

**TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE**  
**PART VI - PARTICULAR PROCEEDINGS**  
**CHAPTER 163 - FINES, PENALTIES AND FORFEITURES**

**§ 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 <sup>1</sup> 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.

**Footnotes**

<sup>1</sup> So in original.

(June 25, 1948, ch. 646, 62 Stat. 974; Pub. L. 106–185, § 16, Apr. 25, 2000, 114 Stat. 221; Pub. L. 109–177, title IV, § 410, Mar. 9, 2006, 120 Stat. 246.)

**Historical and Revision Notes**

Subsection (a) was drafted to clarify a serious ambiguity in existing law and is based upon rulings of the Supreme Court. Numerous sections in the United States Code prescribe civil fines, penalties, and pecuniary forfeitures for violation of certain sections without specifying the mode of recovery or enforcement thereof. See, for example, section 567 of title 12, U.S.C., 1940 ed., Banks and Banking, section 64 of title 14, U.S.C., 1940 ed., Coast Guard, and section 180 of title 25, U.S.C., 1940 ed., Indians. Compare section 1 (21) of title 49, U.S.C., 1940 ed., Transportation.

A civil fine, penalty, or pecuniary forfeiture is recoverable in a civil action. *United States ex rel. Marcus v. Hess et al.*, 1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 433, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163; *Hepner v. United States*, 1909, 29 S.Ct. 474, 213 U.S. 103, 53 L.Ed. 720, and cases cited therein.

Forfeiture of bail bonds in criminal cases are enforceable by procedure set out in Rule 46 of the Federal Rules of Criminal Procedure.

If the statute contemplates a criminal fine, it can only be recovered in a criminal proceeding under the Federal Rules of Criminal Procedure, after a conviction. The collection of civil fines and penalties, however, may not be had under the Federal Rules of Criminal Procedure, Rule 54 (b)(5), but enforcement of a criminal fine imposed in a criminal case may be had by execution on the judgment rendered in such case, as in civil actions. (See section 569 of title 18, U.S.C., 1940 ed., Crimes and Criminal Procedure, incorporated in 3565 of H.R. 1600, 80th Congress, for revision of the Criminal Code. See also Rule 69 of Federal Rules of Civil Procedure and Advisory Committee Note thereunder, as to execution in civil actions.)

Subsection (b) was drafted to cover the subject of forfeiture of property generally. Sections in the United States Code specifically providing a mode of enforcement of forfeiture of property for their violation and other procedural matters will, of course, govern and subsection (b) will not affect them. It will only cover cases where no mode of recovery is prescribed.

Words “Unless otherwise provided by enactment of Congress” were inserted at the beginning of subsection (b) to exclude from its application instances where a libel in admiralty is not required. For example, under sections 1607,

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1609, and 1610 of title 19, U.S.C., 1940 ed., Customs Duties, the collector of customs may, by summary procedure, sell at public auction, without previous declaration of forfeiture or libel proceedings, any vessel, etc., under \$1,000 in value in cases where no claim for the same is filed or bond given as required by customs laws.

Rule 81 of the Federal Rules of Civil Procedure makes such rules applicable to the appeals in cases of seizures on land. (See also *443 Cans of Frozen Egg Product v. United States*, 1912, 33 S.Ct. 50, 226 U.S. 172, 57 L.Ed. 174, and *Eureka Productions v. Mulligan*, C.C.A. 1940, 108 F.2d 760.) The proceeding, which resembles a suit in admiralty in that it is begun by a libel, is, strictly speaking, an “action at law” (*The Sarah*, 1823, 8 Wheat. 391, 21 U.S. 391, 5 L.Ed. 644; *Morris’s Cotton*, 1869, 8 Wall. 507, 75 U.S. 507, 19 L.Ed. 481; Confiscation cases, 1873, 20 Wall. 92, 87 U.S. 92, 22 L.Ed. 320; *Eureka Productions v. Mulligan*, supra), even though the statute may direct that the proceedings conform to admiralty as near as may be. In *re Graham*, 1870, 10 Wall. 541, 19 L.Ed. 981, and *443 Cans of Frozen Egg Product v. United States*, supra.

