(d) *Authorizations.* The Chief Postal Inspector is the principal officer of the Postal Service for the administration of all matters governing test purchases under this section. The Chief Inspector may delegate any or all authority in this regard to any or all postal inspectors.

[49 FR 7230, Feb. 28, 1984; 49 FR 8250, Mar. 6, 1984]

§ 233.7 Forfeiture authority and procedures.

(a) *Designation of officials having forfeiture authority.* The Chief Postal Inspector is authorized to perform all duties and responsibilities necessary on behalf of the Postal Service to enforce 18 U.S.C. 981, 2254, and 21 U.S.C. 881, to delegate all or any part of this authority to Deputy Chief Inspectors, Inspectors in Charge, and Inspectors of the Postal Inspection Service, and to issue such instructions as may be necessary to carry out this authority.

(b) *Administrative forfeiture authority.* The Chief Postal Inspector is authorized to conduct administrative forfeitures under the statutes identified in paragraph (a) of this section, following, where applicable, the procedures provided by the customs laws of the United States (19 U.S.C. 1600 *et seq.*), and to pay valid liens and mortgages against property that has been so forfeited.

(c) *Inventory.* An inventory of all property seized for forfeiture under the statutes identified in paragraph (a) of this section shall be prepared and maintained by the Postal Inspection Service. The inventory should occur within seven days of the seizure. The inventory must, at a minimum, identify all property seized, state the exact location of the property at the time of its seizure, and describe in detail the condition of the property. A written receipt containing such information and identifying the Postal Inspector who conducted the seizure must be provided to the party from whom the property was seized, or the party's agent or representative, at the time of the seizure or as soon thereafter as is practicable.

(d) *Custody.* Custody of all property seized for forfeiture under the statutes identified in paragraph (a) of this section is maintained by the U.S. Marshals Service, except property held for evidentiary purposes; retained for official use upon forfeiture; subject to equitable transfer to federal, state or local law enforcement agencies; or subject to civil administrative forfeiture.

(e) *Appraisal.* The Postal Inspection Service must promptly obtain or complete an appraisal of all seized property. The appraisal value is the fair market value of the property, which is the highest price, in terms of money, which a property will bring in a competitive and open market.

(f) *Quick-release.* Property subject to administrative forfeiture may, prior to forfeiture, be released by the Postal Inspection Service to the owner of the property having an immediate right to possession of the property when the Postal Inspection Service concludes that release of the property is in the best interest of justice. An agreement to hold harmless the United States, the Postal Inspection Service, and all other involved entities should be obtained from the owner. A decision for quick release of the property should be made within five days of the seizure.

(g) *Judicial forfeiture.* If the appraised value of property seized exceeds $500,000, with the exception of: (1) Monetary instruments within the meaning of 31 U.S.C. 5312(a)(3), or (2) any conveyance which was used to import, export, transport, or store any controlled substance or if a claim and satisfactory bond have been received for property appraised at $500,000 or less, or for any monetary instruments within the meaning of 31 U.S.C. 5312(a)(3) or any conveyance which was used to import, export, transport, or store any controlled substance the Postal Inspection Service must transmit the claim and bond to the U.S. Attorney for the judicial district in which the seizure was made and request that the U.S. Attorney promptly institute a judicial forfeiture proceeding against the property. The Postal Inspection Service must provide the U.S. Attorney a complete written description of the property, a statement of the facts and circumstances leading to the seizure of the property, including all facts and documentation leading to the conclusion that the seized property is subject

to forfeiture, and such additional information as the U.S. Attorney may require for the purpose of instituting a judicial forfeiture action.

(h) *Notice of seizure for property having a value of $500,000 or less, or for monetary instruments or for conveyances which were used to transport or store any controlled substance; advertisement; declaration of forfeiture.* (1) The Postal Inspection Service must cause written notice of the seizure of all property subject to civil administrative forfeiture to be sent to each known party that may have a possessory or ownership interest in the seized property. The notice must describe the property seized; state the date, place, and cause for seizure; and inform the party of the intent of the Postal Inspection Service to forfeit the property. In addition, the notice must state that any person desiring a judicial determination of forfeiture must file a claim and bond (see paragraph 2 of this subsection) with a designated official of the Postal Inspection Service, within twenty days from the date of the first publication of the notice of seizure (see paragraph (4) of this subsection), or of the date of the letter of personal notice required by this paragraph, whichever is later. Any claim submitted pursuant to this paragraph is invalid unless accompanied by a bond meeting the requirements of paragraph (2), or a completed PS Form 1518, *Petition to Proceed in Forma Pauperis.*

(2) A bond in the amount of $5,000 or ten percent of the value of the claimed property, whichever is lower, but in no event less than $250, must accompany any claim submitted pursuant to paragraph (1). The bond may be in the form of a cashier's check, certified check, or money order made payable to the United States of America, or satisfactory sureties. If a claimant is financially unable to post the bond because of indigency, such a person may request a waiver of the bond by completion of PS Form 1518, *Petition to Proceed in Forma Pauperis.*

(3) Upon receipt of the claim and bond, the Postal Inspection Service must, upon determining that the documents are in proper form and the sureties satisfactory, transmit the documents to the appropriate U.S. Attorney as provided in subsection (g). If the documents are not satisfactory, the Postal Inspection Service must notify the party making the claim and may allow a reasonable time for correction. If correction is not made within the time allowed for that purpose, the administrative forfeiture must proceed as though the claim and bond had not been tendered.

