiary or its representative or agent, the beneficiary's bank shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a

notation in the record of the lack thereof. If the beneficiary's bank has knowledge that the person receiving the proceeds is not the beneficiary, the beneficiary's bank shall obtain and retain a record of the beneficiary's name and address, as well as the beneficiary's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) if the proceeds are delivered other than in person, the beneficiary's bank shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) Retrievability. The information that an originator's bank must retain under paragraphs (e)(1)(i) and (e)(2) of this section shall be retrievable by the originator's bank by reference to the name of the originator. If the originator is an established customer of the originator's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. The information that a beneficiary's bank must retain under paragraphs (e)(1)(iii) and (e)(3) of this section shall be retrievable by the beneficiary's bank by reference to the name of the beneficiary. If the beneficiary is an established customer of the beneficiary's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the bank is able to retrieve the information required by this paragraph, either by accessing funds transfer records directly or through reference to some other record maintained by the bank.

(5) Verification. Where verification is required under paragraphs (e)(2) and (e)(3) of this section, a bank shall verify a person's identity by examination of a document (other than a bank signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (e.g., a foreign driver's license with indication of home address).

(6) Exceptions. The following funds transfers are not subject to the requirements of this section:

(i) Funds transfers where the originator and beneficiary are any of the following:

(A) A bank;

(B) A wholly-owned domestic subsidiary of a bank chartered in the United States;

(C) A broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a broker or dealer in securities;

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

(G) The United States;

(H) A state or local government; or

(I) A federal, state or local government agency or instrumentality; and

(ii) Funds transfers where both the originator and the beneficiary are the same person and the originator's bank and the beneficiary's bank are the same bank.

(f) Nonbank financial institutions. Each agent, agency, branch, or office located within the United States of a financial institution other than a bank is subject to the requirements of this paragraph (f) with respect to a transmittal of funds in the amount of \$3,000 or more:

(1) Recordkeeping requirements.

(i) For each transmittal order that it accepts as a transmitter's financial institution, a financial institution shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the transmittal order:

(A) The name and address of the transmitter;

(B) The amount of the transmittal order;

(C) The execution date of the transmittal order;

(D) Any payment instructions received from the transmitter with the transmittal order;

(E) The identity of the recipient's financial institution;

(F) As many of the following items as are received with the transmittal order:²

(1) The name and address of the recipient;

(2) The account number of the recipient; and

(3) Any other specific identifier of the recipient; and

(G) Any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.

(ii) For each transmittal order that it accepts as an intermediary financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(iii) For each transmittal order that it accepts as a recipient's financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(2) Transmitters other than established customers. In the case of a transmittal order from a transmitter that is not an established customer, in addition to obtaining and retaining the information required in paragraph (f)(1)(i) of this section:

(i) If the transmittal order is made in person, prior to acceptance the transmitter's financial institution shall verify the identity of the person placing the transmittal order. If it accepts the transmittal order, the transmitter's financial institution shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record the lack thereof. If the transmitter's financial institution has knowledge that the person placing the transmittal order is not the transmitter, the transmitter's financial institution shall obtain and retain a record of the transmitter's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record the lack thereof.

(ii) If the transmittal order accepted by the transmitter's financial institution is not made in person, the transmitter's financial institution shall obtain and retain a record of the name and address of the person placing the transmittal order, as well as the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (e.g., check or credit card transaction) for the transmittal of funds. If the transmitter's financial institution has knowledge that the person placing the transmittal order is not the transmitter, the transmitter's financial institution shall obtain and retain a record of the transmitter's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record the lack thereof.

² For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a domestic broker or dealers in securities, only one of the items is required to be retained, if received with the transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

(3) Recipients other than established customers. For each transmittal order that it accepts as a recipient's financial institution for a recipient that is not an established customer, in addition to obtaining and retaining the information required in paragraph (f)(1)(iii) of this section:

(i) If the proceeds are delivered in person to the recipient or its representative or agent, the recipient's financial institution shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the recipient's financial institution has knowledge that the person receiving the proceeds is not the recipient, the recipient's financial institution shall obtain and retain a record of the recipient's name and address, as well as the recipient's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) If the proceeds are delivered other than in person, the recipient's financial institution shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) Retrievability. The information that a transmitter's financial institution must retain under paragraphs (f)(1)(i) and (f)(2) of this section shall be retrievable by the transmitter's financial institution by reference to the name of the transmitter. If the transmitter is an established customer of the transmitter's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. The information that a recipient's financial institution must retain under paragraphs (f)(1)(iii) and (f)(3) of this section shall be retrievable by the recipient's financial institution by reference to the name of the recipient. If the recipient is an established customer of the recipient's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the financial institution is able to retrieve the information required by this paragraph, either by accessing transmittal of funds records directly or through reference to some other record maintained by the financial institution.

(5) Verification. Where verification is required under paragraphs (f)(2) and (f)(3) of this section, a financial institution shall verify a person's identity by examination of a

document (other than a customer signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (e.g., a foreign driver's license with indication of home address).

(6) Exceptions. The following transmittals of funds are not subject to the requirements of this section:

(i) Transmittals of funds where the transmitter and the recipient are any of the following:

(A) A bank;

(B) A wholly-owned domestic subsidiary of a bank chartered in the United States;

(C) A broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a broker or dealer in securities;

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

(G) The United States;

(H) A state or local government; or

(I) A federal, state or local government agency or instrumentality; and

(ii) Transmittals of funds where both the transmitter and the recipient are the same person and the transmitter's financial institution and the recipient's financial institution are the same broker or dealer in securities.

(g) Any transmitter's financial institution or intermediary financial institution located within the United States shall include in any transmittal order for a transmittal of funds in the amount of \$3,000 or more, information as required in this paragraph (g):

(1) A transmitter's financial institution shall include in a transmittal order, at the time it is sent to a receiving financial institution, the following information:

(i) The name and, if the payment is ordered from an account, the account number of the transmitter;

(ii) The address of the transmitter, except for a transmittal order through Fedwire until such time as the

bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

- (iii) The amount of the transmittal order;
- (iv) The execution date of the transmittal order;
- (v) The identity of the recipient's financial institution;
- (vi) As many of the following items as are received with the transmittal order:³
 - (A) The name and address of the recipient;
 - (B) The account number of the recipient;
 - (C) Any other specific identifier of the recipient; and
- (vii) Either the name and address or numerical identifier of the transmitter's financial institution.

(2) A receiving financial institution that acts as an intermediary financial institution, if it accepts a transmittal order, shall include in a corresponding transmittal order at the time it is sent to the next receiving financial institution, the following information, if received from the sender:

- (i) The name and the account number of the transmitter;
- (ii) The address of the transmitter, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;
- (iii) The amount of the transmittal order;
- (iv) The execution date of the transmittal order;
- (v) The identity of the recipient's financial institution;
- (vi) As many of the following items as are received with the transmittal order:⁴
 - (A) The name and address of the recipient;
 - (B) The account number of the recipient;
 - (C) Any other specific identifier of the recipient; and
- (vii) Either the name and address or numerical identifier of the transmitter's financial institution.

³ For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

⁴ For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

(3) Safe harbor for transmittals of funds prior to conversion to the expanded Fedwire message format. The following provisions apply to transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system or otherwise by a financial institution before the bank that sends the order to the Federal Reserve Bank or otherwise completes its conversion to the expanded Fedwire message format.

