

is disposed of, a petition for remission or mitigation of forfeiture will no longer be accepted. A petition for restoration of proceeds of sale or for value of the property placed in official use must be filed within 90 days of the sale of the property, or within 90 days of the date the property is placed in official use.

(e) Upon receipt of a petition, an appropriate investigation shall be conducted by the FBI. No hearing shall be held. For administrative forfeitures, the petition and the results of the petition investigation shall be forwarded to the Legal Counsel Division, FBI. Final decisions on petitions for property forfeited administratively shall be made by the Assistant Director, Legal Counsel, FBI or his designee within the Legal Counsel Division, FBI. For judicial forfeitures, the petition and the results of the petition investigation shall be forwarded to the U.S. Attorney who prosecuted the property. The U.S. Attorney shall forward the petition and the results of the investigation together with a recommendation as to allowance or denial of the petition to the Assistant Attorney General, Criminal Division. The matter shall be assigned to the Asset Forfeiture Office who shall either grant the petition by remission or mitigation of the forfeiture or shall deny it.

(f) A request for reconsideration of the denial of the petition for an administrative forfeiture must be submitted within 10 days from receipt of the letter denying the petition. Such request shall be addressed to the Director of the FBI for referral to the FBI Legal Counsel Division and shall be based on evidence recently developed or not previously considered. Only one request for reconsideration of a denial of a petition shall be considered. For further information regarding petitions see 28 CFR part 9.

## PART 9—REGULATIONS GOVERNING THE REMISSION OR MITIGATION OF CIVIL AND CRIMINAL FORFEITURES

Sec.

9.1 Authority, purpose, and scope.

9.2 Definitions.

9.3 Petitions in administrative forfeiture cases.

9.4 Petitions in judicial forfeiture cases.

9.5 Criteria governing administrative and judicial remission and mitigation.

9.6 Special rules for specific petitioners.

9.7 Terms and conditions of remission and mitigation.

9.8 Provisions applicable to victims.

9.9 Miscellaneous provisions.

AUTHORITY: 28 U.S.C. 509, 510, 515–518, 524; 8 U.S.C. 1324; 15 U.S.C. 1177; 17 U.S.C. 509; 18 U.S.C. 512, 981, 982, 1467, 1955, 1963, 2253, 2254, 2513; 19 U.S.C. 1613, 1618; 21 U.S.C. 853, 881; 22 U.S.C. 401.

SOURCE: Order No. 2064–96, 62 FR 316, Jan. 3, 1997, unless otherwise noted.

### §9.1 Authority, purpose, and scope.

(a) *Purpose.* This part sets forth the procedures for agency officials to follow when considering remission or mitigation of administrative forfeitures under the jurisdiction of the agency, and civil judicial and criminal judicial forfeitures under the jurisdiction of the Criminal Division. The purpose of the regulations in this part is to provide a basis for ameliorating the effects of forfeiture through the partial or total remission of forfeiture for individuals who have an interest in the forfeited property but who did not participate in, or have knowledge of, the conduct that resulted in the property being subject to forfeiture and, where required, took all reasonable steps under the circumstances to ensure that such property would not be used, acquired, or disposed of contrary to law. Additionally, the regulations provide for partial or total mitigation of the forfeiture and imposition of alternative conditions in appropriate circumstances.

(b) *Authority to grant remission and mitigation.* (1) Remission and mitigation functions in administrative forfeitures are performed by the agency seizing the property. Within the Federal Bureau of Investigation, authority to grant remission and mitigation is delegated to the Forfeiture Counsel, who is the Unit Chief, Legal Forfeiture Unit, Office of the General Counsel; within the Drug Enforcement Administration, authority to grant remission and mitigation is delegated to the Forfeiture Counsel, Office of Chief Counsel; and within the Immigration and

Naturalization Service, authority to grant remission and mitigation is delegated to the INS Regional Directors.

(2) Remission and mitigation functions in judicial cases are performed by the Criminal Division of the Department of Justice. Within the Criminal Division, authority to grant remission and mitigation is delegated to the Chief, Asset Forfeiture and Money Laundering Section, Criminal Division.

(3) The powers and responsibilities delegated by these regulations in this part may be redelegated to attorneys or managers working under the supervision of the designated officials.

(c) The time periods and internal requirements established in this part are designed to guide the orderly administration of the remission and mitigation process and are not intended to create rights or entitlements in favor of individuals seeking remission or mitigation. The regulations will apply to all decisions on petitions for remission or mitigation made on or after February 3, 1997. The regulations will apply to decisions on requests for reconsideration of a denial of a petition under §§ 9.3(j) and 9.4(k) only if the initial decision on the petition was made under the provisions of this part effective on February 3, 1997.

(d) This part governs any petition for remission filed with the Attorney General and supersedes any Department of Justice regulation governing petitions for remission, to the extent such regulation is inconsistent with this part. In particular, this part supersedes the provisions of 21 CFR 1316.79 and 1316.80, which contain remission and mitigation procedures for property seized for narcotics violations. The provisions of 8 CFR 274.13 through 274.19 and 28 CFR 8.10, which concern non-drug related forfeitures, are also superseded by this part where those regulations relate to remission and mitigation.

### § 9.2 Definitions.

As used in this part:

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

(b) The term *appraised value* means the estimated market value of an asset

at the time and place of seizure if such or similar property was freely offered for sale between a willing seller and a willing buyer.

(c) The term *Assets Forfeiture Fund* means the Department of Justice Assets Forfeiture Fund or Department of the Treasury Asset Forfeiture Fund, depending upon the identity of the seizing agency.

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

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

(f) The terms *Chief, Asset Forfeiture and Money Laundering Section*, and *Chief*, refer to the Chief of the Asset Forfeiture and Money Laundering Section, Criminal Division, United States Department of Justice.

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

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

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

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

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

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

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

(k) The term *net equity* means the amount of a lienholder's monetary interest in property subject to forfeiture. Net equity shall be computed by determining the amount of unpaid principal