

§ 233.8 Expedited forfeiture proceedings for property seized for administrative forfeiture involving controlled substances in personal use quantities.

(a) *Definitions.* As used in this section, the following terms have the meanings specified:

(1) *Appraised Value* means the estimated domestic price at the time of seizure at which such or similar property is freely offered for sale.

(2) *Controlled Substance* has the meaning given in 21 U.S.C. 802.

(3) *Legal and Factual Basis of the Seizure* means a statement of the applicable law under which the property is seized, and a written statement of the circumstances of the seizure sufficiently precise to enable an owner or other interested party to identify the date, place, and use or acquisition which makes the property subject to forfeiture.

(4) *Owner* means one having a legal and possessory interest in the property seized for forfeiture. Even though one may hold primary and direct title to the property seized, such person may not have sufficient actual beneficial interest in the property to support a petition as owner if the facts indicate that another person had dominion and control over the property.

(5) *Personal Use Quantities* means possession of a controlled substance in circumstances where there is not other evidence of an intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing, or exporting of any controlled substance. Evidence of personal use quantities does not include sweepings or other evidence of possession of quantities of a controlled substance for other than personal use.

(i) Such other evidence includes:

(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 ac-

tual 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) Relationship of the controlled substance to large amounts of cash or any amount of prerecorded government funds;

(E) Possession of the controlled substance under circumstances that indicate the 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.

(ii) Possession of a controlled substance is presumed to be for personal use when there are no indicia of illicit drug trafficking or distribution such as, but not limited to, the factors listed in § 233.8(a)(5)(i), and the amounts do not exceed the following quantities:

(A) One gram of a mixture of substance containing a detectable amount of heroin;

(B) One gram of a mixture or 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, optical 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 § 233.8(a)(5) (ii)(B)(1)–(3);

(5) $\frac{1}{10}$ th gram of a mixture or substance described in § 233.8(a)(5)(ii) which contains cocaine base;

(6) $\frac{1}{10}$ gram of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(7) 500 micrograms of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

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

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(9) One gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomer.

(iii) The possession of a narcotic, a depressant, a stimulant, a hallucinogen or 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 § 233.8(a)(5)(ii).

(6) *Property* means property subject to forfeiture under title 21, U.S.C., Sections 881(a)(4), (6), and (7).

(7) *Statutory Rights or Defenses to the Forfeiture* means all legal and equitable rights and remedies available to a claimant of property seized for forfeiture.

(8) *Sworn to* as used in § 233.8(b)(4)(ii) refers to the oath as provided by 28 U.S.C. 1746.

(b) *Petition for expedited release in an administrative forfeiture action.* (1) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities, the owner may petition the Postal Inspection Service for expedited release of the property.

(2) The owner filing the petition for expedited release must establish the following:

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

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

(iii) The owner did not know or consent to the illegal use of the property, or in the event that the owner knew or should have known of the illegal use, the owner did what reasonably could be expected to prevent the violation.

(3) In addition to those factors listed in § 233.8(b)(2), if an owner can demonstrate that he has other statutory rights or defenses that would cause him to prevail on the issue of forfeiture, such factors must also be considered in ruling on the petition for expedited release.

(4) A petition for expedited release must be:

(i) Filed in a timely manner to be considered; in order to be filed in a timely manner, the petition must be received by the Postal Inspection Service within 20 days from the date of the first publication of the notice of seizure.

(ii) Executed and sworn to by the owner and both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED RELEASE";

(iii) Filed in accordance with the notice of seizure; and

(iv) Addressed to the Chief Postal Inspector, Postal Inspection Service.

(5) The petition must include the following:

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

(ii) The petitioner's interest in the property, which must be supported by title documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(iii) A statement of the facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify expedited release of the seized property.

(c) *Ruling on petition for expedited release in an administrative forfeiture action involving personal use quantities of a controlled substance.* (1) Upon receipt of a petition for expedited release filed pursuant to § 233.8(b), the Postal Inspection Service must determine first whether a final administrative determination of the case, without regard to the provisions of this section, 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 section.

(2) If no such final administrative determination is made within 21 days of the seizure, the following procedure applies:

(i) The Postal Inspection Service, within 20 days after the receipt of the petition for expedited release, determines whether the petition filed by the owner has established the factors listed in § 233.8(b)(2); and

(ii) If the Postal Inspection Service determines that those factors have

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been established, it terminates the administrative proceedings and returns the property to the owner except where it is evidence of a violation of law; or

(iii) If the Postal Inspection Service determines that those factors have not been established, it proceeds with the administrative forfeiture.

(d) *Posting of substitute res.* (1) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities, the owner may obtain release of the property by posting a substitute res with the Postal Service. The property will be released to the owner upon the payment of an amount equal to the appraised value of the property if it is not evidence of a violation of law or has design or other characteristics that particularly suit it for use in illegal activities. This payment must be in the form of a traveler's check, a money order, a cashier's check or an irrevocable letter of credit made payable to the Postal Service. A bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution which issued the check.

(2) If a substitute res is posted and the property is administratively forfeited, the Postal Inspection Service will forfeit the substitute res in lieu of the property.

[54 FR 47520, Nov. 15, 1989]

§ 233.9 Expedited release of conveyances being forfeited in a judicial forfeiture proceeding for a drug-related offense.

(a) *Petition for expedited release of conveyance.* Where a conveyance has been seized and is being forfeited in a judicial proceeding for a drug-related offense, the owner may petition the United States Attorney for an expedited release of the conveyance in accordance with the regulations of the Department of Justice (21 CFR part 1316).

(b) *Petition filed in timely manner.* A petition for expedited release must be filed in a timely manner in order to be considered by the United States Attorney. To be considered as filed in a timely manner, in accordance with 21 CFR part 1316, the petition must be received by the appropriate United

States Attorney within 20 days from the date of the first publication of the notice of the action and arrest of the property, or within 30 days after filing of the claim, whichever occurs later.

(c) *Obtaining release of the property by filing a substitute res bond.* Where a conveyance is being forfeited in a judicial proceeding for a drug-related offense, the owner may obtain release of the property by filing a substitute res bond with the Postal Inspection Service. The conveyance will be released to the owner upon the payment of a bond in the amount of the appraised value of the conveyance if it is not evidence of a violation of law or has design or other characteristics that particularly suit it for use in illegal activities. This bond must be in the form of a traveler's check, a money order, a cashier's check or an irrevocable letter of credit made payable to the United States Postal Service. A bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution which issued the check.

(d) *Forfeiture of the bond.* If a substitute res bond is filed and the conveyance is judicially forfeited, the court will forfeit the bond in lieu of the property.

[54 FR 47522, Nov. 15, 1989]

§ 233.10 Notice provisions.

(a) *Special notice provision.* At the time of seizure of property defined in § 233.8(b) for violations involving the possession of personal use quantities of a controlled substance, written notice will 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 release and for the posting of a substitute res bond.

(b) *Standard notice provision.* The standard notice to the owner as required by 19 U.S.C. 1607 will be made at the earliest practicable opportunity after determining ownership of the seized property and must include the legal and factual basis of the seizure.

[54 FR 47522, Nov. 15, 1989]