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50 CFR Parts 12

Seizure and Forfeiture Procedures; Proposed Rule

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 12**

[Docket No. FWS-HQ-LE-2016-0067;
FF09L00200-FX-LE12200900000]

RIN 1018-AC89

Seizure and Forfeiture Procedures

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes to revise its seizure and forfeiture regulations. These regulations establish procedures relating to property seized or subject to administrative forfeiture under various laws enforced by the Service. This revision will set forth the procedures the Service uses for the seizure, bonded release, appraisal, administrative proceeding, petition for remission, and disposal of items subject to forfeiture under laws administered by the Service and will reflect the procedures required by the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) and those of U.S. Customs and Border Protection. This proposed rule will make these regulations easier to understand through the use of simpler language. This proposed revision will also more clearly explain the procedures used in administrative forfeiture proceedings, make the process more efficient, and make the Service's seizure and forfeiture procedures more uniform with those of other agencies subject to CAFRA.

DATES: We will consider comments received or postmarked on or before August 16, 2016.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking portal at:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-HQ-LE-2016-0067.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-HQ-LE-2016-0067; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

We will not accept email or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information that you provide to us (see Public Comments in **SUPPLEMENTARY INFORMATION** below for more information).

FOR FURTHER INFORMATION CONTACT:

Edward Grace, Deputy Assistant Director, U.S. Fish and Wildlife Service, Office of Law Enforcement, (703) 358-1949, fax (703) 358-1947.

SUPPLEMENTARY INFORMATION:**Public Comments**

We intend that any final action resulting from this proposed rule will be as accurate and effective as possible. The Service invites interested persons to submit written data, views, or arguments on all aspects of this proposed rule. Comments that will provide the most assistance to us in developing this rule will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports that recommended change.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments you send by email or fax or that you send to an address not listed in **ADDRESSES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

If you submit information via <http://www.regulations.gov>, your entire submission—including your personal identifying information—will be posted on the Web site. If you provide personal identifying information in a hard-copy comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Office of Law Enforcement, MS: OLE; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

Executive Summary

We propose to revise our regulations regarding seizure and administrative forfeiture of property and the disposal of any property forfeited or abandoned to the United States (whether through administrative or judicial forfeiture) under various laws that the Service administers. The proposed regulations will set forth the procedures that we use for the seizure, bonded release, appraisal, administrative proceeding, petition for remission, and disposal of items subject to forfeiture

and will reflect the procedures required by the Civil Asset Forfeiture Reform Act of 2000 (CAFRA). This proposed rule will make the current regulations easier to understand through the use of simpler language and will also more clearly explain the procedures used in administrative forfeiture proceedings, make the process more efficient, and make the Service's seizure and forfeiture procedures more uniform with those of other agencies subject to CAFRA.

The Service is not unique in its seizure and administrative forfeiture authority. In general, all property subject to forfeiture under Federal law may be forfeited administratively by the enforcing Federal agency provided that the statutory authority for the forfeiture incorporates the Customs laws of 19 U.S.C. 1602 *et seq.* and further provided the property is neither real property nor personal property having a value of more than \$500,000 (except as noted in 19 U.S.C. 1607(a)).

Since the enactment of CAFRA in 2000, the Service has implemented the forfeiture procedures imposed by the law through the authority of the Act and through written guidance setting forth practices for the issuance of notice of nonjudicial civil forfeiture proceedings, the availability of administrative and judicial processes for contesting the proposed forfeiture, and applicable deadlines for utilizing these processes. We are now updating the regulations in part 12 of title 50 of the Code of Federal Regulations (50 CFR part 12) to reflect these procedural changes.

Statutory Authority for Rulemaking

The Service has enforcement and oversight responsibilities under Federal wildlife conservation laws and regulations. The regulations in 50 CFR part 12 establish procedures relating to property seized or subject to administrative forfeiture as well as to the disposal of any property forfeited or abandoned to the United States under various laws enforced by the Service. Authority to seize and conduct administrative forfeiture and/or to dispose of property forfeited or abandoned to the United States whether through administrative or judicial forfeiture is granted under the following statutes:

- The Bald and Golden Eagle Protection Act, 16 U.S.C. 668 *et seq.* (BGEPA);
- the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd-ee;
- the Migratory Bird Treaty Act, 16 U.S.C. 704, 706-707, 712 (MBTA);

- the Migratory Bird Hunting and Conservation Stamp Act, 16 U.S.C. 718 *et seq.*;
- the Airborne Hunting Act, 16 U.S.C. 742j–1;
- the African Elephant Conservation Act, 16 U.S.C. 4201 *et seq.*;
- the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA);
- the Marine Mammal Protection Act of 1972, 16 U.S.C. 1375–1377, 1382;
- the Lacey Act, 18 U.S.C. 42;
- the Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*;
- the Rhinoceros and Tiger Conservation Act, 16 U.S.C. 5301 *et seq.*;
- the Antarctic Conservation Act, 16 U.S.C. 2401 *et seq.*;
- the Archeological Resources Protection Act, 16 U.S.C. 470 *et seq.*;
- the Paleontological Resources Preservation Act, 16 U.S.C. 470aaa *et seq.*; and
- the Native American Graves Protection and Repatriation Act, 16 U.S.C. 3001 *et seq.*

Purpose of Proposed Rulemaking

CAFRA (Pub. L. 106–185) superimposes specific procedural requirements over the procedures in various forfeiture laws in existence prior to CAFRA’s enactment. We are proposing a revision of 50 CFR part 12 to reflect in one place the CAFRA procedural overlay and to make changes to increase the efficiency of the regulations, such as allowing the publication of notices through the internet and streamlining the process for claims and petitions for remission. The purposes of the civil forfeiture laws enforced by the Service are remedial, among other things because forfeiture removes unlawful wildlife from society and is based upon the unlawful use of that wildlife.

Section-by-Section Analysis

The following parts of the preamble explain the proposed rule and present a discussion of the substantive issues of each section.

Proposed Changes to Subpart A of 50 CFR Part 12—General Provisions

We are proposing to change the section titles in subpart A. Otherwise, proposed §§ 12.1–12.6 are largely the same as current §§ 12.1–12.6.

Section 12.1—What is the purpose of these regulations?

The purpose of these proposed regulations is essentially unchanged from the purpose stated in the current § 12.1.

Section 12.2—What is the scope of these regulations?

The list of laws to which these regulations apply has been expanded. You can view this list in the corresponding section of the proposed regulations at the end of this document.

Section 12.3—What definitions do I need to know?

We are proposing to remove the definitions of the following terms: “Attorney General,” “disposal,” and “domestic value,” and add the word “designee” to the definition of “Solicitor.” We are also proposing to add definitions for the following terms: Abandon, administrative forfeiture, authorized officer, claim, contraband, declaration of forfeiture, detention, directed re-export, Director, interested party or parties, other property that is illegal to possess, petition for remission, property subject to administrative forfeiture, property subject to forfeiture, value, and we.

Abandon: Abandon means to relinquish to the United States all legal right you have to own, claim, or possess property seized by the Service, and to forever give up any right, title, and interest you have in the property, and to 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: 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: 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 a corporation, partnership, or individual asserting that they are an interested party.