(i) Transmitter's financial institution. A transmitter's financial institution will be deemed to be in compliance with the provisions of paragraph (g)(1) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (g)(1)(iii) through (v), and the information specified in paragraph (g)(1)(vi) of this section to the extent that such information has been received by the financial institution, and

(B) Provides the information specified in paragraphs (g)(1)(i), (ii) and (vii) of this section to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a federal, state, or local law enforcement or financial regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(ii) Intermediary financial institution. An intermediary financial institution will be deemed to be in compliance with the provisions of paragraph (g)(2) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (g)(2)(iii) through (g)(2)(vi) of this section, to the extent that such information has been received by the intermediary financial institution; and

(B) Provides the information specified in paragraphs (g)(2)(i), (ii) and (vii) of this section, to the extent that such information has been received by the intermediary financial institution, to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a federal, state, or local law enforcement or regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(iii) Obligation of requesting financial institution. Any information requested under paragraph (g)(3)(i)(B) or

(g)(3)(ii)(B) of this section shall be treated by the requesting institution, once received, as if it had been included in the transmittal order to which such information relates.

(4) Exceptions. The requirements of this paragraph (g) shall not apply to transmittals of funds that are listed in paragraph (e)(6) or (f)(6) of this section.

31 C.F.R. § 103.41. Registration of money services businesses.

To be used for violations occurring before March 1, 2011.

(a) Registration requirement—

(1) In general. Except as provided in paragraph (a)(2) of this section, relating to agents, each money services business (whether or not licensed as a money services business by any State) must register with the Department of the Treasury and, as part of that registration, maintain a list of its agents as required by 31 U.S.C. 5330 and this section. This section does not apply to the United States Postal Service, to agencies of the United States, of any State, or of any political subdivision of a State, or to a person to the extent that the person is an issuer, seller, or redeemer of stored value.

(2) Agents. A person that is a money services business solely because that person serves as an agent of another money services business, see Sec. 103.11(uu), is not required to register under this section, but a money services business that engages in activities described in Sec. 103.11(uu) both on its own behalf and as an agent for others must register under this section. For example, a supermarket corporation that acts as an agent for an issuer of money orders and performs no other services of a nature and value that would cause the corporation to be a money services business, is not required to register; the answer would be the same if the supermarket corporation served as an agent both of a money order issuer and of a money transmitter. However, registration would be required if the supermarket corporation, in addition to acting as an agent of an issuer of money orders, cashed checks or exchanged currencies (other than as an agent for another business) in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day, in one or more transactions.

(3) Agency status. The determination whether a person is an agent depends on all the facts and circumstances.

(b) Registration procedures—

(1) In general.

(i) A money services business must be registered by filing such form as FinCEN may specify with the Detroit Computing Center of the Internal Revenue Service (or such other location as the form may specify). The information

required by 31 U.S.C. 5330(b) and any other information required by the form must be reported in the manner and to the extent required by the form.

(ii) A branch office of a money services business is not required to file its own registration form. A money services business must, however, report information about its branch locations or offices as provided by the instructions to the registration form.

(iii) A money services business must retain a copy of any registration form filed under this section and any registration number that may be assigned to the business at a location in the United States and for the period specified in Sec. 103.38(d).

(2) Registration period. A money services business must be registered for the initial registration period and each renewal period. The initial registration period is the two-calendar-year period beginning with the calendar year in which the money services business is first required to be registered. However, the initial registration period for a money services business required to register by December 31, 2001 (see paragraph (b)(3) of this section) is the two-calendar year period beginning 2002. Each two-calendar-year period following the initial registration period is a renewal period.

(3) Due date. The registration form for the initial registration period must be filed on or before the later of December 31, 2001, and the end of the 180-day period beginning on the day following the date the business is established. The registration form for a renewal period must be filed on or before the last day of the calendar year preceding the renewal period.

(4) Events requiring re-registration. If a money services business registered as such under the laws of any State experiences a change in ownership or control that requires the business to be re-registered under State law, the money services business must also be re-registered under this section. In addition, if there is a transfer of more than 10 percent of the voting power or equity interests of a money services business (other than a money services business that must report such transfer to the Securities and Exchange Commission), the money services business must be re-registered under this section. Finally, if a money services business experiences a more than 50 percent increase in the number of its agents during any registration period, the money services business must be re-registered under this section. The registration form must be filed not later than 180 days after such change in ownership, transfer of voting power or equity interests, or increase in agents. The calendar year in which the change, transfer, or increase occurs is treated as the first year of a new two-year registration period.

(c) Persons required to file the registration form. Under 31 U.S.C. 5330(a), any person who owns or controls a money services business is responsible for registering the business; however, only one registration form is required to be filed for each registration period. A person is treated as owning or

controlling a money services business for purposes of filing the registration form only to the extent provided by the form. If more than one person owns or controls a money services business, the owning or controlling persons may enter into an agreement designating one of them to register the business. The failure of the designated person to register the money services business does not, however, relieve any of the other persons who own or control the business of liability for the failure to register the business. See paragraph (e) of this section, relating to consequences of the failure to comply with 31 U.S.C. 5330 or this section.

(d) List of agents—

(1) In general. A money services business must prepare and maintain a list of its agents. The initial list of agents must be prepared by January 1, 2002, and must be revised each January 1, for the immediately preceding 12 month period; for money services businesses established after December 31, 2001, the initial agent list must be prepared by the due date of the initial registration form and must be revised each January 1 for the immediately preceding 12-month period. The list is not filed with the registration form but must be maintained at the location in the United States reported on the registration form under paragraph (b)(1) of this section. Upon request, a money services business must make its list of agents available to FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). Requests for information made pursuant to the preceding sentence shall be coordinated through FinCEN in the manner and to the extent determined by FinCEN. The original list of agents and any revised list must be retained for the period specified in Sec. 103.38(d).

(2) Information included on the list of agents—

(i) In general. Except as provided in paragraph (d)(2)(ii) of this section, a money services business must include the following information with respect to each agent on the list (including any revised list) of its agents—

(A) The name of the agent, including any trade names or doing-business-as names;

(B) The address of the agent, including street address, city, state, and ZIP code;

(C) The telephone number of the agent;

(D) The type of service or services (money orders, traveler's checks, check sales, check cashing, currency exchange, and money transmitting) the agent provides;

(E) A listing of the months in the 12 months immediately preceding the date of the most recent agent list in which the gross transaction amount of the agent with respect to financial products or services issued

by the money services business maintaining the agent list exceeded \$100,000. For this purpose, the money services gross transaction amount is the agent's gross amount (excluding fees and commissions) received from transactions of one or more businesses described in Sec. 103.11(uu);

(F) The name and address of any depository institution at which the agent maintains a transaction account (as defined in 12 U.S.C. 461(b)(1)(C)) for all or part of the funds received in or for the financial products or services issued by the money services business maintaining the list, whether in the agent's or the business principal's name;

(G) The year in which the agent first became an agent of the money services business; and

(H) The number of branches or subagents the agent has.

(ii) Special rules. Information about agent volume must be current within 45 days of the due date of the agent list. The information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is not required to be included in an agent list with respect to any person that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000 so long as the information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is made available upon the request of FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority).

(e) Consequences of failing to comply with 31 U.S.C. 5330 or the regulations thereunder. It is unlawful to do business without complying with 31 U.S.C. 5330 and this section. A failure to comply with the requirements of 31 U.S.C. 5330 or this section includes the filing of false or materially incomplete information in connection with the registration of a money services business. Any person who fails to comply with any requirement of 31 U.S.C. 5330 or this section shall be liable for a civil penalty of \$5,000 for each violation. Each day a violation of 31 U.S.C. 5330 or this section continues constitutes a separate violation. In addition, under 31 U.S.C. 5320, the Secretary of the Treasury may bring a civil action to enjoin the violation. See 18 U.S.C. 1960 for a criminal penalty for failure to comply with the registration requirements of 31 U.S.C. 5330 or this section.

(f) Effective date. This section is effective September 20, 1999. Registration of money services businesses under this section will not be required prior to December 31, 2001.

31 C.F.R. § 103.121. Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

To be used for violations occurring before March 1, 2011.

(a) Definitions. For purposes of this section:

(1)(i) Account means a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. Account also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services.

