

petitions for the restoration of proceeds from sale of seized and forfeited property.

### Subpart A—General Provisions

#### §§ 171.1—171.2 [Reserved]

### Subpart B—Application for Relief

#### § 171.11 Petition for relief.

(a) *To whom addressed.* Petitions for the remission or mitigation of a fine, penalty, or forfeiture incurred under any law administered by Customs shall be addressed to the Commissioner of Customs.

(b) *Signature.* The petition for remission or mitigation shall be signed by the petitioner, his attorney at law, or a customhouse broker representing the petitioner. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory employee thereof, an attorney at law, or a customhouse broker representing the corporation.

(c) *Form.* The petition for remission or mitigation need not be in any particular form. It shall set forth the following:

- (1) A description of the property involved;
- (2) The date and place of the violation or seizure; and
- (3) The facts and circumstances relied upon by the petitioner to justify the remission or mitigation.

(d) *Petition for relief from forfeiture.* When the petition is for relief from a forfeiture, it shall show the interest of the petitioner in the property and in appropriate cases shall be supported by bills of sale, contracts, mortgages, or other satisfactory evidence. The notice shall inform any interested party in a case involving forfeiture of seized property that unless the petitioner provides an express agreement to defer judicial or administrative forfeiture proceedings until completion of the administrative process, the case will be referred promptly to the United States attorney for institution of judicial proceedings, or summary forfeiture proceedings will be begun.

(e) *False statement in petition.* A false statement contained in a petition may

subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

[T.D. 70-249, 35 FR 18265, Dec. 1, 1970, as amended by T.D. 72-107, 37 FR 7592, Apr. 18, 1972; T.D. 73-141, 38 FR 13556, May 23, 1973; T.D. 79-160, 44 FR 31961, June 4, 1979]

#### § 171.12 Filing of petition.

(a) *Where filed.* A petition for relief shall be filed with the Fines, Penalties, and Forfeitures Officer for the port where the property was seized or the fine or penalty imposed.

(b) *When filed.* If a petitioner seeks expedited relief under subpart F of this part, a petition must be filed within the timeframe stated in § 171.52(d). Otherwise, unless additional time has been authorized as provided in § 171.15, petitions for relief shall be filed within 30 days from the date of the mailing of the notice of seizure of property subject to forfeiture incurred or within 60 days of the mailing of notice of a fine or penalty incurred.

(c) *Number of copies.* The petition shall be filed in duplicate.

(d) *Petitions for remission or mitigation of monetary penalty.* Petitions for remission or mitigation of a monetary penalty assessed under the provisions of part 111, subpart E, shall be filed within 30 days of the date of mailing of the notice.

(e) *Exception for certain cases.* If a penalty is assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), and fewer than 180 days remain from the date of the penalty notice before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the notice a reasonable period of time shorter than 30 days but not less than 7 days, for the filing of a petition for relief.

[T.D. 85-195, 50 FR 50290, Dec. 10, 1985, as amended by T.D. 86-161, 51 FR 30346, Aug. 26, 1986; 51 FR 45761, Dec. 22, 1986; T.D. 89-86, 54 FR 37602, Sept. 11, 1989; 54 FR 41364, Oct. 6, 1989; T.D. 92-84, 57 FR 40607, Sept. 4, 1992; T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

#### § 171.13 Additional evidence required with certain petitions.

(a) *Seized property in possession of another responsible for act.* If the seized property was in the possession of another who was responsible for or caused

the act which resulted in the seizure, the petitioner shall present the following evidence, as applicable:

(1) Evidence as to the manner in which the property came into the possession of such other person;

(2) Evidence that before parting with the property the petitioner did not know, or have reasonable cause to believe, that the property would be used to violate customs laws or other laws of the United States;

(3) Evidence that the petitioner did not know, or have reasonable cause to believe, that the violator had a criminal record or general reputation for commercial crime; and

(4) Evidence that, with respect to a seized transporting conveyance, the petitioner took reasonable steps to prevent the conveyance from being used in violation of the customs laws or other laws of the United States.

(b) *Petitioner holding chattel mortgage or conditional sales contract.* A petitioner holding a chattel mortgage or conditional sales contract covering the seized property shall submit with his petition evidence showing that:

(1) He has an interest in such property, as owner or otherwise, which he acquired in good faith;

(2) He had at no time any knowledge or reason to believe that the property was being or would be used in violation of the customs laws or other laws of the United States; and

(3) He had at no time any knowledge or reason to believe that the owner of the beneficial interest in the property had a criminal record or general reputation for commercial crime.

(c) *Long-term lease agreements.* A lessor who leases property on a long-term basis with the right to sublease shall submit with his petition evidence in accordance with paragraph (b) of this section.

