

PART 7—REWARDS FOR CAPTURE OF ESCAPED FEDERAL PRISONERS

Sec.

- 7.1 Standing offer of reward.
- 7.2 Amount of reward.
- 7.3 Eligibility for reward.
- 7.4 Procedure for claiming reward.
- 7.5 Certification.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 3059.

CROSS REFERENCE: For Organization Statement, Bureau of Prisons, see subpart Q of part 0 of this chapter.

SOURCE: 25 FR 2420, Mar. 23, 1960, unless otherwise noted.

§ 7.1 Standing offer of reward.

A standing offer of reward is made for the capture, or for assisting in, or furnishing information leading to, the capture, of an escaped Federal prisoner, in accordance with the conditions stated in this part.

§ 7.2 Amount of reward.

Within the discretion of the Warden or U.S. Marshal concerned, a reward not in excess of \$200 may be granted for each capture of a prisoner and to more than one claimant, as determined applicable and appropriate. The Director of the Bureau of Prisons may in exceptional circumstances, as determined by him, grant rewards in excess of \$200. Bodily harm, damage, violence, intimidation, terrorizing, risks, etc., will be considered in determining the appropriate amount of reward.

§ 7.3 Eligibility for reward.

A reward may be paid to any person, except an official or employee of the Department of Justice or a law-enforcement officer of the U.S. Government, who personally captures and surrenders an escaped Federal prisoner to proper officials, or who assists in the capture, of an escaped Federal prisoner.

§ 7.4 Procedure for claiming reward.

A person claiming a reward under this part shall present his claim, within six months from the date of the capture, in the form of a letter to the Warden or U.S. Marshal concerned. The letter shall state fully the facts and circumstances on which the claim is

based, and shall include the name of each escapee captured and the time and place of the capture, and details as to how the arrest was made by the claimant or as to how assistance was rendered to others who made the arrest.

§ 7.5 Certification.

The claim letter required under § 7.4 shall contain the following certification immediately preceding the signature of the claimant:

I am not an officer or employee of the Department of Justice or a law-enforcement officer of the United States Government.

PART 8—FORFEITURE AUTHORITY FOR CERTAIN STATUTES

Subpart A—Seizure and Forfeiture of Property

Sec.

- 8.1 Scope of regulations.
- 8.2 Definitions.
- 8.3 Seizing property subject to forfeiture.
- 8.4 Inventory.
- 8.5 Custody.
- 8.6 Appraisal.
- 8.7 Release before claim.
- 8.8 Commencing the administrative forfeiture proceeding.
- 8.9 Notice of administrative forfeiture.
- 8.10 Claims.
- 8.11 Interplay of administrative and criminal judicial forfeiture proceedings.
- 8.12 Declaration of administrative forfeiture.
- 8.13 Return of property pursuant to 18 U.S.C. 983(a)(3)(B).
- 8.14 Disposition of property before forfeiture.
- 8.15 Requests for hardship release of seized property.
- 8.16 Attorney fees and costs.

Subpart B—Expedited Forfeiture Proceedings for Property Seizures Based on Violations Involving the Possession of Personal Use Quantities of a Controlled Substance

- 8.17 Purpose and scope.
- 8.18 Definitions.
- 8.19 Petition for expedited release in an administrative forfeiture proceeding.
- 8.20 Ruling on petition for expedited release in an administrative forfeiture.
- 8.21 Posting of substitute monetary amount in an administrative forfeiture.
- 8.22 Special notice provision.

Department of Justice

§ 8.2

Subpart C—Other Applicable Provisions

8.23 Redelelegation of authority.

AUTHORITY: 5 U.S.C. 301; 8 U.S.C. 1103, 1324(b); 18 U.S.C. 981, 983, 3051; 19 U.S.C. 1606, 1607, 1608, 1610, 1612(b), 1613, 1618; 21 U.S.C. 822, 871, 872, 880, 881, 883, 958, 965; 28 U.S.C. 509, 510; Pub. L. 100-690, sec. 6079, 102 Stat. 4181.

SOURCE: 77 FR 56101, Sept. 12, 2012, unless otherwise noted.

Subpart A—Seizure and Forfeiture of Property

§ 8.1 Scope of regulations.

(a) This part applies to all forfeitures administered by the Department of Justice with the exception of seizures and forfeitures under the statutes listed in 18 U.S.C. 983(i)(2). The authority of seizing agencies to conduct administrative forfeitures derives from the procedural provisions of the Customs laws (19 U.S.C. 1602-1618) where those provisions are incorporated by reference in the substantive forfeiture statutes enforced by the agencies.

(b) The regulations in this part will apply to all forfeiture actions commenced on or after October 12, 2012.

§ 8.2 Definitions.

