

pursuant to an arbitration process in any respect that is inconsistent with the limitations upon the delegation of settlement authority under the Department's regulations and the directives of the litigation divisions. See 28 CFR part 0, subpart Y and appendix to subpart Y. The attorney for the government shall demand trial de novo in any case in which:

(i) Settlement of the case on the basis of the amount awarded would not be in the best interests of the United States;

(ii) Approval of a proposed settlement under the Department's regulations in accordance with the arbitration award cannot be obtained within the period allowed by the local rule for rejection of the award; or

(iii) The client agency opposes settlement of the case upon the terms of the settlement award, unless the appropriate official of the Department approves a settlement of the case in accordance with the delegation of settlement authority under the Department's regulations.

(2) Cases sounding in tort and arising under the Constitution of the United States or under a common law theory filed against an employee of the United States in his personal capacity for actions within the scope of his employment which are alleged to have caused injury or loss of property or personal injury or death are not appropriate for arbitration.

(3) Cases for injunctive or declaratory relief are not appropriate for arbitration.

(4) The Department reserves the right to seek any appropriate relief to which its client is entitled, including injunctive relief or a ruling on motions for judgment on the pleadings, for summary judgment, or for qualified immunity, or on issues of discovery, before proceeding with the arbitration process.

(5) In view of the provisions of the Federal Rules of Evidence with respect to settlement negotiations, the Department objects to the introduction of the arbitration process or the arbitration award in evidence in any proceeding in which the award has been rejected and the case is tried de novo.

(6) The Department's consent for participation in an arbitration program is not a waiver of sovereign immunity or other defenses of the United States except as expressly stated; nor is it intended to affect jurisdictional limitations (*e.g.*, the Tucker Act).

(e) *Notification of new or revised arbitration rules.* The U.S. Attorney in a district which is considering the adoption of or has adopted a program of court-annexed arbitration including cases involving the United States shall:

(1) Advise the district court of the provisions of this section and the limitations on the delegation of settlement authority to the United States Attorney pursuant to the Department's regulations and the directives of the litigation divisions; and

(2) Forward to the Executive Office for United States Attorneys a notice that such a program is under consideration or has been adopted, or is being revised, together with a copy of the rules or proposed rules, if available, and a recommendation as to whether United States participation in the program as proposed, adopted, or revised, would be advisable, in whole or in part.

[Order No. 1109-85, 50 FR 40524, Oct. 4, 1985]

**§ 50.21 Procedures governing the destruction of contraband drug evidence in the custody of Federal law enforcement authorities.**

(a) *General.* The procedures set forth below are intended as a statement of policy of the Department of Justice and will be applied by the Department in exercising its responsibilities under Federal law relating to the destruction of seized contraband drugs.

(b) *Purpose.* This policy implements the authority of the Attorney General under title I, section 1006(c)(3) of the Anti-Drug Abuse Act of 1986, Public Law 99-570 which is codified at 21 U.S.C. 881(f)(2), to direct the destruction, as necessary, of Schedule I and II contraband substances.

(c) *Policy.* This regulation is intended to prevent the warehousing of large quantities of seized contraband drugs which are unnecessary for due process in criminal cases. Such stockpiling of contraband drugs presents inordinate security and storage problems which create additional economic burdens on

limited law enforcement resources of the United States.

(d) *Definitions.* As used in this subpart, the following terms shall have the meanings specified:

(1) The term *Contraband drugs* are those controlled substances listed in Schedules I and II of the Controlled Substances Act seized for violation of that Act.

(2) The term *Marijuana* is as defined in 21 U.S.C. 801(15) but does not include, for the purposes of this regulation, the derivatives hashish or hashish oil for purposes of destruction.

(3) The term *Representative sample* means the exemplar for testing and a sample aggregate portion of the whole amount seized sufficient for current criminal evidentiary practice.

(4) The term *Threshold amount* means:

(i) Two kilograms of a mixture or substance containing a detectable amount of heroin;

(ii) Ten kilograms of a mixture or substance containing a detectable amount of—

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

(B) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

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

(D) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (d)(4)(ii) (A) through (C) of this section;

(iii) Ten kilograms of a mixture or substance described in paragraph (d)(4)(ii)(B) of this section which contains cocaine base;

(iv) Two hundred grams of phencyclidine (PCP) or two kilograms of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) Twenty grams of a mixture or substance containing a detectable amount of Lysergic Acid Diethylamide (LSD);

(vi) Eight hundred grams of a mixture or substance containing a detectable amount of N-phenyl-N[1-(2-phenylethyl)-4-piperidiny]

propanamide (commonly known as fentanyl) or two hundred grams of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N[1-(2-phenylethyl)-4-piperidiny] propanamide; or

(vii) Twenty kilograms of hashish or two kilograms of hashish oil (21 U.S.C. 841(b)(1)(D), 960(b)(4)).