Claim: Claim means a written declaration regarding property for which the Service has proposed forfeiture 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, and (4) made under oath subject to penalty of perjury. A claim in effect causes a forfeiture proceeding begun administratively to be transferred by the Department of Justice to Federal court,

since once a claim is filed seeking civil judicial forfeiture, the Service will forward the matter, through the Solicitor’s Office, to the U.S. Department of Justice for filing as a civil judicial forfeiture action. Once a claim is referred, all administrative proceedings are terminated. See *Von Neuman v. United States*, 660 F.2d 1319, 1326 (9th Cir. 1981), cert. granted and judgment vacated on other grounds, 462 U.S. 1101 (1983) (“Once a case is referred for judicial action, the administrative proceedings on a petition for remission must cease” (citing 19 CFR 171.2)); see also 18 U.S.C. 983(a)(3); 19 U.S.C. 1608.

Contraband: Contraband means any fish, wildlife, or plant that either (1) by its very nature is illegal to import, export, or possess; or (2) if not inherently illegal in nature, becomes illegal because it has been taken, possessed, imported, exported, acquired, transported, purchased, sold, or offered for sale or purchased contrary to law.

A definition of “contraband” is included in these proposed regulations to address the contraband exemption to three of the procedures imposed by CAFRA on the civil forfeitures covered by these proposed part 12 regulations. These three procedures include certain types of seized property provisions contained in 18 U.S.C. 983(a)(1)(F) and 983(f) and the “innocent owner defense” of 18 U.S.C. 983(d). As discussed above, CAFRA sets forth the procedures used in all civil forfeitures under Federal law unless the particular forfeiture statute is specifically exempted in 18 U.S.C. 983(i)(2). *United States v. 144,774 Lbs. of Blue King Crab*, 410 F. 3d 1131, 1134 (9th Cir. 2005). As such, CAFRA applies to the civil forfeitures covered by these proposed regulations.

CAFRA includes, in 18 U.S.C. 983(f), a process for obtaining the release of certain types of seized property while a civil forfeiture action is pending. Contraband is one type of property that is specifically exempt from such releases (18 U.S.C. 983(f)(8)(A)). CAFRA also provides, in 18 U.S.C. 983(a)(1)(F), for the release and return of seized property in the event of a failure to send a required notice of seizure. Again, however, contraband is specifically exempt from these release provisions, as is other property that the person from whom the property was seized may not legally possess. Both of these CAFRA release provisions, including their contraband exemptions, are reflected in these proposed part 12 regulations, at proposed §§ 12.14 and 12.36.

CAFRA's "innocent owner defense" also expressly excludes "contraband," as well as "other property that it is illegal to possess" (18 U.S.C. 983(d)(4)). The "innocent owner defense," which is reflected at proposed § 12.33(c)(6), is an affirmative defense to civil forfeiture in which the burden of proof rests with the claimant to show the following: (1) If the claimant had an ownership interest in the property at the time of the offense, the claimant either had a lack of knowledge of the conduct giving rise to forfeiture, or, upon learning of the conduct, did all that reasonably could be expected under the circumstances to terminate such use of the property; or (2) if the claimant acquires the property after the conduct giving rise to the property, the claimant is a bona fide purchaser for value who did not know or was reasonably without cause to believe that the property was subject to forfeiture. Congress expressly used two different phrases, separated by the word "or" to describe the circumstances under which the "innocent owner defense" is unavailable: "no person may assert an ownership interest under this subsection [18 U.S.C. 983(d)(4)] in contraband or other property that it is illegal to possess." Each of these phrases is separate and distinct from the other, and they mean two separate things. *Blue King Crab*, 410 F. 3d at 1135; *United States v. 1866.75 Board Feet and 11 Doors and Casings*, 587 F. Supp. 2d 740, 751 (E.D.Va. 2008); *Conservation Force v. Salazar*, 677 F. Supp. 2d 1203, 1207 (N.D.Ca. 2009), *aff'd*, 646 F.3d 1240 (9th Cir. 2011). Consequently, these two phrases are being separately defined in these proposed regulations.

Although the term "contraband" is not explicitly defined in CAFRA, this phrase does have an ordinary, common meaning of "[g]oods that are unlawful to import, export, or possess," and can be of either the "per se" (property whose possession is unlawful regardless of how it is used) or "derivative" (property whose possession becomes unlawful when it is used in an unlawful manner) variety. *Black's Law Dictionary* 365 (9th ed. 2009). Consistent with this common meaning, courts have concluded that "contraband" includes for purposes of the CAFRA "innocent owner defense" property that either (1) by its very nature is illegal to import, export, or possess, or (2) if not inherently illegal in nature, becomes illegal through the manner or circumstances by which it is used, possessed, or acquired. *Conservation Force*, 677 F. Supp. 2d at 1208; *United States v. Approximately 600 Sacks of Green Coffee Beans*, 381 F. Supp. 2d 57 (D.P.R. 2005). This

approach to "contraband" is also consistent with cases decided before the enactment in 2000 of CAFRA. See, e.g., *United States v. Molt*, 599 F. 2d 1217-18, fn. 1 (3d Cir. 1079) (Under the Lacey Act, unlawfully taken foreign wildlife is a "contraband article."); *United States v. The Proceeds from the Sale of Approximately 15,538 Panulirus argus Lobster Tails*, 834 F. Supp. 385, 391 (S.D. Fla. 1993) (No innocent owner defense available because "the [defendant] lobster tails were themselves contraband. . . .") The definition of "contraband" included in these proposed regulations is consistent with the common meaning and case law interpretation of that term.

Application of this definition will mean that petitioners and claimants will not be able to assert the innocent owner defense if, for example, their wildlife is imported without proper permits and so their possession, and/or transport, sale, receipt, etc., violates Federal law. While it is not illegal to import many types of wildlife into the United States, a failure to present required permits will transform the wildlife into contraband. Similarly, taking wildlife in violation of State law and placing it in interstate commerce in violation of Federal law may also transform that wildlife into contraband.

Such results are consistent with the majority of pre-CAFRA authority, which held that a good faith defense was not available in forfeiture proceedings based on violations of wildlife protection laws, including the ESA. *United States v. Fifty-Three (53) Eclectus Parrots*, 685 F. 2d 1131 (9th Cir. 1982) (forfeiture under the Tariff Act of 1930 of birds imported in violation of foreign wildlife laws); *United States v. One Handbag of Crocodilus Species*, 856 F. Supp. 128 (E.D.N.Y. 1994) (forfeiture of wildlife products imported in violation of the Convention on International Trade in Endangered Species (CITES) and the ESA); *United States v. Proceeds From the Sale of Approximately 15,538 Panulirus argus Lobster Tails*, 834 F. Supp. 385 (S.D. Fla. 1993) (forfeiture of wildlife imported in violation of the Lacey Act); *United States v. 1,000 Raw Skins of Caiman crocodilus yacare*, No. CV-88-3476, 1991 U.S. Dist. LEXIS 3535 (E.D.N.Y. 1991) (forfeiture of wildlife products imported in violation of CITES and the ESA and the Lacey Act); *Contra United States v. 3,210 Crusted Sides of Caiman crocodilus yacare*, 636 F. Supp. 1281 (S.D. Fla. 1986) (forfeiture of wildlife products imported in violation of CITES and the ESA and the Lacey Act)—claimants unable to sustain burden of showing by preponderance of the evidence that the

elements of innocent owner defense existed, including that they lacked involvement, knowledge, or did all that was reasonably possible to prevent the proscribed use of their property).

