

**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****21 CFR Part 1316****DEPARTMENT OF JUSTICE****28 CFR Parts 8 and 9**

[Docket No. OAG 127; AG Order No. 3263–2011]

RIN 1105–AA74

**Consolidation of Seizure and Forfeiture Regulations****AGENCY:** Department of Justice.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Justice (the Department) proposes to revise, consolidate, and update its seizure and forfeiture regulations, to conform those regulations to the Civil Asset Forfeiture Reform Act (CAFRA) of 2000 to reflect organizational changes that have occurred within the Department, and to make other changes.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before July 8, 2011. Commenters should be aware that the electronic Federal Docket Management System (FDMS) will not accept comments after Midnight Eastern Time on the last day of the comment period.

**ADDRESSES:** Comments may be mailed to Legal Policy, Asset Forfeiture and Money Laundering Section, Criminal Division, U.S. Department of Justice, 1400 New York Avenue, NW., Bond Building, Tenth Floor, Washington, DC 20005. Comments are available for public inspection at the above address by calling (202) 514–1263 to arrange for an appointment. To ensure proper handling, please reference OAG Docket No. 127 on your correspondence. You may submit comments electronically or view an electronic version of this proposed rule at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Belue Risher, Editor, 1400 New York Avenue, NW., Room 2218, Bond Building, Washington, DC 20530. Telephone: (202) 514–1263.

**SUPPLEMENTARY INFORMATION:**

**POSTING OF PUBLIC COMMENTS:** Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name,

address, *etc.*) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You also must put all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency’s public docket file, but not posted online. If you wish to inspect the agency’s public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

The reason that the Department is requesting electronic comments before Midnight Eastern Time on the day the comment period closes is because the inter-agency FDMS, which receives electronic comments at [www.regulations.gov](http://www.regulations.gov), terminates the public’s ability to submit comments at Midnight Eastern Time on the day the comment period closes.

Commenters in time zones other than Eastern may want to take this fact into account so that their electronic comments can be received. The constraints imposed by the FDMS online system do not apply to comments submitted via U.S. mail, which will be considered as timely filed if they are postmarked before Midnight on the day the comment period closes.

**I. Overview**

First, the proposed rule recognizes that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is now part of the Department of Justice. On November 25, 2002, the President signed into law the Homeland Security Act (HSA) of 2002, Public Law 107–296, 116 Stat. 2135. Section 1111 of the HSA

established in the Department of Justice the “Bureau of Alcohol, Tobacco, Firearms, and Explosives” and generally transferred law enforcement functions, and seizure and forfeiture authority, of the Bureau of Alcohol, Tobacco, and Firearms from the Department of the Treasury to the Department of Justice. This transfer became effective on January 24, 2003. By this rule, the Department proposes consolidating its regulations governing the seizure and administrative forfeiture of property by ATF, the Drug Enforcement Administration (DEA), and the Federal Bureau of Investigation (FBI). Among other things, this rulemaking identifies the scope of these regulations, updates definitions, identifies the scope of authority available to each seizing agency (ATF, DEA, and FBI) to seize property for forfeiture, and provides procedures governing practical issues regarding the seizure, custody, inventory, appraisal, settlement, and release of property subject to forfeiture. See proposed sections 8.1–8.7 of this rule.

Second, the rule proposes conforming the seizure and forfeiture regulations of ATF, DEA, FBI, and the Department’s Criminal Division to address procedural changes necessitated by the Civil Asset Forfeiture Reform Act (CAFRA) of 2000, Public Law 106–185, 114 Stat. 202. The rule also incorporates CAFRA’s innocent owner defense into the remission regulations. Where CAFRA is silent or ambiguous on a subject relating to administrative forfeiture procedure, the proposed rule interprets CAFRA based on case law and agency expertise and experience.

Third, the rule proposes updating the regulations to conform with other authorities and current forfeiture practice. Thus, proposed § 8.14 adds a provision to the Department’s regulations allowing for the pre-forfeiture disposition of seized property when the property is liable to perish or to waste or to be greatly reduced in value while being held for forfeiture, or when the expense of holding the property is or will be disproportionate to its value. Section 8.11 clarifies that administrative and criminal judicial forfeiture proceedings are not mutually exclusive, and § 8.16 affirms that the United States is not liable for attorney fees in any administrative forfeiture proceeding. Section 8.23 adds a provision defining the allowable re-delegations of authority under the regulations. Section 8.9(a)(1) updates the forfeiture regulations by adding the option of publishing notice for administrative forfeitures on an official

government Internet site instead of in a newspaper.

Fourth, the proposed rule amends the list of designated officials at 28 CFR part 9 governing petitions for remission or mitigation of forfeiture, clarifies the existing regulations pertaining to victims, and makes remission available to third parties who reimburse victims under an indemnification agreement.

## II. Discussion

### *A. Consolidation of the Regulations Governing the Seizure and Forfeiture of Property by ATF, DEA, and FBI*

Consolidating the forfeiture regulations used by ATF (formerly 27 CFR part 72), DEA (21 CFR part 1316, subparts E and F), and FBI (28 CFR part 8 and 21 CFR part 1316, subparts E and F) will achieve greater consistency within the Department and will promote overall fairness in the administrative forfeiture process.

The proposed rule removes 21 CFR part 1316, subparts E and F and replaces them by adding an amended 28 CFR part 8 governing the seizure and forfeiture of property by each agency. Part 8 is divided into subparts A, B, and C. Subpart A contains generally applicable provisions for seizures and forfeitures by ATF, DEA, and FBI. Subpart B contains expedited procedures for property seized by DEA and FBI for violations involving personal use quantities of a controlled substance. Subpart C includes the permitted re-delegations of authority under these regulations.

However, this consolidation does not constitute the entirety of the Department's forfeiture regulations. ATF continues to enforce and administer the provisions of the National Firearms Act (NFA), ch. 757, 48 Stat. 1236 (1934) (codified at 26 U.S.C. ch. 53). Pursuant to 18 U.S.C. 983(i)(2), Internal Revenue Code forfeitures, including NFA forfeitures, are not subject to CAFRA's procedural requirements. NFA civil forfeiture procedure is governed, for the most part, by the Customs laws (19 U.S.C. 1602–1618) including the notice and cost bond requirements. In addition, pursuant to the Customs laws, the Government's initial burden of proof in an NFA civil forfeiture is to demonstrate probable cause to believe that the property is forfeitable. Further, there is no innocent ownership defense to forfeiture under the NFA. However, NFA forfeitures are subject to CAFRA's attorney fees requirement.

### *B. CAFRA Procedural Changes Incorporated in the Proposed Rule*

CAFRA's section 2 created 18 U.S.C. 983, which includes the general rules for civil forfeiture proceedings. This rule proposes to implement certain procedural changes in the conduct of administrative forfeitures as required by 18 U.S.C. 983. These changes address procedures relating to notice of seizure, filing of claims, hardship requests, and releases of property.

*Notice of seizure.* Section 983(a)(1) establishes time deadlines and other procedures for the sending of personal written notices of seizures to parties with a potential interest in the property. These time deadlines and procedures are in addition to, and in some respects different from, procedures under the Customs laws. The Customs laws forfeiture procedures (19 U.S.C. 1602–1618), which are incorporated by reference "insofar as applicable" in forfeiture statutes enforced by the Department of Justice (e.g., 21 U.S.C. 881(d)), require that "[w]ritten notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized property." See 19 U.S.C. 1607. CAFRA, as codified at 18 U.S.C. 983(a)(1), requires that notice be sent within 60 days of seizure, or within 90 days of a seizure by a state or local agency, or within 60 days of establishing the interested party's identity if it is not known at the time of seizure. CAFRA also provides that a supervisory official of the seizing agency may grant a single 30-day extension if certain conditions are satisfied and that extensions thereafter may only be granted by a court. Section 8.9 of the proposed rule incorporates these notice-related provisions of CAFRA.

*Filing of administrative claims.* Section 983(a)(2) of title 18 of the United States Code modifies the procedure for filing a claim to seized property. The Customs laws procedure applicable to claims in Department of Justice forfeitures provides that, to contest an administrative forfeiture, a claimant has 20 days after the first published notice of seizure to file with the seizing agency both a claim and a cost bond for \$5,000 or 10 percent of the property's value, whichever is less, but not less than \$250. See 19 U.S.C. 1608. Section 983(a)(2) eliminates the cost bond requirement for forfeitures covered by CAFRA and allows the filing of claims not later than the deadline set forth in a personal notice letter. The deadline must be at least 35 days after the date the letter was mailed. Persons

not receiving a notice letter must file a claim within 30 days after the date of final publication of notice of seizure. Section 983(a)(2) also adds provisions specifying the information required for a valid claim. It reflects the amendments to 18 U.S.C. 983(a)(2)(C)(ii) in the Paul Coverdell National Forensic Sciences Improvement Act of 2000, Public Law 106–561, 114 Stat. 2787, which retroactively deleted CAFRA's original requirements that claimants provide with their claims documentary evidence supporting their interest in the seized property and state that their claims are not frivolous. Consequently, pursuant to section 21 of CAFRA (establishing CAFRA's effective date), the amended section 983(a)(2)(C)(ii) applies to any forfeiture proceeding commenced on or after August 23, 2000. Section 8.10 of the proposed rule incorporates these section 983(a)(2) changes to the claim procedures.

*Release of seized property if forfeiture is not commenced.* Section 8.13 of the proposed rule provides procedures to implement 18 U.S.C. 983(a)(3). Section 983(a)(3) requires the release of seized property pursuant to regulations promulgated by the Attorney General and prohibits the United States from pursuing further action for civil forfeiture if the United States does not institute judicial forfeiture proceedings against the property within 90 days after an administrative claim has been filed and no extension of time has been obtained from a court.

*Hardship request.* Section 8.15 of the proposed rule implements 18 U.S.C. 983(f), which provides procedures and criteria for the release of seized property (subject to certain exceptions) pending the completion of judicial forfeiture proceedings when a claimant's request for such release establishes that continued government custody will cause substantial hardship that outweighs the risk that the property will not remain available for forfeiture.

*Expedited release of property.* Subpart B, §§ 8.17 through 8.22 of the proposed rule, incorporates and amends, to the extent required by CAFRA, the pre-existing regulations for expedited forfeiture proceedings for certain property. These regulations, 21 CFR part 1316, subpart F, provided expedited procedures for conveyances seized for drug-related offenses and property seized for violations involving personal use quantities of a controlled substance. By repealing 21 U.S.C. 888 (expedited procedures for seized conveyances), CAFRA eliminated the statutory basis for the expedited procedure regulations pertaining to drug-related conveyance seizures. Accordingly, §§ 8.17 through

8.22 of the proposed rule omit the 21 CFR part 1316, subpart F provisions applicable to drug-related conveyance seizures. The remaining provisions apply only where property is seized for administrative forfeiture involving controlled substances in personal use quantities.

*Remissions and mitigations.* For consistency with CAFRA's uniform innocent owner defense, 18 U.S.C. 983(d), the proposed rule incorporates the innocent owner provisions of sections 983(d)(2)(A) and 983(d)(3)(A) in a new 28 CFR 9.5(a)(l).

*Forfeitures affected by CAFRA and the proposed rule.* CAFRA's changes apply to civil forfeiture proceedings commenced on or after August 23, 2000, with the exception of civil forfeitures under the following: The Tariff Act of 1930 or any other provision of law codified in title 19; the Internal Revenue Code of 1986; the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*); the Trading with the Enemy Act (50 U.S.C. App. 1 *et seq.*) or the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*); or section 1 of title VI of the Act of June 15, 1917 (22 U.S.C. 401). These regulations apply to all forfeitures administered by the Department of Justice with the exception of seizures and forfeitures under the statutes listed in 18 U.S.C. 983(i). The authority of seizing agencies to conduct administrative forfeitures derives from the procedural provisions of the Customs laws where those provisions are incorporated by reference in the substantive forfeiture statutes enforced by the agencies.