In the event of any changes to section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1) as amended occurring after the date of these regulations, the threshold amount of any substance therein listed, except marijuana, shall be twice the minimum amount required for the most severe mandatory minimum sentence.

(e) *Procedures.* Responsibilities of the Federal Bureau of Investigation and Drug Enforcement Administration.

When contraband drug substances in excess of the threshold amount or in the case of marijuana a quantity in excess of the representative sample are seized pursuant to a criminal investigation and retained in the custody of the Federal Bureau of Investigation or Drug Enforcement Administration, the Agency having custody shall:

(1) Immediately notify the appropriate U.S. Attorney, Assistant U.S. Attorney, or the responsible state/local prosecutor that the amount of seized contraband drug exceeding the threshold amount and its packaging, will be destroyed after sixty days from the date notice is provided of the seizures, unless the agency providing notice is requested in writing by the authority receiving notice not to destroy the excess contraband drug; and

(2) Assure that appropriate tests of samples of the drug are conducted to determine the chemical nature of the contraband substance and its weight sufficient to serve as evidence before the trial courts of that jurisdiction; and

(3) Photographically depict, and if requested by the appropriate prosecutorial authority, videotape, the contraband drugs as originally packaged or an appropriate display of the seized contraband drugs so as to create evidentiary exhibits for use at trial; and

(4) Isolate and retain the appropriate threshold amounts of contraband drug evidence when an amount greater than

## Department of Justice

## § 50.22

the appropriate threshold amount has been seized, or when less than the appropriate threshold amounts of contraband drugs have been seized, the entire amount of the seizure, with the exception of marijuana, for which a representative sample shall be retained; and

(5) Maintain the retained portions of the contraband drugs until the evidence is no longer required for legal proceedings, at which time it may be destroyed, first having obtained consent of the U.S. Attorney, an Assistant U.S. Attorney, or the responsible state/local prosecutor;

(6) Notify the appropriate U.S. Attorney, Assistant U.S. Attorney, or the responsible state/local prosecutor to obtain consent to destroy the retained amount or representative sample whenever the related suspect(s) has been a fugitive from justice for a period of five years. An exemplar sufficient for testing will be retained consistent with this section.

(f) *Procedures.* Responsibilities of the U.S. Attorney or the District Attorney (or equivalent state/local prosecutorial authority). When so notified by the Federal Bureau of Investigation or the Drug Enforcement Administration of an intent to destroy excess contraband drugs, the U.S. Attorney or the District Attorney (or equivalent) may:

(1) Agree to the destruction of the contraband drug evidence in excess of the threshold amount, or for marijuana in excess of the representative sample, prior to the normal sixty-day period. The U.S. Attorney, or the District Attorney (or equivalent) may delegate to his/her assistants authority to enter into such agreement; or

(2) Request an exception to the destruction policy in writing to the Special Agent in Charge of the responsible division prior to the end of the sixty-day period when retaining only the threshold amount or representative sample will significantly affect any legal proceedings; and

(3) In the event of a denial of the request may appeal the denial to the Assistant Attorney General, Criminal Division. Such authority may not be re-delegated. An appeal shall stay the destruction until the appeal is complete.

(g) *Supplementary regulations.* The Federal Bureau of Investigation and the Drug Enforcement Administration are authorized to issue regulations and establish procedures consistent with this section.

[Order No. 1256-88, 53 FR 8453, Mar. 15, 1988]

### § 50.22 Young American Medals Program.

(a) *Scope.* There are hereby established two medals, one to be known as the Young American Medal for Bravery and the other to be known as the Young American Medal for Service.

(b) *Young American Medal for Bravery.*  
(1)(i) The Young American Medal for Bravery may be awarded to a person—

(A) Who during a given calendar year has exhibited exceptional courage, attended by extraordinary decisiveness, presence of mind, and unusual swiftness of action, regardless of his or her own personal safety, in an effort to save or in saving the life of any person or persons in actual imminent danger;

(B) Who was eighteen years of age or younger at the time of the occurrence; and

(C) Who habitually resides in the United States (including its territories and possessions), but need not be a citizen thereof.

(ii) These conditions must be met at the time of the event.

(2) The act of bravery must have been public in nature and must have been acknowledged by the Governor, Chief Executive Officer of a State, county, municipality, or other political subdivision, or by a civic, educational, or religious institution, group, or society.

(3) No more than two such medals may be awarded in any one calendar year.

(c) *Young American Medal for Service.*

(1) The Young American Medal for Service may be awarded to any citizen of the United States eighteen years of age or younger at the time of the occurrence, who has achieved outstanding or unusual recognition for character and service during a given calendar year.

(2) Character attained and service accomplished by a candidate for this medal must have been such as to make