The rationale for rejecting a good faith defense in the majority of wildlife forfeiture cases was that the application of strict liability in wildlife forfeiture actions is necessary to effect Congressional intent. To permit an importer to recover the property because he or she lacks culpability would lend support to the continued commercial traffic of the forbidden wildlife. Additionally, a foreseeable consequence would be to discourage diligent inquiry by the importer, allowing him or her to plead ignorance in the face of an import violation. Furthermore, it is not unreasonable to expect the importer to protect his or her interest by placing the risk of noncompliance on the supplier in negotiation of the sales agreement. *1,000 Raw Skins of Caiman crocodilus yacare*, 1991 U.S. Dist. LEXIS 3535 at *12, quoted in *One Handbag of Crocodilus Species*, 856 F. Supp. at 134.

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 sent, the declaration will describe efforts made to deliver any notice of seizure and proposed forfeiture.

Detention: Detention means the holding for further investigation of fish, wildlife, or plants and any associated property that is neither released nor seized.

Directed re-export: Directed re-export means the prompt export at the sole expense and risk to the importer or consignee of imported shipments.

Directed re-export may be offered by the Service for shipments that have been refused entry by the Service into the United States. If the importer or consignee chooses not to re-export when offered by the Service, then the shipment will not be cleared under 50 CFR part 14 for entry into the United States, and the Service, at its sole discretion, may or may not seize and initiate forfeiture proceedings. If forfeiture proceedings are not initiated, the refused shipment may be subject to Customs enforcement action. Directed re-export also may be offered by the Solicitor under § 12.34(e)(4) of this part for seized property as a condition of the remission decision. Section 12.34(e)(4) further clarifies that one of the options

available when granting remission is to release the seized property for the sole and limited purpose of directed re-export. The importation of goods into the United States is not a fundamental right. See, e.g., *Ganadera Indus., S.A. v. Block*, 727 F. 2d 1156, 1160 (D.C. Cir. 1984). As discussed below in the discussion of § 12.34, Congress assumed that forfeiture would be sought instead of civil penalty in most illegal importation cases, and CITES encourages the use of forfeiture rather than return to the State of export or re-export so that specimens traded in violation of CITES do not enter into illegal trade. Nevertheless, under some circumstances, the appropriate response might be for the Service to allow re-export of wildlife imported in violation of Federal wildlife laws instead of pursuing forfeiture. The Solicitor and the Service have the discretion to consider directed re-export as an option provided that re-export will benefit the enforcement and administration of applicable wildlife laws.

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

Interested party or parties: Interested party or parties means any person(s) who appears to be a person having an interest in the seized property under the criteria in § 12.11(a), based on the facts known to the seizing agency before a declaration of forfeiture is entered.

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

We include a definition of “other property that is illegal to possess” in these proposed regulations to address two specific exemptions from the procedures imposed by CAFRA on the civil forfeitures covered by these proposed regulations: From the “innocent owner defense” of 18 U.S.C. 983(d) and from the provisions of 18 U.S.C. 983(a)(1)(F) regarding the release of seized property in the event of a failure to send a required notice of seizure. The phrase “other property that is illegal to possess” includes property that becomes illegal to possess because of extrinsic circumstances. *United States v. 144,774 Lbs. of Blue King Crab*, 410 F. 3d 1131, 1134 (9th Cir. 2005). The seized property does not have to be in itself illegal; rather, it is property that became illegal to possess owing to a specific set of circumstances. *Id.* at 1136; *United States v. 1866.75 Board Feet and 11 Doors and Casings*, 587 F.

Supp. 2d 740, 751 (E.D. Va. 2008); *Conservation Force v. Salazar*, 677 F. Supp. 2d 1203, 1207 (N.D. Ca. 2009), *aff'd*, 646 F.3d 1240 (9th Cir. 2011).

Circumstances that would make property other than contraband illegal to possess include taking, possessing, importing, exporting, acquiring, transporting, purchasing, selling or offering for sale wildlife contrary to law. In other words, the property becomes illegal to possess through the manner or circumstances by which it is used, possessed, or acquired. As a result, wildlife that may be possessed legally in some circumstances becomes illegal to possess in others. For example, as of the date of publication of these proposed regulations, individuals may import into the United States without CITES documents in personal baggage that is carried or checked on the same transport as the traveler a quantity of no more than 125 grams per person of any sturgeon (*Acipenseriformes*) caviar that is from a species of CITES Appendix II sturgeon not separately listed under the ESA (in 50 CFR part 17) as endangered or threatened. If, however, more than 125 grams per person is so imported without a valid CITES document, then all of the caviar becomes illegal to possess.

Petition for remission: Petition for remission means a request for the Solicitor to exercise equitable discretion and to release the property seized to you. Remission of forfeiture is committed to the discretion of the Solicitor's Office. In the case of administrative forfeiture, remission may be granted under the statutes authorizing forfeiture remissions only where the Solicitor finds in response to a petition the existence of “such mitigating circumstances as to justify the remission,” and then only under such terms and conditions as are deemed reasonable and just.

Property subject to administrative forfeiture: Federal administrative forfeiture is the process by which a Federal agency seeks forfeiture of property to the United States after the Federal agency has seized the property under prescribed administrative procedures. In general, all property subject to forfeiture under Federal law may be forfeited administratively by the enforcing Federal agency provided that the statutory authority for the forfeiture incorporates the Customs laws of 19 U.S.C. 1602 *et seq.*, to the extent not inconsistent with the provisions of the incorporating wildlife laws (identified in § 12.2) pursuant to which forfeiture is sought and further provided the property is neither real property nor personal property having a value of

more than \$500,000 (except as noted in 19 U.S.C. 1607(a)).

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

Solicitor: Solicitor means the Solicitor of the United States Department of the Interior or an authorized representative or designee.

Value: 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.

This proposed rule would make the Service responsible for determining the value of the item seized, whether or not the item had a declared value at the time of seizure. Declared value in papers filed may sometimes understate the value to avoid Customs and Border Protection (CBP) duties or overstate the value for insurance purposes. Therefore, value will be determined based on either reasonable declared value or estimated market value at the time and place of seizure.

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

Section 12.4—When and how must documents be filed or issued?

We propose to revise the language for the filing of documents as follows:

Proposed paragraph (a) will state that, 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, 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 time/date stamp placed by that office on the document, other documentary evidence of receipt maintained by that office, or oral testimony or statements of Government personnel.

Proposed paragraph (b) will indicate that, 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 U.S. mail service, delivered to a commercial carrier, or sent by facsimile transmission. Acceptable evidence to establish the time of filing or issuance by the Government includes any time/date stamp placed by that office on the document, other documentary evidence of receipt maintained by that office, or oral testimony or statements of Government personnel.

Section 12.5—How does the Service handle seizures made by other agencies?

We propose to clarify how the Service handles seizures made by other agencies.