*C. Changes to the Previous Regulations Governing the Seizure and Forfeiture of Property by ATF, DEA, and FBI*

*Pre-forfeiture disposition.* The provision providing for the pre-forfeiture disposition of seized property, § 8.14, is needed to implement the authority of 19 U.S.C. 1612(b), which is one of the procedural Customs statutes incorporated by reference into the forfeiture statutes enforced by the Department of Justice. Section 1612(b) authorizes pre-forfeiture disposal of seized property, pursuant to regulations, when the property is liable to perish or to waste or to be greatly reduced in value by keeping, or when the costs of maintaining the property pending forfeiture are disproportionate to the property's value. The proposed rule enables the Department of Justice to use the authority of section 1612(b) in appropriate cases.

*Internet publication.* The proposed rule updates the forfeiture regulations

by adding, in § 8.9(a)(1)(ii), a provision for the publication of administrative forfeiture notices on an official government Internet site instead of in newspapers. The statute governing the publication of notice in administrative forfeiture proceedings, 19 U.S.C. 1607, does not require a specific means of publication. Section 8.9(a)(1)(ii) will provide ATF, DEA, and FBI with the choice to use the Internet as a more effective and less costly alternative to the newspaper publication provided for in § 8.9(a)(1)(i). This grant of authority parallels a similar grant of authority in Rule G(4)(a)(iv)(C) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

Pursuant to Rule G(4)(a)(iv)(C), in all civil judicial forfeitures, the Government may now employ the option of giving public notice through the Internet rather than in a newspaper. Section 8.9(a)(1)(ii) will permit the Department of Justice agencies to likewise use the Internet to provide notice in administrative forfeitures, a cost savings that is particularly important as the volume of administrative forfeitures is much greater than judicial forfeitures. There is strong statistical proof that Internet access is now available to the vast majority of United States residents. Internet access continues to grow, while newspaper circulation is declining, and in some markets, the option to publish in a traditional newspaper may not be available in the next few years.

*D. Regulations at 28 CFR Part 9 Governing the Remission or Mitigation of Forfeitures*

This proposed rule includes modifications to the regulations governing the remission or mitigation of forfeiture at 28 CFR part 9. Sections 9.3(e)(2) is revised by deleting references to DEA's "Office of Chief Counsel" and referring instead to DEA's "Forfeiture Counsel" as the pertinent official in DEA forfeiture cases, by deleting references to ATF's "Special Agent in Charge, Asset Forfeiture and Seized Property Branch," and referring instead to ATF's "Office of Chief Counsel, Forfeiture Counsel," as the pertinent official in ATF forfeiture cases, and by updating the addresses for both DEA and ATF. Section 9.1 changes the designation of the official within ATF to whom authority to grant remission and mitigation has been delegated.

Second, the definition of "victim" in § 9.2 is modified to make remission available to qualified third parties who reimburse a victim pursuant to an indemnification agreement. In addition,

§ 9.8 is modified to specify the procedures applicable to persons seeking remission as victims.

*E. Summary of the Impact of the Proposed Changes on the Public*

CAFRA enacted additional due process protections for property owners in Federal civil forfeiture proceedings. Section 2(a) of CAFRA, codified at 18 U.S.C. 983, requires prompt notification of administrative forfeiture proceedings. As a general rule, in any administrative forfeiture proceeding under a civil forfeiture statute, the Government must send written notice of the seizure and the Government's intent to forfeit the property to all persons known to the Government who might have an interest in the property within 60 days of a seizure (or 90 days of a seizure made by state or local law enforcement authorities and transferred for Federal forfeiture).

CAFRA also changed the procedure for filing administrative claims. Section 983(a)(2)(B) dictates that when the agency both publishes and sends notice of the seizure and its intent to forfeit the property, an owner who receives notice by mail has 35 days from the date of mailing, and if the personal notice is sent but not received, an owner has 30 days from the date of final publication of notice of the seizure, to file a claim with the agency. In addition, the notice provision in § 8.9(a)(1)(ii) was updated to allow the agencies to publish administrative forfeiture notices on the Internet instead of in newspapers, consistent with the procedure for civil judicial forfeitures under Rule G(4)(a)(iv)(C).

The filing of a valid claim compels the agency to refer the matter to the U.S. Attorney. To preserve the option to seek civil judicial forfeiture, the U.S. Attorney must do one of the following within 90 days: (1) Commence a civil judicial forfeiture action against the seized property; (2) obtain an indictment alleging the property is subject to criminal forfeiture; (3) obtain a good cause extension of the deadline from the district court; or (4) return the property pending the filing of a complaint. If the Government fails to take any of these steps within the statutory deadline, it must promptly release the property and is barred from taking any further action to civilly forfeit the property in connection with the underlying offense.

Prior to CAFRA, claims in an administrative forfeiture required an accompanying bond of either \$5,000 or 10 percent of the value of the seized property, whichever was lower. Section 983(a)(2) eliminated the bond

requirement, in forfeitures covered by CAFRA, to give the property owner greater access to Federal court. However, to prevent frivolous claims, CAFRA requires the claimant to state the basis for his or her interest in the property in the claim under oath.

Under CAFRA, claimants also have a right to petition for immediate release of seized property on grounds of hardship with a 30-day deadline on judicial resolution of such petitions. Section 983(f)(7) provides that if the court grants a petition, it may also enter any order necessary to ensure that the value of the property is maintained during the pendency of the forfeiture action, including permitting inspection, photographing, and inventory of the property, fixing a bond pursuant to Rule E(5) of the Supplemental Rules for Certain Admiralty or Maritime Claims, or requiring the claimant to obtain or maintain insurance on the property. It also provides that the Government may place a lien or file a *lis pendens* on the property.

It is important to note that CAFRA's deadlines apply only to civil forfeiture actions initiated by commencement of an administrative proceeding under section 983(a) and do not apply to actions commenced solely as civil judicial forfeitures. However, the vast majority of civil forfeitures are handled administratively.

CAFRA changed the procedures for the expedited release of conveyances and property seized for drug offenses to apply only where property is seized for administrative forfeiture involving personal use quantities of a controlled substance.

Although CAFRA enacted a provision granting attorney fees to substantially prevailing parties in civil judicial forfeitures, the regulations make it clear that the United States is *not* liable for attorney fees or costs in administrative forfeiture proceedings, even if the matter is referred to the U.S. Attorney and the U.S. Attorney declines to initiate a judicial forfeiture on the property.

In addition to implementing these CAFRA reforms, the new regulations allow the agencies to sell property that is deteriorating rapidly in order to preserve the property's value pending resolution of the forfeiture. This disposition must be authorized by agency headquarters. The regulations also specify that the seizing agency must promptly deposit any seized U.S. currency over \$5,000 into the Seized Asset Deposit Fund pending forfeiture. The only exception is for currency that must be retained because it has a

significant, independent, tangible evidentiary purpose.

The new rule also changes some of the procedures relating to crime victims in 28 CFR part 9. The definition of victim is modified to make remission available to qualified third parties who reimburse a victim pursuant to an insurance or other indemnification agreement. *See* proposed § 9.2(w). In addition, § 9.8 is reorganized and a new paragraph (a) is added to specify the filing procedures applicable to persons seeking remission as victims. This revision is necessary because the current petition filing procedures in § 9.4 are applicable to owners and lienholders, but not to victims. Section 9.8(i) clarifies that the amount of compensation available to a particular victim may not exceed the victim's share of the net proceeds of the forfeiture associated with the activity that caused the victim's loss. In other words, a victim is not entitled to full compensation, but only the amount of compensation available from the forfeited property. In addition, the new rule makes the statutory innocent owner provisions at 18 U.S.C. 983(d)(2)(A) and (d)(3)(A) applicable to all owner and lienholder petitions for remission.

### Regulatory Certifications

#### *Executive Order 12866—Regulatory Planning and Review*

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget (OMB). The costs that this rule imposes (such as additional personnel and higher administrative overhead) fall upon the Justice Department, not upon the general public. The benefits of this rule, however, are numerous. The rule increases the efficiency of forfeitures, ensures that the agencies provide prompt due process and notice, helps maintain property values, ensures that property is promptly returned to third parties if appropriate, eliminates the cost bond and its administrative burden, and requires more effective processing and handling of currency. Publishing administrative forfeiture notices on the Internet accomplishes a substantial financial benefit for the agencies.

#### *Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights*

Executive Order 12630, section 2(a)(3) specifically exempts from the definition of "policies that have takings implications" the seizure and forfeiture of property for violations of law. Therefore, no actions were deemed necessary under the provisions of Executive Order 12630.

#### *Executive Order 12988—Civil Justice Reform*

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### *Executive Order 13132—Federalism*

This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### *Regulatory Flexibility Act*

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Some owners of property subject to administrative or judicial forfeiture under laws enforced by ATF, DEA, FBI, and the Department's Criminal Division may be small businesses as defined under the Regulatory Flexibility Act, and under size standards established by the Small Business Administration. Although the regulations affect every administrative forfeiture initiated by ATF, DEA, and FBI, and every remission or mitigation decision by the agencies or the Department's Criminal Division, the rule will not change existing forfeiture laws. It will only revise and consolidate the seizure and forfeiture regulations of ATF, DEA, FBI, and the Criminal Division to conform to CAFRA, and to fill gaps and address ambiguities in CAFRA and other seizure and forfeiture laws. Accordingly, an initial regulatory flexibility analysis is not required.

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement

Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by state, local and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Paperwork Reduction Act of 1995*

This proposed rule does not contain any information collection requirements that require approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The proposed rule is exempt from the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, 109 Stat. 163, because it does not require a form within the meaning of the Act and because it falls within the exceptions listed in 44 U.S.C. 3518 and 5 CFR § 1320.4. The proposed rule updates the existing regulations to comply with CAFRA. CAFRA included key reforms regarding the rights of property owners in Federal forfeiture. Thus, the purpose of the proposed rule is not to gather information about the claimants or petitioners, but rather to give them an opportunity, as provided by CAFRA, to prove their claim in the forfeiture proceeding.

Under 44 U.S.C. 3502(3)(A), a form falls within the PRA if it calls for answers to identical questions posed to ten or more persons. The proposed rule allows owners and victims to file the following claims, petitions, or requests. None of the filings needs to be in a particular form, but the regulations require the filer to provide certain information, as outlined below.

(1) *Claim*: The claim must identify the specific property being claimed, the claimant's identity and interest in the property, and must be made under oath by the claimant. *See* § 8.10.

(2) *Petition for remission or mitigation of seized property*: The petitioner must include his or her identification information, specifics about the seizure, a complete description of the property, and a description of his or her

ownership interest in the property. *See* §§ 9.3, 9.4.

(3) *Petition for remission involving victims*: The petitioner must show a pecuniary loss arising from the offense underlying the forfeiture, or a related offense. *See* § 9.8(a).

(4) *Petition for expedited release of seized property*: The petitioner must include a complete description of the property and the seizure information, a statement of the petitioner's interest in the property, and a statement of the circumstances justifying expedited release. *See* § 8.19.

(5) *Request for hardship release*: The request must establish, in general, that the claimant has a legitimate interest in the property and that it is not contraband or available for further illegal use. *See* § 8.15.

These statutory and regulatory requirements do not pose identical questions; they provide the guidelines for what information is necessary if an owner or victim chooses to pursue a petition, a claim, or a hardship release.

Moreover, a forfeiture action would fall under one of the three exceptions to the PRA listed in 44 U.S.C. 3518(c)(1), depending on the type of forfeiture proceeding. After property is seized for forfeiture, the Federal seizing agency may commence an administrative forfeiture proceeding against the property by providing notice to the public and any parties with a known ownership interest. An administrative forfeiture would fall within the definition in section 3518(c)(1)(B)(ii) of an "administrative action \* \* \* involving an agency against specific individuals or entities." If a claim is properly filed in the administrative forfeiture, Federal prosecutors must file a civil forfeiture complaint against the property or include it in a criminal indictment within the deadlines laid out by CAFRA or return the property.