(ii) Account does not include:

(A) A product or service where a formal banking relationship is not established with a person, such as check-cashing, wire transfer, or sale of a check or money order;

(B) An account that the bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities; or

(C) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) Bank means:

(i) A bank, as that term is defined in Sec. 103.11(c), that is subject to regulation by a Federal functional regulator; and

(ii) A credit union, private bank, and trust company, as set forth in Sec. 103.11(c), that does not have a Federal functional regulator.

(3)(i) Customer means:

(A) A person that opens a new account; and

(B) An individual who opens a new account for:

(1) An individual who lacks legal capacity, such as a minor; or

(2) An entity that is not a legal person, such as a civic club.

(ii) Customer does not include:

(A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in Sec. 103.22(d)(2)(ii) through (iv); or

(C) A person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.

(4) Federal functional regulator is defined at Sec. 103.120(a)(2).

(5) Financial institution is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(6) Taxpayer identification number is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (e.g., social security number or employer identification number).

(7) U.S. person means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership, or trust), that is established or organized under the laws of a State or the United States.

(8) Non-U.S. person means a person that is not a U.S. person.

(b) Customer Identification Program: minimum requirements—

(1) In general. A bank must implement a written Customer Identification Program (CIP) appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (5) of this section. If a bank is required to have an anti-money laundering compliance program under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), or 12 U.S.C. 1786(q)(1), then the CIP must be a part of the anti-money laundering compliance program. Until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

(2) Identity verification procedures. The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer. These procedures must be based on the bank's assessment of the relevant risks, including those presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank's size, location, and customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i) Customer information required—

(A) In general. The CIP must contain procedures for opening an account that specify the identifying information that will be obtained from each customer. Except as permitted by paragraphs (b)(2)(i)(B) and (C) of this section, the bank must obtain, at a minimum, the following information from the customer prior to opening an account:

- (1) Name;
- (2) Date of birth, for an individual;
- (3) Address, which shall be:
 - (i) For an individual, a residential or business street address;
 - (ii) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or
 - (iii) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office, or other physical location; and
- (4) Identification number, which shall be:
 - (i) For a U.S. person, a taxpayer identification number; or
 - (ii) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to paragraph (b)(2)(i)(A)(4)(ii): When opening an account for a foreign business or enterprise that does not have an identification number, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) Exception for persons applying for a taxpayer identification number. Instead of obtaining a taxpayer identification number from a customer prior to opening the account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens

the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(C) Credit card accounts. In connection with a customer who opens a credit card account, a bank may obtain the identifying information about a customer required under paragraph (b)(2)(i)(A) by acquiring it from a third-party source prior to extending credit to the customer.

(ii) Customer verification. The CIP must contain procedures for verifying the identity of the customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (b)(2)(ii).

(A) Verification through documents. For a bank relying on documents, the CIP must contain procedures that set forth the documents that the bank will use. These documents may include:

- (1) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and
- (2) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) Verification through non-documentary methods. For a bank relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

(1) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(2) The bank's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens

the account without appearing in person at the bank; and where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents.

(C) Additional verification for certain customers. The CIP must address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This verification method applies only when the bank cannot verify the customer's true identity using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) Lack of verification. The CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the bank should not open an account;

(B) The terms under which a customer may use an account while the bank attempts to verify the customer's identity;

(C) When the bank should close an account, after attempts to verify a customer's identity have failed; and

(D) When the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) Recordkeeping. The CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (b) of this section.

(i) Required records. At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance and, if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (b)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) Retention of records. The bank must retain the information in paragraph (b)(3)(i)(A) of this section for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. The bank must retain the information in paragraphs (b)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) Comparison with government lists. The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the bank to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the bank to follow all Federal directives issued in connection with such lists.

(5)(i) Customer notice. The CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities.

(ii) Adequate notice. Notice is adequate if the bank generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a bank may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of written or oral notice.

(iii) Sample notice. If appropriate, a bank may use the following sample language to provide notice to its customers:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) Reliance on another financial institution. The CIP may include procedures specifying when a bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP, with respect

to any customer of the bank that is opening, or has opened, an account or has established a similar formal banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

(c) Exemptions. The appropriate Federal functional regulator, with the concurrence of the Secretary, may, by order or regulation, exempt any bank or type of account from the requirements of this section. The Federal functional regulator and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and with safe and sound banking, and may consider other appropriate factors. The Secretary will make these determinations for any bank or type of account that is not subject to the authority of a Federal functional regulator.

(d) Other requirements unaffected. Nothing in this section relieves a bank of its obligation to comply with any other provision in this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

31 C.F.R. § 103.125. Anti-money laundering programs for money services businesses.

To be used for violations occurring before March 1, 2011.

(a) Each money services business, as defined by Sec. 103.11(u), shall develop, implement, and maintain an effective anti-money laundering program. An effective anti-money laundering program is one that is reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities.

(b) The program shall be commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the money services business.

(c) The program shall be in writing, and a money services business shall make copies of the anti-money laundering program available for inspection to the Department of the Treasury upon request.

(d) At a minimum, the program shall:

(1) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with this part.

(i) Policies, procedures, and internal controls developed and implemented under this section shall include provisions for complying with the requirements of this part including, to the extent applicable to the money services business, requirements for:

(A) Verifying customer identification;

(B) Filing reports;

(C) Creating and retaining records; and

(D) Responding to law enforcement requests.

(ii) Money services businesses that have automated data processing systems should integrate their compliance procedures with such systems.

(iii) A person that is a money services business solely because it is an agent for another money services business as set forth in Sec. 103.41(a)(2), and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of policies, procedures, and internal controls required by this paragraph (d)(1). Each money services business shall remain solely responsible for implementation of the requirements set forth in this section, and nothing in this paragraph (d)(1) relieves any money services business from its obligation to establish and maintain an effective anti-money laundering program.

(2) Designate a person to assure day to day compliance with the program and this part. The responsibilities of such person shall include assuring that:

(i) The money services business properly files reports, and creates and retains records, in accordance with applicable requirements of this part;

(ii) The compliance program is updated as necessary to reflect current requirements of this part, and related guidance issued by the Department of the Treasury; and

(iii) The money services business provides appropriate training and education in accordance with paragraph (d)(3) of this section.

(3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the money services business is required to report such transactions under this part.

(4) Provide for independent review to monitor and maintain an adequate program. The scope and frequency of the review shall be commensurate with the risk of the financial services provided by the money services business. Such review may be conducted by an officer or employee of the money services

business so long as the reviewer is not the person designated in paragraph (d)(2) of this section.

(e) Effective date. A money services business must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the later of July 24, 2002, and the end of the 90-day period beginning on the day following the date the business is established.

31 C.F.R. § 103.176. Due diligence programs for correspondent accounts for foreign financial institutions.

(a) In general. A covered financial institution shall establish a due diligence program that includes appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures, and controls that are reasonably designed to enable the covered financial institution to detect and report, on an ongoing basis, any known or suspected money laundering activity conducted through or involving any correspondent account established, maintained, administered, or managed by such covered financial institution in the United States for a foreign financial institution. The due diligence program required by this section shall be a part of the anti-money laundering program otherwise required by this subpart. Such policies, procedures, and controls shall include:

(1) Determining whether any such correspondent account is subject to paragraph (b) of this section;

(2) Assessing the money laundering risk presented by such correspondent account, based on a consideration of all relevant factors, which shall include, as appropriate:

(i) The nature of the foreign financial institution's business and the markets it serves;

(ii) The type, purpose, and anticipated activity of such correspondent account;

(iii) The nature and duration of the covered financial institution's relationship with the foreign financial institution (and any of its affiliates);

(iv) The anti-money laundering and supervisory regime of the jurisdiction that issued the charter or license to the foreign financial institution, and, to the extent that information regarding such jurisdiction is reasonably available, of the jurisdiction in which any company that is an owner of the foreign financial institution is incorporated or chartered; and

(v) Information known or reasonably available to the covered financial institution about the foreign financial institution's anti-money laundering record; and

(3) Applying risk-based procedures and controls to each such correspondent account reasonably designed to detect and report known or suspected money laundering activity, including a

periodic review of the correspondent account activity sufficient to determine consistency with information obtained about the type, purpose, and anticipated activity of the account.