As used in this part, the following terms shall have the meanings specified:

Administrative forfeiture means the process by which property may be forfeited by a seizing agency rather than through a judicial proceeding. Administrative forfeiture has the same meaning as nonjudicial forfeiture, as that term is used in 18 U.S.C. 983.

Appraised value means the estimated market value of property at the time and place of seizure if such or similar property were freely offered for sale by a willing seller to a willing buyer.

Appropriate official means, in the case of the Drug Enforcement Administration (DEA), the Forfeiture Counsel, DEA. In the case of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), it means the Associate Chief Counsel, Office of Chief Counsel, ATF. In the case of the Federal Bureau of Investigation (FBI), it means the Unit Chief, Legal Forfeiture Unit, Office of the General Counsel, FBI, except as

used in §§ 8.9(a)(2), 8.9(b)(2), 8.10, and 8.15, where the term appropriate official means the office or official identified in the published notice or personal written notice in accordance with § 8.9.

Civil forfeiture proceeding means a civil judicial forfeiture action as that term is used in 18 U.S.C. 983.

Contraband means—

(1) Any controlled substance, hazardous raw material, equipment or container, plants, or other property subject to summary forfeiture pursuant to sections 511(f) or (g) of the Controlled Substances Act (21 U.S.C. 881(f) or (g)); or

(2) Any controlled substance imported into the United States, or exported out of the United States, in violation of law.

Domestic value means the same as the term *appraised value* as defined in this section.

Expense means all costs incurred to detain, inventory, safeguard, maintain, advertise, sell, or dispose of property seized, detained, or forfeited pursuant to any law.

File or filed has the following meanings:

(1) A claim or any other document submitted in an administrative forfeiture proceeding is not deemed filed until actually received by the appropriate official identified in the personal written notice and the published notice specified in § 8.9. It is not considered filed if it is received by any other office or official, such as a court, U.S. Attorney, seizing agent, local ATF or DEA office, or FBI Headquarters. In addition, a claim in an administrative forfeiture proceeding is not considered filed if received only by an electronic or facsimile transmission.

(2) For purposes of computing the start of the 90-day period set forth in 18 U.S.C. 983(a)(3), an administrative forfeiture claim is filed on the date when the claim is received by the designated appropriate official, even if the claim is received from an incarcerated *pro se* prisoner.

Interested party means any person who reasonably appears to have an interest in the property based on the facts known to the seizing agency before a declaration of forfeiture is entered.

§8.3

Mail includes regular or certified U.S. mail and mail and package transportation and delivery services provided by other private or commercial interstate carriers.

Nonjudicial forfeiture has the same meaning as administrative forfeiture as defined in this section.

Person means an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property.

Property subject to administrative forfeiture means any personal property of the kinds described in 19 U.S.C. 1607(a).

Property subject to forfeiture refers to all property that federal law authorizes to be forfeited to the United States of America in any administrative forfeiture proceeding, in any civil judicial forfeiture proceeding, or in any criminal forfeiture proceeding.

Seizing agency refers to ATF, DEA, or FBI.

§8.3 Seizing property subject to forfeiture.

(a) *Authority of seizing agents.* All special agents of any seizing agency may seize assets under any federal statute over which the agency has investigative or forfeiture jurisdiction.

(b) *Turnover of assets seized by state and local agencies.* (1) Property that is seized by a state or local law enforcement agency and transferred to a seizing agency for administrative or civil forfeiture may be adopted for administrative forfeiture without the issuance of any federal seizure warrant or other federal judicial process.

(2) Where a state or local law enforcement agency maintains custody of property pursuant to process issued by a state or local judicial authority, and notifies a seizing agency of the impending release of such property, the seizing agency may seek and obtain a federal seizure warrant in anticipation of a state or local judicial authority releasing the asset from state process for purposes of federal seizure, and may execute such seizure warrant when the state or local law enforcement agency releases the property as allowed or directed by its judicial authority.

28 CFR Ch. I (7-1-23 Edition)

§8.4 Inventory.

The seizing agent shall prepare an inventory of any seized property.

§8.5 Custody.

(a) All property seized for forfeiture by ATF, DEA, or FBI shall be delivered to the custody of the U.S. Marshals Service (USMS), or a custodian approved by the USMS, as soon as practicable after seizure, unless it is retained as evidence by the seizing agency.

(b) Seized U.S. currency (and, to the extent practicable, seized foreign currency and negotiable instruments) must be deposited promptly in the Seized Asset Deposit Fund pending forfeiture. Provisional exceptions to this requirement may be granted as follows:

(1) If the seized currency has a value less than \$5,000 and a supervisory official within a U.S. Attorney's Office determines in writing that the currency is reasonably likely to serve a significant, independent, tangible evidentiary purpose, or that retention is necessary while the potential evidentiary significance of the currency is being determined by scientific testing or otherwise; or

(2) If the seized currency has a value greater than \$5,000 and the Chief of the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, determines in writing that the currency is reasonably likely to serve a significant, independent, tangible evidentiary purpose, or that retention is necessary while the potential evidentiary significance of the currency is being determined by scientific testing or otherwise.

