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§ 12.22 Civil actions to obtain forfeiture.

The Solicitor may request the Attorney General to file a civil action to obtain forfeiture of any property subject to forfeiture under the Airborne Hunting Act, 16 U.S.C. 742j–1; Lacey Act, 18 U.S.C. 43–44; Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*; Black Bass Act, 16 U.S.C. 851 *et seq.*; Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*; Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.*; Migratory Bird Hunting Stamp Act, 16 U.S.C. 718 *et seq.*; Eagle Protection Act, 16 U.S.C. 668 *et seq.*; or Endangered Species Act, 16 U.S.C. 1531 *et seq.* Before any such action is filed against property subject to forfeiture under the Lacey Act, 18 U.S.C. 43, or against property, other than the cargo of a vessel or other conveyance employed in unlawful taking, subject to forfeiture under the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, a civil penalty must first be assessed in accordance with the statute and applicable regulations, and no such action may be filed more than 30 days after the conclusion of civil penalty assessment proceedings.

[47 FR 56860, Dec. 21, 1982]

§ 12.23 Administrative forfeiture proceedings.

(a) *When authorized.* Whenever any property subject to forfeiture under the Eagle Protection Act, 16 U.S.C. 668 *et seq.*, or Airborne Hunting Act, 16 U.S.C. 742j–1, or any wildlife or plant subject to forfeiture under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, or any fish, wildlife or plant subject to forfeiture under the Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*, is determined under § 12.12 to have a value not greater than \$100,000, the Solicitor may obtain forfeiture of such property in accordance with this section.

(b) *Procedure*—(1) *Notice of proposed forfeiture.* As soon as practicable following seizure, the Solicitor shall issue a notice of proposed forfeiture.

(A) *Publication.* The notice shall be published once a week for at least three successive weeks in a newspaper of general circulation in the locality where the property was seized. If the value of the seized property as deter-

mined under § 12.12 does not exceed \$1000, the notice may be published by posting, instead of newspaper publication, for at least three successive weeks in a conspicuous place accessible to the public at the Service's enforcement office, the U.S. District Court or the U.S. Customhouse nearest the place of seizure. In cases of posting, the date of initial posting shall be indicated on the notice. In addition to newspaper publication or posting, a reasonable effort shall be made to serve the notice personally or by registered or certified mail, return receipt requested, on each person whose whereabouts and interest in the seized property are known or easily ascertainable.

(B) *Contents.* The notice shall be in substantially the same form as a complaint for forfeiture filed in United States District Court. The notice shall describe the property, including, in the case of motor vehicles, the license, registration, motor, and serial numbers. The notice shall state the time and place of seizure, as well as the reason therefor, and shall specify the value of the property as determined under § 12.12. The notice shall contain a specific reference to the provisions of the laws or regulations allegedly violated and under which the property is subject to forfeiture. The notice shall state that any person desiring to claim the property must file a claim and a bond in accordance with paragraph (b)(2) of this section, and shall state that if a proper claim and bond are not received by the proper office within the time prescribed by such paragraph, the property will be declared forfeited to the United States and disposed of according to law. The notice shall also advise interested persons of their right to file a petition for remission of forfeiture in accordance with § 12.24.

(2) *Filing a claim and bond.* Upon issuance of the notice of proposed forfeiture, any person claiming the seized property may file with the Solicitor's office indicated in the notice a claim to the property and a bond in the penal sum of \$5,000, or ten per centum of the value of the claimed property, whichever is lower, but not less than \$250. Any claim and bond must be received in such office within 30 days after the date of first publication or posting of

the notice of proposed forfeiture. The claim shall state the claimant's interest in the property. The bond filed with the claim shall be on a United States Customs Form 4615 or on a similar form provided by the Department. There shall be endorsed on the bond a list or schedule in substantially the following form which shall be signed by the claimant in the presence of the witnesses to the bond, and attested by the witnesses:

List or schedule containing a particular description of seized article, claim for which is covered by the within bond, to wit:

The foregoing list is correct.

Claimant _____
 Attest: _____

The claim and bond referred to in this paragraph shall not entitle the claimant or any other person to possession of the property.

(3) *Transmittal to Attorney General.* As soon as practicable after timely receipt by the proper office of a proper claim and bond in accordance with paragraph (b)(2) of this section, the Solicitor shall transmit such claim and bond to the Attorney General for institution of forfeiture proceedings in U.S. District Court.