Section 12.6—How does the Service release seized property under a bond?

We propose to clarify how the Service releases seized property under a bond. This bond requirement is distinct from the pre-CAFRA requirement that a bond be posted with any claim seeking judicial forfeiture. CAFRA eliminated 19 U.S.C. 1608's cost bond requirement. 18 U.S.C. 983(a)(2)(E).

Proposed Changes to Subpart B of 50 CFR Part 12—Preliminary Requirements

We are proposing to change the title of subpart B to "Notification Requirements" and also to change the section titles in the subpart and add sections. The Service is providing additional mechanisms for publication through electronic posting to the U.S. Fish and Wildlife Service Office of Law Enforcement Web site.

Section 12.11—How is personal notification of seizure and proposed forfeiture provided?

We propose to revise current § 12.11 to include any interested party who has not signed an abandonment form. We also propose to clarify how the Service or the Solicitor provides personal notification of seizure and proposed forfeiture.

The term "interested party" has been defined for purposes of notification. The timing of notice of seizure has been established as 60 days unless otherwise allowed pursuant to 18 U.S.C. 983(a). Items detained for identification or investigation only, pursuant to legal authority, and items detained as evidence in an ongoing criminal investigation and for less than 30 days will not be considered seized for purposes of forfeiture. These proposed regulations include provisions for the grounds for extending notification deadlines, how an extension is obtained, the format for notification of

seizure, the deadlines to petition for remission, and electronic posting of notices.

Section 12.12—How is public notification of seizure and proposed forfeiture provided?

We propose to add this section to provide a mechanism for public posting of seized property both in the newspaper or where appropriate on an official government Web site.

Section 12.13—What does a declaration of forfeiture contain?

This new provision describes the requirements for what a declaration of forfeiture must contain.

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

We propose to clarify what happens if the Service or the Solicitor fails to provide the required notification of seizure and proposed forfeiture. This new section makes it clear that, where the owner is known and the property is not contraband or otherwise illegal to possess, the property must be returned if a timely notification of seizure and proposed forfeiture is not made, although the Service or the Solicitor may still seek to obtain a judicial forfeiture.

Proposed Changes to Subpart C of 50 CFR Part 12—Forfeiture Proceedings

We are proposing to change various section titles in subpart C.

Section 12.31—What are the basic types of forfeiture proceedings?

This new section provides an overview of this subpart.

Section 12.32—When may the Service or the Solicitor obtain administrative forfeiture of my property?

This new section describes what the law requires in order to commence administrative forfeiture proceedings and the existing legal requirements for obtaining forfeiture.

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

This section is a rewrite of current § 12.24(b) with some additions. We propose to clarify when a petition for remission of forfeiture may be filed. The administrative process for requesting the release of seized property (through a petition for remission) is different than and is an alternative to the judicial process (through a claim). Either the administrative option or the judicial option may be used provided that the applicable filing deadlines are met.

Once an administrative forfeiture is commenced by the required provision of notice, you have the administrative option to file a petition for remission for the return of the seized property. A petition for remission asks the Solicitor to use equitable discretion in deciding whether to release the seized property pursuant to the petition. The Solicitor will render a decision on the petition pursuant to proposed § 12.34.

Alternatively, judicial relief may be sought by filing a claim, which causes the Government to pursue judicial forfeiture by filing a complaint for forfeiture in Federal court. Prior to 2014, the Service as a matter of administrative discretion (and not of statutory mandate) gave interested parties the opportunity to suspend or toll the time period available for filing a claim simply by filing a petition for remission seeking administrative relief. Under this practice, forfeiture proceedings were deemed to recommence in the event a petition for remission of forfeiture was denied, and the interested party was given the balance of time, if any, remaining to file a claim.

This practice of suspending all forfeiture time periods pending the outcome of a petition for remission was changed in 2014, and these proposed regulations expressly reflect the current practice that interested parties must elect to proceed either administratively or judicially, but they may not use these remedies sequentially. The CAFRA deadlines for the filing of a claim after the Service or the Solicitor commences an administrative forfeiture proceeding are not suspended or tolled pending a decision on a petition for remission.

This is because the administrative remedy for forfeiture (*i.e.*, sought through a petition for remission) is distinct from the judicial remedy initiated through a claim; forfeiture statutes and regulations "provide alternative, not sequential, administrative and legal remedies for an administrative forfeiture." *Conservation Force*, 646 F.3d at 1242. *Accord, Malladi Drugs & Pharmaceuticals, Ltd. v. Tandy*, 552 F. 3d 885, 890 (D.C. Cir. 2009). If a party pursues the administrative path by filing a petition for remission, and the petition is denied, then the "exclusive remedy" for setting aside an administrative declaration of forfeiture is that provided in CAFRA, in 18 U.S.C. 983(e), which is available only if the notice of forfeiture is not received. Put another way, in the event that an interested party receives proper notice of a proposed administrative forfeiture and chooses to pursue an administrative path, filing a petition for remission that is reviewed and denied, then that party

has “waived the opportunity for judicial forfeiture proceedings.” *Conservation Force*, 646 F.3d at 1242. *Accord, Pert v. United States*, 487 Fed. Appx. 396 (9th Cir. 2012) and *Phillips v. United States*, 464 Fed. Appx. 700 (9th Cir. 2011).

The proposed regulation has been clarified to reflect that remissions are an equitable remedy. The burden is on the petitioner to establish grounds for remission. If the petitioner does not provide the information requested in considering the petition for remission, the remission petition may be denied without further consideration. During the remission consideration, a valid forfeiture is presumed.

Section 12.34—What are the standards for remission of forfeiture?

We propose to clarify the standards for remission of forfeiture. Moreover, we propose to revise the requirements for remitting property that has been forfeited to more accurately reflect what the law requires in order for property to be remitted. Remission of forfeiture is discretionary; if the Solicitor “finds the existence of such mitigating circumstances as to justify the remission or mitigation” of the forfeiture or alleged forfeiture, the Solicitor “may remit or mitigate the same upon such terms and conditions as he deems reasonable and just” (19 U.S.C. 1618). Essentially, “[u]nlike the claimant who files a claim [to initiate judicial forfeiture proceedings], a petitioner seeking remission or mitigation of forfeiture does not necessarily contest the legitimacy of forfeiture. In fact, under remission/mitigation procedures, forfeitability is presumed and the petitioner seeks relief from forfeiture on fairness grounds.” *Orallo v. United States*, 887 F. Supp. 1367, 1370 (D. Haw. 1995). Thus, “a petition for remission is a request for leniency, or an executive pardon, based upon the petitioner’s representations of innocence or lack of knowledge of the underlying unlawful conduct.” Id.

Remissions should not be a routine disposition for forfeited items. Where items clearly have been acquired, imported, exported, transported, or possessed contrary to law, the Solicitor granting remission must clearly show both the mitigating circumstances that allow the item to be remitted and that the terms and conditions attached to return of the item will be reasonable and just. See, e.g., 16 U.S.C. 1540(e)(5) and 19 U.S.C. 1618.