(c) Seized currency has a *significant independent, tangible evidentiary purpose* as those terms are used in §8.5(b)(1) and (b)(2) if, for example, it bears fingerprint evidence, is packaged in an incriminating fashion, or contains a traceable amount of narcotic residue or some other substance of evidentiary significance. If only a portion of the seized currency has evidentiary value, only that portion should be retained; the balance should be deposited.

§8.6 Appraisal.

The seizing agency or its designee shall determine the domestic value of

Department of Justice

§ 8.9

seized property as soon as practicable following seizure.

§ 8.7 Release before claim.

(a) After seizure for forfeiture and prior to the filing of any claim, ATF's Chief, Asset Forfeiture and Seized Property Branch, or designee, the appropriate DEA Special Agent in Charge, or designee, or the appropriate FBI Special Agent in Charge, or designee, whichever is applicable, is authorized to release property seized for forfeiture, provided:

(1) The property is not contraband, evidence of a violation of law, or any property, the possession of which by the claimant, petitioner, or the person from whom it was seized is prohibited by state or federal law, and does not have a design or other characteristic that particularly suits it for use in illegal activities; and

(2) The official designated in paragraph (a) of this section determines within 10 days of seizure that there is an innocent party with the right to immediate possession of the property or that the release would be in the best interest of justice or the Government.

(b) Further, at any time after seizure and before any claim is referred, such seized property may be released if the appropriate official of the seizing agency determines that there is an innocent party with the right to immediate possession of the property or that the release would be in the best interest of justice or the Government.

§ 8.8 Commencing the administrative forfeiture proceeding.

An administrative forfeiture proceeding begins when notice is first published in accordance with § 8.9(a), or the first personal written notice is sent in accordance with § 8.9(b), whichever occurs first.

§ 8.9 Notice of administrative forfeiture.

(a) *Notice by publication.* (1) After seizing property subject to administrative forfeiture, the appropriate official of the seizing agency shall select from the following options a means of publication reasonably calculated to notify potential claimants of the seizure and

intent to forfeit and sell or otherwise dispose of the property:

(i) Publication once each week for at least three successive weeks in a newspaper generally circulated in the judicial district where the property was seized; or

(ii) Posting a notice on an official internet government forfeiture site for at least 30 consecutive days.

(2) The published notice shall:

(i) Describe the seized property;

(ii) State the date, statutory basis, and place of seizure;

(iii) State the deadline for filing a claim when personal written notice has not been received, at least 30 days after the date of final publication of the notice of seizure; and

(iv) State the identity of the appropriate official of the seizing agency and address where the claim must be filed.

(b) *Personal written notice.* (1) *Manner of providing notice.* After seizing property subject to administrative forfeiture, the seizing agency, in addition to publishing notice, shall send personal written notice of the seizure to each interested party in a manner reasonably calculated to reach such parties.

(2) *Content of personal written notice.* The personal written notice sent by the seizing agency shall:

(i) State the date when the personal written notice is sent;

(ii) State the deadline for filing a claim, at least 35 days after the personal written notice is sent;

(iii) State the date, statutory basis, and place of seizure;

(iv) State the identity of the appropriate official of the seizing agency and the address where the claim must be filed; and

(v) Describe the seized property.

(c) *Timing of notice.* (1) *Date of personal notice.* Personal written notice is sent on the date when the seizing agency causes it to be placed in the mail, delivered to a commercial carrier, or otherwise sent by means reasonably calculated to reach the interested party. The personal written notice required by § 8.9(b) shall be sent as soon as practicable, and in no case more than 60 days after the date of seizure (or 90 days after the date of seizure by

a state or local law enforcement agency if the property was turned over to a federal law enforcement agency for the purpose of forfeiture under federal law).

(2) *Civil judicial forfeiture.* If, before the time period for sending notice expires, the Government files a civil judicial forfeiture action against the seized property and provides notice of such action as required by law, personal notice of administrative forfeiture is not required under paragraph (c)(1) of this section.

(3) *Criminal indictment.* If, before the time period for sending notice under paragraph (c)(1) of this section expires, no civil judicial forfeiture action is filed, but a criminal indictment or information is obtained containing an allegation that the property is subject to forfeiture, the seizing agency shall either:

(i) Send timely personal written notice and continue the administrative forfeiture proceeding; or

(ii) After consulting with the U.S. Attorney, terminate the administrative forfeiture proceeding and notify the custodian to return the property to the person having the right to immediate possession unless the U.S. Attorney takes the steps necessary to maintain custody of the property as provided in the applicable criminal forfeiture statute.