(d) *Voluntary bailments.* A petitioner who allows another to use his property without cost and who is not in the business of lending money secured by property or of renting property for profit, shall submit with his petition evidence in accordance with paragraph (b) of this section. Property belonging to one family member which is seized from another is property subject to a

voluntary bailment within the meaning of this subsection.

(e) *Straw purchase transactions.* If a person purchases in his own name property for another who has a criminal record or general reputation for commercial crime, and if a lienholder knows or has reason to believe that the purchaser of record is not the real purchaser, the lienholder shall submit with his petition evidence in accordance with paragraph (b) of this section as to both the purchaser of record and the real purchaser.

(f) *Evidence to be considered in determining extent of mitigation with respect to transporting conveyances.* Listed below are some examples of the types of evidence that will be considered in determining whether the petitioner is entitled to relief from the forfeiture of a seized transporting conveyance. This list is not all-inclusive; Customs officers may consider other similar types of evidence in making their determination.

(1) Whether the petitioner asked the person taking possession of the property whether he had a criminal record;

(2) Whether the petitioner asked for and was provided with business or financial references;

(3) Whether the petitioner asked for and was provided with personal references;

(4) Whether the petitioner contacted the references to confirm the reliability and good reputation of such person;

(5) Whether an agreement was reached between the petitioner and the person taking possession that the property would be used only in accordance with law; and

(6) Whether the petitioner contacted Federal, State or local law enforcement authorities as to the criminal record or reputation of the person taking possession. Information from a Federal law enforcement agency may require a waiver of the Privacy Act from the person who is the subject of the request.

(g) *Denial of relief.* The failure to furnish adequate evidence as required by this section may be a basis for denial of relief. Relief may also be denied to a petitioner who has met the applicable

criteria, but with respect to whom remission would be inimical to the interests of justice.

[T.D. 84-92, 49 FR 17756, Apr. 25, 1984]

**§ 171.14 Oral presentations seeking relief.**

(a) *For certain violations*—(1) *Right to make oral presentation.* If the penalty incurred is for a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for which proceedings commenced after December 31, 1978, the person named in the notice also may make an oral presentation seeking relief in accordance with this paragraph. For purposes of this paragraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

(2) *Prerequisites.* The person shall be given a reasonable opportunity to make an oral presentation provided that a petition has been filed under § 171.12, and that the petition contains a request to present orally the reasons for remission or mitigation of the penalty.

(b) *Other oral presentations.* Oral presentations other than those provided in paragraph (a) of this section may be allowed in the discretion of any official of the Customs Service or Department of the Treasury authorized to act on a petition or supplemental petition.

[T.D. 79-160, 44 FR 31962, June 4, 1979; T.D. 79-305, 44 FR 70459, Dec. 7, 1979]

**§ 171.15 Extensions of time for filing petition.**

(a) *Extension of time for filing petition or supplemental petition for relief.* If there is at least 1 year before the statute of limitations may be asserted as a defense, a Fines, Penalties, and Forfeitures Officer may extend the time for filing a petition (or establish a 60-day or 90-day response period pursuant to paragraph (a)(4) of this section) or supplemental petition, upon the request of a person who is or may be liable for a fine or penalty, or who has an interest in property subject to forfeiture, in the following situations:

(1) The person is incapacitated and unable to prepare or to assist in the preparation of a petition.

(2) The person is absent from the U.S. for 20 days or more during the specified period for filing the petition for relief.

(3) Evidence necessary to file an effective petition is not immediately available. Evidence is not immediately available if, for example, it:

(i) Is in the possession of a foreign source and must be procured from same.

(ii) Requires that a request of any Government agency be complied with, provided that any such request is not frivolous and is made in accordance with law.

(4) The case involves a complex legal or factual problem. Examples of the type of problem are the need to examine voluminous records (e.g., Customs entries, purchase orders, invoices and the like) to learn the facts on which to base a petition, or the need to determine legal responsibilities in a case involving numerous parties or numerous violations. In such cases, the Fines, Penalties and Forfeitures Officer, on his own initiative, may specify in any seizure notice that a 60-day response period from the date of mailing of the notice is warranted, or may specify in any fine or penalty notice that a 90-day response period from the date of mailing of the notice is warranted. If, in such cases, the Fines, Penalties and Forfeitures Officer concludes that only a 30 or 60 day response period is warranted and so indicates in the seizure or penalty notice, the person charged with responding shall have 7 days from the date of the mailing of the notice to appeal the decision of the Fines, Penalties and Forfeitures Officer to the Director, International Trade Compliance Division, Customs Headquarters. If an appeal is taken, a copy of the appeal must be furnished to the Fines, Penalties and Forfeitures Officer who issued the notice, and the original forwarded to the Director, International Trade Compliance Division, U.S. Customs Service, 1300 Pennsylvania Ave., NW., Washington, DC 20229. Such appeals should clearly set forth why the particular case warrants an extension beyond the 30- or 60-day period. If the