(b) Enhanced due diligence for certain foreign banks. In the case of a correspondent account established, maintained, administered, or managed in the United States for a foreign bank described in paragraph (c) of this section, the due diligence program required by paragraph (a) of this section shall include enhanced due diligence procedures designed to ensure that the covered financial institution, at a minimum, takes reasonable steps to:

(1) Conduct enhanced scrutiny of such correspondent account to guard against money laundering and to identify and report any suspicious transactions in accordance with applicable law and regulation. This enhanced scrutiny shall reflect the risk assessment of the account and shall include, as appropriate:

(i) Obtaining and considering information relating to the foreign bank's anti-money laundering program to assess the risk of money laundering presented by the foreign bank's correspondent account;

(ii) Monitoring transactions to, from, or through the correspondent account in a manner reasonably designed to detect money laundering and suspicious activity; and

(iii)(A) Obtaining information from the foreign bank about the identity of any person with authority to direct transactions through any correspondent account that is a payable-through account, and the sources and beneficial owner of funds or other assets in the payable-through account.

(B) For purposes of paragraph (b)(1)(iii)(A) of this section, a payable-through account means a correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

(2) Determine whether the foreign bank for which the correspondent account is established or maintained in turn maintains correspondent accounts for other foreign banks that use the foreign correspondent account established or maintained by the covered financial institution and, if so, take reasonable steps to obtain information relevant to assess and mitigate money laundering risks associated with the foreign bank's correspondent accounts for other foreign banks, including, as appropriate, the identity of those foreign banks.

(3)(i) Determine, for any correspondent account established or maintained for a foreign bank whose shares are not publicly traded, the identity of each owner of the foreign bank and the nature and extent of each owner's ownership interest.

(ii) For purposes of paragraph (b)(3)(i) of this section:

(A) Owner means any person who directly or indirectly owns, controls, or has the power to vote 10 percent or more of any class of securities of a foreign bank. For purposes of this paragraph (b)(3)(ii)(A):

(1) Members of the same family shall be considered to be one person; and

(2) Same family has the meaning provided in Sec. 103.175(l)(2)(ii).

(B) Publicly traded means shares that are traded on an exchange or an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

(c) Foreign banks to be accorded enhanced due diligence. The due diligence procedures described in paragraph (b) of this section are required for any correspondent account maintained for a foreign bank that operates under:

(1) An offshore banking license;

(2) A banking license issued by a foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative to the group or organization concurs; or

(3) A banking license issued by a foreign country that has been designated by the Secretary as warranting special measures due to money laundering concerns.

(d) Special procedures when due diligence or enhanced due diligence cannot be performed. The due diligence program required by paragraphs (a) and (b) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence or enhanced due diligence with respect to a correspondent account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

(e) Applicability rules for general due diligence. The provisions of paragraph (a) of this section apply to covered financial institutions as follows:

(1) General rules—

(i) Correspondent accounts established on or after July 5, 2006. Effective July 5, 2006, the requirements of paragraph (a) of this section shall apply to each correspondent account established on or after that date.

(ii) Correspondent accounts established before July 5, 2006. Effective October 2, 2006, the requirements

of paragraph (a) of this section shall apply to each correspondent account established before July 5, 2006.

(2) Special rules for certain banks. Until the requirements of paragraph (a) of this section become applicable as set forth in paragraph (e)(1) of this section, the due diligence requirements of 31 U.S.C. 5318(i)(1) shall continue to apply to any covered financial institution listed in Sec. 103.175(f)(1)(i) through (vi).

(3) Special rules for all other covered financial institutions. The due diligence requirements of 31 U.S.C. 5318(i)(1) shall not apply to a covered financial institution listed in Sec. 103.175(f)(1)(vii) through (x) until the requirements of paragraph (a) of this section become applicable as set forth in paragraph (e)(1) of this section.

(f) Applicability rules for enhanced due diligence. The provisions of paragraph (b) of this section apply to covered financial institutions as follows:

(1) General rules—

(i) Correspondent accounts established on or after February 5, 2008. Effective February 5, 2008, the requirements of paragraph (b) of this section shall apply to each correspondent account established on or after such date.

(ii) Correspondent accounts established before February 5, 2008. Effective May 5, 2008, the requirements of paragraph (b) of this section shall apply to each correspondent account established before February 5, 2008.

(2) Special rules for certain banks. Until the requirements of paragraph (b) of this section become applicable as set forth in paragraph (f)(1) of this section, the enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall continue to apply to any covered financial institutions listed in Sec. 103.175(f)(1)(i) through (vi).

(3) Special rules for all other covered financial institutions. The enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall not apply to a covered financial institution listed in Sec. 103.175(f)(1)(vii) through (x) until the requirements of paragraph (b) of this section become applicable, as set forth in paragraph (f)(1) of this section.

(g) Exemptions—

(1) Exempt financial institutions. Except as provided in this section, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1), or Sec. 103.11(n) is exempt from the requirements of 31 U.S.C. 5318(i)(1) and (i)(2) pertaining to correspondent accounts.

(2) Other compliance obligations of financial institutions unaffected. Nothing in paragraph (g) of this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31, United States Code, and this part.

31 C.F.R. § 103.178. Due diligence programs for private banking accounts.

To be used for violations occurring before March 1, 2011.

(a) In general. A covered financial institution shall maintain a due diligence program that includes policies, procedures, and controls that are reasonably designed to detect and report any known or suspected money laundering or suspicious activity conducted through or involving any private banking account that is established, maintained, administered, or managed in the United States by such financial institution. The due diligence program required by this section shall be a part of the anti-money laundering program otherwise required by this subpart.

(b) Minimum requirements. The due diligence program required by paragraph (a) of this section shall be designed to ensure, at a minimum, that the financial institution takes reasonable steps to:

(1) Ascertain the identity of all nominal and beneficial owners of a private banking account;

(2) Ascertain whether any person identified under paragraph (b)(1) of this section is a senior foreign political figure;

(3) Ascertain the source(s) of funds deposited into a private banking account and the purpose and expected use of the account; and

(4) Review the activity of the account to ensure that it is consistent with the information obtained about the client's source of funds, and with the stated purpose and expected use of the account, as needed to guard against money laundering, and to report, in accordance with applicable law and regulation, any known or suspected money laundering or suspicious activity conducted to, from, or through a private banking account.

(c) Special requirements for senior foreign political figures.

(1) In the case of a private banking account for which a senior foreign political figure is a nominal or beneficial owner, the due diligence program required by paragraph (a) of this section shall include enhanced scrutiny of such account that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

(2) For purposes of this paragraph (c), the term proceeds of foreign corruption means any asset or property that is acquired by, through, or on behalf of a senior foreign political figure through misappropriation, theft, or embezzlement of public funds, the unlawful conversion of property of a foreign government, or through acts of bribery or extortion, and shall include any other property into which any such assets have been transformed or converted.

(d) Special procedures when due diligence cannot be performed. The due diligence program required by paragraph (a) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence with respect to a private banking account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

(e) Applicability rules. The provisions of this section apply to covered financial institutions as follows:

(1) General rules—

(i) Private banking accounts established on or after July 5, 2006. Effective July 5, 2006, the requirements of this section shall apply to each private banking account established on or after such date.

(ii) Private banking accounts established before July 5, 2006. Effective October 2, 2006, the requirements of this section shall apply to each private banking account established before July 5, 2006.

(2) Special rules for certain banks and for brokers or dealers in securities, futures commission merchants, and introducing brokers. Until the requirements of this section become applicable as set forth in paragraph (e)(1) of this section, the requirements of 31 U.S.C. 5318(i)(3) shall continue to apply to a covered financial institution listed in Sec. 103.175(f)(1)(i) through (vi), (viii), or (ix).