(4) *Subsequent federal seizure.* If property is seized by a state or local law enforcement agency, but personal written notice is not sent to the person from whom the property is seized within the time period for providing notice under paragraph (c)(1) of this section, then any administrative forfeiture proceeding against the property may commence if:

(i) The property is subsequently seized or restrained by the seizing agency pursuant to a federal seizure warrant or restraining order and the seizing agency sends notice as soon as practicable, and in no case more than 60 days after the date of the federal seizure; or

(ii) The owner of the property consents to forfeiture of the property.

(5) *Tolling.* (i) In states or localities where orders are obtained from a state court authorizing the turnover of

seized assets to a federal seizing agency, the period from the date an application or motion is presented to the state court for the turnover order through the date when such order is issued by the court shall not be included in the time period for providing notice under paragraph (c)(1) of this section.

(ii) If property is detained at an international border or port of entry for the purpose of examination, testing, inspection, obtaining documentation, or other investigation relating to the importation of the property into, or the exportation of the property from, the United States, such period of detention shall not be included in the period described in paragraph (c)(1) of this section. In such cases, the 60-day period shall begin to run when the period of detention ends, if a seizing agency seizes the property for the purpose of forfeiture to the United States.

(6) *Identity of interested party.* If a seizing agency determines the identity or interest of an interested party after the seizure or adoption of the property, but before entering a declaration of forfeiture, the agency shall send written notice to such interested party under paragraph (c)(1) of this section not later than 60 days after determining the identity of the interested party or the interested party's interest.

(7) *Extending deadline for notice.* The appropriate official of the seizing agency may extend the period for sending personal written notice under the regulations in this part in a particular case for a period not to exceed 30 days (which period may not be further extended except by a court pursuant to 18 U.S.C. 983(a)(1)(C) and (D)), if the appropriate official determines, and states in writing, that there is reason to believe that notice may have an adverse result, including: Endangering the life or physical safety of an individual; flight from prosecution; destruction of or tampering with evidence; intimidation of potential witnesses; or otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(8) *Certification.* The appropriate official of the seizing agency shall provide the written certification required under 18 U.S.C. 983(a)(1)(C) when the

Department of Justice

§ 8.10

Government requests it and the conditions described in section 983(a)(1)(D) are present.

§ 8.10 Claims.

(a) *Filing.* In order to contest the forfeiture of seized property in federal court, any person asserting an interest in seized property subject to an administrative forfeiture proceeding under the regulations in this part must file a claim with the appropriate official, after the commencement of the administrative forfeiture proceeding as defined in § 8.8, and not later than the deadline set forth in a personal notice letter sent pursuant to § 8.9(b). If personal written notice is sent but not received, then the intended recipient must file a claim with the appropriate official not later than 30 days after the date of the final publication of the notice of seizure.

(b) *Contents of claim.* A claim shall:

(1) Identify the specific property being claimed;

(2) Identify the claimant and state the claimant's interest in the property; and

(3) Be made under oath by the claimant, not counsel for the claimant, and recite that it is made under penalty of perjury, consistent with the requirements of 28 U.S.C. 1746. An acknowledgment, attestation, or certification by a notary public alone is insufficient.

(c) *Availability of claim forms.* The claim need not be made in any particular form. However, each seizing agency conducting forfeitures under the regulations in this part must make claim forms generally available on request. Such forms shall be written in easily understandable language. A request for a claim form does not extend the deadline for filing a claim. Any person may obtain a claim form by requesting one in writing from the appropriate official.

(d) *Cost bond not required.* Any person may file a claim under § 8.10(a) without posting bond, except in forfeitures under statutes listed in 18 U.S.C. 983(i).

(e) *Referral of claim.* Upon receipt of a claim that meets the requirements of §§ 8.10(a) and (b), the seizing agency shall return the property or shall suspend the administrative forfeiture proceeding and promptly transmit the

claim, together with a description of the property and a complete statement of the facts and circumstances surrounding the seizure, to the appropriate U.S. Attorney for commencement of judicial forfeiture proceedings. Upon making the determination that the seized property will be released, the agency shall promptly notify the person with a right to immediate possession of the property, informing that person to contact the property custodian within a specified period for release of the property, and further informing that person that failure to contact the property custodian within the specified period for release of the property will result in abandonment of the property pursuant to applicable regulations. The seizing agency shall notify the property custodian of the identity of the person to whom the property should be released. The property custodian shall have the right to require presentation of proper identification or to take other steps to verify the identity of the person who seeks the release of property, or both.