A civil forfeiture would fall under the PRA exception of 44 U.S.C. 3518(c)(1)(B)(ii) because it is "a civil action to which the United States \* \* \* is a party." Alternatively, if the prosecutors include the property in a criminal indictment, the criminal forfeiture would occur "during the conduct of a Federal criminal investigation \* \* \* or during the disposition of a particular criminal matter" and would fall under the exception of section 3518(c)(1)(A).

Thus, a claim or petition filed in forfeiture proceedings under the proposed rule is not a collection of information, as defined by the PRA in 44 U.S.C. 3502(3)(A), and would fall within the exceptions of 44 U.S.C. 3518(c)(1).

## List of Subjects

### 21 CFR Part 1316

Administrative practice and procedure, Authority delegations (Government agencies), Drug traffic control, Research, Seizures and forfeitures.

### 28 CFR Part 8

Administrative practice and procedure, Arms and munitions, communications equipment, copyright, Crime, Gambling, Infants and children, Motor vehicles, Prices, Seizures and forfeitures, Wiretapping and electronic surveillance.

### 28 CFR Part 9

Administrative practice and procedure, Crime, Seizures and forfeitures.

Accordingly, under the authority of 5 U.S.C. 301 and 28 U.S.C. 509–510, and for the reasons set forth in the preamble, Chapter II of Title 21 and Chapter I of Title 28 of the Code of Federal Regulations are proposed to be amended as follows:

## TITLE 21—FOOD AND DRUGS

### PART 1316—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

#### Subparts E and F [Removed]

1. Remove subparts E and F.

## TITLE 28—JUDICIAL ADMINISTRATION

2. Revise part 8 to read as follow:

### PART 8—FORFEITURE AUTHORITY FOR CERTAIN STATUTES

#### Subpart A—Seizure and Forfeiture of Property

Sec.

- 8.1 Scope of regulations.
- 8.2 Definitions.
- 8.3 Seizing property subject to forfeiture.
- 8.4 Inventory.
- 8.5 Custody.
- 8.6 Appraisal.
- 8.7 Release before claim.
- 8.8 Commencing the administrative forfeiture proceeding.
- 8.9 Notice of administrative forfeiture.
- 8.10 Claims.
- 8.11 Interplay of administrative and criminal judicial forfeiture proceedings.
- 8.12 Declaration of administrative forfeiture.
- 8.13 Return of property.
- 8.14 Disposition of property before forfeiture.
- 8.15 Requests for hardship release of seized property.
- 8.16 Attorney fees and costs.

**Subpart B—Expedited Forfeiture Proceedings for Property Seizures Based on Violations Involving the Possession of Personal Use Quantities of a Controlled Substance**

- 8.17 Purpose and scope.  
 8.18 Definitions.  
 8.19 Petition for expedited release in an administrative forfeiture proceeding.  
 8.20 Ruling on petition for expedited release in an administrative forfeiture.  
 8.21 Posting of substitute monetary amount in an administrative forfeiture proceeding.  
 8.22 Special notice provision.

**Subpart C—Other Applicable Provisions**

- 8.23 Re-delegation of authority.

**Authority:** 5 U.S.C. 301; 8 U.S.C. 1103, 1324(b); 18 U.S.C. 981, 983, 3051; 19 U.S.C. 1606, 1607, 1608, 1610, 1612(b), 1613, 1618; 21 U.S.C. 822, 871, 872, 880, 881, 883, 958, 965; 28 U.S.C. 509, 510; Pub. L. 100–690, sec. 6079.

**Subpart A—Seizure and Forfeiture of Property**

**§ 8.1 Scope of regulations.**

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

(b) The regulations will apply to all forfeiture actions commenced on or after [EFFECTIVE DATE OF FINAL RULE].

**§ 8.2 Definitions.**

As used in this part, the following terms shall have the meanings specified:

*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.

*Appraised value* means the estimated market value of property at the time and place of seizure if such or similar property was freely offered for sale by a willing seller to a willing buyer.

*Appropriate official* means, in the case of the Drug Enforcement Administration (DEA), the Forfeiture Counsel, DEA. In the case of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), it means the Associate Chief Counsel, Office of Chief Counsel, ATF. In the case of the Federal Bureau of Investigation (FBI), it means the Unit Chief, Legal Forfeiture Unit, Office of the General Counsel, FBI,

except as used in §§ 8.9(a)(2), 8.9(b)(2), 8.10, and 8.15 of this part, where the term *appropriate official* means the office or official identified in the notice published or personal written notice in accordance with § 8.9.

*Contraband* means—

(1) any controlled substance, hazardous raw material, equipment or container, plants, or other property subject to summary forfeiture pursuant to sections 511(f) or (g) of the Controlled Substances Act (21 U.S.C. 881(f) or (g)); or

(2) any controlled substance imported into the United States, or exported out of the United States, in violation of law.

*Civil forfeiture proceeding* means a civil judicial forfeiture action as that term is used in 18 U.S.C. 983.

*Domestic value* means the same as the term *appraised value* as defined in § 8.2(b) of this part.

*Expense* means all costs incurred to detain, inventory, safeguard, maintain, advertise, sell, or dispose of property seized, detained, or forfeited pursuant to any law.

*File or filed* has the following meanings:

(1) A claim or any other document submitted in an administrative forfeiture proceeding is not deemed filed until actually received by the appropriate official identified in the personal written notice and the published notice specified in § 8.9. It is not considered filed if it is received by any other office or official, such as a court, U.S. Attorney, seizing agent, local ATF or DEA office, or FBI Headquarters. In addition, a claim in an administrative forfeiture proceeding is not considered filed if received only by an electronic or facsimile transmission.

(2) For purposes of computing the start of the 90-day period set forth in 18 U.S.C. 983(a)(3), an administrative forfeiture claim is filed on the date when the claim is received by the designated appropriate official, even if the claim is received from an incarcerated *pro se* prisoner.

*Interested party* means any person who reasonably appears to have an interest in the property based on the facts known to the seizing agency before a declaration of forfeiture is entered.

*Mail* includes regular or certified U.S. mail and mail and package transportation and delivery services provided by other private or commercial interstate carriers.

*Nonjudicial forfeiture* has the same meaning as administrative forfeiture as defined in § 8.2(a).

*Person* means an individual, partnership, corporation, joint business

enterprise, estate, or other legal entity capable of owning property.

*Property subject to administrative forfeiture* means any personal property of the kinds described in 19 U.S.C. 1607(a)(1)–(4).

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

*Seizing agency* refers to ATF, DEA, or FBI.

**§ 8.3 Seizing property subject to forfeiture.**

(a) *Authority of seizing agents.* All special agents of any seizing agency may seize assets under any Federal statute over which the agency has investigative and/or forfeiture jurisdiction.

(b) *Turnover of assets seized by state and local agencies.* (1) Property that is seized by a state or local law enforcement agency and transferred to a seizing agency for administrative or civil forfeiture may be adopted for administrative forfeiture without the issuance of any Federal seizure warrant or other Federal judicial process.

(2) Where a state or local law enforcement agency maintains custody of property pursuant to process issued by a state or local judicial authority, and notifies a seizing agency of the impending release of such property, the seizing agency may seek and obtain a Federal seizure warrant in anticipation of a state or local judicial authority releasing the asset from state process for purposes of Federal seizure, and may execute such seizure warrant when the state or local law enforcement agency releases the property as allowed or directed by its judicial authority.

**§ 8.4 Inventory.**

The seizing agent shall prepare an inventory of any seized property.

**§ 8.5 Custody.**

(a) All property seized for forfeiture by ATF, DEA, or FBI shall be delivered to the custody of the U.S. Marshals Service (USMS), or a custodian approved by the USMS, as soon as practicable after seizure, unless it is retained as evidence by the seizing agency.

(b) Seized U.S. currency (and, to the extent practicable, seized foreign currency and negotiable instruments) must be deposited promptly in the Seized Asset Deposit Fund pending forfeiture. Provisional exceptions to this requirement may be granted as follows:

(1) If the seized currency has a value less than \$5,000 and a supervisory

official within a U.S. Attorney's Office determines in writing that the currency is reasonably likely to serve a significant, independent, tangible evidentiary purpose, or that retention is necessary while the potential evidentiary significance of the currency is being determined by scientific testing or otherwise; or

(2) If the seized currency has a value greater than \$5,000 and the Chief of the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, determines in writing that the currency is reasonably likely to serve a significant, independent, tangible evidentiary purpose, or that retention is necessary while the potential evidentiary significance of the currency is being determined by scientific testing or otherwise.

(c) Seized currency has a *significant independent, tangible evidentiary purpose* as those terms are used in §§ 8.5(b)(1) and (2) of this part if, for example, it bears fingerprint evidence, is packaged in an incriminating fashion, or contains a traceable amount of narcotic residue or some other substance of evidentiary significance. If only a portion of the seized currency has evidentiary value, only that portion should be retained; the balance should be deposited.

#### § 8.6 Appraisal.

The seizing agency or its designee shall determine the domestic value of seized property as soon as practicable following seizure.

#### § 8.7 Release before claim.

(a) After seizure for forfeiture and prior to the filing of any claim, ATF's Chief, Asset Forfeiture and Seized Property Branch, or designee, the appropriate DEA Special Agent in Charge, or designee, or the appropriate FBI Special Agent in Charge, or designee, whichever is applicable, is authorized to release property seized for forfeiture, provided:

(1) The property is not contraband, evidence of a violation of law, or any property, the possession of which by the claimant, petitioner, or the person from whom it was seized is prohibited by state or Federal law, and does not have a design or other characteristic that particularly suits it for use in illegal activities; and

(2) The official designated in paragraph (a) of this section determines within 10 days of seizure that there is an innocent party with the right to immediate possession of the property or that the release would be in the best interest of justice or the Government.

(b) Further, at any time after seizure and before any claim is referred, such seized property may be released if the appropriate official of the seizing agency determines that there is an innocent party with the right to immediate possession of the property or that the release would be in the best interest of justice or the Government.

#### § 8.8 Commencing the administrative forfeiture proceeding.

An administrative forfeiture proceeding begins when notice is first published in accordance with § 8.9(a) of this part, or the first personal written notice is sent in accordance with § 8.9(b) of this part, whichever occurs first.

#### § 8.9 Notice of administrative forfeiture.

(a) *Notice by publication.* (1) After seizing property subject to administrative forfeiture, the appropriate official of the seizing agency shall select from the following options a means of publication reasonably calculated to notify potential claimants of the seizure and intent to forfeit and sell or otherwise dispose of the property:

(i) 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

(ii) Posting a notice on an official government Internet site for at least 30 consecutive days.

(2) The published notice shall:

(i) Describe the seized property;

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

(iii) 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

(iv) State the identity of the appropriate official of the seizing agency and address where the claim must be filed.

(b) *Personal written notice.* (1) *Manner of providing notice.* After seizing property subject to administrative forfeiture, the seizing agency, in addition to publishing notice, shall send personal written notice of the seizure to each interested party in a manner reasonably calculated to reach such parties.

(2) *Content of personal written notice.* The personal written notice sent by the seizing agency shall:

(i) State the date when the personal written notice is sent;

(ii) State the deadline for filing a claim, at least 35 days after the personal written notice is sent;

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

(iv) State the identity of the appropriate official of the seizing agency and the address where the claim must be filed; and

(v) Describe the seized property.

(c) *Timing of notice.* (1) *Date of personal notice.* Personal written notice is sent on the date when the seizing agency causes it to be placed in the mail, delivered to a commercial carrier, or otherwise sent by means reasonably calculated to reach the interested party. The personal written notice required by § 8.9(b) of this part shall be sent as soon as practicable, and in no case more than 60 days after the date of seizure (or 90 days after the date of seizure by a state or local law enforcement agency if the property was turned over to a Federal law enforcement agency for the purpose of forfeiture under Federal law).

(2) *Civil judicial forfeiture.* 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 (c)(1) of this section.