(4) Notice of administrative forfeiture proceedings containing the information required by subsection (h)(1) must be published once each week for at least three successive weeks in a newspaper of general circulation in the judicial district in which the property was seized. If a claim and satisfactory bond is not filed within the time allowed, the Postal Inspection Service may declare the property forfeited.

(i) *Disposition of forfeited property.* (1) Whenever property is forfeited administratively, the Postal Inspection Service may:

(i) Retain the property for official use;

(ii) Transfer ownership of the property to any federal, state or local law enforcement agency that participated in the investigation leading to the forfeiture;

(iii) Sell any property which is not required to be destroyed by law and which is not harmful to the public;

(iv) Destroy the property; or

(v) Dispose of the property as otherwise permitted by law.

(2) If the laws of a state in which an article of forfeited property is located prohibit the sale or possession of such property or if the Postal Service and the Marshals Service are of the opinion that it would be more advantageous to sell the forfeited property in another district, the property may be moved to and sold in such other district.

(3) If, after an administrative forfeiture of property is completed, it appears that the proceeds of sale will not be sufficient to pay the costs of sale or the proceeds will be insignificant in relation to the expenses involved in the forfeiture, then the Postal Service or the Marshals Service may order destruction or other disposition of the property including alteration of the property into an article that is not prohibited.

(j) *Remission or mitigation of administrative, civil, and criminal forfeitures*—(1) *Authority, purpose, and scope*—(i) *Purpose.* This section sets forth the procedures for Postal Inspection Service officials to follow when considering remission or mitigation of administrative forfeitures under the jurisdiction of the Postal Service. The purpose of these regulations is to provide a basis for ameliorating the effects of forfeiture through 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, these regulations provide for partial or total mitigation of the forfeiture and imposition of alternative conditions in appropriate circumstances.

(ii) *Authority to grant remission and mitigation.* (A) Remission and mitigation functions in administrative forfeitures are performed by the agency seizing the property. Within the Postal Inspection Service, authority to grant remission and mitigation is delegated to the Independent Counsel, Office of the Chief Inspector, Washington, DC.

(B) Remission and mitigation functions in judicial cases are within the jurisdiction of the Criminal Division of the Department of Justice. Within the Criminal Division, authority to grant remission and mitigation has been delegated to the Chief, Asset Forfeiture and Money Laundering Section.

(C) The powers and responsibilities within these regulations may be redelegated to attorneys or managers working under the supervision of the designated officials.

(D) The time periods and internal requirements established in these regulations 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. These regulations will apply to all decisions on petitions for remission or mitigation made on or after July 1, 1997. These regulations will apply to decisions on requests for reconsideration of a denial of a petition under paragraphs (j)(3)(x) and (3)(xi) of this section only if the initial decision on the petition was made under the provisions of this part effective July 1, 1997.

(E) This section governs any petition for remission or mitigation filed with the Chief Postal Inspector and supersedes any Postal Service regulation governing petitions for remission or mitigation to the extent such regulation is inconsistent with this section.

(2) *Definitions.* As used in this part:

(i) The term *administrative forfeiture* means the process by which property may be forfeited by an investigative agency rather than through judicial proceedings.

(ii) The term *appraised value* means the estimated market value of an asset at the time and place of seizure if such or similar property was freely offered for sale between a willing seller and a willing buyer.

(iii) The term *Attorney General* means the Attorney General of the United States or his or her designee.

(iv) The term *beneficial owner* means a person with actual use of, as well as an interest in, the property subject to forfeiture.

(v) The term *general creditor* means one whose claim or debt is not secured by a specific right to obtain satisfaction against the particular property subject to forfeiture.

(vi) The term *judgment creditor* means one who has obtained a judgment against the debtor but has not yet received full satisfaction of the judgment.

(vii) The term *judicial forfeiture* means either a civil or criminal proceeding in a United States District Court that may result in a final judgment and order of forfeiture.

(viii) The term *lienholder* means a creditor whose claim or debt is secured by a specific right to obtain satisfaction against the particular property subject to forfeiture. A lien creditor qualifies as a lienholder if the lien:

(A) Was established by operation of law or contract;

(B) Was created as a result of an exchange of money, goods, or services; and

(C) Is perfected against the specific property forfeited for which remission or mitigation is sought (e.g., a real estate mortgage, a mechanic's lien).