(f) *Premature filing.* If a claim is filed with the appropriate official after the seizure of property, but before the commencement of the administrative forfeiture proceeding as defined in § 8.8, the claim shall be deemed filed on the 30th day after the commencement of the administrative forfeiture proceeding. If such claim meets the requirements of § 8.10(b), the seizing agency shall suspend the administrative forfeiture proceedings and promptly transmit the claim, together with a description of the property and a complete statement of the facts and circumstances surrounding the seizure to the appropriate U.S. Attorney for commencement of judicial forfeiture proceedings.

(g) *Defective claims.* If the seizing agency determines that an otherwise timely claim does not meet the requirements of § 8.10(b), the seizing agency may notify the claimant of this determination and allow the claimant a reasonable time to cure the defect(s) in the claim. If, within the time allowed by the seizing agency, the requirements of § 8.10(b) are not met, the claim shall be void and the forfeiture proceedings shall proceed as if no claim

§8.11

had been submitted. If the claimant timely cures the deficiency, then the claim shall be deemed filed on the date when the appropriate official receives the cured claim.

§8.11 Interplay of administrative and criminal judicial forfeiture proceedings.

An administrative forfeiture proceeding pending against seized or restrained property does not bar the Government from alleging that the same property is forfeitable in a criminal case. Notwithstanding the fact that an allegation of forfeiture has been included in a criminal indictment or information, the property may be administratively forfeited in a parallel proceeding.

§8.12 Declaration of administrative forfeiture.

If the seizing agency commences a timely proceeding against property subject to administrative forfeiture, and no valid and timely claim is filed, the appropriate official of the seizing agency shall declare the property forfeited. The declaration of forfeiture shall have the same force and effect as a final decree and order of forfeiture in a federal judicial forfeiture proceeding.

§8.13 Return of property pursuant to 18 U.S.C. 983(a)(3)(B).

(a) If, under 18 U.S.C. 983(a)(3), the United States is required to return seized property, the U.S. Attorney in charge of the matter shall immediately notify the appropriate seizing agency that the 90-day deadline was not met. Under this subsection, the United States is not required to return property for which it has an independent basis for continued custody, including but not limited to contraband or evidence of a violation of law.

(b) Upon becoming aware that the seized property must be released, the agency shall promptly notify the person with a right to immediate possession of the property, informing that person to contact the property custodian within a specified period for release of the property, and further informing that person that failure to contact the property custodian within the specified period for release of the

28 CFR Ch. I (7-1-23 Edition)

property may result in initiation of abandonment proceedings against the property pursuant to 41 CFR part 128-48. The seizing agency shall notify the property custodian of the identity of the person to whom the property should be released.

(c) The property custodian shall have the right to require presentation of proper identification and to verify the identity of the person who seeks the release of property.

§8.14 Disposition of property before forfeiture.

(a) Whenever it appears to the seizing agency that any seized property is liable to perish or to waste, or to be greatly reduced in value during its detention for forfeiture, or that the expense of keeping the property is or will be disproportionate to its value, the appropriate official of the seizing agency may order destruction, sale, or other disposition of such property prior to forfeiture. In addition, the owner may obtain release of the property by posting a substitute monetary amount with the seizing agency to be held subject to forfeiture proceedings in place of the seized property to be released. Upon approval by the appropriate official of the seizing agency, the property will be released to the owner after the payment of an amount equal to the Government appraised value of the property if the property is not evidence of a violation of law, is not contraband, and has no design or other characteristics that particularly suit it for use in illegal activities. This payment must be in the form of a money order, an official bank check, or a cashier's check made payable to the United States Marshals Service. A bond in the form of a cashier's check or official bank check will be considered as paid once the check has been accepted for payment by the financial institution that issued the check. If a substitute amount is posted and the property is administratively forfeited, the seizing agency will forfeit the substitute amount in lieu of the property. The pre-forfeiture destruction, sale, or other disposition of seized property pursuant to this section shall not extinguish any person's rights to the value of the property under applicable

Department of Justice

§ 8.15

law. The authority vested in the appropriate official under this subsection may not be delegated.

(b) The seizing agency shall commence forfeiture proceedings, regardless of the disposition of the property under § 8.14(a). A person with an interest in the property that was destroyed or otherwise disposed of under § 8.14(a) may file a claim to contest the forfeiture of the property or a petition for remission or mitigation of the forfeiture. No government agent or employee shall be liable for the destruction or other disposition of property made pursuant to § 8.14(a). The destruction or other disposition of the property pursuant to this section does not impair in rem jurisdiction.

§ 8.15 Requests for hardship release of seized property.

(a) Under certain circumstances a claimant may be entitled to immediate release of seized property on the basis of hardship.