(4) *Motion for stay.* Upon issuance of the notice of proposed forfeiture, any person claiming the seized property may file with the Solicitor's regional or field office indicated in the notice a motion to stay administrative forfeiture proceedings. Any motion for stay must be filed within 30 days after the date of first publication or posting of the notice of the proposed forfeiture. Each motion must contain:

(i) The claimant's verified statement showing that he or she holds absolute, fee simple title to the seized property, free and clear of all liens, encumbrances, security interests, or other third-party interests, contingent or vested; and (ii) the claimant's offer to pay in advance all reasonable costs anticipated to be incurred in the storage, care, and maintenance of the seized property for which administrative forfeiture is sought. Where a stay of administrative forfeiture proceedings would not injure or impair the rights of any third parties and where the claim-

ant has agreed to pay in advance anticipated, reasonable storage costs associated with the granting of a stay, the Regional or Field Solicitor as appropriate may, in his discretion, grant the motion for stay and specify reasonable and prudent conditions therefor, including but not limited to the duration of the stay, a description of the factors which would automatically terminate the stay, and any requirement for a bond (including amount) to secure the payment of storage and other maintenance costs. If a motion for stay is denied, or if a stay is terminated for any reason, the claimant must file, if he or she has not already done so, a claim and bond in accordance with paragraph (b)(2) of this section not later than 30 days after receipt of the Solicitor's Office denial or termination order. Failure to file the claim and bond within 30 days will result in summary forfeiture under paragraph (c) of this section.

(c) *Summary forfeiture.* If a proper claim and bond are not received by the proper office within 30 days as specified in paragraph (b)(2) of this section, the Solicitor shall declare the property forfeited. The declaration of forfeiture shall be in writing, and shall be sent by registered or certified mail, return receipt requested, to the Service and to each person whose whereabouts and prior interest in the seized property are known or easily ascertainable. The declaration shall be in substantially the same form as a default judgment of forfeiture entered in United States District Court. The declaration shall describe the property and state the time, place, and reason for its seizure. The declaration shall identify the notice of proposed forfeiture, describing the dates and manner of publication of the notice and any efforts made to serve the notice personally or by mail. The declaration shall state that in response to the notice a proper claim and bond were not timely received by the proper office from any claimant, and that therefore all potential claimants are deemed to admit the truth of the allegations of the notice. The declaration

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shall conclude with an order of condemnation and forfeiture of the property to the United States for disposition according to law.

[45 FR 17864, Mar. 19, 1980, as amended at 46 FR 44759, Sept. 8, 1981; 47 FR 56860, Dec. 21, 1982; 50 FR 6350, Feb. 15, 1985]

§ 12.24 Petition for remission of forfeiture.

(a) Any person who has an interest in cargo, of a vessel or other conveyance employed in unlawful taking, subject to forfeiture under the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, or any person who has an interest in any property subject to forfeiture under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; Eagle Protection Act, 16 U.S.C. 668 *et seq.*; Airborne Hunting Act, 16 U.S.C. 742j–1; or the Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*, or any person who has incurred or is alleged to have incurred a forfeiture of any such property, may file with the Solicitor or, when forfeiture proceedings have been brought in U.S. District Court, the Attorney General, a petition for remission of forfeiture.

(b) A petition filed with the Solicitor need not be in any particular form, but it must be received before disposition of the property and must contain the following:

- (1) A description of the property;
- (2) The time and place of seizure;
- (3) Evidence of the petitioner's interest in the property, including contracts, bills of sale, invoices, security interests, certificates of title, and other satisfactory evidence; and
- (4) A statement of all facts and circumstances relied upon by the petitioner to justify remission of the forfeiture.

(c) The petition shall be signed by the petitioner or the petitioner's attorney at law. If the petitioner is a corporation, the petition must be signed by an authorized officer, supervisory employee, or attorney at law, and the corporate seal shall be properly affixed to the signature.

(d) A false statement in the petition may subject the petitioner to prosecution under title 18, U.S. Code, section 1001.

(e) Upon receiving the petition, the Solicitor shall decide whether or not to grant relief. In making a decision, the Solicitor shall consider the information submitted by the petitioner, as well as any other available information relating to the matter.

(f) If the Solicitor finds the existence of such mitigating circumstances as to justify remission or mitigation of the forfeiture or alleged forfeiture, the Solicitor may remit or mitigate the same upon such terms and conditions as may be reasonable and just or may order discontinuance of any proceeding under § 12.23

(g) If the Solicitor decides that relief should not be granted, the Solicitor shall so notify the petitioner in writing, stating in the notification the reasons for denying relief. The petitioner may then file a supplemental petition, but no supplemental petition shall be considered unless it is received within 60 days from the date of the Solicitor's notification denying the original petition.

[45 FR 17864, Mar. 19, 1980, as amended at 47 FR 56861, Dec. 21, 1982]

§ 12.25 Transfers in settlement of civil penalty claims.

In the discretion of the Solicitor, an owner of wildlife or plants who may be liable for civil penalty under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; Lacey Act, 18 U.S.C. 43; Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*; Eagle Protection Act, 16 U.S.C. 668 *et seq.*; or Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, may be given an opportunity to completely or partially settle the civil penalty claim by transferring to the United States all right, title, and interest in any wildlife or plants that are subject to forfeiture. Such transfer may be accomplished by the owner's execution and return of a U.S. Customs Form 4607 or a similar compromise transfer of property instrument provided by the Department.

[47 FR 56861, Dec. 21, 1982]

Subpart D—Disposal of Forfeited or Abandoned Property

SOURCE: 47 FR 17525, Apr. 23, 1982, unless otherwise noted.