(ix) The term *net equity* means the amount of a lienholder's monetary interest in property subject to forfeiture. Net equity shall be computed by determining the amount of unpaid principal and unpaid interest at the time of seizure, and by adding to that sum unpaid interest calculated from the date of seizure through the last full month prior to the date of the decision on the petition. Where a rate of interest is set forth in a security agreement, the rate of interest to be used in this computation will be the annual percentage rate so specified in the security agreement that is the basis of the lienholder's interest. In this computation, however, there shall be no allowances for attorneys' fees, accelerated or enhanced interest charges, amounts set by contract as damages, unearned extended warranty fees, insurance, service contract charges incurred after the date of seizure, allowances for dealer's reserve, or any other similar charges.

(x) The term *owner* means the person in whom primary title is vested or whose interest is manifested by the actual and beneficial use of the property, even though the title is vested in another. A victim of an offense as defined in paragraph (j) (2)(xxi) of this section may also be an owner if he or she has a present legally cognizable ownership interest in the property forfeited. A nominal owner of property will not be treated as its true owner if he or she is not its beneficial owner.

(xi) The term *person* means an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property.

(xii) The term *petition* means a petition for remission or mitigation of forfeiture under these regulations. This definition includes a petition for restoration of the proceeds of sale of forfeited property and a petition for the value of forfeited property placed into official use.

(xiii) The term *petitioner* means the person applying for remission, mitigation, restoration of the proceeds of sale, or for the appraised value of forfeited property under these regulations. A petitioner may be an owner of forfeited property as defined in paragraph (j)(2)(x) of this section; a lienholder as defined in paragraph (j)(2)(viii) of this section; or a victim as defined in paragraph (j)(2)(xxi) of this section subject to the limitations of paragraph (j)(8) of this section.

(xiv) The term *Postal Service Fund* means the United States Postal Fund established under 39 U.S.C. 2003.

(xv) The term *property* means real or personal property of any kind capable of being owned or possessed.

(xvi) The term *record* means a series of arrests for related crimes, unless the arrestee was acquitted or the charges were dismissed for lack of evidence; a conviction for a related crime or completion of sentence within ten years of the acquisition of the property subject to forfeiture; or two convictions for a related crime at any time in the past.

(xvii) The term *related crime* as used in paragraphs (j)(2)(xvi) and (6)(v) of this section means any crime similar in nature to that which gives rise to the seizure of property for forfeiture. For example, where property is seized for a violation of the federal laws dealing with drugs, a related crime would be any offense involving a violation of the federal laws relating to drugs or the laws of any state or political subdivision thereof relating to drugs.

(xviii) The term *related offense* as used in paragraph (j)(8) of this section means:

(A) Any predicate offense charged in a Federal Racketeer Influenced and Corrupt Organizations Act (RICO) count for which forfeiture was ordered; or

(B) An offense committed as part of the same scheme or design, or pursuant to the same conspiracy, as was involved in the offense for which the forfeiture was ordered.

(xix) The term *Ruling Official* means any official to whom decision making authority has been delegated pursuant to paragraph (j)(1)(ii) of this section.

(xx) The term *seizing agency* means the federal agency that seized the property or adopted the seizure of another agency for federal forfeiture.

(xxi) The term *victim* means a person who has incurred a pecuniary loss as a direct result of the commission of the offense underlying a forfeiture. A drug user is not considered a victim of a drug trafficking offense under this definition. A victim does not include one who acquires a right to sue the perpetrator of the criminal offense for any loss by assignment, subrogation, inheritance, or otherwise from the actual victim, unless that person has acquired an actual ownership interest in the forfeited property.

(xxii) The term *violator* means the person whose use or acquisition of the property in violation of the law subjected such property to seizure for forfeiture.

(3) *Petitions in administrative forfeiture cases*—(i) *Notice of seizure.* The notice of seizure and intent to forfeit the property shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission or mitigation within thirty (30) days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until the forfeited property is placed into official use, sold, or otherwise disposed of according to law, except in cases involving petitions to restore the proceeds from the sale of forfeited property. A notice of seizure shall include the title of the seizing agency, the Ruling Official, the mailing and street address of the official to whom petitions should be sent, and an asset identifier number.

(ii) *Persons who may file.* A petition for remission or mitigation must be filed by a petitioner as defined in paragraph (j)(2)(xiii) of this section or as prescribed in paragraphs (j)(9) (vii) and (viii) of this section.

(iii) *Contents of petition.* (A) All petitions must include the following information in clear and concise terms:

(*1*) The name, address, and social security or other taxpayer identification number of the person claiming an interest in the seized property who is seeking remission or mitigation;

(*2*) The name of the seizing agency, the asset identifier number, and the date and place of seizure;

(*3*) A complete description of the property including make, model, and serial numbers, if any; and

(*4*) A description of the petitioner's interest in the property as owner, lienholder, or otherwise, supported by original or certified bills of sale, contracts, deeds, mortgages, or other documentary evidence.