(b) Any person filing a request for hardship release must also file a claim to the seized property pursuant to § 8.10 and as defined in 18 U.S.C. 983(a).

(c) The timely filing of a valid claim pursuant to § 8.10 does not entitle claimant to possession of the seized property, but a claimant may request immediate release of the property while the forfeiture is pending, based on hardship.

(d) A claimant seeking hardship release of property under 18 U.S.C. 983(f) and the regulations in this part must file a written request with the appropriate official. The request must establish that:

(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 by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;

(4) The claimant's likely hardship from the continued possession by the

Government 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 proceeding; and

(5) The seized property is not:

(i) Contraband;

(ii) Any property, the possession of which by the claimant, petitioner, or the person from whom it was seized is prohibited by state or federal law;

(iii) Currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business that has been seized;

(iv) Intended to be used as evidence of a violation of law;

(v) By reason of design or other characteristic, particularly suited for use in illegal activities; or

(vi) Likely to be used to commit additional criminal acts if returned to the claimant.

(e) A hardship release request pursuant to this section shall be deemed to have been made on the date when it is received by the appropriate official as defined in § 8.2(c) or the date the claim was deemed filed under § 8.10(f). If the request is ruled on and denied by the appropriate official or the property has not been released within the 15-day time period, the claimant may file a petition in federal district court pursuant to 18 U.S.C. 983(f)(3). If a petition is filed in federal district court, the claimant must send a copy of the petition to the agency to which the hardship petition was originally submitted and to the U.S. Attorney in the judicial district in which the judicial petition was filed.

(f) If a civil forfeiture complaint is filed on the property and the claimant files a claim with the court pursuant to 18 U.S.C. 983(a)(4)(A) and Rule G(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims, a hardship petition may be submitted to the individual identified in the public or personal notice of the civil judicial forfeiture action.

§ 8.16 Attorney fees and costs.

The United States is not liable for attorney fees or costs in any administrative forfeiture proceeding, including such proceedings in which a claim is filed, even if the matter is referred to the U.S. Attorney, and the U.S. Attorney declines to commence judicial forfeiture proceedings.

Subpart B—Expedited Forfeiture Proceedings for Property Seizures Based on Violations Involving the Possession of Personal Use Quantities of a Controlled Substance

§ 8.17 Purpose and scope.

(a) The following definitions, regulations, and criteria in this subpart are designed to establish and implement procedures required by section 6079 of the Anti-Drug Abuse Act of 1988, Public Law 100–690, 102 Stat. 4181. They are intended to supplement existing law and procedures relative to the forfeiture of property under the identified statutory authority. These regulations do not affect the existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture, nor do these provisions relieve interested parties from their existing obligations and responsibilities in pursuing their interests through such courses of action. These regulations are intended to reflect the intent of Congress to minimize the adverse impact on those entitled to legal or equitable relief occasioned by the prolonged detention of property subject to forfeiture due to violations of law involving personal use quantities of controlled substances. The definition of *personal use quantities* of a controlled substance as contained herein is intended to distinguish between those small quantities that are generally considered to be possessed for personal consumption and not for further distribution, and those larger quantities generally considered to be intended for further distribution.

(b) In this regard, for violations involving the possession of personal use quantities of a controlled substance, section 6079(b)(2) requires either that administrative forfeiture be completed

within 21 days of the seizure of the property, or alternatively, that procedures be established that provide a means by which an individual entitled to relief may initiate an expedited administrative review of the legal and factual basis of the seizure for forfeiture. Should an individual request relief pursuant to these regulations and be entitled to the return of the seized property, such property shall be returned immediately following that determination, and in no event later than 20 days after the filing of a petition for expedited release by an owner, and the administrative forfeiture process shall cease. Should the individual not be entitled to the return of the seized property, however, the administrative forfeiture of that property shall proceed. The owner may, in any event, obtain release of property pending the administrative forfeiture by submitting to the agency making the determination property sufficient to preserve the Government's vested interest for purposes of the administrative forfeiture.

§ 8.18 Definitions.

As used in this subpart, the following terms shall have the meanings specified: *Commercial fishing industry vessel* means a vessel that:

(1) Commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(2) Commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling; or

(3) Commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or fish processing facility.

Controlled substance has the meaning given in 21 U.S.C. 802(6).

Normal and customary manner means that inquiry suggested by particular facts and circumstances that would customarily be undertaken by a reasonably prudent individual in a like or similar situation. Actual knowledge of

such facts and circumstances is unnecessary, and implied, imputed, or constructive knowledge is sufficient. An established norm, standard, or custom is persuasive but not conclusive or controlling in determining whether an owner acted in a normal and customary manner to ascertain how property would be used by another legally in possession of the property. The failure to act in a normal and customary manner as defined herein will result in the denial of a petition for expedited release of the property and is intended to have the desirable effect of inducing owners of the property to exercise greater care in transferring possession of their property.

