

forth in paragraph (b)(6)(ii) of this section. The possession of a narcotic, a depressant, a stimulant, a hallucinogen or a cannabis-controlled substance will be considered in excess of personal use quantities if the dosage unit amount possessed provides the same or greater equivalent efficacy as described in paragraph (b)(6)(i) of this section.

(i) *Quantities presumed to be for personal use unless evidence of illicit drug trafficking or distribution exists.* (A) One gram of a mixture of substance containing a detectable amount of heroin;

(B) One gram of a mixture of substance containing a detectable amount of—

(1) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(2) Cocaine, its salts, optional and geometric isomers, and salts of isomers;

(3) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(4) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (b)(6)(i)(B) (1) through (3) of this section;

(C) 1/10th gram of a mixture of substances described in paragraph (b)(6)(i)(B) of this section which contains cocaine base;

(D) 1/10th gram of mixture of substance containing a detectable amount of phencyclidine (PCP);

(E) 500 micrograms of a mixture of substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) One ounce of a mixture of substance containing a detectable amount of marihuana; or

(G) One gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture of substances containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

(ii) *Evidence of possession for other than personal use.* Quantities shall not be considered to be for personal use if sweepings are present or there is other evidence of possession for other than personal use such as:

(A) Evidence such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug “cutting” agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;

(B) Information from reliable sources indicating possession of a controlled substance with intent to distribute;

(C) The arrest and/or conviction record of the person or persons in actual or constructive possession of the controlled substance for offenses under Federal, State or local law that indicates an intent to distribute a controlled substance;

(D) The controlled substance is related to large amounts of cash or any amount of prerecorded government funds;

(E) The controlled substance is possessed under circumstances that indicate such a controlled substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery; or

(F) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute.

(7) *Property.* “Property” means property subject to forfeiture under 21 U.S.C. 881(a) (4), (6), and (7); 19 U.S.C. 1595a, and 49 U.S.C. 80303.

(8) *Seizing agency.* “Seizing agency” means the Federal agency which has seized the property or adopted the seizure of another agency, and has the responsibility for administratively forfeiting the property.

(9) *Sworn to.* “Sworn to” refers to the oath as provided by 28 U.S.C. 1746 or as notarized in accordance with state law.

[T.D. 89-86, 54 FR 37602, Sept. 11, 1989; 54 FR 41364, Oct. 6, 1989, as amended by T.D. 00-88, 65 FR 78093, Dec. 14, 2000]

**§ 171.52 Petition for expedited procedures in an administrative forfeiture proceeding.**

(a) *Procedures for violations involving possession of controlled substance in personal use quantities.* The usual procedures for petitions for relief when property is seized are set forth in subpart B of this part. However, where property

is seized for administrative forfeiture pursuant to 21 U.S.C. 881(a) (4), (6) or (7), 19 U.S.C. 1595a and/or 49 U.S.C. 80303 due to violations involving controlled substances in personal use quantities, a petition may be filed pursuant to paragraphs (c) and (d) of this section to seek expedited procedures for release of the property. A petition filed pursuant to this subpart shall also serve as a petition for relief filed under subpart B of this part. The petition may be filed by an owner or interested party.

(b) *Commercial fishing industry vessels.* Where a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations is subject to seizure for administrative forfeiture for a violation of law involving controlled substances in personal use quantities, a summons to appear shall be issued in lieu of a physical seizure. The vessel shall report to the port designated in the summons no later than the date specified in the summons. When a commercial fishing industry vessel reports, the appropriate Customs officer shall, depending on the facts and circumstances, either issue another summons to appear at a time deemed appropriate, execute a constructive seizure agreement pursuant to 19 U.S.C. 1605, or take physical custody of the vessel. When a summons to appear has been issued, the seizing agency may be authorized to institute administrative forfeiture as if the vessel had been physically seized. When a summons to appear has been issued, the owner or interested party may file a petition for expedited procedures pursuant to subsection (a); the provisions of subsection (a) and other provisions in this subpart relating to a petition for expedited release shall apply as if the vessel had been physically seized.

(c) *Elements to be established in petition.* (1) The petition for expedited procedures shall establish that:

(i) The petitioner has a valid, good faith interest in the seized property as owner or otherwise;

(ii) The petitioner reasonably attempted to ascertain the use of the property in a normal and customary manner; and

(iii) The petitioner did not know or consent to the illegal use of the prop-

erty or, in the event that the petitioner knew or should have known of the illegal use, the petitioner did what reasonably could be expected to prevent the violation.