(B) Any factual recitation or documentation of any type in a petition must be supported by a sworn affidavit.

(iv) *Releases.* In addition to the contents of the petition for remission or mitigation set forth in paragraph (j)(3)(iii) of this section, upon request, the petitioner shall also furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the property releasing interest in such property.

(v) *Filing petition with agency.* (A) A petition for remission or mitigation of an administrative forfeiture by the Postal Inspection Service shall be sent to the Chief Postal Inspector, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–2100.

(B) The petition shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set out in paragraph (j)(9)(vii) of this section.

(vi) *Agency investigation.* Upon receipt of a petition, the Postal Inspection Service shall investigate the merits of the petition and prepare a written report containing the results of that investigation. This report shall be submitted to the Ruling Official for review and consideration.

(vii) *Ruling.* Upon receipt of the petition and the agency report, the Ruling Official shall review the petition and the report, and shall rule on the merits of the petition. No hearing shall be held.

(viii) *Petitions granted.* If the Ruling Official grants a remission or mitigation of the forfeiture, a copy of the decision shall be sent by certified mail to the petitioner, or, if represented by an attorney, to the petitioner's attorney.

A copy of the decision shall also be sent to the U.S. Marshals Service or other property custodian. The written decision shall include the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures the petitioner must follow to obtain release of the property or the monetary interest therein.

(ix) *Petitions denied.* If the Ruling Official denies a petition, a copy of the decision shall be sent by certified mail to the petitioner, or, if represented by an attorney, to the petitioner's attorney of record. A copy of the decision shall also be sent to the U.S. Marshals Service or other property custodian. The written decision shall specify the reason that the petition was denied. The decision shall advise the petitioner that a request for reconsideration of the denial of the petition may be submitted to the Ruling Official in accordance with paragraph (j)(3)(x) of this section.

(x) *Request for reconsideration.* (A) A request for reconsideration of the denial of the petition shall be considered if:

(*1*) It is postmarked or received by the office of the Ruling Official within ten (10) days from the receipt of the notice of the denial of the petition by the petitioner; and

(*2*) The request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly demonstrating that the denial was erroneous.

(B) In no event shall a request for reconsideration be decided by the same Ruling Official who ruled on the original petition.

(C) Only one request for reconsideration of a denial of a petition shall be considered.

(xi) *Restoration of proceeds from sale.* (A) A petition for restoration of the proceeds from the sale of forfeited property, or for the appraised value of forfeited property when the forfeited property has been retained by or delivered to a government agency for official use, may be submitted by an owner or lienholder in cases in which the petitioner:

(*1*) Did not know of the seizure prior to the entry of a declaration of forfeiture; and

(*2*) Could not reasonably have known of the seizure prior to the entry of a declaration of forfeiture.

(B) Such a petition shall be submitted pursuant to paragraphs (j)(3)(ii) through (v) of this section within ninety (90) days from the date the property is sold or otherwise disposed of.

(4) *Petitions in judicial forfeiture cases*—(i) *Procedure for filing petition.* If the forfeiture proceedings are judicial, a petition for remission or mitigation of a judicial forfeiture shall be addressed to the Attorney General; shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746; and shall be submitted to the United States Attorney for the district in which the judicial forfeiture proceedings are brought. A petitioner also shall submit a copy of the petition to the Chief Postal Inspector if the Postal Inspection Service was the seizing agency.

(ii) *Ruling.* Department of Justice regulations on petitions for remission or mitigation in judicial forfeiture cases are stated in 29 CFR 9.4.

(5) *Criteria governing administrative remission and mitigation*—(i) *Remission.* (A) The Ruling Official shall not grant remission of a forfeiture unless the petitioner establishes that:

(*1*) The petitioner has a valid, good faith and legally cognizable interest in the seized property as owner or lienholder as defined in these regulations; and

(*2*) The petitioner is innocent within the meaning of the innocent owner provisions of the applicable civil forfeiture statute, is a bona fide purchaser for value without cause to believe that the property was subject to forfeiture at the time of the purchase, or is one who held a legally cognizable interest in the seized property at the time of the violation underlying the forfeiture superior to that of the defendant within the meaning of the applicable criminal forfeiture statute, and is thereby entitled to recover his or her interest in the forfeited property by statute. (If the applicable civil forfeiture statute

contains no innocent owner defense, the innocent owner provisions applicable to 21 U.S.C. 881(a)(4) shall apply.) Unless otherwise provided by statute, in the case of petitioners who acquired their interest in the property after the time of the violation underlying the forfeiture, the question of whether the petitioner had knowledge of the violation shall be determined as of the point in time when the interest in the property was acquired.

(B) The knowledge and responsibilities of petitioner's representative, agent, or employee in paragraph (j)(5)(i)(A)(*2*) of this section are imputed to the petitioner where the representative, agent, or employee was acting in the course of his or her employment and in furtherance of the petitioner's business.