Congress has limited the authority to grant remission to those factors set out in 19 U.S.C. 1618 (the remission provisions of the Customs laws) as those statutory provisions have been

incorporated into the specific Federal wildlife conservation law under which nonjudicial civil forfeiture is pursued. For example, the ESA provides that the Customs laws provision regarding seizure and forfeiture (including remission) apply to seizures and forfeitures under the ESA only “insofar as such provisions of law are applicable and not inconsistent with the provisions” of that Act (16 U.S.C. 1540(e)(5)). Similarly, the Lacey Act Amendments of 1981 incorporate the seizure and forfeiture (including remission) provisions of the Customs law with the caveat of “insofar as such provisions of law are applicable and not inconsistent with the provisions of” that law (16 U.S.C. 3374(b)). Also by way of example, the Bald and Golden Eagle Protection Act provides that the Customs laws regarding seizure and forfeiture (including remission) apply “insofar as such provisions of law are applicable and not inconsistent with the provisions of” that Act (16 U.S.C. 668b(c)).

As a consequence of these requirements for consistency with the incorporating Federal wildlife conservation law, any consideration of remission of forfeiture must not only take into account the factors in 19 U.S.C. 1618 but also any other applicable Federal wildlife laws. This includes, as applicable, U.S. treaty obligations under CITES, restrictions on species listed under the ESA as endangered or threatened, and obligations under the Lacey Act Amendments of 1981 to provide support for other countries’ conservation laws.

Because of this provision, for example, Appendix I remissions are disfavored. CITES provides that “[t]rade in specimens of these [Appendix I] species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances” (CITES art. 2(1); see also CITES Res. Conf. 12.3 (Rev. CoP16) recognizing “the need for Parties to be particularly vigilant regarding the issuance of permits and certificates for very valuable specimens of species included in Appendix I”).

The CITES parties are directed to enforce the treaty through measures including “confiscation” of illegally traded specimens (CITES art. 8(1); see also CITES Res. Conf. 9.9 “[T]he seizure and confiscation of such specimens are generally preferable to the definitive refusal of the import of the specimens . . .”). Article XIV of CITES explicitly recognizes parties’ rights to adopt stricter national measures to restrict or

prohibit trade, taking, possession, or transport of any wildlife or plant species, including those listed in the CITES Appendices. CITES art. 14(1); see *H.L. Justin Co. & Sons, Inc. v. Deukmejian*, 702 F.2d 758, 759 n. 2 (9th Cir. 1983) (holding that Article XIV showed that CITES did not bar stricter State law); see also 50 CFR 23.3 (noting that permit applicants must comply with restrictions over and above those imposed by CITES).

The parties to CITES have observed “that false and invalid permits and certificates are used more and more often for fraudulent purposes and that appropriate measures are needed to prevent such documents from being accepted” (CITES Res. Conf. 12.3 (Rev. CoP16)). They recognized “the need for Parties to be particularly vigilant regarding the issuance of permits and certificates for” specimens of Appendix I species such as leopard trophies. Id.; see also CITES Res. Conf. 11.3 (Rev. CoP16) (urging parties “to strictly verify the documents originating from [producing] countries”). And they considered “that the retrospective issuance of permits and certificates has an increasingly negative impact on the possibilities for properly enforcing the Convention and leads to the creation of loopholes for illegal trade.” Id.

The parties accordingly recommended that: (1) “Parties refuse to accept any permit or certificate that is invalid, including authentic documents that do not contain all the required information,” Id. 14(d); (2) that export permits “may not be accepted to authorize export . . . except during [their] period of validity,” Id. 2(g); (3) that importing countries “not accept permits or certificates that were issued retrospectively,” except in limited circumstances” Id. 13(b); and that exporting countries neither “issue CITES permits . . . retrospectively” nor “provide exporters . . . with declarations about the legality of exports . . . of specimens having left [the] country without the required CITES documents,” Id. 13(a). The Resolutions adopted at the Conferences of the Parties to CITES are not inherently binding on the United States or other parties, but it is reasonable for Federal agencies to rely upon them when implementing CITES. See *Castlewood Prods., L.L.C. v. Norton*, 365 F.3d 1076, 1084 (D.C. Cir. 2004). The ESA implements CITES by making it unlawful “to trade in any specimens contrary to the provisions of [CITES], or to possess any specimens traded contrary to the provisions of [CITES].” Id. § 1538(c)(1). “Congress implemented the CITES into U.S. law in the [ESA].

The ESA makes it unlawful to ‘engage in any trade in any specimens,’ or ‘possess any specimens traded,’ contrary to the provisions of the [CITES] and authorizes the Secretary of the Interior to promulgate regulations to enforce the ESA. 16 U.S.C. 1538(c)(1) and 1540(f). The CITES regulates the trade of those endangered species of fish, wildlife, and plants listed in its appendices. See CITES, art. II, 27 U.S.T. at 1092. The degree of trade regulation under CITES depends on the appendix in which a specimen is listed.” *United States v. Norris*, 452 F.3d 1275, 1278 (11th Cir. 2006).

The ESA also imposes a burden on the holder of a CITES permit to affirmatively prove that it is valid. 16 U.S.C. 1539(g). Congress acknowledged that forfeiture is an important tool in many illegal importation cases. See H.R. Rep. No. 95–1625, at 21 (1978), reprinted in 1978 U.S.C.C.A.N. 9453, 9476. CITES favors forfeiture as a remedy for illegally traded articles, see art. 8(1)(b), and the parties thereto have encouraged its use, see CITES Res. Conf. 9.9 (recognizing “that the return by the importing Party to the State of export or re-export of specimens that have been traded in violation of the Convention may result later in such specimens being entered into illegal trade unless measures are taken by the Parties concerned to prevent this” and, therefore, finding “confiscation . . . generally preferable”); 72 FR 48415; August 23, 2017 (“To ensure that specimens traded in violation of CITES do not re-enter illegal trade, Parties are urged to consider seizure of specimens, rather than refusal of entry of the shipment”); *cf. Austin v. United States*, 509 U.S. 602, 621 (1993) (“[W]e have recognized that the forfeiture of contraband itself may be characterized as remedial because it removes dangerous or illegal items from society.”)

The need to maintain the integrity of the CITES permitting system must be considered when evaluating the equities presented in petitions and supplemental petitions for remission. Individuals play an important role in the CITES permitting system. Foreign exporters must include required CITES permits and certificates with their shipments to the United States. However, the U.S. importer bears personal responsibility for obtaining a valid permit before commencing an activity for which a permit is required by 50 CFR part 23 (except as provided under very specific situations) and assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permits. 50 CFR 13.1(a), 13.50.

Importantly, the U.S. importer initiates the import and, as a consequence, has the ability to exercise control over his or her foreign suppliers. Congress clearly intended that individual importers bear some penalty in the event that wildlife specimens were traded contrary to the provisions of CITES, by providing that, among other things, it is illegal for persons subject to the jurisdiction of the United States to possess any specimens traded contrary to the provisions of CITES and providing for forfeiture of “all” wildlife possessed or imported in violation of ESA’s prohibition on trade contrary to the provision of CITES. 16 U.S.C. 1538(c), 1540(e)(4)(A).

In all instances, remission of forfeiture of wildlife seized by the Service may be granted only if the Solicitor’s Office finds in response to a petition the existence of “such mitigating circumstances as to justify the remission” and then only under such terms and conditions as are deemed “reasonable and just.” 19 U.S.C. 1618.