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.

Personal use quantities means those amounts of controlled substances in possession in circumstances where there is no other evidence of an intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing, or exporting of any controlled substance.

(1) Evidence that possession of quantities of a controlled substance is for other than personal use may include, for example:

(i) 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;

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

(iii) The arrest 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;

(iv) Circumstances or reliable information indicating that the controlled

substance is related to large amounts of cash or any amount of prerecorded government funds;

(v) Circumstances or reliable information indicating that the controlled substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery;

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

(vii) The fact that the controlled substance was recovered from sweepings.

(2) Possession of a controlled substance shall be 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 above—and the amounts do not exceed the following quantities:

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

(ii) One gram 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 derivations of ecgonine 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 that contains any quantity of any of the substances referred to in paragraphs (2)(ii)(A) through (2)(ii)(C) of this definition;

(iii) 1/10th gram of a mixture or substance described in paragraph (e)(2)(ii) of this section which contains cocaine base;

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

(v) 500 micrograms of lysergic acid diethylamide (LSD);

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

§ 8.19

28 CFR Ch. I (7-1-23 Edition)

(vii) 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 isomers.

(3) 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 the quantities described in paragraph (e)(2) of this section.

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.

Seizing agency means the federal agency that has seized the property or adopted the seizure of another agency and has the responsibility for administratively forfeiting the property;

Statutory rights or defenses to the forfeiture means all legal and equitable rights and remedies available to a claimant of property seized for forfeiture.

§ 8.19 Petition for expedited release in an administrative forfeiture proceeding.

(a) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities the owner may petition the seizing agency for expedited release of the property.

(b) Where property described in § 8.19(a) is a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations, which would be 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. The seizing agency shall be authorized to effect administrative forfeiture as if the vessel had been physically seized. Upon answering the summons to appear on or prior to the last reporting date specified in the summons, the owner of the vessel may file a petition for expedited release

pursuant to § 8.19(a), and the provisions of § 8.19(a) and other provisions in this section pertaining to a petition for expedited release shall apply as if the vessel had been physically seized.

(c) The owner filing the petition for expedited release shall establish the following:

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

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

(3) The owner did not know of 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.

(d) In addition to those factors listed in § 8.19(c), if an owner can demonstrate that the owner has other statutory rights or defenses that would cause the owner to prevail on the issue of forfeiture, such factors shall also be considered in ruling on the petition for expedited release.

(e) A petition for expedited release must be received by the appropriate seizing agency within 20 days from the date of the first publication of the notice of seizure in order to be considered by the seizing agency. The petition must be executed and sworn to by the owner and both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED RELEASE." Such petition shall be filed with the appropriate office or official identified in the personal written notice and the publication notice.

(f) The petition shall include the following:

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

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

(3) 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.

Department of Justice

§ 8.23

§ 8.20 Ruling on petition for expedited release in an administrative forfeiture proceeding.

(a) If a final administrative determination of the case, without regard to the provisions of this section, is made within 21 days of the seizure, the seizing agency need take no further action under this section on a petition for expedited release received pursuant to § 8.19(a).

(b) If no such final administrative determination is made within 21 days of the seizure, the following procedure shall apply. The seizing agency shall, within 20 days after the receipt of the petition for expedited release, determine whether the petition filed by the owner has established the factors listed in § 8.19(c) and:

(1) If the seizing agency determines that those factors have been established, it shall terminate the administrative proceedings and return the property to the owner (or in the case of a commercial fishing industry vessel for which a summons has been issued shall dismiss the summons), except where it is evidence of a violation of law; or

(2) If the seizing agency determines that those factors have not been established, the agency shall proceed with the administrative forfeiture.

§ 8.21 Posting of substitute monetary amount in an administrative forfeiture proceeding.

(a) 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 monetary amount with the seizing agency to be held subject to forfeiture proceedings in place of the seized property to be released. The property will be released to the owner upon the payment of an amount equal to the government appraised value of the property if the property is not evidence of a violation of law and has no 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 seizing agency. 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.

(b) If a substitute amount is posted and the property is administratively forfeited, the seizing agency will forfeit the substitute amount in lieu of the property.

§ 8.22 Special notice provision.

At the time of seizure of property defined in § 8.18 for violations involving the possession of personal use quantities of a controlled substance, the seizing agency must provide written notice to the possessor of the property specifying the procedures for the filing of a petition for expedited release and for the posting of a substitute monetary bond as set forth in section 6079 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

Subpart C—Other Applicable Provisions

§ 8.23 Redefinition of authority.