(3) *Criminal indictment.* If, before the time period for sending notice under paragraph (c)(1) of this section expires, no civil judicial forfeiture action is filed, but a criminal indictment or information is obtained containing an allegation that the property is subject to forfeiture, the seizing agency shall either:

(i) Send timely personal written notice and continue the administrative forfeiture proceeding; or

(ii) After consulting with the U.S. Attorney, terminate the administrative forfeiture proceeding and notify the custodian to return the property to the person having the right to immediate possession unless the U.S. Attorney takes the steps necessary to maintain custody of the property as provided in the applicable criminal forfeiture statute.

(4) *Subsequent Federal seizure.* If property is seized by a state or local law enforcement agency, but personal written notice is not sent to the person from whom the property is seized within the time period for providing notice under paragraph (c)(1) of this section, then any administrative forfeiture proceeding against the property may commence if:

(i) The property is subsequently seized or restrained by the seizing agency pursuant to a Federal seizure warrant or restraining order and the seizing agency sends notice as soon as

practicable, and in no case more than 60 days after the date of the Federal seizure; or

(ii) The owner of the property consents to forfeiture of the property.

(5) *Tolling.* (i) In states or localities where orders are obtained from a state court authorizing the turnover of seized assets to a Federal seizing agency, the period from the date an application or motion is presented to the state court for the turnover order through the date when such order is issued by the court shall not be included in the time period for providing notice under paragraph (c)(1) of this section.

(ii) 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 of the property into, or the exportation of the property from, the United States, such period of detention shall not be included in the period described in paragraph (c)(1) of this section. In such cases, the 60-day period shall begin to run when the period of detention ends, if a seizing agency seizes the property for the purpose of forfeiture to the United States.

(6) *Identity of interested party.* If a seizing agency determines the identity or interest of an interested party after the seizure or adoption of the property, but before entering a declaration of forfeiture, the agency shall send written notice to such interested party under paragraph (c)(1) of this section not later than 60 days after determining the identity of the interested party or the interested party's interest.

(7) *Extending deadline for notice.* The appropriate official of the seizing agency may extend the period for sending personal written notice under these regulations in a particular case for a period not to exceed 30 days (which period may not be further extended except by a court pursuant to 18 U.S.C. 983(a)(1)(C) and (D)), if the appropriate official determines, and states in writing, that there is reason to believe that 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.

(8) *Certification.* The appropriate official of the seizing agency shall provide the written certification required under 18 U.S.C. 983(a)(1)(C) when the Government requests it and the conditions described in section 983(a)(1)(D) are present.

#### **§ 8.10 Claims.**

(a) *Filing.* In order to contest the forfeiture of seized property in Federal court, any person asserting an interest in seized property subject to an administrative forfeiture proceeding under these regulations must file a claim with the appropriate official, after the commencement of the administrative forfeiture proceeding as defined in § 8.8 of this part, and not later than the deadline set forth in a personal notice letter sent pursuant to § 8.9(b) of this part. If personal written notice is sent but not received, then the intended recipient must file a claim with the appropriate official not later than 30 days after the date of the final publication of the notice of seizure.

(b) *Contents of claim.* A claim shall:

(1) Identify the specific property being claimed;

(2) Identify the claimant and state the claimant's interest in the property; and

(3) Be made under oath by the claimant, not counsel for the claimant, and recite that it is made under penalty of perjury, consistent with the requirements of 28 U.S.C. 1746. An acknowledgment, attestation, or certification by a notary public alone is insufficient.

(c) *Availability of claim forms.* The claim need not be made in any particular form. However, each seizing agency conducting forfeitures under these regulations must make claim forms generally available on request. Such forms shall be written in easily understandable language. A request for a claim form does not extend the deadline for filing a claim. Any person may obtain a claim form by requesting one in writing from the appropriate official.

(d) *Cost bond not required.* Any person may file a claim under § 8.10(a) of this part without posting bond, except in forfeitures under statutes listed in 18 U.S.C. 983(i).

(e) *Referral of claim.* Upon receipt of a claim that meets the requirements of § 8.10(a) and (b) of this part, the seizing agency shall return the property or shall suspend the administrative forfeiture proceeding and promptly transmit the claim, together with a description of the property and a complete statement of the facts and circumstances surrounding the seizure, to the appropriate U.S. Attorney for commencement of judicial forfeiture proceeding. Upon making the determination that the seized property will be released, the agency shall promptly notify the person with a right to immediate possession of the property, informing that person to contact the property custodian within a specified period for release of the property, and

further informing that person that failure to contact the property custodian within the specified period for release of the property will result in abandonment of the property pursuant to applicable regulations. The seizing agency shall notify the property custodian of the identity of the person to whom the property should be released. The property custodian shall have the right to require presentation of proper identification or to take other steps to verify the identity of the person who seeks the release of property, or both.

(f) *Premature filing.* If a claim is filed with the appropriate official after the seizure of property, but before the commencement of the administrative forfeiture proceeding as defined in § 8.8 of this part, the claim shall be deemed filed on the 30th day after the commencement of the administrative forfeiture proceeding. If such claim meets the requirements of § 8.10(b) of this part, the seizing agency shall suspend the administrative forfeiture proceedings and promptly transmit the claim, together with a description of the property and a complete statement of the facts and circumstances surrounding the seizure to the appropriate U.S. Attorney for commencement of judicial forfeiture proceedings.

(g) *Defective claims.* If the seizing agency determines that an otherwise timely claim does not meet the requirements of § 8.10(b) of this part, the seizing agency may notify the claimant of this determination and allow the claimant a reasonable time to cure the defect(s) in the claim. If, within the time allowed by the seizing agency, the requirements of § 8.10(b) of this part are not met, the claim shall be void and the forfeiture proceedings shall proceed as if no claim had been submitted. If the claimant timely cures the deficiency, then the claim shall be deemed filed on the date when the appropriate official receives the cured claim.

#### **§ 8.11 Interplay of administrative and criminal judicial forfeiture proceedings.**

An administrative forfeiture proceeding pending against seized or restrained property does not bar the Government from alleging that the same property is forfeitable in a criminal case. Notwithstanding the fact that an allegation of forfeiture has been included in a criminal indictment or information, the property may be administratively forfeited in a parallel proceeding.

#### **§ 8.12 Declaration of administrative forfeiture.**

If the seizing agency commences a timely proceeding against property



subject to administrative forfeiture, and no valid and timely claim is filed, the appropriate official of the seizing agency shall declare the property forfeited. The declaration of forfeiture shall have the same force and effect as a final decree and order of forfeiture in a Federal judicial forfeiture proceeding.

#### **§ 8.13 Return of property.**

(a) If, under 18 U.S.C. 983(a)(3), the United States is required to return seized property, the U.S. Attorney in charge of the matter shall immediately notify the appropriate seizing agency that the 90-day deadline was not met. Under this subsection, the United States is not required to return property for which it has an independent basis for continued custody, including but not limited to contraband or evidence of a violation of law.

(b) Upon becoming aware that the seized property must be released, the agency shall promptly notify the person with a right to immediate possession of the property, informing that person to contact the property custodian within a specified period for release of the property, and further informing that person that failure to contact the property custodian within the specified period for release of the property may result in initiation of abandonment proceedings against the property pursuant to 41 CFR part 128-48. The seizing agency shall notify the property custodian of the identity of the person to whom the property should be released.

(c) The property custodian shall have the right to require presentation of proper identification and to verify the identity of the person who seeks the release of property.

#### **§ 8.14 Disposition of property before forfeiture.**

(a) Whenever it appears to the seizing agency that any seized property is liable to perish or to waste, or to be greatly reduced in value during its detention for forfeiture, or that the expense of keeping the property is or will be disproportionate to its value, the appropriate official of the seizing agency may order destruction, sale, or other disposition of such property prior to forfeiture. In addition, the owner may obtain release of the property by posting a substitute monetary amount with the seizing agency to be held subject to forfeiture proceedings in place of the seized property to be released. Upon approval by the appropriate official of the seizing agency, the property will be released to the owner after the payment of an amount equal to the government appraised value of the property if the

property is not evidence of a violation of law, is not contraband, and has no design or other characteristics that particularly suit it for use in illegal activities. This payment must be in the form of a money order, an official bank check, or a cashier's check made payable to the United States Marshals Service. A bond in the form of a cashier's check or official bank check will be considered as paid once the check has been accepted for payment by the financial institution that issued the check. If a substitute amount is posted and the property is administratively forfeited, the seizing agency will forfeit the substitute amount in lieu of the property. The pre-forfeiture destruction, sale, or other disposition of seized property pursuant to this section shall not extinguish any person's rights to the value of the property under applicable law. The authority vested in the appropriate official under this subsection may not be delegated.

(b) The seizing agency shall commence forfeiture proceedings, regardless of the disposition of the property under § 8.14(a) of this part. A person with an interest in the property that was destroyed or otherwise disposed of under § 8.14(a) of this part may file a claim to contest the forfeiture of the property or a petition for remission or mitigation of the forfeiture. No government agent or employee shall be liable for the destruction or other disposition of property made pursuant to § 8.14(a) of this part. The destruction or other disposition of the property pursuant to this section does not impair *in rem* jurisdiction.

#### **§ 8.15 Requests for hardship release of seized property.**

(a) Under certain circumstances a claimant may be entitled to immediate release of seized property on the basis of hardship.

(b) Any person filing a request for hardship release must also file a claim to the seized property pursuant to § 8.10 of this part and as defined in 18 U.S.C. 983(a).

(c) The timely filing of a valid claim pursuant to § 8.10 of this part does not entitle claimant to possession of the seized property, but a claimant may request immediate release of the property while the forfeiture is pending, based on hardship.

(d) A claimant seeking hardship release of property under 18 U.S.C. 983(f) and these regulations must file a written request with the appropriate official. The request must establish that:

(1) The claimant has a possessory interest in the property;

(2) The claimant has sufficient ties to the community to provide assurance that the property will be available at the time of trial;

(3) The continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;

(4) The claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

(5) The seized property is not:

(i) Contraband, any property, the possession of which by the claimant, petitioner, or the person from whom it was seized is prohibited by state or Federal law, currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;

(ii) Intended to be used as evidence of a violation of law;

(iii) By reason of design or other characteristic, particularly suited for use in illegal activities; or

(iv) Likely to be used to commit additional criminal acts if returned to the claimant.

(e) A hardship release request pursuant to this section shall be deemed to have been made on the date when it is received by the appropriate official as defined in § 8.2(c) of this part or the date the claim was deemed filed under § 8.10(f) of this part. If the request is ruled on and denied by the appropriate official or the property has not been released within the 15-day time period, the claimant may file a petition in Federal district court pursuant to 18 U.S.C. 983(f)(3). If a petition is filed in Federal district court, the claimant must send a copy of the petition to the agency to which the hardship petition was originally submitted and to the U.S. Attorney in the judicial district in which the judicial petition was filed.

(f) If a civil forfeiture complaint is filed on the property and the claimant files a claim with the court pursuant to 18 U.S.C. 983(a)(4)(A) and Rule G(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims, a hardship petition may be submitted to the individual identified in the public or personal notice of the civil judicial forfeiture action.

**§ 8.16 Attorney fees and costs.**

The United States is not liable for attorney fees or costs in any administrative forfeiture proceeding, including such proceedings in which a claim is filed, the matter is referred to the U.S. Attorney, and the U.S. Attorney declines to commence judicial forfeiture proceedings.

**Subpart B—Expedited Forfeiture Proceedings for Property Seizures Based on Violations Involving the Possession of Personal Use Quantities of a Controlled Substance****§ 8.17 Purpose and scope.**

(a) The following definitions, regulations, and criteria are designed to establish and implement procedures required by section 6079 of the Anti-Drug Abuse Act of 1988, Public Law 100-690, 102 Stat. 4181. They are intended to supplement existing law and procedures relative to the forfeiture of property under the identified statutory authority. These regulations do not affect the existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture, nor do these provisions relieve interested parties from their existing obligations and responsibilities in pursuing their interests through such courses of action. These regulations are intended to reflect the intent of Congress to minimize the adverse impact on those entitled to legal or equitable relief occasioned by the prolonged detention of property subject to forfeiture due to violations of law involving personal use quantities of controlled substances. The definition of *personal use quantities* of a controlled substance as contained herein is intended to distinguish between those small quantities that are generally considered to be possessed for personal consumption and not for further distribution, and those larger quantities generally considered to be intended for further distribution.

