

Fish and Wildlife Service. Each annual adjustment will be reflected in the table in §11.33.

## PART 12—SEIZURE AND FORFEITURE PROCEDURES

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### Subpart A—General Provisions

#### § 12.1 What is the purpose of the regulations in this part?

These regulations provide procedures that govern the seizure and administrative forfeiture or abandonment of property, as well as the disposal of such property, and the recovery of costs associated with handling and storage of seized property under various laws enforced by the Service.

#### § 12.2 What is the scope of the regulations in this part?

(a) The regulations in this part apply to all property seized or subject to administrative forfeiture under any of the following laws:

- (1) The Bald and Golden Eagle Protection Act, 16 U.S.C. 668 *et seq.*;
- (2) The Airborne Hunting Act, 16 U.S.C. 742j–1;

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(3) The Endangered Species Act, 16 U.S.C. 1531 *et seq.*;

(4) The Lacey Act, 18 U.S.C. 42;

(5) The Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*;

(6) The Rhinoceros and Tiger Conservation Act, 16 U.S.C. 5301 *et seq.*;

(7) The Antarctic Conservation Act, 16 U.S.C. 2401 *et seq.*;

(8) The Paleontological Resources Protection Act, 16 U.S.C. 470aaa *et seq.*; and

(9) The African Elephant Conservation Act, 16 U.S.C. 4201 *et seq.*

(b) These regulations apply to the disposal of any property forfeited or abandoned to the United States under any of the following laws:

(1) Any of the laws identified in paragraph (a) of this section;

(2) The National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd *et seq.*;

(3) The Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.* (MBTA);

(4) The Migratory Bird Hunting and Conservation Stamp Act, 16 U.S.C. 718 *et seq.*;

(5) The Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.*;

(6) The Archeological Resources Protection Act, 16 U.S.C. 470aa *et seq.*; and

(7) The Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 *et seq.*

(c) This part applies to all forfeitures administered by the Service with the exception of seizures and forfeitures under the statutes listed under 18 U.S.C. 983(i). The authority under this part to conduct administrative forfeitures derives from the procedural provisions of the Customs and Border Protection laws (19 U.S.C. 1602-1618) where those provisions are incorporated by reference in the substantive forfeiture statutes enforced by the Service.

### § 12.3 What definitions do I need to know?

In addition to the definitions contained in parts 10, 14, 17, and 23 of this chapter, as well as other applicable Federal laws and regulations, in this part:

*Abandon* means to relinquish to the United States all legal right you have to own, claim, or possess property and to forever give up any right, title, and

interest in the property and waive any further rights or proceedings relative to the property other than whatever rights to seek relief expressly were reserved in the abandonment document you signed.

*Administrative forfeiture* means the process by which property may be forfeited by a seizing agency rather than through a judicial proceeding. Administrative forfeiture has the same meaning as nonjudicial forfeiture, as that term is used in 18 U.S.C. 983.

*Authorized officer* means a person or entity who is acting as an agent, trustee, partner, corporate officer, director, supervisory employee, or any other representative designated to act on behalf of an individual, corporation, partnership, or any other entity asserting that they are an interested party.

*Claim* means a written declaration regarding property for which the Service has proposed forfeiture and that meets the statutory requirements of 18 U.S.C. 983(a)(2), including:

(1) Timely submission;

(2) Containing required information regarding identification of the specific property being claimed;

(3) Stating the claimant's interest in the property;

(4) Requesting the initiation of judicial forfeiture proceedings; and

(5) Made under oath subject to penalty of perjury.

*Contraband* means any fish, wildlife, or plant that either:

(1) Is inherently illegal to import, export, or possess; or

(2) Has been taken, possessed, bred, imported, exported, acquired, transported, purchased, sold, or offered for sale or purchase contrary to law.

*Declaration of forfeiture* means a written declaration by the Service or the Solicitor describing the property forfeited and stating the date, time, place, and reason for forfeiture. The declaration will also describe the date and manner in which notice of seizure and proposed forfeiture was sent to the property owner. If notice was never successfully delivered, the declaration will describe efforts made to deliver any notice of seizure and proposed forfeiture.

*Detention* means the holding for further investigation of fish, wildlife, or

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plants and any associated property that is neither immediately released nor seized but is temporarily held by Service officers under 50 CFR part 14.

*Directed reexport* means the prompt export at the expense of the importer or consignee of imported shipments that have been refused entry by the Service into the United States.

*Director* means the Director of the U.S. Fish and Wildlife Service, Department of the Interior, or an authorized representative (as defined in 50 CFR 10.12).

*Interested party or parties* means any person(s) who appears to be a person having an interest in property based on the facts known to the seizing agency before a declaration of forfeiture is entered.

*Other property that is illegal to possess* means any fish, wildlife, or plant that may not be legally possessed or held due to extrinsic circumstances.

*Petition for remission* is a request in an administrative forfeiture proceeding for the Solicitor to exercise equitable discretion on behalf of the Department and to release the property seized. Remission of forfeiture is discretionary.

*Property subject to administrative forfeiture* means any property of the kinds described in 19 U.S.C. 1607(a) to the extent not inconsistent with the provisions of the incorporating wildlife laws (identified in §12.2) pursuant to which forfeiture is sought.

*Property subject to forfeiture* means all property that Federal law authorizes to be forfeited to the United States in any administrative forfeiture proceeding, or in any civil judicial forfeiture, or in any criminal forfeiture proceeding.