(C) The petitioner has the burden of establishing the basis for granting a petition for remission or mitigation of forfeited property, a restoration of proceeds of sale or appraised value of forfeited property, or a reconsideration of a denial of such a petition. Failure to provide information or documents and to submit to interviews, as requested, may result in a denial of the petition.

(D) The Ruling Official shall presume a valid forfeiture and shall not consider whether the evidence is sufficient to support the forfeiture.

(E) Willful, materially false statements or information, made or furnished by the petitioner in support of a petition for remission or mitigation of forfeited property, the restoration of proceeds or appraised value of forfeited property, or the reconsideration of a denial of any such petition, shall be grounds for denial of such petition and possible prosecution for the filing of false statements.

(ii) *Mitigation*. (A) The Ruling Official may grant mitigation to a party not involved in the commission of the offense underlying forfeiture:

(*1*) Where the petitioner has not met the minimum conditions for remission, but the Ruling Official finds that some relief should be granted to avoid extreme hardship and that return of the property combined with imposition of monetary and/or other conditions of mitigation in lieu of a complete forfeiture will promote the interest of justice and will not diminish the deterrent effect of the law. Extenuating circumstances justifying such a finding include those circumstances that reduce the responsibility of the petitioner for knowledge of the illegal activity, knowledge of the criminal record of a user of the property, or failure to take reasonable steps to prevent the illegal use or acquisition by another for some reason, such as a reasonable fear of reprisal; or

(*2*) Where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the Ruling Official, complete relief is not warranted.

(B) The Ruling Official may in his or her discretion grant mitigation to a party involved in the commission of the offense underlying the forfeiture where certain mitigating factors exist, including, but not limited to: The lack of a prior record or evidence of similar criminal conduct; if the violation does not include drug distribution, manufacturing, or importation, the fact that the violator has taken steps, such as drug treatment, to prevent further criminal conduct; the fact that the violation was minimal and was not part of a larger criminal scheme; the fact that the violator has cooperated with federal, state, or local investigations relating to the criminal conduct underlying the forfeiture; or the fact that complete forfeiture of an asset is not necessary to achieve the legitimate purposes of forfeiture.

(C) Mitigation may take the form of a monetary condition or the imposition of other conditions relating to the continued use of the property, and the return of the property, in addition to the imposition of any other costs that would be chargeable as a condition to remission. This monetary condition is considered as an item of cost payable by the petitioner, and shall be deposited into the Postal Service Fund as an amount realized from forfeiture in accordance with the applicable statute. If the petitioner fails to accept the Ruling Official's mitigation decision or any of its conditions, or fails to pay the monetary amount within twenty (20) days of the receipt of the decision, the property shall be sold, and the monetary amount imposed and other

costs chargeable as a condition to mitigation shall be subtracted from the proceeds of the sale before transmitting the remainder to the petitioner.

(6) *Special rules for specific petitioners*—(i) *General creditors.* A general creditor may not be granted remission or mitigation of forfeiture unless he or she otherwise qualifies as a petitioner under these regulations.

(ii) *Rival claimants.* If the beneficial owner of the forfeited property and the owner of a security interest in the same property each file a petition, and if both petitions are found to be meritorious, the claim of the beneficial owner shall take precedence.

(iii) *Voluntary bailments.* A petitioner who allows another to use his or her property without cost, and who is not in the business of lending money secured by property or of leasing or renting property for profit, shall be granted remission or mitigation of forfeiture in accordance with the provisions of paragraph (j)(5) of this section.

(iv) *Lessors.* A person engaged in the business of leasing or renting real or personal property on a long-term basis with the right to sublease shall not be entitled to remission or mitigation of a forfeiture of such property unless the lessor can demonstrate compliance with all the requirements of paragraph (j)(5) of this section.

(v) *Straw owners.* A petition by any person who has acquired a property interest recognizable under these regulations and who knew or had reason to believe that the interest was conveyed by the previous owner for the purpose of circumventing seizure, forfeiture, or these regulations, shall be denied. A petition by a person who purchases or owns property for another who has a record for related crimes as defined in paragraph (j)(2)(xvii) of this section, or a petition by a lienholder who knows or has reason to believe that the purchaser or owner of record is not the real purchaser or owner, shall be denied unless both the purchaser of record and the real purchaser or owner meet the requirements of paragraph (j)(5) of this section.

(vi) *Judgment creditors.* (A) A judgment creditor will be recognized as a lienholder if:

(*1*) The judgment was duly recorded before the seizure of the property for forfeiture;

(*2*) Under applicable state or other local law, the judgment constitutes a valid lien on the property that attached to it before the seizure of the property for forfeiture; and

(*3*) The petitioner had no knowledge of the commission of any act or acts giving rise to the forfeiture at the time the judgment became a lien on the forfeited property.