(b) In this regard, for violations involving the possession of personal use quantities of a controlled substance, section 6079(b)(2) requires either that administrative forfeiture be completed within 21 days of the seizure of the property, or alternatively, that procedures be established that provide a means by which an individual entitled to relief may initiate an expedited administrative review of the legal and factual basis of the seizure for forfeiture. Should an individual request relief pursuant to these regulations and be entitled to the return of the seized property, such property shall be returned immediately following that

determination, and in no event later than 20 days after the filing of a petition for expedited release by an owner, and the administrative forfeiture process shall cease. Should the individual not be entitled to the return of the seized property, however, the administrative forfeiture of that property shall proceed. The owner may, in any event, obtain release of property pending the administrative forfeiture by submitting to the agency making the determination property sufficient to preserve the Government's vested interest for purposes of the administrative forfeiture.

**§ 8.18 Definitions.**

As used in this subpart, the following terms shall have the meanings specified:

*Commercial fishing industry vessel* means a vessel that:

(1) Commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(2) Commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling; or

(3) Commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or fish processing facility.

*Controlled substance* has the meaning given in 21 U.S.C. 802(6).

*Normal and customary manner* means that inquiry suggested by particular facts and circumstances that would customarily be undertaken by a reasonably prudent individual in a like or similar situation. Actual knowledge of such facts and circumstances is unnecessary, and implied, imputed, or constructive knowledge is sufficient. An established norm, standard, or custom is persuasive but not conclusive or controlling in determining whether an owner acted in a normal and customary manner to ascertain how property would be used by another legally in possession of the property. The failure to act in a normal and customary manner as defined herein will result in the denial of a petition for expedited release of the property and is intended to have the desirable effect of inducing owners of the property to exercise greater care in transferring possession of their property. *Owner* means one having a legal and possessory interest in the property seized for forfeiture. Even though one may hold primary and direct title to the property seized, such person may not have sufficient actual beneficial

interest in the property to support a petition as owner if the facts indicate that another person had dominion and control over the property.

*Personal use quantities* means those amounts of controlled substances in possession in circumstances where there is no other evidence of an intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing, or exporting of any controlled substance.

(1) Evidence that possession of quantities of a controlled substance is for other than personal use may include, for example:

(i) Evidence, such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug "cutting" agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;

(ii) Information from reliable sources indicating possession of a controlled substance with intent to distribute;

(iii) The arrest or conviction record of the person or persons in actual or constructive possession of the controlled substance for offenses under Federal, state or local law that indicates an intent to distribute a controlled substance;

(iv) Circumstances or reliable information indicating that the controlled substance is related to large amounts of cash or any amount of prerecorded government funds;

(v) Circumstances or reliable information indicating that the controlled substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery;

(vi) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute; or

(vii) The fact that the controlled substance was recovered from sweepings.

(2) Possession of a controlled substance shall be presumed to be for personal use when there are no indicia of illicit drug trafficking or distribution—such as, but not limited to, the factors listed above—and the amounts do not exceed the following quantities:

(i) One gram of a mixture or substance containing a detectable amount of heroin;

(ii) One gram of a mixture or substance containing a detectable amount of—

(A) Coca leaves, except coca leaves and extracts of coca leaves from which

cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(B) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(C) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(D) Any compound, mixture, or preparation that contains any quantity of any of the substances referred to in paragraphs (2)(ii)(A) through (C) of this definition;

(iii)  $\frac{1}{10}$ th gram of a mixture or substance described in paragraph (e)(2)(ii) of this section which contains cocaine base;

(iv)  $\frac{1}{10}$ th gram of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 500 micrograms of lysergic acid diethylamide (LSD);

(vi) One ounce of a mixture or substance containing a detectable amount of marijuana;

(vii) One gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

(3) The possession of a narcotic, a depressant, a stimulant, a hallucinogen, or a cannabis-controlled substance will be considered in excess of personal use quantities if the dosage unit amount possessed provides the same or greater equivalent efficacy as the quantities described in paragraph (e)(2) of this section.

*Property* means property subject to forfeiture under 21 U.S.C. 881(a)(4), (6), and (7); 19 U.S.C. 1595a; and 49 U.S.C. 80303.

*Seizing agency* means the Federal agency that has seized the property or adopted the seizure of another agency and has the responsibility for administratively forfeiting the property;

*Statutory rights or defenses to the forfeiture* means all legal and equitable rights and remedies available to a claimant of property seized for forfeiture.

#### **§ 8.19 Petition for expedited release in an administrative forfeiture proceeding.**

(a) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities the owner may petition the seizing agency for expedited release of the property.

(b) Where property described in § 8.19(a) of this part is a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations, which would be subject to seizure for administrative forfeiture for

a violation of law involving controlled substances in personal use quantities, a summons to appear shall be issued in lieu of a physical seizure. The vessel shall report to the port designated in the summons. The seizing agency shall be authorized to effect administrative forfeiture as if the vessel had been physically seized. Upon answering the summons to appear on or prior to the last reporting date specified in the summons, the owner of the vessel may file a petition for expedited release pursuant to § 8.19(a) of this part, and the provisions of § 8.19(a) of this part and other provisions in this section pertaining to a petition for expedited release shall apply as if the vessel had been physically seized.

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

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

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

(3) The owner did not know of or consent to the illegal use of the property, or in the event that the owner knew or should have known of the illegal use, the owner did what reasonably could be expected to prevent the violation.

(d) In addition to those factors listed in § 8.19(c) of this part, if an owner can demonstrate that the owner has other statutory rights or defenses that would cause the owner to prevail on the issue of forfeiture, such factors shall also be considered in ruling on the petition for expedited release.

(e) A petition for expedited release must be received by the appropriate seizing agency within 20 days from the date of the first publication of the notice of seizure in order to be considered by the seizing agency. The petition must be executed and sworn to by the owner and both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED RELEASE." Such petition shall be filed with the appropriate office or official identified in the personal written notice and the publication notice.

(f) The petition shall include the following:

(1) A complete description of the property, including identification numbers, if any, and the date and place of seizure;

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

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

#### **§ 8.20 Ruling on petition for expedited release in an administrative forfeiture proceeding.**

(a) If a final administrative determination of the case, without regard to the provisions of this section, is made within 21 days of the seizure, the seizing agency need take no further action under this section on a petition for expedited release received pursuant to § 8.19(a) of this part.

(b) If no such final administrative determination is made within 21 days of the seizure, the following procedure shall apply. The seizing agency shall, within 20 days after the receipt of the petition for expedited release, determine whether the petition filed by the owner has established the factors listed in § 8.19(c) of this part and:

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

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

#### **§ 8.21 Posting of substitute monetary amount in an administrative forfeiture proceeding.**

(a) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities, the owner may obtain release of the property by posting a substitute monetary amount with the seizing agency to be held subject to forfeiture proceedings in place of the seized property to be released. The property will be released to the owner upon the payment of an amount equal to the government appraised value of the property if the property is not evidence of a violation of law and has no design or other characteristics that particularly suit it for use in illegal activities. This payment must be in the form of a traveler's check, a money order, a cashier's check, or an irrevocable letter of credit made payable to the seizing agency. A bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution which issued the check.

(b) If a substitute amount is posted and the property is administratively

forfeited, the seizing agency will forfeit the substitute amount in lieu of the property.

#### § 8.22 Special notice provision.

At the time of seizure of property defined in § 8.18 of this part for violations involving the possession of personal use quantities of a controlled substance, the seizing agency must provide written notice to the possessor of the property specifying the procedures for the filing of a petition for expedited release and for the posting of a substitute monetary bond as set forth in section 6079 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

#### Subpart C—Other Applicable Provisions

#### § 8.23 Re-delegation of authority.

(a) *Re-delegation of authority permitted.* (1) The powers and responsibilities delegated to the DEA Forfeiture Counsel by this regulation may be re-delegated to attorneys working under the direct supervision of the DEA Forfeiture Counsel.

(2) The powers and responsibilities delegated to the FBI Unit Chief, Legal Forfeiture Unit, by this regulation may be re-delegated to the attorneys working under the direct supervision of the FBI Unit Chief, Legal Forfeiture Unit.

(3) The powers and responsibilities delegated to the Associate Chief Counsel, Office of Chief Counsel, ATF may be re-delegated to the attorneys working under the direct supervision of the Associate Chief Counsel, Office of Chief Counsel, ATF.

(b) *Re-delegation of authority not permitted.* (1) The powers and responsibilities delegated to the DEA Forfeiture Counsel, the FBI Unit Chief, Legal Forfeiture Unit, and the ATF Associate Chief Counsel, Office of Chief Counsel to make decisions regarding the disposition of property before forfeiture pursuant to § 8.14 of this part may not be re-delegated.

(2) The powers and responsibilities delegated to the DEA Forfeiture Counsel, the FBI Unit Chief, Legal Forfeiture Unit, and the ATF Associate Chief Counsel, Office of Chief Counsel to make decisions regarding the delay of notice of forfeiture pursuant to §§ 8.9(c)(7) and (8) of this part and 18 U.S.C. 983(a)(1)(B)–(C) may not be re-delegated.

3. Revise part 9 to read as follows:

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

Sec.

9.1 Purpose, authority, 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 Remission procedures for victims.

9.9 Miscellaneous provisions.

**Authority:** 5 U.S.C. 301; 8 U.S.C. 1103, 1324(b); 18 U.S.C. 981, 983, 3051; 19 U.S.C. 1606, 1607, 1608, 1610, 1612(b), 1613, 1618; 21 U.S.C. 822, 871, 872, 880, 881, 883, 958, 965; 28 U.S.C. 509, 510; Pub. L. 100–690, sec. 6079.

#### § 9.1 Purpose, authority, 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 Department of Justice's Criminal Division. The purpose of this part is to provide a basis for 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 (FBI), 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 (DEA), authority to grant remission and mitigation is delegated to the Forfeiture Counsel, Office of Chief Counsel; and within the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), authority to grant remission and mitigation is delegated to the Associate Chief Counsel, Office of Chief Counsel.

(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.

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

(c) *Scope.* 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.

(d) 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. This part applies to all forfeiture actions commenced on or after [EFFECTIVE DATE OF FINAL RULE].

#### § 9.2 Definitions.

As used in this part:

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

*Appraised value* means the estimated market value of property at the time and place of seizure if such or similar property were freely offered for sale between a willing seller and a willing buyer.

*Assets Forfeiture Fund* means the Department of Justice Assets Forfeiture Fund or Department of the Treasury Forfeiture Fund, depending upon the identity of the seizing agency.

*Attorney General* means the Attorney General of the United States or his or her designee.

*Beneficial owner* means a person with actual use of, as well as an interest in, the property subject to forfeiture.

*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.

*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.

*Judgment creditor* means one who has obtained a judgment against the debtor but has not yet received full satisfaction of the judgment.

*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.

*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).

*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 and unpaid interest at the time of seizure and by adding to that sum unpaid interest calculated from the date of seizure through the last full month prior to the date of the decision on the petition. Where a rate of interest is set forth in a security agreement, the rate of interest to be used in this computation will be the annual percentage rate so specified in the security agreement that is the basis of the lienholder's interest. In this computation, however, there shall be no allowances for attorney fees, accelerated or enhanced interest charges, amounts set by contract as damages, unearned extended warranty fees, insurance, service contract charges incurred after the date of seizure, allowances for dealer's reserve, or any other similar charges.

*Nonjudicial forfeiture* has the same meaning as *administrative forfeiture* as defined in this section.

*Owner* means the person in whom primary title is vested or whose interest is manifested by the actual and beneficial use of the property, even though the title is vested in another. A *victim* of an offense, as defined in this section, may also be an owner if he or she has a present legally cognizable ownership interest in the property forfeited. A nominal owner of property will not be treated as its true owner if he or she is not its beneficial owner.