*Solicitor* means the Solicitor of the U.S. Department of the Interior or an authorized representative or designee.

*Value* means the value of property as determined by the Service. For property having a legal market in the United States, the Service will use the reasonable declared value or the estimated market value 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. For property that may not be sold in the United States, the Service will use other reasonable means, including, but

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not limited to, the Service's knowledge of sale prices in illegal markets or the replacement cost.

*We* means the U.S. Fish and Wildlife Service.

### § 12.4 When and how must documents be filed or issued?

(a) Whenever this part requires or allows you to file a document on or before a certain date, you are responsible for submitting that document so as to reach the Government office designated for receipt by the time specified. You may use the U.S. Postal Service (USPS), a commercial carrier, or electronic or facsimile transmission. We will consider the document filed on the date on which the document is received by the Government office designated for receipt. Acceptable evidence to establish the time of receipt by the Government office includes any official USPS receipt, commercial carrier signature log, time/date stamp placed by the Government on the document, other documentary evidence of receipt maintained by that Government office, or oral testimony or statements of Government personnel.

(b) Whenever this part requires or allows the Government to issue or file a document on or before a certain date, the document will be considered to be issued or filed on the date on which the document was placed in the USPS system, delivered to a commercial carrier, or sent by electronic or facsimile transmission. Acceptable evidence to establish the time of filing or issuance by the Government includes any official USPS sender's receipt, commercial carrier receipt log, and time/date stamp placed by the government office on the document, other documentary evidence of receipt maintained by that office, or oral testimony or statements of Government personnel.

### § 12.5 How does the Service handle seizures made by other agencies?

(a) If an authorized employee or officer of another Federal or State or local law enforcement agency seized your fish, wildlife, or plant or other property under any of the laws listed in §12.2, the Service may request the delivery of the seized property to the appropriate Special Agent in Charge

(SAC), Office of Law Enforcement, or to an authorized designee. The addresses for SACs are listed in §2.2 of this subchapter, and telephone numbers are listed in §10.22 of this subchapter. The SAC or authorized designee will hold the seized fish, wildlife, or plants or other property subject to forfeiture and arrange for its proper handling and care. Forfeiture proceedings must be initiated by notice to the interested parties within 90 days of the date of seizure by the Federal, State, or local law enforcement agency.

(b) If you use any U.S. Customs and Border Protection (CBP) form (forms may be amended or superseded) to voluntarily abandon any fish, wildlife, or plants or other property subject to forfeiture in lieu of Service Form 3-2096, Fish and Wildlife Abandonment Form, the Service may request that CBP transfer the property to the Service for final disposition.

**§ 12.6 How does the Service release seized property under a bond?**

(a) When an administrative forfeiture is pending, the Service may at its discretion accept an appearance bond or other security from you in place of any property authorized for seizure by civil forfeiture under any Act listed in §12.2. If you file a judicial claim, then early release of property must be handled under the provisions of 18 U.S.C. 983(f).

(b) You may post an appearance bond or other security in place of seized property only if the Service, at its discretion, authorizes the acceptance of the bond or security and the following conditions are met:

(1) You must complete Service Form 3-2095, Cash Bond for Release of Seized Property;

(2) The Service may release your seized property only to you (the owner) or your designated representative; and

(3) Your possession of the property may not violate or undermine the purpose or policy of any applicable law or regulation.

**Subpart B—Notification Requirements**

**§ 12.11 How is personal notification of seizure and proposed forfeiture provided?**

An administrative forfeiture proceeding begins when notice is first published in accordance with §12.12, or the first personal written notice is sent in accordance with the regulations in this section, whichever occurs first.

(a) *Manner of providing notice.* After seizing property subject to administrative forfeiture, the Service or the Solicitor, in addition to publishing notice of the seizure, will send personal written notice of the seizure to each interested party in a manner reasonably calculated to reach such parties. The notice of seizure and proposed forfeiture will not be sent to any person who signed an abandonment form. The notice of seizure and proposed forfeiture will be sent by U.S. registered or certified mail, express mail, or commercial carrier, all with proof of delivery and return receipt requested. The notice will be sent to an address that has been provided on shipping or other documents accompanying the property or on your permit or license application, unless the Service or the Solicitor has actual notice of a different address.

(b) *Content of personal written notice.* The personal written notice sent by the Service or the Solicitor will contain the following information:

(1) A description of the seized property;

(2) The name, title, and business address to whom any petition for remission or claim for judicial proceedings must be filed, as well as a seizure tag number;

(3) The date and place of seizure, and the estimated value of the property as determined under §12.3;

(4) A reference to provisions of law or regulations under which the property is subject to forfeiture;

(5) A statement that the Service or the Solicitor intends to proceed with administrative forfeiture proceedings;

(6) The date when the personal written notice is sent;

(7) The deadline for filing claims for judicial forfeiture proceedings, which is 35 days after the personal written

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notice is sent, as well as the deadline for filing petitions for remission; and

(8) A statement that any interested party may file a claim or petition for remission by the deadline.

(c) *Date of personal notice.* Personal written notice is sent on the date when the Service or the Solicitor places the notice in the mail, delivers it to a commercial carrier, or otherwise sends it by means reasonably calculated to reach the interested party.