(2) In addition, the petitioner may submit evidence to establish that he has statutory rights or defenses such that he would prevail in a judicial proceeding on the issue of forfeiture.

(d) *Manner of filing.* A petition for expedited procedures must be filed in a timely manner to be considered by Customs. To be filed in a timely manner, the petition must be received by Customs within 20 days from the date the notice of seizure was mailed, or in the case of a commercial fishing industry vessel for which a summons to appear is issued, 20 days from the original date when the vessel is required to report. The petition must be sworn to by the petitioner and signed by the petitioner or his attorney at law. If the petitioner is a corporation, the petition may be sworn to by an officer or responsible supervisory employee thereof and signed by that individual or an attorney at law representing the corporation. Both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED PROCEDURES." The petition shall be addressed to the U.S. Customs Service and filed in triplicate with the Fines, Penalties, and Forfeitures Officer for the port where the property was seized, or for commercial fishing industry vessels, with the Fines, Penalties, and Forfeitures Officer for the port to which the vessel was required to report.

(e) *Contents of petition.* The petition shall include the following:

(1) A complete description of the property, including identification numbers, if any, and the date and place of the violation and seizure;

(2) A description of the petitioner's interest in the property, supported by the documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(3) A statement of the facts and circumstances relied upon by the petitioner to justify expedited return of

## United States Customs Service, Treasury

## § 171.61

the seized property, supported by satisfactory evidence.

[T.D. 89-86, 54 FR 37602, Sept. 11, 1989; 54 FR 41364, Oct. 6, 1989, as amended by T.D. 99-27, 64 FR 13676, Mar. 22, 1999; T.D. 00-88, 65 FR 78093, Dec. 14, 2000]

### § 171.53 Ruling on petition for expedited procedures.

(a) *Final administrative determination.* Upon receipt of a petition filed pursuant to § 171.52, Customs shall determine first whether a final administrative determination of the case can be made within 21 days of the seizure. If such a final administrative determination is made within 21 days, no further action need be taken under this subpart.

(b) *Determination within 20 days.* If no such final administrative determination is made within 21 days of the seizure, Customs shall within 20 days after the receipt of the petition make a determination as follows:

(1) If Customs determines that the factors listed in § 171.52(c) have been established, it shall terminate the administrative proceedings and release the property from seizure, or in the case of a commercial fishing industry vessel for which a summons has been issued, but not yet answered, dismiss the summons. The property shall not be returned if it is evidence of a violation of law.

(2) If Customs determines that the factors listed in § 171.52(c) have not been established, it shall proceed with the administrative forfeiture.

[T.D. 89-86, 54 FR 37602, Sept. 11, 1989]

### § 171.54 Substitute res in an administrative forfeiture action.

(a) *Substitute res.* Where property is seized for administrative forfeiture for a violation involving controlled substances in personal use quantities, the owner or interested party may offer to post an amount equal to the appraised value of the property (the res) to obtain release of the property. The offer, which may be tendered at any time subsequent to seizure and up until the completion of administrative forfeiture proceedings, must be in the form of cash, irrevocable letter of credit, certified funds such as a certified check, traveler's check(s), or money order made payable to U.S. Customs. Unless

the property is evidence of a violation of law or has other characteristics that particularly suit it for use in illegal activities, it will be released to the owner or interested party subsequent to tender of the substitute res.

(b) *Forfeiture of res.* If a substitute res is posted and it is determined that the property should be administratively forfeited, the res will be forfeited in lieu of the property.

[T.D. 89-86, 54 FR 37602, Sept. 11, 1989]

### § 171.55 Notice provisions.

(a) *Special notice provision.* At the time of seizure of property defined in § 171.51, written notice must be provided to the possessor of the property regarding applicable statutes and Federal regulations including the procedures established for the filing of a petition for expedited procedures as set forth in section 6079 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

(b) *Notice provision.* The notice as required by section 1607 of Title 19, United States Code and applicable regulations shall be made at the earliest practicable opportunity after determining ownership of, or interest in, the seized property and shall include a statement of the applicable law under which the property is seized and a statement of the circumstances of the seizure sufficiently precise to enable an owner or interested party to identify the date, place and use or acquisition which makes the property subject to forfeiture.

[T.D. 89-86, 54 FR 37602, Sept. 11, 1989; 54 FR 43424, Oct. 25, 1989]

## Subpart G—Supplemental Petitions for Relief

SOURCE: T.D. 00-57, 65 FR 53578, Sept. 5, 2000, unless otherwise noted.

### § 171.61 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. Such supplemental petition must be filed