

Department of Justice

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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 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 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;

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(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.

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(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