

to preserve the government's vested interest for purposes of the administrative forfeiture.

(c) Section 6080 requires a similar expedited review by the Attorney General or his representative in those instances where a conveyance is being forfeited in a civil judicial proceeding following its seizure for a drug-related offense.

§ 1316.91 Definitions.

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

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

(b) The term *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.

(c) The term *Controlled Substance* has the meaning given in section 802 of title 21, United States Code (U.S.C.).

(d) The term *Drug-Related Offense* means any proscribed offense which involves the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited by Title 21, U.S.C.

(e) The term *Immediately* means within 20 days of the filing of a petition for expedited release by an owner.

(f) The term *Interested Party* means one who was in legal possession of the property at the time of seizure and is entitled to legal possession at the time of the granting of the petition for expedited release. This includes a lienholder (to the extent of his interest in the property) whose claim is in writ-

ing (except for a maritime lien which need not be in writing), unless the collateral is in the possession of the secured party. The agreement securing such lien must create or provide for a security interest in the collateral, describe the collateral, and be signed by the debtor.

(g) The term *Legal and Factual Basis of the Seizure* means 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 other interested party to identify the date, place, and use or acquisition which makes the property subject to forfeiture.

(h) The term *Normal and Customary Manner* means that inquiry suggested by particular facts and circumstances which 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.

(i) The term *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.

(j) The term *Personal Use Quantities* means possession of controlled substances in circumstances where there

§ 1316.91

21 CFR Ch. II (4-1-03 Edition)

is no other evidence of an intent to distribute, of to facilitate the manufacturing, compounding, processing, delivering, importing or exporting of any controlled substance. Evidence of personal use quantities shall not include sweepings or other evidence of possession of quantities of a controlled substance for other than personal use.

(1) Such other evidence shall include:

(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 and/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) The controlled substance is related to large amounts of cash or any amount of prerecorded government funds;

(v) The controlled substance is possessed under circumstances that indicate such a controlled substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery; or

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

(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 which contains any quantity of any of the substances referred to in paragraphs (j)(2)(i)(A) through (j)(2)(i)(C) of this section;

(iii) 1/10th gram of a mixture or substance described in paragraph (j)(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 a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

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

(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 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 described in paragraph (j)(2) of this section.

(k) The term *Property* means property subject to forfeiture under title 21, U.S.C., sections 881(a) (4), (6), and (7); title 19, U.S.C., section 1595a, and; title 49, U.S.C. App., section 782.

(l) The term *Seizing Agency* means the Federal agency which has seized the property or adopted the seizure of another agency, and has the responsibility for administratively forfeiting the property;

(m) The term *Statutory Rights or Defenses to the Forfeiture* means all legal and equitable rights and remedies available to a claimant of property seized for forfeiture.

(n) The term *Sworn to* as used in §§1316.92(e) and 1316.95(c) refers to the

Drug Enforcement Administration, Justice

§ 1316.93

oath as provided by Title 28, U.S.C., section 1746.

§ 1316.92 Petition for expedited release in an administrative forfeiture action.

(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 paragraph (a) of this section 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 paragraph (a) of this section and the provisions of paragraph (a) of this section and other provisions in this subpart 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 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 paragraph (c) of this section, 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 filed in a timely manner to be considered by the seizing agency. In order to be filed in a timely manner, the petition must be received by the appropriate seizing agency within 20 days from the date of the first publication of the notice of seizure. 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 in triplicate with the Special Agent in Charge of the Drug Enforcement Administration (DEA) or Federal Bureau of Investigation (FBI) field office in the judicial district in which the property was seized, depending upon which agency seized the property. The petition shall be addressed to the Director of the FBI or to the Administrator of the DEA, depending upon which agency seized the property.

(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.

§ 1316.93 Ruling on petition for expedited release in an administrative forfeiture action.

(a) Upon receipt of a petition for expedited release filed pursuant to § 1316.92(a), the seizing agency shall determine first whether a final administrative determination of the case, without regard to the provisions of this subpart, 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.