

§ 162.93

Assistant Commissioner, Investigations, or designee, that the conditions set forth in paragraph (d) of this section are present.

[T.D. 00-88, 65 FR 78091, Dec. 14, 2000, as amended by USCBP-2006-0122, 73 FR 9012, Feb. 19, 2007]

§ 162.93 Failure to issue notice of seizure.

If Customs does not send notice of a seizure of property in accordance with § 162.92 to the person from whom the property was seized, and no extension of time is granted, Customs will return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. Customs is not, however, required to return contraband or other property that the person may not legally possess.

§ 162.94 Filing of a claim for seized property.

(a) *Generally.* In lieu of filing a petition for relief in accordance with part 171 of this chapter, any person claiming property seized by Customs in a non-judicial civil forfeiture proceeding may file a claim with the appropriate Fines, Penalties, and Forfeitures Officer.

(b) *When filed.* Unless the Fines, Penalties, and Forfeitures Officer provides additional time to the person filing a claim for seized property pursuant to paragraph (a) of this section, the claim must be filed within 35 calendar days after the date the notice of seizure is mailed. If the notice of seizure is not received, a claim may be filed not later than 30 calendar days after the date of final publication of notice of seizure and intent to forfeit the property.

(c) *Form of claim.* The claim must be in writing but need not be made in any particular form. Claim forms will be made generally available upon request.

(d) *Content of claim.* The claim must:

- (1) Identify the specific property being claimed;
- (2) State the claimant's interest in the property; and
- (3) Be made under oath, subject to penalty of perjury.

(e) *No bond required.* Any person may make a claim under this section without posting a bond.

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(f) *Effect of claim.* Not later than 90 calendar days after a claim has been filed, the Government will file an appropriate complaint for forfeiture, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

[T.D. 00-88, 65 FR 78091, Dec. 14, 2000, as amended by T.D. 02-08, 67 FR 9191, Feb. 28, 2002]

§ 162.95 Release of seized property.

(a) *Generally.* Except as provided in paragraph (b) of this section, a claimant to seized property under 18 U.S.C. 983(a) is entitled to immediate release of the property if:

- (1) The claimant has a possessory interest in the property;
- (2) The claimant has sufficient ties to the community to provide assurance that the property will be available at the time of trial;
- (3) The continued possession of the property by Customs pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing an individual from working, or leaving an individual homeless; and
- (4) The claimant's likely hardship from the continued possession by Customs of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceedings.

(b) *Exceptions.* Immediate release of seized property under paragraph (a) of this section will not apply if the seized property:

- (1) Is contraband, currency or other monetary instrument, or electronic funds, unless, in the case of currency, other monetary instrument or electronic funds, such property comprises the assets of a legitimate business which has been seized;
- (2) Is to be used as evidence of a violation of the law;
- (3) By reason of design or other characteristic, is particularly suited for use in illegal activities; or
- (4) Is likely to be used to commit additional criminal acts if returned to the claimant.