Section 12.34(e) of these proposed regulations sets out a number of mitigating factors that may be considered in determining whether or not to grant remission. One of these factors is whether the petitioner has taken meaningful steps, including the use of contractual or monetary mechanisms, to prevent the violations that occurred. One of the relevant considerations in applying this factor to wildlife imports is whether the petitioner has undertaken diligent inquiry into the compliance capability and record of any foreign supplier. Rewarding ignorance of an import violation through remission could discourage the diligent inquiry that might have prevented the violation from occurring. Other considerations include whether the petitioner has attempted to protect his or her interest by placing the risk of noncompliance on the supplier in the negotiation of the sales or services agreement.

Notably, the sole purpose of the § 12.34(e) factors is for consideration of whether remission should be granted and not for any other use, such as application of the “innocent owner defense” under CAFRA. The factors stated are not intended to be all inclusive and do not constitute authority in and of themselves. In all instances, however, all remission decisions must be made with due consideration for the cumulative conservation impacts of the remission including whether the item is an Appendix I, II, or III species under CITES or is listed as threatened or endangered under the ESA, whether the

violation increased the regulatory burden on government agencies, and whether 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.

Section 12.34(e) of these proposed regulations provides examples of the type of terms and conditions that may be set for remission. Again, these are examples only and are not intended to be all inclusive. In all instances, the terms and conditions imposed must be “reasonable and just,” as required by 19 U.S.C. 1618.

Section 12.34(e) provides that the Solicitor, at his or her sole discretion, may determine to settle completely or partially at the same time as remission is granted any civil penalty claim against the property owner arising from the owner’s violation of Federal wildlife conservation laws. Forfeiture proceedings are brought against the “guilty property” itself, and as such are in the nature of an *in rem* proceeding, in which the property is the defendant and not the property owner. Importantly, forfeiture does not provide relief from potential liability for civil penalties that may be sought from the individuals or entities that actually violated the law. To expedite resolution of such potential civil liability, proposed § 12.34(e) allows, at the sole discretion of the Solicitor, for complete or partial settlement of civil penalties provided certain conditions are met. Consistent with the purpose of expediting resolution, one of the conditions to civil penalty settlement is that the property owner agrees to waive any notice of violation and notice of assessment required by 50 CFR part 11 and the opportunity for a hearing.

Section 12.35—How will the Solicitor notify me of its decision on my petition for remission?

This is a new section derived from the current § 12.24(g). We propose to clarify how decisions are made on petitions for remission. This new provision makes it clear that you should file a supplemental petition only where you have new evidence or evidence that has not previously been considered.

Section 12.36—How do I file a claim to get back my seized property?

We propose to clarify the procedures for filing a claim to get back seized property. This proposed rule would also explicitly require that a claim include any documentary evidence relied on and that such claims are made under penalty of perjury.

Section 12.37—Can I get my property back while the claim is pending?

This is a new provision allowing forfeited property to be retained while a claim is pending to avoid substantial hardship to the claimant provided that the requirements of 18 U.S.C. 983(f) are met.

Section 12.38—What happens if my property is subject to civil judicial actions to obtain forfeiture?

We propose to clarify what happens if property is subject to civil actions to obtain forfeiture. This new section describes the process for seeking judicial forfeiture under the applicable laws.

Proposed Changes to Subpart D of 50 CFR Part 12—Disposal of Forfeited or Abandoned Property

We are proposing to change the title of subpart D to “Abandonment Procedures.”

Section 12.51—May I simply abandon my interest in the property?

We propose to clarify how property can be abandoned.

Section 12.52—Can I file a petition for remission for my abandoned property?

If you have agreed to abandon property, then your right to seek relief is limited to whatever process expressly was reserved in the abandonment document you signed. For example, the Fish and Wildlife Abandonment Form (Service Form 3–2096) or U.S. Customs and Border Protection forms used to abandon property may state that you are abandoning all claim to the property identified in the form and are waiving any further rights to proceedings relative to those articles other than the right to file a petition for administrative relief within a specified time period. Consequently, if you have so agreed to abandon your property, then you have no right to file a claim requesting judicial forfeiture, but are limited to seeking administrative relief within any time periods specified in the signed abandonment form.

Proposed Changes to Subpart E of 50 CFR Part 12—Restoration of Proceeds and Recovery of Storage Costs

We are proposing to change the title of subpart E to “Disposal of Forfeited or Abandoned Property.” This proposed subpart is largely based on the regulations in current subpart D.

Section 12.61—What is the purpose of this subpart?

The purpose of this subpart is to describe the proposed procedures the

Service will follow for the disposal of forfeited or abandoned property. This purpose is unchanged from the current § 12.30.

Section 12.62—How does the Service keep track of forfeited or abandoned property?

This proposed section is only slightly changed from the current regulations at § 12.31.

Section 12.63—When may the Service return live fish, wildlife, or plants to the wild?

We propose to clarify when the Service may return live fish, wildlife, or plants to the wild. This section is basically unchanged from the current regulations at § 12.34.

Section 12.64—How does forfeiture or abandonment affect the status of the property?

This proposed section is intended to make it clear that, although the prior illegal status of the property ceases with forfeiture or abandonment, any subsequent owner of that property must comply with all applicable laws and regulations.

Section 12.65—How does the Service dispose of forfeited or abandoned property?

We propose to clarify how the Service disposes of forfeited or abandoned property. This proposed rule makes provision for donation of forfeited and abandoned items used in traditional cultural practices to members of tribes. Eagle parts and feathers may be donated only to the National Eagle and Wildlife Property Repository for allocation through that established process.

Section 12.66—How does the Service dispose of seized injurious fish or wildlife?

We propose to clarify how the Service disposes of seized injurious fish or wildlife. The section reiterates and clarifies the Service’s authority to dispose of injurious wildlife and to recover costs associated with disposal. Specifically, this new section provides for re-export or destruction of injurious species.

Section 12.67—When may the Service donate forfeited or abandoned property?

This section is largely unchanged from current § 12.36, except, because of food safety concerns, the Service will no longer donate forfeited and abandoned wildlife for human consumption.

Section 12.68—When may the Service loan forfeited or abandoned property?

We propose to clarify when the Service may loan forfeited or abandoned property. This section now also makes it clear that recipients may not sell loaned fish, wildlife, or plants or their offspring.

Section 12.69—When may the Service sell forfeited or abandoned property?

We propose to clarify when the Service may sell forfeited or abandoned property. This section is largely unchanged from current regulations at § 12.37.

Section 12.70—When may the Service destroy forfeited or abandoned property?

We propose to clarify when the Service may destroy forfeited or abandoned property. This proposed section now makes specific provisions for destruction of forfeited and abandoned wildlife to happen only in compliance with applicable Federal health, safety, and environmental laws including disposal of any resulting waste.

Proposed Changes to Subpart F of 50 CFR Part 12—Return of Property

We are proposing to change the title of subpart F to “Recovery of Storage Costs and Return of Property.”

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

This proposed section is basically unchanged from the current regulations at § 12.42.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written,

which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

The Department has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. A Small Entity Compliance Guide is not required.