(d) *Timing of notification.* The Service or the Solicitor will notify you in writing of any seizure of your property as soon as practicable and not more than 60 days after the date of seizure. If property is detained at an international border or port of entry for the purpose of examination, testing, inspection, obtaining documentation, or other investigation relating to the importation or the exportation of the property, the 60-day period will begin to run when the period of detention ends, if the Service seizes the property for the purpose of forfeiture to the United States.

(e) *Exceptions to the 60-day notification requirement.* The exceptions in 18 U.S.C. 983(a)(1), including but not limited to the exceptions listed in this paragraph (e), apply to the notice requirement under paragraph (d) of this section.

(1) If the identity or interest of an interested party is determined after the seizure of the property but before entering a declaration of forfeiture, the Service or the Solicitor will send written notice to such interested party under paragraph (a) of this section not more than 60 days after the date that the identity of the interested party or the interested party's interest is determined.

(2) For the purposes of this section, we do not consider property that has been refused entry, held for identification, held for an investigation as evidence, or detained for less than 30 days under part 14 of this chapter, to be seized.

(3) If, before the time period for sending notice expires, the Government files a civil judicial forfeiture action against the seized property and provides notice of such action as required by law, personal notice of administra-

tive forfeiture is not required under paragraph (a) of this section.

(4) If, before the time period for sending notice expires, the Government does not file a civil judicial forfeiture action, but does obtain a criminal indictment containing an allegation that the property is subject to forfeiture, the Government will either:

(i) Send notice within the 60 days specified under paragraph (a) of this section and continue the administrative civil forfeiture proceeding; or

(ii) Terminate the administrative civil forfeiture proceeding and take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute.

(f) *Extensions to the 60-day notification requirement.* The Director may extend the 60-day deadline for sending personal written notice under these regulations in a particular case one time, for a period not to exceed 30 days, unless further extended by a court, only if the Director determines that the notice may have an adverse result including endangering the life or physical safety of an individual, flight from prosecution, destruction of or tampering with evidence, intimidation of potential witnesses, or otherwise seriously jeopardizing an investigation or unduly delaying a trial.

### § 12.12 How is public notification of seizure and proposed forfeiture provided?

(a) After seizing property subject to administrative forfeiture, the Service will select from the following options a means of publication reasonably calculated to notify potential claimants of the seizure and the Service's intent to forfeit and sell or otherwise dispose of the property:

(1) Publication once each week for at least 3 successive weeks in a newspaper generally circulated in the judicial district where the property was seized; or

(2) Posting a notice on the official government internet site at <http://www.fws.gov/fwsforfeiture/> for at least 30 consecutive days.

(b) The published notice will:

(1) Describe the seized property;

(2) State the date, statutory basis, and place of seizure;

(3) State the deadline for filing a claim when personal written notice has not been received, which must be at least 30 days after the date of final publication of the notice of seizure; and

(4) State the name, title, and business address to whom any petition for remission or claim for judicial proceedings must be filed.

**§ 12.13 How is a declaration of forfeiture issued?**

(a) If the seizing agency commences a timely proceeding against property subject to administrative forfeiture, and either no valid and timely claim is filed or the seized property is not released in response to a petition or supplemental petition for remission, the Service or the Solicitor will declare the property forfeited to the United States for disposition according to law. The declaration of forfeiture will have the same force and effect as a final decree and order of forfeiture in a Federal judicial forfeiture proceeding.

(b) The declaration of forfeiture will describe the property and state the date, time, place, and reason for the seizure of the property. The declaration of forfeiture will refer to the notice of seizure and proposed forfeiture and describe the dates and manner in which the notice of seizure and proposed forfeiture was sent to you. If we have no proof of delivery to you of the notice of seizure and proposed forfeiture, the declaration of forfeiture will describe the efforts made to deliver the notice of seizure and proposed forfeiture to you.

**§ 12.14 What happens if the required notification of seizure and proposed forfeiture is not provided?**

Under 18 U.S.C. 983(a)(1)(F), if the Service or the Solicitor does not send notice of a seizure of property in accordance with that section to the person from whom the property was seized, and no extension of time was granted, the Government is required to return the property to that person, unless the property is contraband or other property that is illegal to possess. Any return of property under this section does not prejudice the right of the Government to commence a forfeiture proceeding at a later time.

**Subpart C—Forfeiture Proceedings**

**§ 12.31 What are the basic types of forfeiture proceedings?**

(a) Property seized for violations of the laws identified in § 12.2 and subject to forfeiture may be forfeited, depending upon the nature of the property and the law involved, through criminal forfeiture proceedings, civil judicial procedures, or civil administrative procedures.

(b) The process used also may be determined in certain circumstances by the actions of an interested party. For example, a person claiming property seized in an administrative civil forfeiture proceeding under a civil forfeiture statute may choose to file a claim after the seizure rather than to pursue administrative relief through a petition for remission of forfeiture.

(c) A claim that is timely and contains the information required by § 12.36 will terminate the administrative proceeding and will cause the Service, through the Solicitor, to refer the claim to the U.S. Department of Justice with the request that a judicial forfeiture action be instituted in Federal court.

**§ 12.32 When may the Service or the Solicitor obtain administrative forfeiture of my property?**

If your fish, wildlife, plant or other property is subject to forfeiture under any Act listed in § 12.2, and it is also property subject to administrative forfeiture, the Service or the Solicitor may initiate an administrative forfeiture proceeding of the property under the forfeiture procedures described in this subpart.