*Person* means an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property.

*Petition* means a petition for remission or mitigation of forfeiture

under the regulations in this part. This definition includes a petition for restoration of the proceeds of sale of forfeited property and a petition for the value of forfeited property placed into official use.

*Petitioner* means the person applying for remission, mitigation, or restoration of the proceeds of sale, or for the appraised value of forfeited property, under this part. A petitioner may be an *owner* as defined in this section, a *lienholder* as defined in this section, or a *victim* as defined in this section, subject to the limitations of § 9.8.

*Property* means real or personal property of any kind capable of being owned or possessed.

*Record* means a series of arrests for related crimes, unless the arrestee was acquitted or the charges were dismissed for lack of evidence, a conviction for a related crime or completion of sentence within ten years of the acquisition of the property subject to forfeiture, or two convictions for a related crime at any time in the past.

*Related crime* as defined in this section and used in § 9.6(e) means any crime similar in nature to that which gives rise to the seizure of property for forfeiture. For example, where property is seized for a violation of the Federal laws relating to drugs, a related crime would be any offense involving a violation of the Federal laws relating to drugs or the laws of any state or political subdivision thereof relating to drugs.

*Related offense* as used in § 9.8 means:

- (1) Any predicate offense charged in a Federal Racketeer Influenced and Corrupt Organizations Act (RICO) count for which forfeiture was ordered; or
- (2) An offense committed as part of the same scheme or design, or pursuant to the same conspiracy, as was involved in the offense for which forfeiture was ordered.

*Ruling official* means any official to whom decision making authority has been delegated pursuant to § 9.1(b).

*Seizing agency* means the Federal agency that seized the property or adopted the seizure of another agency for Federal forfeiture.

*Victim* means a person who has incurred a pecuniary loss as a direct result of the commission of the offense underlying a forfeiture. A drug user is not considered a victim of a drug trafficking offense under this definition. A victim does not include one who acquires a right to sue the perpetrator of the criminal offense for any loss by assignment, subrogation, inheritance, or otherwise from the actual victim, unless that person has acquired an actual

ownership interest in the forfeited property; provided however, that if a victim has received compensation from insurance or any other source with respect to a pecuniary loss, remission may be granted to the third party who provided the compensation, up to the amount of the victim's pecuniary loss as defined in § 9.8(c).

*Violator* means the person whose use or acquisition of the property in violation of the law subjected such property to seizure for forfeiture.

### § 9.3 Petitions in administrative forfeiture cases.

(a) *Notice of seizure.* The notice of seizure and intent to forfeit the property shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission or mitigation within 30 days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until the property has been forfeited, except in cases involving petitions to restore the proceeds from the sale of forfeited property. A notice of seizure shall include the title of the seizing agency, the ruling official, the mailing and street address of the official to whom petitions should be sent, and an asset identifier number.

(b) *Persons who may file.* (1) A petition for remission or mitigation must be filed by a petitioner as defined in § 9.2 of this part or as prescribed in § 9.9(g) and (h) of this part. A person or person on their behalf may not file a petition if, after notice or knowledge of the fact that a warrant or process has been issued for his apprehension, in order to avoid criminal prosecution, the person:

- (i) Purposely leaves the jurisdiction of the United States;
- (ii) Declines to enter or reenter the United States to submit to its jurisdiction; or
- (iii) Otherwise evades the jurisdiction of the court in which a criminal matter is pending against the person.

(2) Section 9.3(b)(1) of this part applies to a petition filed by a corporation if any majority shareholder, or individual filing the claim on behalf of the corporation:

- (i) Purposely leaves the jurisdiction of the United States;
- (ii) Declines to enter or reenter the United States to submit to its jurisdiction; or
- (iii) Otherwise evades the jurisdiction of the court in which a criminal matter is pending against the person.

(c) *Contents of petition.* (1) All petitions must include the following information in clear and concise terms:

(i) The name, address, and social security or other taxpayer identification number of the person claiming an interest in the seized property who is seeking remission or mitigation;

(ii) The name of the seizing agency, the asset identifier number, and the date and place of seizure;

(iii) A complete description of the property, including make, model, and serial numbers, if any; and

(iv) 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. Such documentation includes evidence establishing the source of funds for seized currency or the source of funds used to purchase the seized asset.

(2) Any factual recitation or documentation of any type in a petition must be supported by a declaration under penalty of perjury that meets the requirements of 28 U.S.C. 1746.

(d) *Releases.* In addition to the contents of the petition for remission or mitigation set forth in § 9.3(c) of this part, upon request of the agency, the petitioner shall also furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the property releasing interest in such property.

(e) *Filing petition with agency.* (1) A petition for remission or mitigation subject to administrative forfeiture is to be sent to the official address provided in the notice of seizure and shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set out in § 9.9(g) of this part.

(2) If the notice of seizure does not provide an official address, the petition shall be addressed to the appropriate Federal agency as follows:

(i)(A) DEA: All submissions must be filed with the Forfeiture Counsel, Asset Forfeiture Section, Office of Chief Counsel, Drug Enforcement Administration, HQS Forfeiture Response, P.O. Box 1475, Quantico, Virginia 22134-1475.

(B) Correspondence via private delivery must be filed with the Forfeiture Counsel, Asset Forfeiture Section (CCF), Office of Chief Counsel, Drug Enforcement Administration, 8701 Morrisette Drive, Springfield, Virginia 22152.

(C) Submission by facsimile or other electronic means will not be accepted.

(ii)(A) FBI: All submissions must be filed with the FBI Special Agent in

Charge at the Field Office that seized the property.

(B) Submission by facsimile or other electronic means will not be accepted.

(iii)(A) ATF: All submissions must be filed with the Office of Chief Counsel, Attention: Forfeiture Counsel, 99 New York Avenue, NE, Washington, DC 20226.

(B) Submission by facsimile or other electronic means will not be accepted.

(f) *Agency investigation.* Upon receipt of a petition, the seizing agency shall investigate the merits of the petition and may prepare a written report containing the results of that investigation. This report shall be submitted to the ruling official for review and consideration.

(g) *Ruling.* Upon receipt of the petition and the agency report, the ruling official for the seizing agency shall review the petition and the report, if any, and shall rule on the merits of the petition. No hearing shall be held.

(h) *Petitions granted.* If the ruling official grants a remission or mitigation of the forfeiture, a copy of the decision shall be mailed to the petitioner or, if represented by an attorney, to the petitioner's attorney. A copy shall also be sent to the United States Marshals Service (USMS) or other property custodian. The written decision shall include the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures the petitioner must follow to obtain release of the property or the monetary interest therein.

(i) *Petitions denied.* If the ruling official denies a petition, a copy of the decision shall be mailed to the petitioner or, if represented by an attorney, to the petitioner's attorney of record. A copy of the decision shall also be sent to the USMS or other property custodian. The decision shall specify the reason that the petition was denied. The decision shall advise the petitioner that a request for reconsideration of the denial of the petition may be submitted to the ruling official in accordance with § 9.3(j) of this part.

(j) *Request for reconsideration.* (1) A request for reconsideration of the denial of the petition shall be considered if:

(i) It is postmarked or received by the office of the ruling official within 10 days from the receipt of the notice of denial of the petition by the petitioner; and

(ii) The request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly demonstrating that the denial was erroneous.

(2) In no event shall a request for reconsideration be decided by the same

ruling official who ruled on the original petition.

(3) Only one request for reconsideration of a denial of a petition shall be considered.

(k) *Restoration of proceeds from sale.*

(1) A petition for restoration of the proceeds from the sale of forfeited property, or for the appraised value of forfeited property when the forfeited property has been retained by or delivered to a government agency for official use, may be submitted by an owner or lienholder in cases in which the petitioner:

(i) Did not know of the seizure prior to the entry of a declaration of forfeiture; and

(ii) Could not reasonably have known of the seizure prior to the entry of a declaration of forfeiture.

(2) Such a petition shall be submitted pursuant to § 9.3(b) through (e) of this part within 90 days of the date the property is sold or otherwise disposed of.

#### § 9.4 Petitions in judicial forfeiture cases.

(a) *Notice of seizure.* The notice of seizure and intent to forfeit the property shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission or mitigation within 30 days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until such time as the forfeited property is placed in official use, sold, or otherwise disposed of according to law, except in cases involving petitions to restore property. A notice of seizure shall include the title of the ruling official and the mailing and street address of the official to whom petitions should be sent, the name of the agency seizing the property, an asset identifier number, and the district court docket number.

(b) *Persons who may file.* A petition for remission or mitigation must be filed by a petitioner as defined in § 9.2(p) of this part or as prescribed in § 9.9(g) and (h) of this part.

(c) *Contents of petition.* (1) All petitions must include the following information in clear and concise terms:

(i) The name, address, and social security or other taxpayer identification number of the person claiming an interest in the seized property who is seeking remission or mitigation;

(ii) The name of the seizing agency, the asset identifier number, and the date and place of seizure;

(iii) The district court docket number;

(iv) A complete description of the property, including the address or legal description of real property, and make,

model, and serial numbers of personal property, if any; and

(v) A description of the petitioner's interest in the property as owner, lienholder, or otherwise, supported by original or certified bills of sale, contracts, mortgages, deeds, or other documentary evidence.

(2) Any factual recitation or documentation of any type in a petition must be supported by a declaration under penalty of perjury that meets the requirements of 28 U.S.C. 1746.

(d) *Releases.* In addition to the content of the petition for remission or mitigation set forth in § 9.4(c) of this part, the petitioner, upon request, also shall furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the property releasing the interest in such property.

(e) *Filing petition with Department of Justice.* A petition for remission or mitigation of a judicial forfeiture shall be addressed to the Attorney General; shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set forth in § 9.9(g) of this part; and shall be submitted to the U.S. Attorney for the district in which the judicial forfeiture proceedings are brought.

(f) *Agency investigation and recommendation; U.S. Attorney's recommendation.* Upon receipt of a petition, the U.S. Attorney shall direct the seizing agency to investigate the merits of the petition based on the information provided by the petitioner and the totality of the agency's investigation of the underlying basis for forfeiture. The agency shall submit to the U.S. Attorney a report of its investigation and its recommendation on whether the petition should be granted or denied. Upon receipt of the agency's report and recommendation, the U.S. Attorney shall forward to the Chief, Asset Forfeiture and Money Laundering Section, the petition, the seizing agency's report and recommendation, and the U.S. Attorney's recommendation on whether the petition should be granted or denied.

(g) *Ruling.* The Chief shall rule on the petition. No hearing shall be held. The Chief shall not rule on any petition for remission if such remission was previously denied by the agency pursuant to § 9.3 of this part.

(h) *Petitions under Internal Revenue Service liquor laws.* The Chief shall accept and consider petitions submitted in judicial forfeiture proceedings under the Internal Revenue Service liquor laws

only prior to the time a decree of forfeiture is entered. Thereafter, the district court has exclusive jurisdiction.

(i) *Petitions granted.* If the Chief grants a remission or mitigates the forfeiture, the Chief shall mail a copy of the decision to the petitioner (or, if represented by an attorney, to the petitioner's attorney) and shall mail or transmit electronically a copy of the decision to the appropriate U.S.

Attorney, the USMS or other property custodian, and the seizing agency. The written decision shall include the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures the petitioner must follow to obtain release of the property or the monetary interest therein. The Chief shall advise the petitioner or the petitioner's attorney to consult with the U.S. Attorney as to such terms and conditions. The U.S. Attorney shall confer with the seizing agency regarding the release and shall coordinate disposition of the property with that office and the USMS or other property custodian.

(j) *Petitions denied.* If the Chief denies a petition, a copy of that decision shall be mailed to the petitioner (or, if represented by an attorney, to the petitioner's attorney of record) and mailed or transmitted electronically to the appropriate U.S. Attorney, the USMS or other property custodian, and to the seizing agency. The decision shall specify the reason that the petition was denied. The decision shall advise the petitioner that a request for reconsideration of the denial of the petition may be submitted to the Chief at the address provided in the decision, in accordance with § 9.4(k) of this part.