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency publishes a notice of rulemaking for any proposed or final rule, the agency must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (such as small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the

factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. Most of the businesses that the Service will initiate administrative forfeiture proceedings against would be considered small businesses as defined under the Regulatory Flexibility Act. These businesses would be located in many different economic sectors but would generally fall within the size standards established by the Small Business Administration for small businesses.

We have determined that this action will not have a significant economic impact on a substantial number of small entities because the purpose of this proposed rule is to make our regulations governing the seizure, bonded release, appraisal, administrative proceeding, petition for remission, and disposal of items subject to forfeiture under laws administered by the Service, consistent with CAFRA. Small businesses will actually have more freedom in contesting administrative forfeitures if this proposed rule is finalized because CAFRA waived the requirement to file a cash bond before filing a claim for property. Therefore, we are certifying that, if made final as proposed, this rule will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act as it will not have an annual effect on the economy of \$100 million or more. Moreover, this proposed rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The changes to the regulations contained in this proposed rule will ensure that 50 CFR part 12 complies with CAFRA, as well as clarifying what procedures are available to claim items potentially subject to forfeiture. Finally, this proposed rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because foreign-based enterprises are subject to the same procedures as U.S.-based enterprises relating to property seized or subject to

administrative forfeiture under various laws enforced by the Service.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this proposed rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required.

We are the lead agency for enforcing numerous conservation acts and executive orders, regulating wildlife trade through the declaration process, issuing permits to conduct activities affecting wildlife and their habitats, and carrying out U.S. obligations under CITES. No small government assistance or impact is expected as a result of this proposed rule. The changes to the regulations contained in this proposed rule will ensure that 50 CFR part 12 complies with CAFRA, as well as clarify what procedures are available to claim items potentially subject to forfeiture.

This proposed rule will not produce a Federal requirement that may result in the combined expenditure by State, local, or tribal governments of \$100 million or greater in any year, so it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This proposed rule will not result in any combined expenditure by State, local, or tribal governments.

Executive Order 12630 (Takings)

Under Executive Order 12630, this proposed rule does not have significant takings implications nor will it affect any constitutionally protected property rights. This proposed rule has no private property takings implications as defined in Executive Order 12630 because the Executive Order specifically exempts seizure and forfeiture of property for violations of law.

Executive Order 13132 (Federalism)

Under Executive Order 13132, this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. This proposed rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government because State wildlife agencies will forfeit items under their own applicable laws and regulations.

Executive Order 12988 (Civil Justice Reform)

Under Executive Order 12988, the Office of the Solicitor has determined

that this proposed rule does not overly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The purpose of this proposed rule is to simplify and update our regulations regarding seizure and forfeiture of property. Specifically, this proposed rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize lawsuits, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 et seq.). This rule would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

This proposed rule has been analyzed under the criteria of the National Environmental Policy Act and 318 DM 2.2 (g) and 6.3 (D). This proposed rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/evaluation is not required. This proposed rule is categorically excluded from further National Environmental Policy Act requirements, under 43 CFR 46.210(d), (i). These categorical exclusions address policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis under NEPA.

Endangered Species Act

Section 7 of the ESA, as amended (16 U.S.C. 1531 et seq.), provides that Federal agencies shall “ensure that any action authorized, funded or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat. . . .” We found that no section 7 consultation under the ESA was required for this proposed rule.

Executive Order 13175 (Tribal Consultation) and 512 DM 2 (Government-to-Government Relationship With Tribes)

Under the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no adverse effects. Individual tribal members are subject to the same procedures as other individuals relating to property seized or subject to administrative forfeiture under various laws enforced by the Service, except for proposed § 12.65(a)(2), which is wholly beneficial to tribal members.

Executive Order 13211 (Energy Supply, Distribution, or Use)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions that significantly affect energy supply, distribution, and use. Because this proposed rule applies only to U.S. Government administrative forfeiture procedures, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 12

Administrative practice and procedure, Exports, Fish, Imports, Plants, Seizures and forfeitures, Surety bonds, Transportation, Wildlife.

For the reasons described above, we propose to revise part 12, subchapter B of Chapter I, title 50 of the Code of Federal Regulations as set forth below.

PART 12—SEIZURE AND FORFEITURE PROCEDURES

Subpart A—General Provisions

Sec.

- 12.1 What is the purpose of the regulations in this part?
- 12.2 What is the scope of the regulations in this part?
- 12.3 What definitions do I need to know?
- 12.4 When and how must documents be filed or issued?
- 12.5 How does the Service handle seizures made by other agencies?
- 12.6 How does the Service release seized property under a bond?

Subpart B—Notification Requirements

Sec.

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

- 12.12 How is public notification of seizure and proposed forfeiture provided?
- 12.13 What does a declaration of forfeiture contain?
- 12.14 What happens if the required notification of seizure and proposed forfeiture is not provided?

Subpart C—Forfeiture Proceedings

Sec.

- 12.31 What are the basic types of forfeiture proceedings?
- 12.32 When may the Service or the Solicitor obtain administrative forfeiture of my property?
- 12.33 How do I file a petition for remission of forfeiture requesting the release of my property?
- 12.34 What are the standards for remission of forfeiture?
- 12.35 How will the Solicitor notify me of its decision on my petition for remission?
- 12.36 How do I file a claim to get back my seized property?
- 12.37 Can I get my property back while the claim is pending?
- 12.38 What happens if my property is subject to civil judicial actions to obtain forfeiture?

Subpart D—Abandonment Procedures

Sec.

- 12.51 May I simply abandon my interest in the property?
- 12.52 Can I file a petition for remission for my abandoned property?

Subpart E—Disposal of Forfeited or Abandoned Property

Sec.

- 12.61 What is the purpose of this subpart?
- 12.62 How does the Service keep track of forfeited or abandoned property?
- 12.63 When may the Service return live fish, wildlife, or plants to the wild?
- 12.64 How does forfeiture or abandonment affect the status of the property?
- 12.65 How does the Service dispose of forfeited or abandoned property?
- 12.66 How does the Service dispose of seized injurious fish or wildlife?
- 12.67 When may the Service donate forfeited or abandoned property?
- 12.68 When may the Service loan forfeited or abandoned property?
- 12.69 When may the Service sell forfeited or abandoned property?
- 12.70 When may the Service destroy forfeited or abandoned property?

Subpart F—Recovery of Storage Costs and Return of Property

Sec.

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

Authority: 16 U.S.C. 470, 470aaa et seq., 668–668b, 668dd(e)–(f), 704, 706–707, 712, 718f–718g, 742j–l(d)–(f), 1375–1377, 1382, 1540, 2401 et seq., 3001 et seq., 3371 et seq., 4201 et seq., 5301 et seq., 7421; 18 U.S.C. 43, 44, 983, 985; 19 U.S.C. 1602–1624; 28 U.S.C. 2465(b); 42 U.S.C. 1996; and E.O. 11987, 42 FR 26949.

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;
 - (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–668ee;
 - (3) The Migratory Bird Treaty Act, 16 U.S.C. 704, 706–707, 712 (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. 1375–1377, 1382;
 - (6) The Archeological Resources Protection Act, 16 U.S.C. 470 *et seq.*;
 - (7) The Native American Graves Protection and Repatriation Act, 16 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 seized by the Service, 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 a corporation, partnership, or individual asserting that they are an interested party.