(B) A judgment creditor will not be recognized as a lienholder if the property in question is not property of which the judgment debtor is entitled to claim ownership under applicable state or other local law (e.g., stolen property). A judgment creditor is entitled under these regulations to no more than the amount of the judgment, exclusive of any interest, costs, or other fees including attorney's fees associated with the action that led to the judgment or its collection.

(C) A judgment creditor's lien must be registered in the district where the property is located if the judgment was obtained outside the district.

(7) *Terms and conditions of remission and mitigation*—(i) *Owners.* (A) An owner's interest in property that has been forfeited is represented by the property itself or by a monetary interest equivalent to that interest at the time of seizure. Whether the property or a monetary equivalent will be remitted to an owner shall be determined at the discretion of the Ruling Official.

(B) If a civil judicial forfeiture action against the property is pending, release of the property must await an appropriate court order.

(C) Where the government sells or disposes of the property prior to the grant of the remission, the owner shall receive the proceeds of that sale, less any costs incurred by the government in the sale. The Ruling Official, at his or her discretion, may waive the deduction of costs and expenses incident to the forfeiture.

(D) Where the owner does not comply with the conditions imposed upon release of the property by the Ruling Official, the property shall be sold. Following the sale, the proceeds shall be used to pay all costs of the forfeiture

and disposition of the property, in addition to any monetary conditions imposed. The remaining balance shall be paid to the owner.

(ii) *Lienholders.* (A) When the forfeited property is to be retained for official use or transferred to a state or local law enforcement agency or foreign government pursuant to law, and remission or mitigation has been granted to a lienholder, the recipient of the property shall assure that:

(*1*) In the case of remission, the lien is satisfied as determined through the petition process; or

(*2*) In the case of mitigation, an amount equal to the net equity, less any monetary conditions imposed, is paid to the lienholder prior to the release of the property to the recipient agency or foreign government.

(B) When the forfeited property is not retained for official use or transferred to another agency or foreign country pursuant to law, the lienholder shall be notified by the Ruling Official of the right to select either of the following alternatives:

(*1*) *Return of property.* The lienholder may obtain possession of the property after paying the United States, through the Ruling Official, the costs and expenses incident to the forfeiture, the amount, if any, by which the appraised value of the property exceeds the lienholder's net equity in the property, and any amount specified in the Ruling Official's decision as a condition to remit the property. The Ruling Official, at his or her discretion, may waive costs and expenses incident to the forfeiture. The Ruling Official shall forward a copy of the decision, a memorandum of disposition, and the original releases to the U.S. Marshals Service or other property custodian who shall thereafter release the property to the lienholder; or

(*2*) *Sale of Property and Payment to Lienholder*—Subject to the provisions of paragraph (j)(9)(i) of this section, upon sale of the property, the lienholder may receive the payment of a monetary amount up to the sum of the lienholder's net equity, less the expenses and costs incident to the forfeiture and sale of the property, and any other monetary conditions imposed. The Ruling Official, at his or her discretion, may waive costs and expenses incident to the forfeiture.

(iii) If the lienholder does not notify the Ruling Official of the selection of one of the two options set forth above in paragraph (j)(7)(ii)(B) of this section within twenty (20) days of the receipt of such notification, the Ruling Official shall direct the U.S. Marshal or other property custodian to sell the property and pay the lienholder an amount up to the net equity, less the costs and expenses incurred incident to the forfeiture and sale, and any monetary conditions imposed. In the event a lienholder subsequently receives a payment of any kind on the debt owed for which he or she has already received payment as a result of the granting of remission or mitigation, the lienholder shall reimburse the Postal Service Fund to the extent of the payment received.

(iv) Where the lienholder does not comply with the conditions imposed upon the release of the property, the property shall be sold after forfeiture. From the proceeds of the sale, all costs incident to the forfeiture and sale shall first be deducted, and the balance up to the net equity, less any monetary conditions, shall be paid to the lienholder.

(8) *Provisions applicable to victims.*

The provisions of this section apply to victims of an offense underlying the forfeiture of property, or of a related offense, who do not have a present ownership interest in the forfeited property (or, in the case of multiple victims of an offense, who do not have a present ownership interest in the forfeited property that is clearly superior to that of other petitioner victims). The provisions of this section apply only with respect to property forfeited pursuant to statutes that explicitly authorize restoration or remission of forfeited property to victims. Victims who have a superior present legally cognizable ownership interest in forfeited property may file petitions as other owners, subject to the regulations set forth in paragraph (j)(7)(i) of this section. The claims of such owner victims, like those of any other owners, shall have priority over the claims of any non-owner victims whose claims are recognized pursuant to this section.