Subsection (b) is in conformity with Rule 21 of the Supreme Court Admiralty Rules, which recognizes that a libel may be filed upon seizure for any breach of any enactment of Congress, whether on land or on the high seas or on navigable waters within the admiralty and maritime jurisdiction of the United States. Such rule also permits an information to be filed, but is rarely, if ever, used at present. Consequently, “information” has been omitted from the text and only “libel” is incorporated.

## References in Text

The Federal Rules of Criminal Procedure, referred to in subsec. (c), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The Controlled Substances Act, referred to in subsec. (c), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

## Amendments

2006—Subsec. (c). Pub. L. 109–177 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “If a forfeiture of property is authorized in connection with a violation of an Act of Congress, and any person is charged in an indictment or information with such violation but no specific statutory provision is made for criminal forfeiture upon conviction, the Government may include the forfeiture in the indictment or information in accordance with the Federal Rules of Criminal Procedure, and upon conviction, the court shall order the forfeiture of the property in accordance with the procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section.”

2000—Subsec. (c). Pub. L. 106–185 added subsec. (c).

## Effective Date of 2000 Amendment

Amendment by Pub. L. 106–185 applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

## Federal Civil Penalties Inflation Adjustment

Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by Pub. L. 104–134, title III, § 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321–373; Pub. L. 105–362, title XIII, § 1301(a), Nov. 10, 1998, 112 Stat. 3293, provided that:

### “short title

“Section 1. This Act may be cited as the ‘Federal Civil Penalties Inflation Adjustment Act of 1990’.

### “findings and purpose

“Sec. 2. (a) Findings.—The Congress finds that—

“(1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations;

“(2) the impact of many civil monetary penalties has been and is diminished due to the effect of inflation;

“(3) by reducing the impact of civil monetary penalties, inflation has weakened the deterrent effect of such penalties; and

“(4) the Federal Government does not maintain comprehensive, detailed accounting of the efforts of Federal agencies to assess and collect civil monetary penalties.

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“(b) Purpose.—The purpose of this Act is to establish a mechanism that shall—

- “(1) allow for regular adjustment for inflation of civil monetary penalties;
- “(2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and
- “(3) improve the collection by the Federal Government of civil monetary penalties.

### “definitions

“Sec. 3. For purposes of this Act, the term—

“(1) ‘agency’ means an Executive agency as defined under section 105 of title 5, United States Code, and includes the United States Postal Service;

“(2) ‘civil monetary penalty’ means any penalty, fine, or other sanction that—

“(A)(i) is for a specific monetary amount as provided by Federal law; or

“(ii) has a maximum amount provided for by Federal law; and

“(B) is assessed or enforced by an agency pursuant to Federal law; and

“(C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts; and

“(3) ‘Consumer Price Index’ means the Consumer Price Index for all-urban consumers published by the Department of Labor.

### “civil monetary penalty inflation adjustment reports

“Sec. 4. The head of each agency shall, not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996 [Apr. 26, 1996], and at least once every 4 years thereafter—

“(1) by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], the Tariff Act of 1930 [19 U.S.C. 1202 et seq.], the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], or the Social Security Act [42 U.S.C. 301 et seq.], by the inflation adjustment described under section 5 of this Act; and

“(2) publish each such regulation in the Federal Register.

### “cost-of-living adjustments of civil monetary penalties

“Sec. 5. (a) Adjustment.—The inflation adjustment under section 4 shall be determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this subsection shall be rounded to the nearest—

“(1) multiple of \$10 in the case of penalties less than or equal to \$100;

“(2) multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;

“(3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;

“(4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;

“(5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

“(6) multiple of \$25,000 in the case of penalties greater than \$200,000.

“(b) Definition.—For purposes of subsection (a), the term ‘cost-of-living adjustment’ means the percentage (if any) for each civil monetary penalty by which—

“(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds

“(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

“Sec. 6. Any increase under this Act in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.”

[Pub. L. 104–134, title III, § 31001(s)(2), Apr. 26, 1996, 110 Stat. 1321–373, provided that: “The first adjustment of a civil monetary penalty made pursuant to the amendment made by paragraph (1) [amending Pub. L. 101–410, set out above] may not exceed 10 percent of such penalty.”]

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[For authority of the Director of the Office of Management and Budget to consolidate reports required under the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, set out above, to be submitted between Jan. 1, 1995, and Sept. 30, 1997, or to adjust their frequency and due dates, see section 404 of Pub. L. 103-356, set out as a note under section 501 of Title 31, Money and Finance.]