

§ 171.52 Petition for expedited procedures in an administrative forfeiture proceeding.

(a) *Procedures for violations involving possession of controlled substance in personal use quantities.* The usual procedures for petitions for relief when property is seized are set forth in subpart B of this part. However, where property is seized for administrative forfeiture pursuant to 21 U.S.C. 881(a) (4), (6) or (7), 19 U.S.C. 1595a and/or 49 U.S.C. App. 782 due to violations involving controlled substances in personal use quantities, a petition may be filed pursuant to paragraphs (c) and (d) of this section to seek expedited procedures for release of the property. A petition filed pursuant to this subpart shall also serve as a petition for relief filed under subpart B of this part. The petition may be filed by an owner or interested party.

(b) *Commercial fishing industry vessels.* Where a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations is 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 no later than the date specified in the summons. When a commercial fishing industry vessel reports, the appropriate Customs officer shall, depending on the facts and circumstances, either issue another summons to appear at a time deemed appropriate, execute a constructive seizure agreement pursuant to 19 U.S.C. 1605, or take physical custody of the vessel. When a summons to appear has been issued, the seizing agency may be authorized to institute administrative forfeiture as if the vessel had been physically seized. When a summons to appear has been issued, the owner or interested party may file a petition for expedited procedures pursuant to subsection (a); the provisions of subsection (a) and other provisions in this subpart relating to a petition for expedited release shall apply as if the vessel had been physically seized.

(c) *Elements to be established in petition.* (1) The petition for expedited procedures shall establish that:

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

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

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

(2) In addition, the petitioner may submit evidence to establish that he has statutory rights or defenses such that he would prevail in a judicial proceeding on the issue of forfeiture.

(d) *Manner of filing.* A petition for expedited procedures must be filed in a timely manner to be considered by Customs. To be filed in a timely manner, the petition must be received by Customs within 20 days from the date the notice of seizure was mailed, or in the case of a commercial fishing industry vessel for which a summons to appear is issued, 20 days from the original date when the vessel is required to report. The petition must be sworn to by the petitioner and signed by the petitioner or his attorney at law. If the petitioner is a corporation, the petition may be sworn to by an officer or responsible supervisory employee thereof and signed by that individual or an attorney at law representing the corporation. Both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED PROCEDURES." The petition shall be addressed to the U.S. Customs Service and filed in triplicate with the Fines, Penalties, and Forfeitures Officer for the port where the property was seized, or for commercial fishing industry vessels, with the Fines, Penalties, and Forfeitures Officer for the port to which the vessel was required to report.

(e) *Contents of petition.* The petition shall include the following:

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

(2) A description of the petitioner's interest in the property, supported by the documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(3) A statement of the facts and circumstances relied upon by the petitioner to justify expedited return of the seized property, supported by satisfactory evidence.

[T.D. 89-86, 54 FR 37602, Sept. 11, 1989; 54 FR 41364, Oct. 6, 1989; T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

§171.53 Ruling on petition for expedited procedures.

(a) *Final administrative determination.* Upon receipt of a petition filed pursuant to §171.52, Customs shall determine first whether a final administrative determination of the case 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 subpart.

(b) *Determination within 20 days.* If no such final administrative determination is made within 21 days of the seizure, Customs shall within 20 days after the receipt of the petition make a determination as follows:

(1) If Customs determines that the factors listed in §171.52(c) have been established, it shall terminate the administrative proceedings and release the property from seizure, or in the case of a commercial fishing industry vessel for which a summons has been issued, but not yet answered, dismiss the summons. The property shall not be returned if it is evidence of a violation of law.

(2) If Customs determines that the factors listed in §171.52(c) have not been established, it shall proceed with the administrative forfeiture.

[T.D. 89-86, 54 FR 37602, Sept. 11, 1989]

§171.54 Substitute res in an administrative forfeiture action.

(a) *Substitute res.* Where property is seized for administrative forfeiture for a violation involving controlled substances in personal use quantities, the owner or interested party may offer to post an amount equal to the appraised value of the property (the res) to obtain release of the property. The offer, which may be tendered at any time

subsequent to seizure and up until the completion of administrative forfeiture proceedings, must be in the form of cash, irrevocable letter of credit, certified funds such as a certified check, traveler's check(s), or money order made payable to U.S. Customs. Unless the property is evidence of a violation of law or has other characteristics that particularly suit it for use in illegal activities, it will be released to the owner or interested party subsequent to tender of the substitute res.

(b) *Forfeiture of res.* If a substitute res is posted and it is determined that the property should be administratively forfeited, the res will be forfeited in lieu of the property.

[T.D. 89-86, 54 FR 37602, Sept. 11, 1989]

§171.55 Notice provisions.

(a) *Special notice provision.* At the time of seizure of property defined in §171.51, written notice must 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 procedures as set forth in section 6079 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

(b) *Notice provision.* The notice as required by section 1607 of Title 19, United States Code and applicable regulations shall be made at the earliest practicable opportunity after determining ownership of, or interest in, the seized property and shall include a statement of the applicable law under which the property is seized and a statement of the circumstances of the seizure sufficiently precise to enable an owner or interested party to identify the date, place and use or acquisition which makes the property subject to forfeiture.

[T.D. 89-86, 54 FR 37602, Sept. 11, 1989; 54 FR 43424, Oct. 25, 1989]

APPENDIX A TO PART 171—GUIDELINES FOR DISPOSITION OF VIOLATIONS OF 19 U.S.C. 1497

Liabilities incurred under section 497, Tariff Act of 1930 (19 U.S.C. 1497), shall be mitigated or remitted in accordance with the following guidelines (see also part 148, Customs Regulations):