**§ 12.33 How do I file a petition for remission of forfeiture requesting the release of my property?**

(a) If you are an interested party, you may file a petition for remission of forfeiture with the Service to return seized property that is subject to administrative forfeiture. Upon receiving the petition, the Service will refer the petition to the Solicitor to decide whether to grant relief.

(b) You must file your petition for remission within 35 days from the date of the delivery of the notice of seizure and

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proposed forfeiture, if you or any interested party receives the notice of seizure and proposed forfeiture. If you do not receive the notice of seizure and proposed forfeiture, we must receive the petition for remission that you file not later than 30 days from the date of last posting of the public notice of the seizure of the property.

(c) Petitions for remission of forfeiture must be concise and logically presented to facilitate review by the Solicitor. The Solicitor may dismiss a petition for remission that fails to substantially comply with any of the information required by this paragraph (c). The petition for remission of forfeiture must contain the following:

(1) The name and address of the person claiming the interest in the seized property who is seeking remission.

(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.

(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.

(5) A statement containing all of the facts and circumstances you use to justify the remission of the forfeiture. If you rely on an exemption or an exception to a prohibition under any Act listed in §12.2, you must demonstrate how that exemption or exception applies to your particular situation.

(6) A statement containing all of the facts and circumstances you contend support any innocent owner's defense allowed by 18 U.S.C 983(d) that you are asserting. No person may assert an innocent owner's interest in property that is contraband or other property that is illegal to possess. A petitioner has the burden of proving by a preponderance of the evidence that the petitioner is an "innocent owner" as defined in 18 U.S.C 983(d).

(7) A statement that the information furnished is, to the best of your knowledge and belief, complete, true, and correct and that you recognize false statements may subject you to criminal penalties under 18 U.S.C 1001.

(d) In addition to the contents of the petition for remission described in paragraph (c) of this section, upon request, the petitioner must also furnish the agency with instruments executed by each known party with an interest in the property releasing that interest.

(e) A petition for remission of property subject to administrative forfeiture must be addressed to the appropriate office identified in the notice of forfeiture.

(f) Your petition for remission must be signed by you or your lawyer. If a lawyer files on behalf of the petitioner, the petition must include a signed and sworn statement by the client-petitioner stating that:

(1) The lawyer has the authority to represent you in the proceeding;

(2) You have fully reviewed the petition; and

(3) The petition is truthful and accurate in every respect to the best of your knowledge and belief.

(g) If the petitioner is a corporation, the petition must be signed by an authorized officer, supervisory employee of the corporation, or a lawyer representing the corporation, and the corporate seal must be properly affixed to the signature.

(h) If you file a claim to the property, as described in §12.36, the administrative proceeding will be terminated and the Solicitor will no longer have the opportunity or authority to review or rule on the petition for remission of the property.

### **§ 12.34 What are the standards for remission of forfeiture?**

(a) A petition for remission must include evidence that either:

(1) The petitioner is an interested party or owner as defined in this part; or

(2) The knowledge and responsibilities of the petitioner's representative, agent, or employee are ascribed 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.

(b) The petitioner has the burden of establishing the basis for granting a petition for remission of property and

for granting a reconsideration of a denial of such a petition. Failure to provide information or documents or to submit to interviews, when requested by the Solicitor, may result in a denial of the petition.

(c) The Solicitor will consider relevant information that you submit, as well as other information available to the Solicitor relating to the matter. The Solicitor will review the basis for the seizure, and in the absence of evidence to the contrary, will presume a valid seizure.

(d) Willful, materially false statements or information, made or furnished by the petitioner in support of a petition for remission or the reconsideration of a denial of any such petition, will be grounds for denial of the petition and possible prosecution for filing of false statements.

(e) The Solicitor will consider the following principles, if applicable, when making a decision on a petition for remission:

(1) Remission is an equitable remedy and is discretionary with the Solicitor.

(2) The Solicitor may grant remission of property if the Solicitor determines that mitigating circumstances justify the remission and then only under such terms and conditions as are reasonable and just.

(i) Mitigating factors that may be considered for the sole and limited purpose of remission of forfeiture include, but are not limited to, whether:

(A) The facts demonstrate your honest and good-faith intent and effort to comply with the law;

(B) You did not have the ability to prevent the violation;

(C) No evidence exists that you have engaged in past conduct similar to the violation;

(D) You have taken meaningful steps, including enforcement mechanisms (*e.g.*, contractual or monetary), to prevent any violations; and

(E) The 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.

(ii) These factors are not intended to be all inclusive and do not constitute authority in and of themselves.

(3) The Solicitor will make all remission decisions with due consideration for the cumulative conservation impacts of the remission including, but not limited to, whether:

(i) The species is listed in Appendix I, II, or III under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (See §23.91 of this chapter);

(ii) The species is listed in part 17 of this chapter as “threatened” or “endangered” under the Endangered Species Act (16 U.S.C. 1531 *et seq.*);

(iii) The violation increased the regulatory burden on government agencies; or

(iv) Remission may have an adverse effect on the integrity of any applicable permitting system or may provide an incentive to third parties to avoid meeting CITES requirements.

(4) The Solicitor has the discretion to condition a grant of remission of the seized property, in whole or in part, on terms and conditions that are reasonable and just. The Solicitor further has the discretion to grant remission for the limited purpose of directed reexport to the exporter of record provided that the reexport benefits enforcement and administration of applicable wildlife laws. Any terms and conditions of remission will be in writing and may include but are not limited to payment of those costs and expenses that the United States may, as a matter of applicable law, recover for the property.