(i) *Qualifications to file.* A victim, as defined in paragraph (j)(2)(xxi) of this section, of an offense that was the underlying basis for the criminal, civil, or administrative forfeiture of specific property, or a victim of a related offense, may be granted remission of the forfeiture of that property, if in addition to complying with the other applicable provisions of this section, the victim satisfactorily demonstrates that:

(A) A pecuniary loss of a specific amount has been directly caused by the criminal offense, or related offense, that resulted in the forfeiture, or by a related offense, and that the loss is supported by documentary evidence including invoices and receipts;

(B) The pecuniary loss is the direct result of the illegal acts and is not the result of otherwise lawful acts which were committed in the course of a criminal offense;

(C) The victim did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner towards the commission of the offense, or related offense, that was the underlying basis of the forfeiture;

(D) The victim has not in fact been compensated for the wrongful loss of the property by the perpetrator or others; and

(E) The victim does not have recourse reasonably available to other assets from which to obtain compensation for the wrongful loss of the property.

(ii) *Pecuniary loss.* The amount of the pecuniary loss suffered by a victim for which remission may be granted is limited to the fair market value of the property of which the petitioner was deprived as of the date of the occurrence of the loss. No allowance shall be made for interest foregone or for collateral expenses incurred to recover lost property or to seek other recompense.

(iii) *Torts.* A tort associated with illegal activity that formed the basis for the forfeiture shall not be a basis for remission, unless it constitutes the illegal activity itself, nor shall remission be granted for physical injuries to a petitioner or for damage to a petitioner's property.

(iv) *Denial of petition.* In the exercise of his or her discretion, the Ruling Official may decline to grant remission where:

(A) There is substantial difficulty in calculating the pecuniary loss incurred by the victim or victims;

(B) The amount of the remission, if granted, would be small compared with the amount of expenses incurred by the government in determining whether to grant remission; or

(C) The total number of victims is large and the monetary amount of the remission so small as to make its granting impractical.

(v) *Pro rata basis.* In granting remission to multiple victims pursuant to this section, the Ruling Official should generally grant remission on a pro rata basis to recognized victims when petitions cannot be granted in full due to the limited value of the forfeited property. However, the Ruling Official may consider, among others, the following factors in establishing appropriate priorities in individual cases:

(A) The specificity and reliability of the evidence establishing a loss;

(B) The fact that a particular victim is suffering an extreme financial hardship;

(C) The fact that a particular victim has cooperated with the government in the investigation related to the forfeiture or to a related prosecution or civil action; and

(D) In the case of petitions filed by multiple victims of related offenses, the fact that a particular victim is a victim of the offense underlying the forfeiture.

(vi) *Reimbursement.* Any petitioner granted remission pursuant to this section shall reimburse the Postal Service Fund for the amount received to the extent the individual later receives compensation for the loss of the property from any other source. The petitioner shall surrender the reimbursement upon payment from any secondary source.

(vii) *Claims of financial institution regulatory agencies.* In cases involving property forfeitable under 18 U.S.C. 981(a)(1)(C) or (a)(1)(D), the Ruling Official may decline to grant a petition filed by a petitioner in whole or in part due to the lack of sufficient forfeitable

funds to satisfy both the petition and claims of the financial institution regulatory agencies pursuant to 18 U.S.C. 981 (e)(3) or (7). Generally, claims of financial regulatory agencies pursuant to 18 U.S.C. 981(e)(3) or (7) shall take priority over claims of victims.

(9) *Miscellaneous Provisions*—(i) *Priority of payment.* Except where otherwise provided in this section, costs incurred by the Postal Inspection Service and other agencies participating in the forfeiture that were incident to the forfeiture, sale, or other disposition of the property shall be deducted from the amount available for remission or mitigation. Such costs include, but are not limited to, court costs, storage costs, brokerage and other sales-related costs, the amount of any liens and associated costs paid by the government on the property, costs incurred in paying the ordinary and necessary expenses of a business seized for forfeiture, awards for information as authorized by statute, expenses of trustees or other assistants pursuant to paragraph (j)(9)(iii) of this section, investigative or prosecutive costs specially incurred incident to the particular forfeiture, and costs incurred incident to the processing of the petition(s) for remission or mitigation. The remaining balance shall be available for remission or mitigation. The Ruling Official shall direct the distribution of the remaining balance in the following order of priority, except that he or she may exercise discretion in determining the priority between petitioners belonging to classes described in paragraphs (j)(9)(iii) and (9)(iv) of this section in exceptional circumstances:

(A) Owners;

(B) Lienholders;

(C) Federal financial institution regulatory agencies (pursuant to paragraph (j)(9)(vi) of this section, not constituting owners or lienholders); and

(D) Victims not constituting owners or lienholders (pursuant to paragraph (j)(8) of this section).

(ii) *Sale or disposition of property prior to ruling.* If forfeited property has been sold or otherwise disposed of prior to a ruling, the Ruling Official may grant relief in the form of a monetary amount. The amount realized by the sale of the property is presumed to be the value of the property. Monetary relief shall not be greater than the appraised value of the property at the time of seizure and shall not exceed the amount realized from the sale or other disposition. The proceeds of the sale shall be distributed as follows:

(A) Payment of the government's expenses incurred incident to the forfeiture and sale, including court costs and storage charges, if any;

(B) Payment to the petitioner of an amount up to his or her interest in the property;

(C) Payment to the Postal Service Fund of all other costs and expenses incident to the forfeiture;

(D) In the case of victims, payment of any amount up to the amount of his or her loss; and

(E) Payment of the balance remaining, if any, to the Postal Service Fund.

