

## Drug Enforcement Administration, Justice

## § 1316.96

(1) If the seizing agency determines that those factors have been established, it shall terminate the administrative proceedings and return the property to the owner (or in the case of a commercial fishing industry vessel for which a summons has been issued shall dismiss the summons), except where it is evidence of a violation of law; or

(2) If the seizing agency determines that those factors have not been established, the agency shall proceed with the administrative forfeiture.

### § 1316.94 Posting of substitute res in an administrative forfeiture action.

(a) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities, the owner may obtain release of the property by posting a substitute res with the seizing agency. The property will be released to the owner upon the payment of an amount equal to the appraised value of the property if it is not evidence of a violation of law or has design or other characteristics that particularly suit it for use in illegal activities. This payment must be in the form of a traveler's check, a money order, a cashier's check or an irrevocable letter of credit made payable to the seizing agency. A bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution which issued the check.

(b) If a substitute res is posted and the property is administratively forfeited, the seizing agency will forfeit the substitute res in lieu of the property.

### § 1316.95 Petition for expedited release of a conveyance in a judicial forfeiture action.

(a) Where a conveyance has been seized and is being forfeited in a judicial proceeding for a drug-related offense, the owner may petition the United States Attorney for an expedited release of the conveyance.

(b) The owner filing the petition for expedited release shall establish the following:

(1) The owner has a valid, good faith interest in the seized conveyance as owner or otherwise;

(2) The owner has statutory rights or defenses that would show to a substantial probability that the owner would prevail on the issue of forfeiture;

(3) The owner reasonably attempted to ascertain the use of the conveyance in a normal and customary manner; and

(4) The owner did not know or consent to the illegal use of the conveyance; 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.

(c) A petition for expedited release must be filed in a timely manner in order to be considered by the United States Attorney. To be considered as filed in a timely manner, the petition must be received by the appropriate United States Attorney within 20 days from the date of the first publication of the notice of the action and arrest of the property, or within 30 days after filing of the claim, whichever occurs later. 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 and addressed to and filed with the United States Attorney prosecuting the conveyance for forfeiture with a copy to the seizing agency.

(d) The petition shall include the following:

(1) A complete description of the conveyance, including the identification number, and the date and place of seizure;

(2) The petitioner's interest in the conveyance, which shall be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and,

(3) The facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify expedited release of the seized conveyance.

### § 1316.96 Ruling on a petition for expedited release of a conveyance in a judicial forfeiture action.

(a) Upon receipt of a petition for expedited release filed pursuant to § 1316.95, the United States Attorney shall rule on the petition within 20

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days of receipt. A petition shall be deemed filed on the date it is received by the United States Attorney.

(b) If the United States Attorney does not rule on the petition for expedited release within 20 days after the date on which it is filed, the conveyance shall be returned to the owner or interested party pending further forfeiture proceedings, except where it is evidence of a violation of law. Release of conveyance under provisions of this paragraph shall not affect the forfeiture action with respect to that conveyance.

(c) Upon a favorable ruling on the petition for expedited release, the United States Attorney shall, where necessary, move to terminate the judicial proceedings against the conveyance and immediately direct the return of the conveyance except where it is evidence of a violation of law.

(d) If, within 20 days, the United States Attorney denies the petition for expedited release, the government shall retain possession of the conveyance until the owner provides a substitute res bond pursuant to § 1316.98 or the forfeiture is finalized.

**§ 1316.97 Initiating judicial forfeiture proceeding against a conveyance within 60 days of the filing of a claim and cost bond.**

(a) The United States Attorney shall file a complaint for forfeiture of the conveyance within 60 days of the filing of the claim and cost bond.

(b) Upon the failure of the United States Attorney to file a complaint for forfeiture of a conveyance within 60 days unless the court extends the 60-day period following a showing of good cause, or unless the owner and the United States Attorney agree to such an extension, the court shall order the return of the conveyance and the return of any bond.

**§ 1316.98 Substitute res bond in a judicial forfeiture action against a conveyance.**

(a) Where a conveyance is being forfeited in a judicial proceeding for a

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drug-related offense, the owner may obtain release of the property by filing a substitute res bond with the seizing agency. The conveyance will be released to the owner upon the payment of a bond in the amount of the appraised value of the conveyance if it is not evidence of a violation of law or has design or other characteristics that particularly suit it for use in illegal activities. This bond must be in the form of a traveler's check, a money order, a cashier's check or an irrevocable letter of credit made payable to the Department of Justice or to the United States Customs Service depending on which agency seized the conveyance. A bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution which issued the check.

(b) If a substitute res bond is filed and the conveyance is judicially forfeited, the court will forfeit the bond in lieu of the property.

**§ 1316.99 Notice provisions.**

(a) *Special notice provision.* At the time of seizure of property defined in § 1316.91 for violations involving the possession of personal use quantities of a controlled substance and conveyances seized pursuant to § 1316.95, 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 release and for the posting of a substitute res bond as set forth in sections 6079 and 6080 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

(b) *Standard notice provision.* The standard notice to the owner as required by title 19, U.S.C., section 1607 and applicable regulations, shall be made at the earliest practicable opportunity after determining ownership of the seized property or conveyance and shall include the legal and factual basis of the seizure.