(k) *Request for reconsideration.* (1) A request for reconsideration of the denial shall be considered if:

(i) It is postmarked or received by the Asset Forfeiture and Money Laundering Section at the address contained in the decision denying the petition within 10 days from the receipt of the notice of denial of the petition by the petitioner;

(ii) A copy of the request is also received by the appropriate U.S. Attorney within 10 days of the receipt of the denial by the petitioner; and

(iii) The request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly demonstrating that the denial was erroneous.

(2) In no event shall a request for reconsideration be decided by the ruling official who ruled on the original petition.

(3) Only one request for reconsideration of a denial of a petition shall be considered.

(4) Upon receipt of the request for reconsideration of the denial of a petition, disposition of the property will be delayed pending notice of the decision at the request of the Chief. If the request for reconsideration is not received within the prescribed period, the USMS may dispose of the property.

(l) *Restoration of proceeds from sale.*

(1) A petition for restoration of the proceeds from the sale of forfeited property, or for the appraised value of forfeited property when the forfeited property has been retained by or delivered to a government agency for official use, may be submitted by an owner or lienholder in cases in which the petitioner:

(i) Did not know of the seizure prior to the entry of a final order of forfeiture; and

(ii) Could not reasonably have known of the seizure prior to the entry of a final order of forfeiture.

(2) Such a petition must be submitted pursuant to § 9.4(b) through (e) of this part within 90 days of the date the property was sold or otherwise disposed of.

#### **§ 9.5 Criteria governing administrative and judicial remission and mitigation.**

(a) *Remission.* (1) The ruling official shall not grant remission of a forfeiture unless the petitioner establishes that the petitioner has a valid, good faith, and legally cognizable interest in the seized property as owner or lienholder as defined in this part and is an innocent owner within the meaning of 18 U.S.C. 983(d)(2)(A) or 983(d)(3)(A).

(2) For purposes of paragraph (a)(1) of this section, the knowledge and responsibilities of a petitioner's representative, agent, or employee are imputed 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.

(3) The petitioner has the burden of establishing the basis for granting a petition for remission or mitigation of forfeited property, a restoration of proceeds of sale or appraised value of forfeited 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.

(4) The ruling official shall presume a valid forfeiture and shall not consider whether the evidence is sufficient to support the forfeiture.

(5) Willful, materially-false statements or information made or furnished by the

petitioner in support of a petition for remission or mitigation of forfeited property, the restoration of proceeds or appraised value of forfeited property, or the reconsideration of a denial of any such petition, shall be grounds for denial of such petition and possible prosecution for the filing of false statements.

(b) *Mitigation.* (1) The ruling official may grant mitigation to a party not involved in the commission of the offense underlying forfeiture:

(i) Where the petitioner has not met the minimum conditions for remission, but the ruling official finds that some relief should be granted to avoid extreme hardship, and that return of the property combined with imposition of monetary or other conditions of mitigation in lieu of a complete forfeiture will promote the interest of justice and will not diminish the deterrent effect of the law. Extenuating circumstances justifying such a finding include those circumstances that reduce the responsibility of the petitioner for knowledge of the illegal activity, knowledge of the criminal record of a user of the property, or failure to take reasonable steps to prevent the illegal use or acquisition by another for some reason, such as a reasonable fear of reprisal; or

(ii) Where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the ruling official, complete relief is not warranted.

(2) The ruling official may in his or her discretion grant mitigation to a party involved in the commission of the offense underlying the forfeiture where certain mitigating factors exist, including, but not limited to: The lack of a prior record or evidence of similar criminal conduct; if the violation does not include drug distribution, manufacturing, or importation, the fact that the violator has taken steps, such as drug treatment, to prevent further criminal conduct; the fact that the violation was minimal and was not part of a larger criminal scheme; the fact that the violator has cooperated with Federal, state, or local investigations relating to the criminal conduct underlying the forfeiture; or the fact that complete forfeiture of an asset is not necessary to achieve the legitimate purposes of forfeiture.

(3) Mitigation may take the form of a monetary condition or the imposition of other conditions relating to the continued use of the property, and the return of the property, in addition to the imposition of any other costs that would be chargeable as a condition to remission. This monetary condition is

considered as an item of cost payable by the petitioner, and shall be deposited into the Assets Forfeiture Fund as an amount realized from forfeiture in accordance with the applicable statute. If the petitioner fails to accept the ruling official's mitigation decision or any of its conditions, or fails to pay the monetary amount within 20 days of the receipt of the decision, the property shall be sold, and the monetary amount imposed and other costs chargeable as a condition to mitigation shall be subtracted from the proceeds of the sale before transmitting the remainder to the petitioner.

#### § 9.6 Special rules for specific petitioners.

(a) *General creditors.* A general creditor may not be granted remission or mitigation of forfeiture unless he or she otherwise qualifies as petitioner under this part.

(b) *Rival claimants.* If the beneficial owner of the forfeited property and the owner of a security interest in the same property each file a petition, and if both petitions are found to be meritorious, the claims of the beneficial owner shall take precedence.

(c) *Voluntary bailments.* A petitioner who allows another to use his or her property without cost, and who is not in the business of lending money secured by property or of leasing or renting property for profit, shall be granted remission or mitigation of forfeiture in accordance with the provisions of § 9.5 of this part.

(d) *Lessors.* A person engaged in the business of leasing or renting real or personal property on a long-term basis with the right to sublease shall not be entitled to remission or mitigation of a forfeiture of such property unless the lessor can demonstrate compliance with all the requirements of § 9.5 of this part.

(e) *Straw owners.* A petition by any person who has acquired a property interest recognizable under this part, and who knew or had reason to believe that the interest was conveyed by the previous owner for the purpose of circumventing seizure, forfeiture, or the regulations in this part, shall be denied. A petition by a person who purchases or owns property for another who has a record for related crimes as defined in § 9.2 of this part, or a petition by a lienholder who knows or has reason to believe that the purchaser or owner of record is not the real purchaser or owner, shall be denied unless both the purchaser of record and the real purchaser or owner meet the requirements of § 9.5 of this part.

(f) *Judgment creditors.* (1) A judgment creditor will be recognized as a lienholder if:

(i) The judgment was duly recorded before the seizure of the property for forfeiture;

(ii) Under applicable state or other local law, the judgment constitutes a valid lien on the property that attached to it before the seizure of the property for forfeiture; and

(iii) The petitioner had no knowledge of the commission of any act or acts giving rise to the forfeiture at the time the judgment became a lien on the forfeited property.

(2) A judgment creditor will not be recognized as a lienholder if the property in question is not property of which the judgment debtor is entitled to claim ownership under applicable state or other local law (e.g., stolen property). A judgment creditor is entitled under this part to no more than the amount of the judgment, exclusive of any interest, costs, or other fees including attorney fees associated with the action that led to the judgment or its collection.

(3) A judgment creditor's lien must be registered in the district where the property is located if the judgment was obtained outside the district.

#### § 9.7 Terms and conditions of remission and mitigation.

(a) *Owners.* (1) An owner's interest in property that has been forfeited is represented by the property itself or by a monetary interest equivalent to that interest at the time of seizure. Whether the property or a monetary equivalent will be remitted to an owner shall be determined at the discretion of the ruling official.

(2) If a civil judicial forfeiture action against the property is pending, release of the property must await an appropriate court order.

(3) Where the Government sells or disposes of the property prior to the grant of the remission, the owner shall receive the proceeds of that sale, less any costs incurred by the Government in the sale. The ruling official, at his or her discretion, may waive the deduction of costs and expenses incident to the forfeiture.

(4) Where the owner does not comply with the conditions imposed upon release of the property by the ruling official, the property shall be sold. Following the sale, the proceeds shall be used to pay all costs of the forfeiture and disposition of the property, in addition to any monetary conditions imposed. The remaining balance shall be paid to the owner.

(b) *Lienholders.* (1) When the forfeited property is to be retained for official use or transferred to a state or local law enforcement agency or foreign government pursuant to law, and



remission or mitigation has been granted to a lienholder, the recipient of the property shall assure that:

(i) In the case of remission, the lien is satisfied as determined through the petition process; or

(ii) In the case of mitigation, an amount equal to the net equity, less any monetary conditions imposed, is paid to the lienholder prior to the release of the property to the recipient agency or foreign government.

(2) When the forfeited property is not retained for official use or transferred to another agency or foreign government pursuant to law, the lienholder shall be notified by the ruling official of the right to select either of the following alternatives:

(i) *Return of property.* The lienholder may obtain possession of the property after paying the United States, through the ruling official, the costs and expenses incident to the forfeiture, the amount, if any, by which the appraised value of the property exceeds the lienholder's net equity in the property, and any amount specified in the ruling official's decision as a condition to remit the property. The ruling official, at his or her discretion, may waive costs and expenses incident to the forfeiture. The ruling official shall forward a copy of the decision, a memorandum of disposition, and the original releases to the USMS or other property custodian who shall thereafter release the property to the lienholder; or

(ii) *Sale of property and payment to lienholder.* Subject to § 9.9(a) of this part, upon sale of the property, the lienholder may receive the payment of a monetary amount up to the sum of the lienholder's net equity, less the expenses and costs incident to the forfeiture and sale of the property, and any other monetary conditions imposed. The ruling official, at his or her discretion, may waive costs and expenses incident to the forfeiture.

(3) If the lienholder does not notify the ruling official of the selection of one of the two options set forth in § 9.7(b)(2) of this part within 20 days of the receipt of notification, the ruling official shall direct the USMS or other property custodian to sell the property and pay the lienholder an amount up to the net equity, less the costs and expenses incurred incident to the forfeiture and sale, and any monetary conditions imposed. In the event a lienholder subsequently receives a payment of any kind on the debt owed for which he or she received payment as a result of the granting of remission or mitigation, the lienholder shall reimburse the Assets Forfeiture Fund to the extent of the payment received.

(4) Where the lienholder does not comply with the conditions imposed upon the release of the property, the property shall be sold after forfeiture. From the proceeds of the sale, all costs incident to the forfeiture and sale shall first be deducted, and the balance up to the net equity, less any monetary conditions, shall be paid to the lienholder.

#### § 9.8 Remission procedures for victims.

This section applies to victims of an offense underlying the forfeiture of property, or of a related offense, who do not have a present ownership interest in the forfeited property (or, in the case of multiple victims of an offense, who do not have a present ownership interest in the forfeited property that is clearly superior to that of other petitioner victims). This section applies only with respect to property forfeited pursuant to statutes that explicitly authorize restoration or remission of forfeited property to victims. A victim requesting remission under this section may concurrently request remission as an owner, pursuant to the regulations set forth in §§ 9.3, 9.4, and 9.7 of this part. The claims of victims granted remission as both an owner and victim shall, like claims of other owners, have priority over the claims of any non-owner victims whose claims are recognized under this section.

##### (a) *Remission procedure for victims.*

(1) *Where to file.* Persons seeking remission as victims shall file petitions for remission with the appropriate deciding official as described in § 9.3(e) (administrative forfeiture) or § 9.4(e) (judicial forfeiture) of this part.

(2) *Time of decision.* The deciding official or his designee as described in § 9.1(b) of this part may consider petitions filed by persons claiming eligibility for remission as victims at any time prior to the disposal of the forfeited property in accordance with law.

(3) *Request for reconsideration.* Persons denied remission under this section may request reconsideration of the denial, in accordance with § 9.3(j) (administrative forfeiture) or § 9.4(k) (judicial forfeiture) of this part.

(b) *Qualification to file.* A victim, as defined in § 9.2 of this part, may be granted remission, if in addition to complying with the other applicable provisions of § 9.8, the victim satisfactorily demonstrates that:

(1) A pecuniary loss of a specific amount has been directly caused by the criminal offense, or related offense, that was the underlying basis for the forfeiture, and that the loss is supported

by documentary evidence including invoices and receipts;

(2) The pecuniary loss is the direct result of the illegal acts and is not the result of otherwise lawful acts that were committed in the course of a criminal offense;

(3) The victim did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner towards the commission of the offense, or related offense, that was the underlying basis of the forfeiture;

(4) The victim has not in fact been compensated for the wrongful loss of the property by the perpetrator or others; and

(5) The victim does not have recourse reasonably available to other assets from which to obtain compensation for the wrongful loss of the property.