(i) Shipment of any released property will be at your sole cost, and the risk of loss from such shipment will be your risk.

(ii) Property for which remission is granted will be released only after successful completion of all terms and conditions of remission, proper identification of the recipient of the property, and your execution of a property receipt provided by the Solicitor or the Service acknowledging receipt of the remitted property.

(5) Any decision to grant remission is separate from and does not preclude or otherwise provide relief from civil enforcement against the person or persons who committed the violations associated with the seizure and proposed forfeiture of the property. To expedite the resolution of any civil penalties

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that may be brought against you under the ESA (16 U.S.C. 1531 *et seq.*), the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*), or the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*) in connection with violations involving any wildlife for which remission is to be granted, the Solicitor has the sole discretion to give you the opportunity to completely or partially settle the civil penalty claim at the same time that remission is granted by executing a written agreement setting forth the terms and conditions of the civil penalty settlement. Such an agreement may be included in the written documentation of the terms and conditions of the parallel remission of forfeiture provided that:

- (i) The terms and conditions of the civil penalty settlement are clearly delineated as relating separately and solely to any civil penalty claims; and
- (ii) The wildlife owner agrees in writing to waive any notice of violation and notice of assessment required by part 11 of this subchapter and the opportunity for a hearing as conditions of civil penalty settlement.

### **§ 12.35 How will the Solicitor notify me of the decision on my petition for remission?**

(a) The Solicitor will notify you in writing of any decision to grant or deny a petition for remission or to dismiss the petition for failure to provide the information required in this part or to timely file that petition. The notification will advise you of the reasons for the decision made and the options, if any, available to you for addressing the decision.

(b) In the event that the Solicitor denies your petition for remission of forfeiture, you may file a supplemental petition for reconsideration if you have information or evidence not previously considered that is material to the basis for the denial or new documentation clearly demonstrating that the denial was erroneous. A supplemental petition must be received within 60 days from the date of the Solicitor's notification denying the original petition. You may file only one supplemental petition. The Solicitor's decision on your petition for remission will be the decision for the Service.

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### **§ 12.36 How do I file a claim to get back my seized property?**

(a) If you receive a notice of seizure and proposed forfeiture, you may file a claim to the property by the deadline stated in the notice of seizure and proposed forfeiture. This deadline will be 35 days after the notice is mailed.

(b) If you did not receive a notice of seizure and proposed forfeiture, your claim must be received by the appropriate office not later than 30 days from the last date of final publication of the notice of the seizure of the property.

(c) A claim does not have to be in any particular form, but your claim must: be in writing, identify the specific property being claimed, state your interest in the specific property being claimed, and be made under oath subject to penalty of perjury. We will make a claim form available to you upon request.

(d) Your claim, by itself, will not entitle you or any other person to possession of the property. No bond is required to make a claim for judicial forfeiture proceedings. Rather, your claim will result in the Service referring the case, through the Solicitor, to the Department of Justice for civil judicial forfeiture. However, if you request possession of the property pending an administrative forfeiture decision under § 12.6, you will be required to post a bond under § 12.6 if your request is granted. This bond is only required to obtain interim possession of the property.

(e) Your claim must be made under oath by you as the claimant and not by an attorney or agent.

(f) If you are an individual claimant, you must sign the claim.

(1) If the claimant is a corporation or a form of limited liability business entity organized under a State law, an authorized officer or supervisory employee of the entity must sign the claim.

(2) If the claimant is a partnership or limited partnership, any general partner may sign the claim.

(3) If the claimant is a trust, estate, or fiduciary entity, such as a person to whom property is entrusted, the chief officer authorized by the trust, estate,

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or fiduciary entity must sign the claim.

### **§ 12.37 Can I get my property back while the claim is pending?**

If you have filed a claim and you think that continued possession of the property by the United States during the forfeiture proceeding will cause you substantial hardship, you may request under 18 U.S.C. 983(f) that the Service return the property to you pending the resolution of the judicial forfeiture proceeding. In determining whether to grant or deny your request, the Service will consider the factors set out in 18 U.S.C. 983(f). You must furnish evidence substantiating the hardship, and that none of the conditions set forth in 18 U.S.C. 983(f)(8) apply; for example, the property may not be contraband.

### **§ 12.38 What happens if my property is subject to civil judicial actions to obtain forfeiture?**

If a claim is filed in the forfeiture proceeding under § 12.36, the Solicitor will refer the case to the Department of Justice to include in a civil forfeiture complaint or in a criminal indictment.

## **Subpart D—Abandonment Procedures**

### **§ 12.51 May I simply abandon my interest in the property?**

You may voluntarily abandon your interest in property to the United States by signing Service Form 3-2096, Fish and Wildlife Abandonment Form, or equivalent Federal, State, Tribal, or local form, or by signed letter to the Service or the Solicitor containing substantially the same information as Form 3-2096.

### **§ 12.52 Can I file a petition for remission for my abandoned property?**

You may file a petition for remission of abandoned property with the Service and seek the return of property you had voluntarily abandoned, within the time period described in § 12.33. If you have agreed to abandon property, your right to seek relief is limited to whatever process expressly was reserved in

the abandonment document you signed.

## **Subpart E—Disposal of Forfeited or Abandoned Property**

### **§ 12.61 What is the purpose of this subpart?**

This subpart contains the provisions under which the Service will dispose of any property forfeited or abandoned to the United States.

