

Subpart E—Treatment of Seized Merchandise

§ 162.41 [Reserved]

§ 162.42 Proceedings by libel.

If seizure is made under a statute which provides that the property may be seized and proceeded against by libel, the summary forfeiture procedures set forth in §§ 162.45, 162.46, and 162.47 do not apply. Such cases shall be referred to the U.S. attorney. The Fines, Penalties, and Forfeitures Officer may request the U.S. attorney to seek a decree of forfeiture providing for delivery of the property to the Fines, Penalties, and Forfeitures Officer for sale or other appropriate disposition, if such property is not to be retained for official use.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1999, as amended by T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

§ 162.43 Appraisement.

(a) *Property under seizure and subject to forfeiture.* Seized property shall be appraised as required by section 606, Tariff Act of 1930, as amended (19 U.S.C. 1606). The term “domestic value” as used therein shall mean the price at which such or similar property is freely offered for sale at the time and place of appraisement, in the same quantity or quantities as seized, and in the ordinary course of trade. If there is no market for the seized property at the place of appraisement, such value in the principal market nearest to the place of appraisement shall be reported.

(b) *Property not under seizure.* The basis for a claim for forfeiture value or for an assessment of a penalty relating to the forfeiture value of property not under seizure is the domestic value as defined in paragraph (a) of this section, except that the value shall be fixed as of the date of the violation. In the case of entered merchandise, the date of the violation shall be the date of the entry, or the date of the filing of the document, or the commission of the act

forming the basis of the claim, whichever is later.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 79-160, 44 FR 31957, June 4, 1979; T.D. 85-123, 50 FR 29956, July 23, 1985]

§ 162.44 Release on payment of appraised value.

(a) *Value exceeding \$100,000.* Any offer to pay the appraised domestic value of seized property in order to obtain the immediate release of the property which was seized under the Customs laws or laws administered by Customs and exceeding \$100,000 in appraised domestic value, or which was seized under the navigation laws, shall be in writing, addressed to the Commissioner of Customs, and signed by the claimant or his attorney. It shall be submitted in duplicate to the Fines, Penalties, and Forfeitures Officer having jurisdiction at the port where the property was seized. Proof of ownership shall be submitted with the application if the facts in the case make such action necessary.

(b) *Value not over \$100,000—(1) Authority to accept offer.* The Fines, Penalties, and Forfeitures Officer is authorized to accept a written offer pursuant to section 614, Tariff Act of 1930, as amended (19 U.S.C. 1614), to pay the appraised domestic value of property seized under the Customs laws and to release such property if:

(i) The appraised domestic value of the seized property does not exceed \$100,000.

(ii) The Fines, Penalties, and Forfeitures Officer is satisfied that the claimant has, in fact, a substantial interest in the property; and

(iii) Entry of the seized property into the commerce of the United States is not prohibited by law.

(2) *Referral of offer.* The Fines, Penalties, and Forfeitures Officer shall refer to the Commissioner of Customs any offer where it appears that the claimant does not have a substantial interest in the seized property or where it appears it would not be in the best interest of the United States to accept.

(c) *Retention of property.* The Fines, Penalties, and Forfeitures Officer shall retain custody of the property pending

payment of the amount of the offer when the application is approved.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 74-276, 39 FR 37633, Oct. 23, 1974; T.D. 85-195, 50 FR 50289, Dec. 10, 1985; T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

§ 162.45 Summary forfeiture: Property other than Schedule I and Schedule II controlled substances. Notice of seizure and sale.

(a) *Contents.* The notice required by section 607, Tariff Act of 1930, as amended (19 U.S.C. 1607), of seizure and intent to forfeit and sell or otherwise dispose of according to law property not exceeding \$500,000 in value, or any seized merchandise the importation of which is prohibited, or any seized vessel, vehicle or aircraft that was used to import, export, transport, or store any controlled substance, or such seized merchandise is any monetary instrument within the meaning of 31 U.S.C. 5312(a)(3), shall:

(1) Describe the property seized and in the case of motor vehicles, specify the motor and serial numbers;

(2) State the time, cause, and place of seizure;

(3) State that any person desiring to claim property must appear at a designated place and file with the Fines, Penalties, and Forfeitures Officer within 20 days from the date of first publication of the notice a claim to such property and a bond in the sum of \$5,000 or 10% of the value of the claimed property, whichever is lower, but not less than \$250, in default of which the property will be disposed of in accordance with the law; and

(4) State the name and place of residence of the person to whom any vessel or merchandise seized for forfeiture under the navigation laws belongs or is consigned, if that information is known to the Fines, Penalties, and Forfeitures Officer.

(b) *Publication.* (1) If the appraised value of any property in one seizure from one person, other than Schedule I and Schedule II controlled substances (as defined in 21 U.S.C. 802(6) and 812), exceeds \$2,500, the notice will be published for at least three successive weeks in a newspaper circulated at the Customs port and in the judicial district where the property was seized. All

known parties-in-interest shall be notified of the newspaper and expected dates of publication of such notice.

(2) In all other cases, except for Schedule I and Schedule II controlled substances (see §162.45a), the notice will be published by posting it in the customhouse nearest the place of seizure. It will be posted in a conspicuous place that is accessible to the public, with the date of posting noted thereon, and will be kept posted for at least three successive weeks. Articles of small value of the same class or kind included in two or more seizures will be advertised as one unit.

(c) *Delay of publication.* Publication of the notice of seizure and intent to summarily forfeit and dispose of property eligible for such treatment may be delayed for a period not to exceed 30 days in those cases where the Fines, Penalties, and Forfeitures Officer has reason to believe that a petition for administrative relief in accord with part 171 of this chapter will be filed.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 83-72, 48 FR 11423, Mar. 18, 1983; T.D. 85-123, 50 FR 29956, July 23, 1985; T.D. 85-195, 50 FR 50290, Dec. 10, 1985; T.D. 91-52, 56 FR 25364, June 4, 1991; T.D. 99-27, 64 FR 13676, Mar. 22, 1999; T.D. 00-37, 65 FR 33254, May 23, 2000]

§ 162.45a Summary forfeiture of Schedule I and Schedule II controlled substances.

The Controlled Substances Act (84 Stat. 1242, 21 U.S.C. 801 *et seq.*) provides that all controlled substances in Schedule I and Schedule II (as defined in 21 U.S.C. 802(6) and 812) that are possessed, transferred, sold or offered for sale in violation of the Act will be deemed contraband, seized and summarily forfeited to the United States (21 U.S.C. 881(f)). The Controlled Substances Import and Export Act (21 U.S.C. 951 *et seq.*) incorporates by reference this contraband forfeiture provision of 21 U.S.C. 881. See 21 U.S.C. 965. Accordingly, in the case of a seizure of Schedule I or Schedule II controlled substances, the Fines, Penalties, and Forfeitures Officer or his designee will contact the appropriate Drug Enforcement Administration official responsible for issuing permits authorizing the importation of such substances (see 21 CFR part 1312). If upon inquiry the