(c) *Pecuniary loss.* The amount of the pecuniary loss suffered by a victim for which remission may be granted is limited to the fair market value of the property of which the victim was deprived as of the date of the occurrence of the loss. No allowance shall be made for interest forgone or for collateral expenses incurred to recover lost property or to seek other recompense.

(d) *Torts.* A tort associated with illegal activity that formed the basis for the forfeiture shall not be a basis for remission, unless it constitutes the illegal activity itself, nor shall remission be granted for physical injuries to a petitioner or for damage to a petitioner's property.

(e) *Denial of petition.* In the exercise of his or her discretion, the ruling official may decline to grant remission where:

(1) There is substantial difficulty in calculating the pecuniary loss incurred by the victim or victims;

(2) The amount of the remission, if granted, would be small compared with the amount of expenses incurred by the Government in determining whether to grant remission; or

(3) The total number of victims is large and the monetary amount of the remission so small as to make its granting impractical.

(f) *Pro rata basis.* In granting remission to multiple victims pursuant to this section, the ruling official should generally grant remission on a pro rata basis to recognized victims when petitions cannot be granted in full due to the limited value of the forfeited property. However, the ruling official may consider, among others, the following factors in establishing appropriate priorities in individual cases:

(1) The specificity and reliability of the evidence establishing a loss;

(2) The fact that a particular victim is suffering an extreme financial hardship;

(3) The fact that a particular victim has cooperated with the Government in the investigation related to the forfeiture or to a related prosecution or civil action; and

(4) In the case of petitions filed by multiple victims of related offenses, the fact that a particular victim is a victim of the offense underlying the forfeiture.

(g) *Reimbursement.* Any petitioner granted remission pursuant to this part shall reimburse the Assets Forfeiture Fund for the amount received to the extent the individual later receives compensation for the loss of the property from any other source. The petitioner shall surrender the reimbursement upon payment from any secondary source.

(h) *Claims of financial institution regulatory agencies.* In cases involving property forfeitable under 18 U.S.C. 981(a)(1)(C) or (D), the ruling official may decline to grant a petition filed by a petitioner in whole or in part due to the lack of sufficient forfeitable funds to satisfy both the petition and claims of the financial institution regulatory agencies pursuant to 18 U.S.C. 981(e)(3) or (7). Generally, claims of financial institution regulatory agencies pursuant to 18 U.S.C. 981(e)(3) or (7) shall take priority over claims of victims.

(i) *Amount of remission.* Consistent with the Assets Forfeiture Fund statute (28 U.S.C. 524(c)), the amount of remission shall not exceed the victim's share of the net proceeds of the forfeitures associated with the activity that caused the victim's loss. The calculation of net proceeds includes, but is not limited to, the deduction of allowable government expenses and valid third-party claims.

#### **§ 9.9 Miscellaneous provisions.**

(a) *Priority of payment.* Except where otherwise provided in this part, costs incurred by the USMS and other agencies participating in the forfeiture that were incident to the forfeiture, sale, or other disposition of the property shall be deducted from the amount available for remission or mitigation. Such costs include, but are not limited to, court costs, storage costs, brokerage and other sales-related costs, the amount of any liens and associated costs paid by the Government on the property, costs incurred in paying the ordinary and necessary expenses of a business seized for forfeiture, awards for information as authorized by statute, expenses of trustees or other assistants pursuant to § 9.9(c) of this part, investigative or prosecutive costs specially incurred incident to the particular forfeiture, and

costs incurred incident to the processing of the petition(s) for remission or mitigation. The remaining balance shall be available for remission or mitigation. The ruling official shall direct the distribution of the remaining balance in the following order of priority, except that the ruling official may exercise discretion in determining the priority between petitioners belonging to classes described in paragraphs (a)(3) and (4) of this section in exceptional circumstances:

(1) Owners;

(2) Lienholders;

(3) Federal financial institution regulatory agencies (pursuant to paragraph (e) of this section), not constituting owners or lienholders; and

(4) Victims not constituting owners or lienholders (pursuant to § 9.8 of this part).

(b) *Sale or disposition of property prior to ruling.* If forfeited property has been sold or otherwise disposed of prior to a ruling, the ruling official may grant relief in the form of a monetary amount. The amount realized by the sale of the property is presumed to be the value of the property. Monetary relief shall not be greater than the appraised value of the property at the time of seizure and shall not exceed the amount realized from the sale or other disposition. The proceeds of the sale shall be distributed as follows:

(1) Payment of the Government's expenses incurred incident to the forfeiture and sale, including court costs and storage charges, if any;

(2) Payment to the petitioner of an amount up to his or her interest in the property;

(3) Payment to the Assets Forfeiture Fund of all other costs and expenses incident to the forfeiture;

(4) In the case of victims, payment of any amount up to the amount of his or her loss; and

(5) Payment of the balance remaining, if any, to the Assets Forfeiture Fund.

(c) *Trustees and other assistants.* In the exercise of his or her discretion, the ruling official, with the approval of the Asset Forfeiture and Money Laundering Section, may use the services of a trustee, other government official, or appointed contractors to notify potential petitioners, process petitions, and make recommendations to the ruling official on the distribution of property to petitioners. The expense for such assistance shall be paid out of the forfeited funds.

(d) *Other agencies of the United States.* Where another agency of the United States is entitled to remission or mitigation of forfeited assets because of an interest that is recognizable under

this part or is eligible for such transfer pursuant to 18 U.S.C. 981(e)(6), such agency shall request the transfer in writing, in addition to complying with any applicable provisions of §§ 9.3 through 9.5 of this part. The decision to make such transfer shall be made in writing by the ruling official.

(e) *Financial institution regulatory agencies.* A ruling official may direct the transfer of property under 18 U.S.C. 981(e) to certain Federal financial institution regulatory agencies or an entity acting on their behalf, upon receipt of a written request, in lieu of ruling on a petition for remission or mitigation.

(f) *Transfers to foreign governments.* A ruling official may decline to grant remission to any petitioner other than an owner or lienholder so that forfeited assets may be transferred to a foreign government pursuant to 18 U.S.C. 981(i)(1), 19 U.S.C. 1616a(c)(2), or 21 U.S.C. 881(e)(1)(E).

(g) *Filing by attorneys.* (1) A petition for remission or mitigation may be filed by a petitioner or by his or her attorney or legal guardian. If an attorney files on behalf of the petitioner, the petition must include a signed and sworn statement by the client-petitioner stating that:

(i) The attorney has the authority to represent the petitioner in this proceeding;

(ii) The petitioner has fully reviewed the petition; and

(iii) The petition is truthful and accurate in every respect.

(2) Verbal notification of representation is not acceptable. Responses and notification of rulings shall not be sent to an attorney claiming to represent a petitioner unless a written notice of representation is filed. No extensions of time shall be granted due to delays in submission of the notice of representation.

(h) *Consolidated petitions.* At the discretion of the ruling official in individual cases, a petition may be filed by one petitioner on behalf of other petitioners, provided the petitions are based on similar underlying facts, and the petitioner who files the petition has written authority to do so on behalf of the other petitioners. This authority must be either expressed in documents giving the petitioner the authority to file petitions for remission, or reasonably implied from documents giving the petitioner express authority to file claims or lawsuits related to the course of conduct in question on behalf of these petitioners. An insurer or an administrator of an employee benefit plan, for example, which itself has standing to file a petition as a "victim"

within the meaning of § 9.2 of this part, may also file a petition on behalf of its insured or plan beneficiaries for any claims they may have based on co-payments made to the perpetrator of the offense underlying the forfeiture or the perpetrator of a “related offense” within the meaning of § 9.2 of this part, if the authority to file claims or lawsuits is contained in the document or documents establishing the plan. Where such a petition is filed, any amounts granted as a remission must be transferred to the other petitioners, not the party filing the petition; although, in his or her discretion, the ruling official may use the actual petitioner as an intermediary for transferring the amounts authorized as a remission to the other petitioners.

Dated: April 18, 2011.

**Eric H. Holder, Jr.,**

*Attorney General.*

[FR Doc. 2011–9826 Filed 5–6–11; 8:45 am]

BILLING CODE 4410–02–P; 4410–FY–P; 4410–09–P; 4410–14–P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 31

[REG–151687–10]

RIN 1545–BJ98

#### Withholding on Payments by Government Entities to Persons Providing Property or Services

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to withholding by government entities on payments to persons providing property or services. The proposed regulations reflect changes in the law made by the Tax Increase Prevention and Reconciliation Act of 2005 that require Federal, State, and local government entities to withhold income tax when making payments to persons providing property or services. These proposed regulations would change the provisions related to the effective date of the final regulations concerning these withholding requirements that are being issued concurrently with these proposed regulations. The guidance affects government entities that are required to withhold from payments to persons providing property or services and persons receiving the payments.

**DATES:** Written or electronic comments and requests for a public hearing must be received by August 8, 2011.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–151687–10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–151687–10), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG–151687–10).

**FOR FURTHER INFORMATION CONTACT:** Concerning these proposed regulations, A.G. Kelley, (202) 622–6040; concerning submissions of comments or to request a public hearing, Oluwafunmilayo Taylor at (202) 622–7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed amendments to 26 CFR Part 31 under section 3402(t) of the Internal Revenue Code (Code). Section 3402(t) of the Code was added by section 511 of the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (TIPRA), 120 Stat. 345, which was enacted into law on May 17, 2006. Section 3402(t)(1) provides that the Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) making any payment to any person providing any property or services (including any payment made in connection with a government voucher or certificate program which functions as a payment for property or services) shall deduct and withhold from such payment a tax in an amount equal to 3 percent of such payment. Section 3402(t)(2) provides exceptions to withholding under section 3402(t).

Section 1511 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), 123 Stat. 115, 355, amended the effective date of section 3402(t) withholding. As amended, the statute provides that section 3402(t) applies to payments made after December 31, 2011.

Notice 2010–91, 2010–52 IRB 915, provided interim guidance on the application of section 3402(t) to payments by debit cards, credit cards, stored value cards, and other payment cards.

Proposed regulations under sections 3402(t), 3406, 6011, 6051, 6071, and 6302 of the Code were published in the **Federal Register** on December 5, 2008 (REG–158747–06, 73 FR 74082, 2009–4 IRB 362) (the “2008 proposed regulations”). The 2008 proposed regulations proposed applying the withholding obligations to payments beginning on January 1, 2011, but proposed excluding payments made under contracts existing on January 1, 2011, unless those contracts were materially modified. The final regulations provide an additional one-year extension beyond the amended effective date of the statute. Thus, under the final regulations, the withholding obligation applies to payments made after December 31, 2012, and the exclusion applies to contracts existing on December 31, 2012, that are not materially modified on or after December 31, 2012. These final regulations under sections 3402(t), 3406, 6011, 6051, 6071, and 6302 of the Code (REG–158747–06, Treasury decision) are being published in the **Federal Register** concurrently with these proposed regulations.

Several commenters on the 2008 proposed regulations expressed concern that the requirement to differentiate between payments subject to withholding and payments not subject to withholding based on whether the payment was made under a contract existing on December 31, 2011, and whether that contract had been materially modified, would be burdensome to apply. In response to these concerns, these proposed regulations would provide that the exclusion for payments under existing contracts that had not been materially modified would terminate with payments after December 31, 2013. Thus, these proposed regulations would subject payments under all contracts to section 3402(t) withholding after December 31, 2013, unless another exception applied. This rule would avoid the administrative burden of distinguishing between payments made under existing contracts and all other payments while allowing time to address concerns about applying the withholding requirements to existing contracts.

#### Proposed Effective Date

These regulations are proposed to apply to payments made after December 31, 2011.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined