

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

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

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

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

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

AMENDMENTS

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 305 of this title.

§ 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