(3) Special rules for federally regulated trust banks or trust companies, and mutual funds. Until the requirements of this section become applicable as set forth in paragraph (e)(1) of this section, the requirements of 31 U.S.C. 5318(i)(3) shall not apply to a covered financial institution listed in Sec. 103.175(f)(1)(vii), or (x).

(4) Exemptions—

(i) Exempt financial institutions. Except as provided in this section, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1) or Sec. 103.11(n) is exempt from the requirements of 31 U.S.C. 5318(i)(3) pertaining to private banking accounts.

(ii) Other compliance obligations of financial institutions unaffected. Nothing in paragraph (e)(4) of this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31, United States Code, and this part.

Appendix A—Specified Unlawful Activity (SUAs) that apply to money laundering

The following Table lists all of those violations of federal and state or foreign law identified as “specified unlawful activity” under 18 U.S.C. § 1956(c)(7):

SPECIFIED UNLAWFUL ACTIVITY¹

18 U.S.C. § 1956 and § 1957
[Money Laundering Control Act of 1986 as amended]

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
7	2024	Food Stamp Program (felony violations involving a quantity of coupons having a value of not less than \$5,000)	1956(c)(7)(D)	10/28/94
8	1324	Immigration and Nationality (bringing in and harboring certain aliens)	1961(1)(F)	4/24/96
8	1327	Immigration and Nationality (aiding or assisting certain aliens to enter)	1961(1)(F)	4/24/96
8	1328	Immigration and Nationality (importation of alien for immoral purpose)	1961(1)(F)	4/24/96
11	101 et seq.	Bankruptcy (any offense involving fraud connected with a case under Title 11 including 18 U.S.C. §§ 153-156)	1961(1)(D)	10/27/86
15	78m 78dd-1 78dd-2 78ff	Foreign Corrupt Practices Act (felony violations of the Foreign Corrupt Practices Act)	1956(c)(7)(D)	10/28/92
18	32	Aircraft and Motor Vehicles (destruction of aircraft or aircraft facilities)	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
18	37	Aircraft and Motor Vehicles (violence at international airports)	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
18	81	Arson (arson within special maritime and territorial jurisdiction)	1961(1)(G)	10/26/01
18	115	Assault (influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member)	1956(c)(7)(D)	4/24/96

¹ Also included, but not listed in the chart above, are any offenses involving fraud in the sale of securities (18 U.S.C. § 1961(1)(D)).

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
18	152	Bankruptcy (concealment of assets; false oaths and claims; bribery)	1956(c)(7)(D)	10/27/86
18	175 175b	Biological Weapons (prohibitions with respect to biological weapons)	1956(1)(G) 1956(1)(B)	10/26/01 12/17/04
18	175c	Biological Weapons (variola virus)	1956(c)(7)(D) 1961(1)(B) 1961(1)(G)	12/17/04 12/17/04 12/17/04
18	201	Bribery, Graft and Conflicts of Interest (bribery of public officials and witnesses)	1961(1)(B)	10/27/86
18	215	Bribery, Graft and Conflicts of Interest (receipt of commissions or gifts for procuring loans)	1956(c)(7)(D)	10/27/86
18	224	Bribery, Graft and Conflicts of Interest (bribery in sporting contests)	1961(1)(B)	10/27/86
18	229	Chemical Weapons (prohibitions with respect to chemical weapons)	1956(1)(G) 1956(1)(B)	10/26/01 12/17/04
18	287	False, Fictitious, or Fraudulent Claims Involving Health Care Programs	1956(c)(7)(F); See: 24(a)(2)	8/21/96
18	351(a), (b), (c), or (d)	Congressional, Cabinet, and Supreme Court Assassination, Kidnapping, and Assault (Congressional, Cabinet, and Supreme Court assassination and assault; penalties)	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
18	371	Conspiracy to Commit Offense or to Defraud Involving Health Care Programs	1956(c)(7)(F); See: 24(a)(2)	8/21/96
18	471	Counterfeiting and Forgery (obligations or securities of the United States)	1961(1)(B)	10/27/86
18	472	Counterfeiting and Forgery (uttering counterfeit obligations or securities)	1961(1)(B)	10/27/86
18	473	Counterfeiting and Forgery (dealing in counterfeit obligations or securities)	1961(1)(B)	10/27/86
18	500	Counterfeiting and Forgery (money orders)	1956(c)(7)(D)	10/27/86
18	501	Counterfeiting and Forgery (postage stamps, postage meter stamps, and postal cards)	1956(c)(7)(D)	10/27/86

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
18	502	Counterfeiting and Forgery (postage and revenue stamps of foreign governments)	1956(c)(7)(D)	10/27/86
18	503	Counterfeiting and Forgery (postmarking stamps)	1956(c)(7)(D)	10/27/86
18	513	Counterfeiting and Forgery (securities of the States and private entities)	1956(c)(7)(D)	10/27/86
18	541	Customs (goods falsely classified)	1956(c)(7)(D)	10/26/01
18	542	Customs (entry of goods by means of false statements)	1965(c)(7)(D)	11/18/88
18	545	Customs (smuggling goods into the United States)	1956(c)(7)(D)	10/27/86
18	549	Customs (removing goods from Customs' custody, breaking seals)	1956(c)(7)(D)	11/18/88
18	554	Customs (smuggling goods from the United States)	1956(c)(7)(D)	3/9/06
18	555	Customs (border tunnels and passages)	1956(c)(7)(D)	5/20/09
18	641	Embezzlement and Theft (public money, property or records)	1956(c)(7)(D)	10/27/86
18	656	Embezzlement and Theft (theft, embezzlement, or misapplication by bank officer or employee)	1956(c)(7)(D)	10/27/86
18	657	Embezzlement and Theft (lending, credit, and insurance institutions)	1956(c)(7)(D)	11/18/88
18	658	Embezzlement and Theft (property mortgaged or pledged to farm credit agencies)	1956(c)(7)(D)	11/18/88
18	659	Embezzlement and Theft (felonious theft from interstate shipment)	1961(1)(B)	10/27/86
18	664	Embezzlement and Theft (theft or embezzlement from pension and welfare funds) - and - Involving a Health Care Offense	1961(1)(B) 1956(c)(7)(F); See: 24(a)(2)	10/27/89 8/21/96

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
18	666	Embezzlement and Theft (theft or bribery concerning programs receiving Federal funds) - and - Involving a Health Care Offense	1956(c)(7)(D) 1956(c)(7)(F); See: 24(a)(2)	10/27/86 8/21/96
18	669	Theft and Embezzlement involving Health Care Offenses	1956(c)(7)(F); See: 24(a)(1)	8/21/96
18	793	Espionage and Censorship (gathering, transmitting, or losing defense information)	1956(c)(7)(D)	10/27/86
18	794	Espionage and Censorship (gathering or delivering defense information to aid foreign government)	1956(c)(7)(D)	10/27/86
18	798	Espionage and Censorship (disclosure of classified information)	1956(c)(7)(D)	10/27/86
18	831	Explosives and Other Dangerous Articles (prohibited transactions involving nuclear materials)	1956(c)(7)(D) 1961(1)(G) 1961(1)(B)	4/24/96 10/26/01 12/17/04
18	832	Explosives and Other Dangerous Articles (participation in nuclear and weapons of mass destruction threats to the United States)	1961(1)(G)	12/17/04
18	842(m) or (n)	Explosive Materials (plastic explosives)	1961(1)(G)	10/26/01
18	844(f) 844(i)	Importation, Manufacture, Distribution and Storage of Explosive Materials (damage or destruction by means of fire or explosives of Government property or property used in interstate commerce risking or causing death)	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
18	875	Extortion and Threats (interstate communications)	1956(c)(7)(D)	10/27/86
18	892	Extortionate Credit Transactions (making extortionate extensions of credit)	1961(1)(B)	10/27/86
18	893	Extortionate Credit Transactions (financing extortionate extensions of credit)	1961(1)(B)	10/27/86
18	894	Extortionate Credit Transactions (collection of extensions of credit by extortionate means)	1961(1)(B)	10/27/86

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
18	922(l)	Firearms (unlawful importation of firearms)	1956(c)(7)(D)	10/26/01
18	924(n)	Firearms (firearms trafficking)	1956(c)(7)(D)	10/26/01
18	930(c)	Firearms (killing or attempted killing during attack on Federal facility with a dangerous weapon)	1961(1)(G)	10/26/01
18	956	Foreign Relations (conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country)	1956(c)(7)(D)	4/24/96
18	956(a)(1)	Foreign Relations (conspiracy to murder, kidnap, or maim persons abroad)	1961(1)(G)	10/26/01
18	1001	Fraud and False Statements involving a Health Care Offense	1956(c)(7)(F); See: 24(a)(2)	8/21/96
18	1005	Fraud and False Statements (fraudulent bank entries, reports and transactions)	1956(c)(7)(D)	11/29/90
18	1006	Fraud and False Statements (fraudulent Federal credit institution entries, reports and transactions)	1956(c)(7)(D)	11/29/90
18	1007	Fraud and False Statements (fraudulent Federal Deposit Insurance Corporation transactions)	1956(c)(7)(D)	11/29/90
18	1014	Fraud and False Statements (fraudulent loan and credit applications)	1956(c)(7)(D)	11/29/90
18	1027	False statement/ERISA involving Health Care Offenses	1956(c)(7)(F); See: 24(a)(2)	8/21/96
18	1028	Fraud and False Statements (fraud and related activity in connection with identification documents)	1961(1)(B)	4/24/96
18	1029	Fraud and False Statements (fraud and related activity in connection with access devices)	1961(1)(B)	11/18/88
18	1030	Fraud and False Statements (computer fraud and abuse; protection of computers)	1956(c)(7)(D) 1961(1)(G)	10/26/01

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
18	1032	Fraud and False Statements (concealment of assets from conservator, receiver, or liquidating agent of financial institution)	1956(c)(7)(D)	11/29/90
18	1035	False Statements regarding Health Care Offenses	1956(c)(7)(F); See: 24(a)(1)	8/21/96
18	1084	Gambling (transmission of wagering information)	1961(1)(B)	10/27/86
18	1111	Homicide (murder)	1956(c)(7)(D)	4/24/96
18	1114	Homicide (protection of officers and employees of the United States)	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
18	1116	Homicide (murder or manslaughter of foreign officials, official guests, or internationally protected persons)	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
18	1201	Kidnapping	1956(c)(7)(D)	10/27/86
18	1203	Kidnapping (hostage taking)	1956(c)(7)(D) 1961(1)(G)	10/27/86 10/26/01
18	1341	Mail Fraud (frauds and swindles) - and - Involving a Health Care Offense	1961(1)(B) 1956(c)(7)(F); See: 24(a)(2)	10/27/86 8/21/96
18	1343	Wire Fraud (fraud by wire, radio, or television) - and - Involving a Health Care Offense	1961(1)(B) 1956(c)(7)(F); See: 24(a)(2)	10/27/86 8/21/96
18	1344	Bank Fraud (defrauding a federally chartered or insured financial institution)	1961(1)(B)	8/9/89
18	1347	Health Care Fraud	1956(c)(7)(F); See: 24(a)(1)	8/21/96
18	1349	Attempt and Conspiracy (Health Care Fraud)	1956(c)(7)(F); See: 24(a)(2)	3/23/10
18	1351	Fraud in Foreign Labor Contracts (Fraud in Hiring Outside of the U.S.)	1961(1)(B)	3/7/13

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
18	1361	Malicious Mischief (Government property or contracts)	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
18	1362	Malicious Mischief (destruction of communication lines, stations, or systems)	1961(1)(G)	10/26/01
18	1363	Malicious Mischief (damage or destruction of buildings or property within special maritime and territorial jurisdiction of the United States)	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
18	1366(a)	Malicious Mischief (destruction of an energy facility)	1961(1)(G)	10/26/01
18	1425	Nationality and Citizenship (unlawful procurement of citizenship or naturalization)	1961(1)(B)	9/30/96
18	1426	Nationality and Citizenship (reproduction of naturalization or citizenship papers)	1961(1)(B)	9/30/96
18	1427	Nationality and Citizenship (sale of naturalization or citizenship papers)	1961(1)(B)	9/30/96
18	1461	Obscenity (mailing obscene or crime-inciting matter)	1961(1)(B)	10/27/86
18	1462	Obscenity (importation or transportation of obscene matters)	1961(1)(B)	10/27/86
18	1463	Obscenity (mailing indecent matter on wrappers or envelopes)	1961(1)(B)	10/27/86
18	1464	Obscenity (broadcasting obscene language)	1961(1)(B)	10/27/86
18	1465	Obscenity (transportation of obscene matters for sale or distribution)	1961(1)(B)	10/27/86
18	1503	Obstruction of Justice (influencing or injuring officer or juror generally)	1961(1)(B)	10/27/86
18	1510	Obstruction of Justice (obstruction of criminal investigations)	1961(1)(B)	10/27/86
18	1511	Obstruction of Justice (obstruction of State or local law enforcement)	1961(1)(B)	10/27/86
18	1512	Obstruction of Justice (tampering with a witness, victim, or informant)	1961(1)(B)	11/10/86

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
18	1513	Obstruction of Justice (retaliating against a witness, victim, or informant)	1961(1)(B)	11/10/86
18	1518	Obstruction of Justice (obstruction of criminal investigations regarding a Health Care Offense)	1956(c)(7)(F); See: 24(a)(1)	8/21/96
18	1542	Passports and Visas (false statement in application and use of a passport)	1961(1)(B)	4/24/96
18	1543	Passports and Visas (forgery or false use of passport)	1961(1)(B)	4/24/96
18	1544	Passports and Visas (misuse of a passport)	1961(1)(B)	4/24/96
18	1546	Passports and Visas (fraud and misuse of visas, permits, and other documents)	1961(1)(B)	4/24/96
18	1581	Peonage and Slavery (peonage; obstructing enforcement)	1961(1)(B)	4/24/96
18	1582	Peonage and Slavery (vessels for slave trade)	1961(1)(B)	4/24/96
18	1583	Peonage and Slavery (enticement into slavery)	1961(1)(B)	4/24/96
18	1584	Peonage and Slavery (sale into involuntary servitude)	1961(1)(B)	4/24/96
18	1585	Peonage and Slavery (seizure, detention, transportation or sale of slaves)	1961(1)(B)	4/24/96
18	1586	Peonage and Slavery (service on vessels in slave trade)	1961(1)(B)	4/24/96
18	1587	Peonage and Slavery (possession of slaves aboard a vessel)	1961(1)(B)	4/24/96
18	1588	Peonage and Slavery (transportation of slaves from the United States)	1961(1)(B)	4/24/96
18	1589	Peonage and Slavery (forced labor)	1961(1)(B)	12/19/03
18	1590	Peonage and Slavery (trafficking with respect to peonage, slavery, involuntary servitude, or forced labor)	1961(1)(B)	12/19/03

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
18	1591	Peonage and Slavery (sex trafficking of children or by force, fraud, or coercion)	1961(1)(B)	12/19/03
18	1592	Peonage and Slavery (unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor)	1961(1)(B)	1/10/06
18	1708	Theft from the Mail	1956(c)(7)(D)	10/28/92
18	1751	Presidential and Presidential Staff Assassination, Kidnapping, and Assault	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
18	1951	Racketeering (interference with commerce by threats or violence)	1961(1)(B)	10/27/86
18	1952	Racketeering (interstate and foreign travel or transportation in aid of racketeering enterprises)	1961(1)(B)	10/27/86
18	1953	Racketeering (interstate transportation of wagering paraphernalia)	1961(1)(B)	10/27/86
18	1954	Racketeering (offer, acceptance, or solicitation to influence operations of employee benefit plan) - and - Involving a Health Care Offense	1961(1)(B) 1956(c)(7)(F); See: 24(a)(2)	10/27/86 8/21/96
18	1955	Racketeering (prohibition of illegal gambling businesses)	1961(1)(B)	10/27/86
18	1956	Racketeering (laundering of monetary instruments)	1961(1)(B)	10/27/86
18	1957	Racketeering (engaging in monetary transactions in property derived from specified unlawful activity)	1961(1)(B)	10/27/86
18	1958	Racketeering (use of interstate commerce facilities in the commission of murder-for-hire)	1961(1)(B)	11/18/88
18	1960	Racketeering (money transmitting business)	1961(1)(B)	3/9/06

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
18	1992	Railroads (terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air)	1961(1)(G)	10/26/01
18	2113	Robbery and Burglary (bank robbery and incidental crimes)	1956(c)(7)(D)	10/27/86
18	2114	Robbery and Burglary (mail, money, or other property of the United States)	1956(c)(7)(D)	10/27/86
18	2155	Sabotage (destruction of national defense materials, premises, or utilities)	1961(1)(G)	10/26/01
18	2156	Sabotage (production of defective national defense material, premises, or utilities)	1961(1)(G)	12/17/04
18	2251	Sexual Exploitation and Other Abuse of Children (sexual exploitation of children)	1961(1)(B)	11/18/88
18	2251A	Sexual Exploitation and Other Abuse of Children (selling or buying of children)	1961(1)(B)	11/18/88
18	2252	Sexual Exploitation and Other Abuse of Children (certain activities relating to material involving the sexual exploitation of minors)	1961(1)(B)	11/18/88
18	2252A	Sexual Exploitation and Other Abuse of Children (certain activities relating to material constituting or containing child pornography)	1956(c)(7)(D)	10/22/08
18	2260	Sexual Exploitation and Other Abuse of Children (production of sexually explicit depictions of a minor for importation into the United States)	1961(1)(B) 1956(c)(7)(D)	9/13/96
18	2280	Shipping (violence against maritime navigation)	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
18	2281	Shipping (violence against maritime fixed platforms)	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
18	2312	Stolen Property (interstate transportation of stolen motor vehicles)	1961(1)(B)	10/27/86
18	2313	Stolen Property (sale or receipt of stolen motor vehicles)	1961(1)(B)	10/27/86

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
18	2314	Stolen Property (interstate transportation of stolen property)	1961(1)(B)	10/27/86
18	2315	Stolen Property (sale, receipt, or possession of stolen property moved interstate)	1961(1)(B)	10/27/86
18	2318	Stolen Property (trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audio visual works)	1961(1)(B)	7/2/96
18	2319	Stolen Property (criminal infringement of a copyright)	1956(c)(7)(D) 1961(1)(B)	11/18/88 7/2/96
18	2319A	Stolen Property (unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances)	1961(1)(B)	7/2/96
18	2320	Stolen Property (trafficking in counterfeit goods or services)	1956(c)(7)(D) 1961(1)(B)	9/13/94 7/2/96
18	2321	Stolen Property (trafficking in certain motor vehicles or motor vehicle parts)	1961(1)(B)	10/27/86
18	2332	Terrorism (terrorist acts abroad against U.S. Nationals)	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
18	2332a	Terrorism (use of weapons of mass destruction)	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
18	2332b	Terrorism (international terrorist acts transcending national boundaries)	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
18	2332f	Terrorism (bombing of public places and facilities)	1961(1)(G)	6/25/02
18	2332g	Terrorism (missile systems designed to destroy aircraft)	1956(c)(7)(D) 1961(1)(G)	12/17/04 12/17/04
18	2332h	Terrorism (radiological dispersal devices)	1956(c)(7)(D) 1961(1)(G)	12/17/04 12/17/04
18	2339	Terrorism (harboring terrorists)	1961(1)(G)	10/26/01

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
18	2339A 2339B	Terrorism (providing material support to terrorists or terrorist organizations)	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
18	2339C	Terrorism (financing of terrorism)	1956(c)(7)(D) 1961(1)(G)	3/9/06 6/25/02
18	2339D	Terrorism (military-type training from a foreign terrorist organization)	1956(c)(7)(D) 1961(1)(G)	3/9/06
18	2340A	Torture	1961(1)(G)	10/26/01
18	2342	Trafficking in Contraband Cigarettes (unlawful acts)	1961(1)(B)	10/27/86
18	2343	Trafficking in Contraband Cigarettes (recordkeeping and inspection)	1961(1)(B)	10/27/86
18	2344	Trafficking in Contraband Cigarettes (penalties)	1961(1)(B)	10/27/86
18	2345	Trafficking in Contraband Cigarettes (effect on State law)	1961(1)(B)	10/27/86
18	2346	Trafficking in Contraband Cigarettes (enforcement and regulations)	1961(1)(B)	10/27/86
18	2421	Transportation for Illegal Sexual Activity (transportation of an individual interstate to engage in criminal sexual activity)	1961(1)(B)	10/27/86
18	2422	Transportation for Illegal Sexual Activity (coercion and enticement to travel interstate to engage in criminal sexual activity)	1961(1)(B)	10/27/86
18	2423	Transportation for Illegal Sexual Activity (transportation of minors interstate to engage in criminal sexual activity)	1961(1)(B)	10/27/86
18	2424	Transportation for Illegal Sexual Activity (filing factual statements about alien individuals)	1961(1)(B)	10/27/86
19	1590	Tariff Act of 1930 (aviation smuggling)	1956(c)(7)(D)	11/18/88
21	331	Federal Food, Drug, and Cosmetic Act (adulterated or misbranded food, drug, device, or cosmetic in interstate commerce)	1956(c)(7)(F); See: 24(a)(2)	3/23/10

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
21	841	Drug Abuse Prevention and Control (felony violations of certain prohibited acts)	1961(1)(D) 1956(c)(7)(D)	10/27/86 11/29/90
21	842	Drug Abuse Prevention and Control (subsequent violations of subparagraph (A) after one or more prior convictions of a drug-related offense)	1961(1)(D) 1956(c)(7)(D)	10/27/86 11/29/90
21	843	Drug Abuse Prevention and Control (felony violations of certain other prohibited acts)	1961(1)(D) 1956(c)(7)(D)	10/27/86 11/29/90
21	844	Drug Abuse Prevention and Control (penalties for simple possession after one or more prior convictions for any drug or narcotic offense)	1961(1)(D)	10/27/86
21	846	Drug Abuse Prevention and Control (attempt and conspiracy to commit any felonious offense defined in Subchapter I)	1961(1)(D)	10/27/86
21	848	Drug Abuse Prevention and Control (continuing criminal enterprise)	1956(c)(7)(C) 1961(1)(D)	10/27/86 10/27/86
21	849	Drug Abuse Prevention and Control (transportation safety offenses)	1961(1)(D)	10/27/86
21	854	Drug Abuse Prevention and Control (investment of illicit drug profits obtained from a felonious violation of either Subchapter I or II)	1961(1)(D)	10/27/86
21	856	Drug Abuse Prevention and Control (establishment of manufacturing operations)	1961(1)(D)	10/27/86
21	858	Drug Abuse Prevention and Control (endangering human life while illegally manufacturing a controlled substance)	1961(1)(D)	10/27/86
21	859	Drug Abuse Prevention and Control (felonious distribution to persons under age twenty-one)	1961(1)(D)	10/27/86
21	860	Drug Abuse Prevention and Control (felonious distribution or manufacturing in or near schools and colleges)	1961(1)(D)	10/27/86
21	861	Drug Abuse Prevention and Control (employment of persons under 18 years of age)	1961(1)(D)	10/27/86
21	863	Drug Abuse Prevention and Control (transportation of drug paraphernalia)	1961(1)(D) 1956(c)(7)(D)	10/27/86 11/18/88
21	864	Drug Abuse Prevention and Control (stolen anhydrous ammonia)	1961(1)(D)	10/27/86