### **§ 12.62 How does the Service keep track of forfeited or abandoned property?**

The Service must account in official records for all property forfeited or abandoned under this subpart. These records must include the following information:

- (a) A description of the property;
- (b) The date and place of the seizure of the property, and, if appropriate, the seizure tag number, and the date of forfeiture or abandonment of the property;
- (c) The investigative case file number associated with the property;
- (d) The name of any person known to have or to have had an interest in the property;
- (e) The date, place, and manner of the disposal of the property;
- (f) The name of the official responsible for the disposal of the property; and
- (g) The value of the property.

### **§ 12.63 When may the Service return live fish, wildlife, or plants to the wild?**

(a) The Service may release any live member of a native species of fish, wildlife, or plant that is capable of surviving in the wild into suitable habitat within the historical range of the species in the United States, with the permission of the landowner and the State, unless that release poses an imminent danger to public health or safety, or presents a known threat of disease transmission to other fish, wildlife, or plants.

(b) The Service may transplant any live member of a native species of plant that is capable of surviving into suitable habitat on Federal or other protected lands within the historical

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range of the species in the United States, with the permission of the appropriate land-management agency.

(c)(1) The Service may not return to the wild any live member of an exotic, nonnative species of fish, wildlife (including injurious wildlife), or plant, within the United States. The Service may return such live member that is capable of surviving in the wild to one of the following countries for return to suitable habitat:

(i) The country of export, if known, after consultation with that country; or

(ii) A country that is within the historical range of the species and that is a party to CITES (Treaties and Other International Acts Series, TIAS 8249) after consultation with that country.

(2) Any return of fish, wildlife, or plants under paragraph (c)(1) of this section must comply with applicable laws, including CITES and the domestic laws of that country.

(3) We may require that the return of fish, wildlife, or plants under paragraph (c)(1) of this section be at the expense of that country, the transporter, the violator, or others as provided by law.

### **§ 12.64 How does forfeiture or abandonment affect the status of the property?**

(a) After property has been forfeited or abandoned, the prior illegal status of the property, due to violations of any Act listed in § 12.2 that led to the forfeiture or abandonment of the property, is terminated. However, any subsequent holder or owner of the property must comply with all prohibitions, restrictions, conditions, or requirements that apply to a particular species of fish, wildlife, or plant under any Act listed in § 12.2, or any other applicable Federal, State, Tribal, or foreign law or regulation.

(b) When releasing property under the provisions of this subpart, the Service will prescribe the conditions under which the property may be possessed and used and will reserve the right to resume possession of the property if it is possessed or used in violation of those conditions.

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### **§ 12.65 How does the Service dispose of forfeited or abandoned property?**

(a) The Service will dispose of any fish, wildlife, or plant forfeited or abandoned by one of the following means, unless the item is the subject of a petition for remission of forfeiture under § 12.33 or disposed of by court order (items will be disposed of in order of priority listed below):

(1) Return to the wild, as described in § 12.63(a);

(2) Transfer for use by the Service; transfer to the National Eagle and Wildlife Property Repository; transfer to a Tribe, where the item is credibly identified as an object of cultural patrimony; or transfer to another government agency for official use;

(3) Donation or loan;

(4) Sale; or

(5) Destruction.

(b) The Service may use forfeited or abandoned fish, wildlife, or plants or transfer them to another government agency, including foreign government agencies, for official use including, but not limited to, one or more of the following purposes:

(1) Training government officials to perform their official duties;

(2) Identifying protected fish, wildlife, or plants, including forensic identification or research;

(3) Educating the public concerning the conservation of fish, wildlife, or plants;

(4) Conducting law enforcement operations in performance of official duties;

(5) Enhancing the propagation or survival of a species or other scientific purposes;

(6) Presenting as evidence in a legal proceeding involving the fish, wildlife, or plants; or

(7) Returning the live fish, wildlife, or plants to the wild under § 12.63.

(c) The Service must document each transfer and the terms of each transfer.

(d) A government agency, including a foreign government agency, receiving the fish, wildlife, or plants may be required to pay all of the costs of care, storage, and transportation in connection with the transfer of the fish, wildlife, or plants, from the date of seizure, refused entry, or detention to the date of delivery.

(e) The Service must dispose of forfeited or abandoned property, other than fish, wildlife, or plants, including vehicles, vessels, aircraft, cargo, guns, nets, traps, and other equipment, as allowed under current Federal property management regulations.

(f) When disposing of property, the Service must follow these guidelines:

(1) The Service may dispose of any live fish, wildlife, or plant immediately upon order of forfeiture or abandonment of the property, if the Service determines that the property is likely to perish, deteriorate, decay, waste, or greatly decrease in value if maintained by the Service, or if the expense of maintaining that property is disproportionate to its value; or

(2) The Service may dispose of all other property no sooner than 30 days after an order of forfeiture or abandonment of the property.

(g) If the property is the subject of a pending petition for remission of forfeiture under § 12.35, the Service may not dispose of the property until the Solicitor or the Attorney General, pursuant to 28 CFR part 9, makes a final decision regarding whether relief will be granted.

**§ 12.66 How does the Service dispose of seized injurious fish or wildlife?**

(a) The Service will order immediate reexport or destruction of any seized injurious fish or wildlife imported or transported in violation of our injurious species regulations in part 16 of this subchapter.

(b) The importer, exporter, or transporter will be responsible for all costs associated with the reexport or destruction of any seized injurious fish or wildlife imported, exported, or transported in violation of our injurious species regulations in part 16 of this subchapter.

(c) Any live or dead specimen, part, or product of any fish or wildlife species listed as injurious under part 16 of this subchapter will be disposed of in a manner that minimizes, to the greatest extent practicable, the possibility that additional specimens will be imported or transported in violation of our injurious species regulations in part 16 of this subchapter.

**§ 12.67 When may the Service donate forfeited or abandoned property?**

(a) The Service may donate forfeited or abandoned fish, wildlife, or plants, for scientific, educational, or public display purposes, when consistent with applicable law. The donation may be made to any person, government agency (including foreign government agencies) or public organization, as defined in § 10.12 of this subchapter. The donee must have the demonstrated ability to provide adequate care and security for the fish, wildlife, or plants.

(b) A transfer document between the Service and the person, government agency (foreign or domestic), or public organization receiving the fish, wildlife, or plants, must be completed before any donation of fish, wildlife, or plants takes place. Form SF-123, Transfer Order Surplus Personal Property, should be used for transfers with agencies or persons outside of the Department of the Interior, and Form DI-104, Transfer of Property, should be used for transfers with agencies within the Department of the Interior. The donation is subject to the following conditions:

(1) The transfer document must state the purpose for which the fish, wildlife, or plants will be used.

(2) Any attempt by the recipient to use the donation for any purpose other than that specifically stated on the transfer document entitles the Service to immediately repossess the fish, wildlife, or plants or their offspring.

(3) The recipient may be required to pay all of the costs associated with the transfer of the fish, wildlife, or plants, or their offspring, including the costs of care, storage, transportation, and return to the Service, if applicable.

(4) The recipient may not sell the fish, wildlife, or plants, or their offspring.

(5) The recipient may be required to show the Form SF-123, DI-104, or any other transfer document that was received.

(6) The recipient is subject to the prohibitions, restrictions, conditions, or requirements that may apply to a particular species of fish, wildlife, or plant imposed by Federal, State, Tribal, or foreign law or regulation.

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(7) Any attempt to retransfer a donation without the prior authorization of the Service entitles the Service to immediately repossess the fish, wildlife, or plants, or their offspring.

(8) At all reasonable times, upon prior notice, the recipient must provide authorized Service officers access to the location where the donation is kept for the purposes of inspecting the donation and all associated records pertaining to the donation.

(9) Any donation is subject to the conditions specified in the transfer document, including, without limitation, any time periods, and any violation of these specific conditions entitles the Service to immediately repossess the fish, wildlife, or plants, or their offspring.

(c) The Service will not donate live fish, wildlife, or plants for human consumption.

### **§ 12.68 When may the Service loan forfeited or abandoned property?**

(a) The Service may loan forfeited or abandoned property, fish, wildlife, or plants, for scientific, educational, or public display purposes, when consistent with applicable law. The loan may be made to any person, government agency (including foreign government agencies) or public organization, as defined in § 10.12 of this subchapter. The recipient must have the demonstrated ability to provide adequate care and security for the fish, wildlife, or plants.

(b) A transfer document between the Service and the person, government agency (foreign or domestic), or public organization receiving the fish, wildlife, or plants must be completed before any loan of fish, wildlife, or plant takes place. Form SF-123, Transfer Order Surplus Personal Property, should be used for transfers with agencies or persons outside of the Department of the Interior, and Form DI-104, Transfer of Property, should be used for transfers with agencies within the Department of the Interior. The loan is subject to the following conditions:

(1) The transfer document must state the purpose for which the fish, wildlife, or plants will be used.

(2) Any attempt by the recipient to use the loan for any purpose other than

that specifically stated on the transfer document entitles the Service to immediately repossess the fish, wildlife, or plants or their offspring.

(3) The recipient may be required to pay all of the costs associated with the transfer of the fish, wildlife, or plants, or their offspring, including the costs of care, storage, transportation, and return to the Service, if applicable.

(4) The recipient may not sell the fish, wildlife, or plants, or their offspring.

(5) The recipient may be subject to a periodic accounting of the care and use of the loaned fish, wildlife, or plants, or their offspring.

(6) The recipient is subject to the prohibitions, restrictions, conditions, or requirements that may apply to a particular species of fish, wildlife, or plant imposed by Federal, State, Tribal, or foreign law or regulation.

(7) Any attempt to retransfer a loan without the prior authorization of the Service entitles the Service to immediately repossess the fish, wildlife, or plants, or their offspring.

(8) At all reasonable times, upon prior notice, the recipient must provide authorized Service officers access to the location where the loan is kept for the purposes of inspecting the loan and all associated records pertaining to the loan.

(9) Any loan is subject to the conditions specified in the transfer document, including, without limitation, any time periods, and any violation of these specific conditions entitles the Service to immediately repossess the fish, wildlife, or plants, or their offspring.

(10) Any loan is in effect for an indefinite period of time unless the transfer document specifies a date for returning the loan to the Service.

(11) Any loan remains the property of the United States, and the Service may demand the return of the loan at any time, and the recipient cannot prevent that return.