Claim means a written declaration regarding property for which the Service has proposed forfeiture, 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, 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 sent, 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 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 re-export 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 United States 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 under the criteria in § 12.11(a), 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 plants 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 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 plants 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 a judicial claim has been filed, 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 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 administrative 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 shall either:

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

(ii) Terminate the nonjudicial 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.

(g) *Deadlines for filing a petition for remission.* (1) You must file your petition for remission within 35 days from the date of the delivery of the notice of seizure and proposed forfeiture, if you or any interested party receives the notice of seizure and proposed forfeiture.

(2) If you do not receive the notice of seizure and proposed forfeiture, the petition for remission that you file must be received not later than 30 days from the date of last posting of the public notice of the seizure of the property.

§ 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 intent to forfeit and sell or otherwise dispose of the property:

(1) Publication once each week for at least three 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, 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 What does a declaration of forfeiture contain?

(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 make reference 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 forfeiture procedures, or civil nonjudicial (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 a nonjudicial (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, or plants 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 or not to grant relief.

(b) Any petition for remission of forfeiture must be filed within the time

periods set out in the notice of seizure and proposed forfeiture issued under subpart B of this part.

(c) Petitions for remission of forfeiture must be concise and logically presented to facilitate review by the Solicitor.

Failure to substantially comply with any of the information required by this paragraph (c) may be grounds for dismissal of the petition for remission. The petition for remission of forfeiture must contain the following:

(1) The name, address, and social security or other taxpayer identification number 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 rely upon 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 an instrument executed by the titled or registered owner and any other known claimant of an interest in the party releasing its interest in such property.

(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) In making a decision, the Solicitor will consider the information you submit, as well as any other available information relating to the matter. 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 the petitioner is either:

(1) An interested party or owner as defined in this part; or

(2) That 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, 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.

(c) The Solicitor will presume a valid seizure and will not consider whether the evidence is sufficient to support the seizure in determining whether remission should be granted. The Solicitor will consider the information you submit, as well as any other available information relating to the matter.

(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 such petition and possible prosecution for filing of false statements.

(e) The provisions of the remission decision include the following:

(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) All remission decisions must be made with due consideration for the cumulative conservation impacts of the remission including whether:

(i) The item is an Appendix I, II, or III species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

(ii) The item is listed as threatened or endangered under the Endangered Species Act (ESA);

(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 his or her 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 re-export to the exporter of record provided that any such re-export 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 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, at his or her sole discretion, may 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 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 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 its decision on my petition for remission?

(a) The Solicitor will notify you in writing of any decision that is made to grant a petition for remission or to 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. Any such 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 a petition for remission of forfeiture is denied, 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. Such supplemental petition must be received within 60 days from the date of the Solicitor's notification denying the original petition. Only one supplemental petition will be allowed. The Solicitor's decision on your petition for remission will be the decision for the Service.

§ 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, must identify the specific property being claimed, must state your interest in the specific property being claimed, and must 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, 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 considering 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 none of the conditions set forth in 18 U.S.C. 983(f)(8) may 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?

(a) 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.

(b) If you file a claim (as defined in § 12.3) for property that is contraband or other property that is illegal to possess (as defined in § 12.3), and a judicial forfeiture action is not pursued within the required time period, the Solicitor will promptly notify you by letter that, if you are still interested in having the property returned, you must file a civil judicial action moving for return of the property under Rule 41(g) of the Federal Rules of Criminal Procedure (FRCP) in the district where the property was seized. The Service will also publish this notification to the general public as provided for in § 12.12.

(c) If a court determines, pursuant to FRCP 41(g), that any fish, wildlife, or plant is contraband or other property that is illegal to possess, the Director will dispose of it as provided in §§ 12.61–12.70. If no motion for return of property is filed as described in paragraph (b) of this section within 6 years of the date of publication by letter or public notice (whichever is later), the Director will deem the property abandoned and will dispose of it as provided in §§ 12.61–12.70.

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 a 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 saying that you abandon all right, title, and interest you have in the property to the United States other than whatever right to seek relief (if any) was expressly reserved in the abandonment document you signed.

§ 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 subpart B. 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, if appropriate, the seizure tag number, and 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 range of the species in the United States, with the permission of the appropriate land-management agency.

(c) 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, but may return the exotic fish, wildlife, or plant to one of the following countries for return to suitable habitat under the provisions of applicable laws, including CITES and the domestic laws of that country, if the returned species is capable of surviving:

- (1) The country of export, if known, after consultation with and at the expense of the country of export; or
- (2) 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 and at the expense of that country.

§ 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 State, including any applicable conservation, health, quarantine, agricultural, or Customs laws or regulations.

(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.

§ 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 or 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) The government agency, including foreign government agencies, 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 the following 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 or not relief will be granted.

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

(a) The Service will order immediate re-export 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 re-export 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. The donation may be made to any person, government agency (including foreign government agencies) or public organization, as defined in § 10.12 of this chapter. 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 recipient must state on the transfer document 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.

(3) The recipient may be required to pay all of the costs associated with the transfer of the fish, wildlife, or plants, 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 the laws or regulations of the United States or any State, including any applicable health, quarantine, agricultural, or Customs laws or regulations.

(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.

(8) If the transfer document identifies a time period during which the recipient of a donation may not retransfer the donation without prior approval of the Service, and an attempt to do so during this period is made by the recipient, the Service will be entitled to immediately repossess the fish, wildlife, or plants.

(9) 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.

(10) 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.

(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 to any person, government agency, including foreign government agencies, or public organization, as defined in § 10.12 of this subchapter, that demonstrates the 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, including foreign government agencies, or public organization receiving the fish, wildlife, or plants must be completed before any loan 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, and Form DI-104, Transfer of Property, should be used for transfers with agencies within the Department. The loan is subject to the following conditions:

(1) The recipient must state on the transfer document 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.

(3) The recipient may be required to pay all of the costs associated with the transfer of the fish, wildlife, or plants, 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.

(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 the laws or regulations of the United States or any State, including any applicable health, quarantine, agricultural, or Customs laws or regulations.

(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.

(8) If the transfer document identifies a time period during which the recipient of a loan may not retransfer the loan without prior approval of the Service and an attempt to do so during this period is made by the recipient, the

Service will be entitled to immediately repossess the fish, wildlife, or plants.

(9) 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.

(10) 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.

(11) 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.

(12) 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, 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. 704, 706–707, 712 *et seq.*);

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

(3) Listed as “Appendix I” or “Appendix II with an annotation” under the Convention on International Trade in Endangered Species (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. 1375–1377, 1382);

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

(7) The African elephant (*Loxodonta africana* or *Loxodonta cyclotis*); or

(8) 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 possessed 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 the laws or regulations of the United States or any State, including any applicable conservation, health, quarantine, agricultural, or Customs laws or regulations.

§ 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 Federal health, safety, and environmental protection laws applicable to the method of the destruction of the fish, wildlife, or plants and to 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 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 Special Agent in Charge (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.

Dated: June 2, 2016.

Karen Hyun,

Assistant Secretary for Fish and Wildlife and Parks.

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