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
21	952	Drug Abuse Prevention and Control (importation of controlled substances)	1961(1)(D)	10/27/86
21	953	Drug Abuse Prevention and Control (exportation of controlled substances)	1961(1)(D)	10/27/86
21	955	Drug Abuse Prevention and Control (felonious possession on board vessels, etc., arriving in or departing from the United States)	1961(1)(D)	10/27/86
21	957	Drug Abuse Prevention and Control (felonious offenses by persons required to register)	1961(1)(D)	10/27/86
21	959	Drug Abuse Prevention and Control (felonious possession, manufacture, or distribution of a controlled substance)	1961(1)(D)	10/27/86
21	960	Drug Abuse Prevention and Control (knowingly or intentionally imports/exports; brings/possesses on board a vessel, aircraft or vehicle; or manufacture, possesses with intent to distribute, or distributes a controlled substance)	1961(1)(D)	10/27/86
21	960a	Drug Abuse Prevention and Control (foreign terrorist organizations, terrorist persons and groups; narco-terrorism)	1961(1)(D) 1961(1)(G)	3/9/06
21	962	Drug Abuse Prevention and Control (second or subsequent offenses penalties defined)	1961(1)(D)	10/27/86
21	963	Drug Abuse Prevention and Control (attempt and conspiracy)	1961(1)(D)	10/27/86
22	611 et seq.	Foreign Agents Registration Act of 1938 (felonious violations of FARA of 1938)	1956(c)(7)(D)	10/26/01
22	2778(c)	Arms Export Control (criminal violations of Arms Export Control Act of 1979)	1956(c)(7)(D)	10/27/86
29	186	Labor-Management Relations (restrictions on payments and loans to labor organizations)	1961(1)(C)	10/27/86
29	501(c)	Reporting and Disclosure (fiduciary responsibility of officers of labor organizations; embezzlement of assets)	1961(1)(C)	10/27/86
29	1141	Employee Retirement Income Security Act of 1974 (coercive interference of participant/beneficiary)	1956(c)(7)(F); See: 24(a)(2)	3/23/10
29	1148	Employee Retirement Income Security Act of 1974 (disasters and terroristic or military actions)	1956(c)(7)(F); See: 24(a)(2)	3/23/10

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
33	1251 et seq.	Federal Water Pollution Control Act (felonious violations concerning the discharge of pollutants into the Nation's waters)	1956(c)(7)(E)	11/29/90
33	1401 et seq.	Ocean Dumping Act (felony violations concerning the dumping of materials into ocean waters)	1956(c)(7)(E)	11/29/90
33	1901 et seq.	Act to Prevent Pollution from Ships (felony violations concerning the discharge of pollutants from ships)	1956(c)(7)(E)	11/29/90
42	1320a-7b	Social Security Act (false statements, illegal remunerations, illegal patient admittance and retention practices)	1956(c)(7)(F); See: 24(a)(1)	3/23/10
42	1490s(a)	Housing Act of 1949 (equity skimming)	1956(c)(7)(D)	12/27/00
42	2122 (Sec. 92)	Atomic Energy Act of 1954 (prohibitions governing atomic weapons)	1956(c)(7)(D) 1961(1)(G)	12/17/04 12/17/04
42	2284 (Sec.236)	Atomic Energy Act of 1954 (sabotage of nuclear facilities or fuel)	1961(1)(G)	10/26/01
42	300f et seq.	Safe Drinking Water Act (felony violations concerning the safety of public water systems)	1956(c)(7)(E)	11/29/90
42	6901 et seq.	Resources Conservation and Recovery Act (felony violations concerning resource conservation and recovery)	1956(c)(7)(E)	11/29/90
49	46502	Special Aircraft Jurisdiction of the United States (aircraft piracy)	1956(c)(7)(D) 1961(1)(G)	4/24/96 10/26/01
49	46504 (2nd sentence)	Special Aircraft Jurisdiction of the United States (assault on a flight crew with a dangerous weapon)	1961(1)(G)	10/26/01
49	46505 (b)(3) or (c)	Special Aircraft Jurisdiction of the United States (explosive or incendiary devices, or endangerment of human life by means of weapons, on an aircraft)	1961(1)(G)	10/26/01
49	46506	Special Aircraft Jurisdiction of the United States (application of certain criminal laws to acts on aircraft if homicide or attempted homicide is involved)	1961(1)(G)	10/26/01

Title:	Section:	Violations of Federal Law Relating to:	Appearing in Title 18, §:	Effective Date:
49	60123(b)	Safety (destruction of interstate gas or hazardous liquid pipeline facility)	1961(1)(G)	10/26/01
50	1705	Emergency Economic Powers (willful violations of the International Emergency Economic Powers Act)	1956(c)(7)(D)	10/27/86
50	App. 16	Trading with Enemy Act (offenses and punishment)	1956(c)(7)(D)	10/27/86
50	App. 2410	Export Regulation (knowingly violating the provisions of the Export Administration Act of 1979)	1956(c)(7)(D)	10/27/86

Any Act of Threat (chargeable under State Law and punishable by imprisonment for more than one year) Involving:	Appearing in 18 U.S.C., Section:	Effective Date:
Murder	1961(1)(A)	10/27/86
Kidnapping	1961(1)(A)	10/27/86
Gambling	1961(1)(A)	10/27/86
Arson	1961(1)(A)	10/27/86
Robbery	1961(1)(A)	10/27/86
Bribery	1961(1)(A)	10/27/86
Extortion	1961(1)(A)	10/27/86
Dealing in Obscene Matter	1961(1)(A)	10/27/86
Dealing in a Controlled Substance or Listed Chemical (as defined in 21 U.S.C. §802)	1961(1)(A)	10/27/86

An Offense Against a Foreign Nation (with respect to a financial transaction occurring in whole or in part in the United States) Involving:	Appearing in 18 U.S.C., Section:	Effective Date
The Manufacture, Importation, Sale, or Distribution of a Controlled Substance	1956(c)(7)(B)(i)	10/27/86
Murder	1956(c)(7)(B)(ii)	4/24/96
Kidnapping	1956(c)(7)(B)(ii)	10/28/92
Robbery	1956(c)(7)(B)(ii)	10/28/92
Extortion	1956(c)(7)(B)(ii)	10/28/92
Destruction of Property by Means of Explosive or Fire or a Crime of Violence (as defined in 18 U.S.C. §16)	1956(c)(7)(B)(ii)	4/24/96
Fraud, or Any Scheme or Attempt to Defraud, by or Against a Foreign Bank (as defined in 12 U.S.C. §3101(7))	1956(c)(7)(B)(iii)	10/28/92
Bribery of a Public Official, or the Misappropriation, Theft, or Embezzlement of Public Funds by or for the Benefit of a Public Official	1956(c)(7)(B)(iv)	10/26/01
Smuggling or Export Control Violations (involving an item controlled on the U.S. Munitions List, Section 38 of the Arms Export Control Act (22 U.S.C. 2778) or an item controlled under the Export Administration Regulations (15 C.F.R. Parts 730-774))	1956(c)(7)(B)(v)	10/26/01
U.S. Obligation by a Multilateral Treaty to Extradite or Prosecute the Offender (if offender located within territory of U.S.)	1956(c)(7)(B)(vi)	10/26/01
Trafficking in Persons, Selling or Buying of Children, Sexual Exploitation of Children, or Transporting, Recruiting or Harboring a Person, including a Child, for Commercial Sex Acts	1956(c)(7)(B)(vii)	1/10/06