### **§ 12.69 When may the Service sell forfeited or abandoned property?**

(a) The Service may sell, or offer for sale, forfeited or abandoned fish, wildlife, or plants, except any species,

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which at the time of sale or offer for sale, is:

(1) Listed in part 10 of this subchapter as a migratory bird protected by the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*);

(2) Protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*);

(3) Listed in Appendix I, or in Appendix II with an annotation (limiting commercial use of specimens of the species or where specimens of the species are treated as if listed in Appendix I), under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (See § 23.91 of this chapter);

(4) Listed in part 17 of this chapter as “endangered” or “threatened” under the Endangered Species Act (16 U.S.C. 1531 *et seq.*);

(5) Protected under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*);

(6) Regulated as an injurious species under our injurious species regulations in part 16 of this chapter;

(7) The African elephant (*Loxodonta* species);

(8) Protected under the Wild Bird Conservation Act, (16 U.S.C. 4901 *et seq.*); or

(9) Protected under the Rhinoceros and Tiger Conservation Act (16 U.S.C. 5301 *et seq.*);

(10) Protected under the Big Cat Public Safety Act (16 U.S.C. 3371(h), 3372(e), 117 Public Law 243, 136 Stat. 2336); or

(11) Any fish, wildlife, or plant that is prohibited for export by the country of origin of the species.

(b) If the Service chooses to dispose of fish, wildlife, or plants by sale, we must do so under current Federal property management regulations or Customs laws and regulations, except that the Service may sell any fish, wildlife, or plants immediately to the highest bidder above the set minimum bid, if the Service determines that the fish, wildlife, or plants are likely to perish, deteriorate, decay, waste, or greatly decrease in value by keeping, or that the expense of keeping the fish, wildlife, or plants is disproportionate to their value.

(c) The Service may transport fish, wildlife, or plants that may not be pos-

sessed lawfully by purchasers under the laws of the State where the fish, wildlife, or plants are held to a State where possession of the fish, wildlife, or plants is lawful and the fish, wildlife, or plants may be sold.

(d) Fish, wildlife, or plants purchased at sale are subject to the prohibitions, restrictions, conditions, or requirements that apply to a particular species of fish, wildlife or plant imposed by Federal, State, or Tribal or foreign law or regulation.

### § 12.70 When may the Service destroy forfeited or abandoned property?

(a) The Service may destroy fish, wildlife, or plants under the provisions set forth in §§ 12.65 and 12.66.

(b) The Service official who performs the destruction of fish, wildlife, or plants and a witness must certify the completion of the destruction, the method of the destruction, the date of the destruction, and the type and quantity of fish, wildlife, or plants destroyed.

(c) The Service will comply with all applicable laws regarding the destruction of the fish, wildlife, or plants and regarding the disposal of any residue or wastes resulting from the method of the destruction of the fish, wildlife, or plants.

### Subpart F—Recovery of Storage Costs and Return of Property

#### § 12.81 When can the Service assess fees for costs incurred by the transfer, boarding, handling, or storage of property seized or forfeited?

(a) If any fish, wildlife, plant, or item of evidence is seized or forfeited under the ESA (16 U.S.C. 1531 *et seq.*), you or any person whose act or omission was the basis for the seizure will be charged a reasonable fee for expenses to the United States connected with the transfer, boarding, handling, or storage of the seized or forfeited property. If any fish, wildlife, or plant is seized in connection with a violation of the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*), you or any person convicted or assessed a civil penalty for this violation will be assessed a reasonable fee for expenses of the United

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States connected with the storage, care, and maintenance of the property.

(1) Within a reasonable time after seizure or forfeiture, the Service may send by registered mail, certified mail, or private courier, return receipt requested, a bill for this fee. The bill will contain an itemized statement of the applicable costs, together with instructions on the time and manner of payment.

(2) You must make payment under terms of the bill. If you fail to pay, you may be subject to collection proceedings under the Federal Claim Collection Act, 31 U.S.C. 3711 *et seq.*, as well as the Federal Debt Collection Act, 31 U.S.C. 3701 *et seq.*, and the possible refusal of clearance of future shipments, and disqualification from receiving or exercising the privileges of any Service permit.

(b) If you object to the costs described in the bill, you may, within 30 days of the date on which you received the bill, file written objections with the SAC for the U.S. Fish and Wildlife Service Office of Law Enforcement in the region in which the seizure occurred. Upon receipt of the written objections, the SAC will promptly review them and, within 30 days, deliver in writing a final decision. In all cases, the SAC's decision will constitute final administrative action on the matter.

### § 12.82 How will my property be returned if my petition or claim is successful?

If, at the conclusion of the appropriate proceedings, seized property is to be returned to the owner or consignee, the Solicitor or Service will issue a letter or other document authorizing its return. This letter or other document will be delivered personally or sent by registered or certified mail, return receipt requested, and will identify the owner or consignee, the seized property, and, if appropriate, the custodian of the seized property. It will also provide that, upon presentation of the letter or other document and proper identification, and the signing of a receipt provided by the Solicitor or the Service, the seized property is authorized to be released, provided it is properly marked in ac-

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cordance with applicable State or Federal requirements.

### PART 13—GENERAL PERMIT PROCEDURES

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AUTHORITY: 16 U.S.C. 668a, 704, 712, 742j-1, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901-4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

SOURCE: 39 FR 1161, Jan. 4, 1974, unless otherwise noted.

#### Subpart A—Introduction

##### § 13.1 General.

(a) A person must obtain a valid permit before commencing an activity for which a permit is required by this subchapter, except as provided in § 23.53 of this subchapter for retrospective permits for certain CITES shipments under very specific situations.