(iii) *Trustees and other assistants.* In the exercise of his or her discretion, the Ruling Official may use the services of a trustee, other government official, or appointed contractors to notify potential petitioners, process petitions, and make recommendations to the Ruling Official on the distribution of property to petitioners. The expense for such assistance shall be paid out of the forfeited funds.

(iv) *Other agencies of the United States.* Where another agency of the United States is entitled to remission or mitigation of forfeited assets because of an interest that is recognizable under these regulations, or is eligible for such transfer pursuant to 18 U.S.C. 981(e)(6), such agency shall request the transfer in writing, in addition to complying with the provisions of paragraphs (j)(3) through (5) of this section. The decision to make such transfer shall be made in writing by the Ruling Official.

(v) *Financial institution regulatory agencies.* A Ruling Official may direct the transfer of property under 18 U.S.C. 981(e) to certain federal financial institution regulatory agencies or an entity acting in their behalf, upon receipt of a written request, in lieu of ruling on a petition for remission or mitigation.

(vi) *Transfers to foreign governments.* A Ruling Official may decline to grant remission to any petitioner other than an owner or lienholder so that forfeited

assets may be transferred to a foreign government pursuant to 18 U.S.C. 981(i)(1), 19 U.S.C. 1616a(c)(2), or 21 U.S.C. 881(e)(1)(E).

(vii) *Filing by attorneys.* (A) A petition for remission or mitigation may be filed by a petitioner or by his or her attorney or legal guardian. If an attorney files on behalf of the petitioner, the petition must include a signed and sworn statement by the client-petitioner stating that:

(*1*) The attorney has the authority to represent the petitioner in this proceeding;

(*2*) The petitioner has fully reviewed the petition; and

(*3*) The petition is truthful and accurate in every respect.

(B) Verbal notification of representation is not acceptable. Responses and notification of rulings shall not be sent to an attorney claiming to represent a petitioner unless a written notice of representation is filed. No extensions of time shall be granted due to delays in submission of the notice of representation.

(viii) *Consolidated petitions.* At the discretion of the Ruling Official in individual cases, a petition may be filed by one petitioner on behalf of other petitioners, provided the petitions are based on similar underlying facts, and the petitioner who files the petition has written authority to do so on behalf of the other petitioners. This authority must be either expressed in documents giving the petitioner the authority to file petitions for remission, or reasonably implied from documents giving the petitioner express authority to file claims or lawsuits related to the course of conduct in question on behalf of these other petitioners. An insurer or an administrator of an employee benefit plan, for example, which itself has standing to file a petition as a ''victim'' within the meaning of paragraph (j)(2)(xxi) of this section, may also file a petition on behalf of all its insured or plan beneficiaries for any claims they may have based on co-payments made to the perpetrator of the offense underlying the forfeiture or the perpetrator of a ''related offense'' within the meaning of paragraph (j)(2)(xviii) of this section, if the authority to file claims or lawsuits is contained in the document or documents establishing the plan. Where such a petition is filed, any amounts granted as a remission must be transferred to the other petitioners, not the party filing the petition; although, in his or her discretion, the Ruling Official may use the actual petitioner as an intermediary for transferring the amounts authorized as a remission to the other petitioners.

[52 FR 4497, Feb. 12, 1987; 52 FR 5765, Feb. 26, 1987, as amended at 54 FR 47520, Nov. 15, 1989; 56 FR 20361, May 3, 1991; 57 FR 32726, July 23, 1992; 59 FR 31154, June 17, 1994; 59 FR 35852, July 14, 1994; 60 FR 5581, Jan. 30, 1995; 60 FR 8306, Feb. 14, 1995; 62 FR 31726, June 11, 1997]

§ 233.8 Expedited forfeiture proceedings for property seized for administrative forfeiture involving controlled substances in personal use quantities.

(a) *Definitions.* As used in this section, the following terms have the meanings specified:

(1) *Appraised Value* means the estimated domestic price at the time of seizure at which such or similar property is freely offered for sale.

(2) *Controlled Substance* has the meaning given in 21 U.S.C. 802.

(3) *Legal and Factual Basis of the Seizure* means a statement of the applicable law under which the property is seized, and a written statement of the circumstances of the seizure sufficiently precise to enable an owner or other interested party to identify the date, place, and use or acquisition which makes the property subject to forfeiture.

(4) *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.

(5) *Personal Use Quantities* means possession of a controlled substance in circumstances where there is not other evidence of an intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing, or exporting of any controlled substance. Evidence of personal