(a) *Redelegation of authority permitted.*

(1) The powers and responsibilities delegated to the DEA Forfeiture Counsel by the regulations in this part may be redelegated to attorneys working under the direct supervision of the DEA Forfeiture Counsel.

(2) The powers and responsibilities delegated to the FBI Unit Chief, Legal Forfeiture Unit, by the regulations in this part may be redelegated to the attorneys working under the direct supervision of the FBI Unit Chief, Legal Forfeiture Unit.

(3) The powers and responsibilities delegated to the Associate Chief Counsel, Office of Chief Counsel, ATF may be redelegated to the attorneys working under the direct supervision of the Associate Chief Counsel, Office of Chief Counsel, ATF.

(b) *Redelegation of authority not permitted.* (1) The powers and responsibilities delegated to the DEA Forfeiture Counsel, the FBI Unit Chief, Legal Forfeiture Unit, and the ATF Associate Chief Counsel, Office of Chief Counsel to make decisions regarding the disposition of property before forfeiture pursuant to § 8.14 may not be redelegated.

(2) The powers and responsibilities delegated to the DEA Forfeiture Counsel, the FBI Unit Chief, Legal Forfeiture Unit, and the ATF Associate Chief Counsel, Office of Chief Counsel to make decisions regarding the delay of notice of forfeiture pursuant to §§ 8.9(c)(7) and (8) and 18 U.S.C. 983(a)(1)(B) and (C) may not be redelegated.

PART 9—REGULATIONS GOVERNING THE REMISSION OR MITIGATION OF ADMINISTRATIVE, CIVIL, AND CRIMINAL FORFEITURES

Sec.

- 9.1 Purpose, authority, and scope.
- 9.2 Definitions.
- 9.3 Petitions in administrative forfeiture cases.
- 9.4 Petitions in judicial forfeiture cases.
- 9.5 Criteria governing administrative and judicial remission and mitigation.
- 9.6 Special rules for specific petitioners.
- 9.7 Terms and conditions of remission and mitigation.
- 9.8 Remission procedures for victims.
- 9.9 Miscellaneous provisions.

AUTHORITY: 5 U.S.C. 301; 8 U.S.C. 1103, 1324(b); 18 U.S.C. 981, 983, 3051; 19 U.S.C. 1606, 1607, 1608, 1610, 1612(b), 1613, 1618; 21 U.S.C. 822, 871, 872, 880, 881, 883, 958, 965; 28 U.S.C. 509, 510; Pub. L. 100-690, sec. 6079.

SOURCE: 77 FR 56108, Sept. 12, 2012, unless otherwise noted.

§ 9.1 Purpose, authority, and scope.

(a) *Purpose.* This part sets forth the procedures for agency officials to follow when considering remission or mitigation of administrative forfeitures under the jurisdiction of the agency, and civil judicial and criminal judicial forfeitures under the jurisdiction of the Department of Justice's Criminal Division. The purpose of this part is to provide a basis for the partial or total remission of forfeiture for individuals who have an interest in the forfeited property but who did not participate in, or have knowledge of, the conduct that resulted in the property being subject to forfeiture and, where required, took all reasonable steps under the circumstances to ensure that such property would not be used, acquired, or disposed of contrary to law. Additionally, the regulations provide

for partial or total mitigation of the forfeiture and imposition of alternative conditions in appropriate circumstances.

(b) *Authority to grant remission and mitigation.* (1) Remission and mitigation functions in administrative forfeitures are performed by the agency seizing the property. Within the Federal Bureau of Investigation (FBI), authority to grant remission and mitigation is delegated to the Forfeiture Counsel, who is the Unit Chief, Legal Forfeiture Unit, Office of the General Counsel; within the Drug Enforcement Administration (DEA), authority to grant remission and mitigation is delegated to the Forfeiture Counsel, Office of Chief Counsel; and within the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), authority to grant remission and mitigation is delegated to the Associate Chief Counsel, Office of Chief Counsel.

(2) Remission and mitigation functions in judicial cases are performed by the Criminal Division of the Department of Justice. Within the Criminal Division, authority to grant remission and mitigation is delegated to the Chief, Asset Forfeiture and Money Laundering Section.

(3) The powers and responsibilities delegated by this part may be redelegated to attorneys or managers working under the supervision of the designated officials.

(c) *Scope.* This part governs any petition for remission filed with the Attorney General and supersedes any Department of Justice regulation governing petitions for remission, to the extent such regulation is inconsistent with this part.

(d) The time periods and internal requirements established in this part are designed to guide the orderly administration of the remission and mitigation process and are not intended to create rights or entitlements in favor of individuals seeking remission or mitigation. This part applies to all forfeiture actions commenced on or after October 12, 2012.

§ 9.2 Definitions.

As used in this part: