



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 12

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

RIN 1018–BG73

#### Seizure and Forfeiture Procedures

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

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

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Public comments and materials received on the proposed rule are available on the internet at <https://www.regulations.gov> in Docket No. FWS-HQ-LE-2016-0067.

**FOR FURTHER INFORMATION CONTACT:** Edward Grace, Assistant Director, U.S. Fish and Wildlife Service, Office of Law Enforcement, (703) 358–1949, fax (703) 358–1947. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

We are revising our regulations regarding seizure and administrative forfeiture of property and the disposal of any property forfeited or abandoned to the United States (whether through administrative or judicial forfeiture) under various laws that the Service administers. These regulations establish the procedures that we use for the seizure, bonded release, appraisal, administrative proceeding, petition for remission, and disposal of items subject to forfeiture and reflect the procedures required by CAFRA. This rule makes these regulations easier to understand using simpler language. This revision also more clearly explains the procedures used in administrative forfeiture proceedings, makes the process more efficient, and makes the Service’s seizure and forfeiture procedures more uniform with those of other agencies subject to CAFRA.

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

Since Congress enacted CAFRA in 2000, the Service has implemented that Act’s

requirements. For example, in written guidance that we issued in 2014 on providing notice of seizures and proposed forfeitures, we outlined administrative and judicial options to contest seizures and proposed forfeitures and advised which statutory deadlines apply (OLE Public Bulletin, Revision of Notice of Seizure and Proposed Forfeiture Letter, September 23, 2014). We are now updating the regulations in part 12 of title 50 of the Code of Federal Regulations (50 CFR part 12) to reflect these procedural changes.

We published a proposed rule on June 17, 2016, at 81 FR 39848. We held a 60-day public comment period on the proposed rule. After the comment period closed, we considered the comments, and we address them below. Today, we are finalizing the rule largely as proposed, with some minor changes.

### **Statutory Authority for Rulemaking**

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

- the Bald and Golden Eagle Protection Act, 16 U.S.C. 668 et seq.;
- the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd et seq.;
- the Migratory Bird Treaty Act, 16 U.S.C. 703 et seq. (MBTA);
- the Migratory Bird Hunting and Conservation Stamp Act, 16 U.S.C. 718 et seq.;
- the Airborne Hunting Act, 16 U.S.C. 742j-1;

- the African Elephant Conservation Act, 16 U.S.C. 4201 et seq.;
- the Endangered Species Act of 1973, 16 U.S.C. 1531 et seq. (ESA);
- the Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 et. seq.;
- the Lacey Act, 18 U.S.C. 42;
- the Lacey Act Amendments of 1981, 16 U.S.C. 3371 et seq.;
- the Rhinoceros and Tiger Conservation Act, 16 U.S.C. 5301 et seq.;
- the Antarctic Conservation Act, 16 U.S.C. 2401 et seq.;
- the Archeological Resources Protection Act, 16 U.S.C. 470aa et seq.;
- the Paleontological Resources Preservation Act, 16 U.S.C. 470aaa et seq.; and
- the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et seq.

We note that the Service implements other statutes that may be enforced through the above-listed statutes. For example, importation in violation of the Wild Bird Conservation Act, 16 U.S.C. 4901 et seq., is also a violation of the Lacey Act Amendments of 1981. See 16 U.S.C. 4912(c).

### **Purpose of Rulemaking**

CAFRA (Pub. L. 106-185; 18 U.S.C. 983) superimposes specific procedural requirements over the procedures in various forfeiture laws in existence prior to CAFRA's enactment. We are revising 50 CFR part 12 to reflect in one place the CAFRA procedural overlay and to make changes to increase the efficiency of the regulations, such as allowing the publication of notices through the internet and streamlining the process for claims and petitions for remission. The purposes of the civil forfeiture laws enforced by the Service are remedial, among other things, because forfeiture removes unlawful wildlife from society and is based upon the unlawful use of that wildlife.

## **Summary of Comments and Responses**

We reviewed and considered all substantive information we received during the comment period on the proposed regulation revisions. We received five comments, two of which were identical. Below we summarize the substantive information in those public comments and our responses that explain why we do or do not incorporate the changes suggested by each commenter into this final rule. Comments supporting various provisions of the rulemaking are not included below. As comments were often similar or covered multiple topics, we grouped comments and responses by topic areas.

### **Compliance with Federal Law**

*(1) Comment:* Commenter stated that forfeiture has takings implication under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights; 53 FR 8859, March 18, 1988) and that exemptions alluded to by the Service contradict the spirit of E.O. 12630.

*FWS Response:* Executive Order 12630 specifically exempts seizure and forfeiture of property for violations of law. See E.O. 12630, sections 2(a)(3) (excluding from the takings implications law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings) and 2(c) (excluding actions, including proposed Federal regulations and applications of Federal regulations to specific property, that are law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings).

*(2) Comment:* Commenter stated that civil forfeiture is against constitutional rights to due process.

*FWS Response:* The Federal Government may forfeit people's property yet avoid violating their due process rights. There are two types of due process: procedural due process and substantive due process. Procedural due process concerns property owners'

right to be notified of a seizure and a violation, and their right to be heard, i.e., to make their case. See *United States v. James Daniel Good Real Property*, 510 U.S. 43, 48 (1993). Substantive due process refers to the requirement that laws and regulations must be related to a legitimate government interest (as crime prevention) and may not contain provisions that result in the unfair or arbitrary treatment of an individual. Merriam-Webster.com Legal Dictionary, <https://www.merriam-webster.com>. Accessed March 7, 2023.

The final rule preserves property owners' procedural due process. If we seize property, 50 CFR 12.11 requires us to send property owners a notice of seizure and proposed forfeiture. Also, § 12.12 requires us to post public notice of seizure and proposed forfeiture. We wrote these sections with the intent to give property owners reasonable notice, as the law requires. Once a property owner receives a notice, they have a meaningful opportunity to be heard either by filing a petition for remission or by filing a claim, which removes the matter to court and converts it to judicial forfeiture. By incorporating notice and hearing into the rule, we have met the procedural due process requirements.

In this context, substantive due process generally concerns property owners' right to ownership in the property itself. If we seize property, we have made the preliminary determination that it is contraband. The United States Supreme Court has held that there are no fundamental property rights in contraband. See *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965). If we ultimately determine that property is contraband and forfeit the property, we do not deprive the property owner of their substantive due process right in the property.

(3) *Comment:* Commenter stated that no exemptions to CAFRA should be made.

*FWS Response:* The proposed part 12 regulations do not provide an exemption to CAFRA. They do, however, reflect certain exceptions that are written into and are part of

CAFRA itself. Three of these CAFRA-mandated exceptions concern “contraband”: first, the release of property not properly noticed under 18 U.S.C. 983(a)(1)(F); second, the release of certain types of seized property under section 983(f); and third, the innocent owner defense in section 983(d). Two of these CAFRA-mandated exceptions concern “other property that is illegal to possess”: the release of certain types of seized property provisions contained in 18 U.S.C. 983(a)(1)(F) and the innocent owner defense of 18 U.S.C. 983(d). The part 12 regulations simply contain definitions of the terms “contraband” and “other property that is illegal to possess” that are used in these CAFRA-mandated exceptions.

*(4) Comment:* Commenter stated that FWS did not conduct a scoping notice before the publication of the proposed rule.

*FWS Response:* The Service conducted a review for the proposed rule in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.; NEPA), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508) and the Department of the Interior NEPA regulations (43 CFR part 46), and 516 Departmental Manual Chapters 1–4 and 8. Under 40 CFR 1501.9, scoping is required only for an environmental impact statement (EIS). The rule does not amount to a major Federal action significantly affecting the quality of the human environment; therefore, neither an EIS nor scoping is required. This rule is categorically excluded from further NEPA requirements under 43 CFR 46.210(i). This categorical exclusion addresses policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

*(5) Comment:* Commenter stated that the Service “fails to include a reference to

animal welfare laws” in proposed § 12.70(c) and § 12.65 (which discuss disposal and destruction of forfeited and abandoned property).

*FWS Response:* We acknowledge that the Service must comply with all laws applicable to the destruction and disposal of fish, wildlife, and plants and any residue or wastes. Therefore, we are removing the modifiers “health, safety, and environmental protection” and have rewritten § 12.70(c) as follows: The Service will comply with all applicable laws regarding the destruction of the fish, wildlife, or plants and regarding the disposal of any residue or wastes resulting from the method of the destruction of the fish, wildlife, or plants.

## **Definitions**

(6) *Comment:* Commenter stated that the definition of “contraband” is too broad and should not include noncommercial goods that become unlawful to import due to harmless errors in the import process itself.

*FWS Response:* The definition of “contraband” in the proposed rule reflects the ordinary, common meaning of that term and judicial decisions that have construed the word “contraband” as used in CAFRA. Neither this common usage nor case law distinguishes between commercial and noncommercial goods. Several Federal wildlife protection laws apply not only to commercial but also to noncommercial import/export, transportation, use, and possession of wildlife and expressly provide for the seizure and forfeiture of wildlife involved in violations regardless of whether they occurred in connection with commercial activities. See, e.g., 16 U.S.C. 1538(c) (unlawful for any person to possess any specimens traded contrary to the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)) and section 1540(e) (“all” fish or wildlife or plants involved in violations of the Endangered Species Act and its implementing regulations are subject to forfeiture to the United States); 50

CFR part 23 (Federal regulations implementing the trade protections for listed species provided through the CITES international treaty). Violations involving noncommercial property can and do make that property into contraband because of the manner or circumstances by which the noncommercial property is used.

Indeed, this was the situation in *Conservation Force v. Salazar*, 677 F. Supp. 2d 1203, 1207 (N.D. Cal. 2009), *aff'd*, 646 F.3d 1240 (9<sup>th</sup> Cir. 2011), where the District Court found that hunting trophies imported for noncommercial purposes had become contraband because they lacked valid CITES permits and so “the manner in which plaintiffs brought their trophies into the United States transformed the trophies into contraband.” As for the concern expressed by the commenter about “harmless errors,” this complaint was raised in the context of the importation of hunting trophies. In those cases, the violations giving rise to seizure typically are due to problems with required CITES documents. Maintenance of the integrity of the CITES permitting system is essential to the effectiveness of the entire system of wildlife trade restrictions established by CITES. Unless the system of permits and certificates used by CITES to enforce its trade restrictions is enforced uniformly, protected wildlife may be overexploited through international trade. See 50 CFR 23.1 and 23.4.

“Documentary violations are particularly troubling and significant in the CITES framework, where signatory nations attempt to monitor and conserve dwindling wildlife populations in an era of increased international trade.” *Underwater Exotics, Ltd. v. Secretary of the Interior*, 1994 U.S. Dist. LEXIS 2262 (D.D.C. 1994). CITES parties are directed by the treaty not to allow trade in CITES specimens except in accordance with CITES (CITES article II(4)), to enforce CITES through measures including “confiscation” of illegally traded specimens (CITES article VIII(1)), and as noted above it is unlawful for any person to possess any specimens traded contrary to the provisions of CITES (16 U.S.C. 1538(c); 50 CFR 23.13). The CITES parties have agreed that when

specimens are exported or reexported in violation of CITES, the seizure and confiscation of such specimens are generally preferable to the definitive refusal of the import of the specimen. CITES Resolution Conf. 17.8 (Rev. CoP19).

(7) *Comment:* Commenter stated that the definitions of “contraband” and “other property that is illegal to possess” are overbroad, because they strip from ivory owners the CAFRA innocent owner defense that otherwise would protect them from the documentation requirements set under the African elephant section 4(d) rule.

*FWS Response:* We do not agree that the innocent owner defense would apply to items determined to be contraband. Further, the requirements of the African elephant 4(d) rule are not at issue in this rulemaking. When enacting the innocent owner defense in CAFRA (at 18 U.S.C. 983(d)), Congress specifically chose to exclude “contraband” as well as “other property that it is illegal to possess.” The proposed 50 CFR part 12 regulations simply apply this statutory decision made by Congress, implementing the exclusions for “contraband” and “other property that it is illegal to possess” set out in 18 U.S.C. 983(d)(4), and providing definitions reflecting the ordinary, common meaning of these terms and judicial decisions that have construed their use in CAFRA.

(8) *Comment:* Commenter takes the position that sport-hunted trophies imported with paperwork errors should not be considered contraband, and the innocent owner defense should apply. Commenter stated that the conclusion on page 39850 of the proposed rule (in the explanation of the definition of “contraband”) that the innocent owner defense does not apply is incorrect. Commenter describes *United States v. 144,774 Lbs. of Blue King Crab*, 410 F. 3d 1131, 1134 (9th Cir. 2005), cited on page 39850, as limited only to the second of the two phrases “contraband or other property illegal to possess” used in CAFRA to describe instances in which the innocent owner defense is unavailable due to the commenter’s conclusion that the crab at issue in that case was illegally harvested and taken in violation of Russian law and thus an intentional violation

of the Lacey Act. Second, the commenter stated that the defense's unavailability should be limited to commercial cases, as in *144,774 Lbs. of Blue King Crab*. Commenter also stated that *United States v. 1866.75 Bd. Ft. & 11 Doors & Casings*, 587 F. Supp. 2d 740, 750 (E.D. Va. 2008), does not apply because the shipment in that case was imported without any CITES paperwork. Commenter points to a definition of "contraband" found on page 39850 of the proposed rule (81 FR 39848, June 17, 2016): Courts have concluded that contraband includes property that, if not inherently illegal in nature, becomes illegal through the manner or circumstances by which it is used, possessed, or acquired. Commenter also states that hunting trophies are almost never illegally used, possessed, or acquired, but instead have errors in their permitting paperwork.

*FWS Response:* We cited *United States v. 144,774 Lbs. of Blue King Crab*, 410 F. 3d 1131 (9th Cir. 2005), to support the statement directly above the citation on page 39850 of the proposed rule (81 FR 39848, June 17, 2016) regarding the effect of Congress using two different phrases, separated by the word "or" to describe the circumstances under which the innocent owner defense is unavailable. As we stated on page 39850 and as the court did in *144,774 Lbs. of Blue King Crab*, 410 F.3d at 1135, each of these phrases is separate and distinct from the other, and they mean two separate things. *144,774 Lbs. of Blue King Crab* did not define the term "contraband" because the Ninth Circuit was able to conclude that the property seized was covered by the "other property illegal to possess" portion of the two phrases. Consistent with this express ruling of the Ninth Circuit (410 F.3d at 1135–36), the proposed regulations only cited (at page 38951) to *144,774 Lbs. of Blue King Crab* as supporting the proposed definition of "other property illegal to possess" and not of the term "contraband."

Although the commenter argues that *144,774 Lbs. of Blue King Crab* should be read as being further limited to commercial cases, the holding of the court did not depend on the shipment at issue being commercial or illegally harvested as the comment

suggests. Similarly, we cited *1866.75 Bd. Ft. & 11 Doors & Casings*, 587 F. Supp. 2d. 740, 750 (E.D. Va. 2008), as support for the statement regarding the effect of Congress using two different phrases. The court in *1866.75 Bd. Ft.* likewise determined that the wood in that case was “other property illegal to possess,” not contraband. The commenter’s position that hunting trophies are almost never illegally used, possessed, or acquired, but instead may have errors in their permitting paperwork, misinterprets how we are defining contraband. Property imported without necessary, complete, error-free permits is illegally possessed. We addressed this issue in detail in our response to Comment 6.

*(9) Comment:* Commenter expressed concern with a statement in the proposed rule that the described approach to the innocent owner defense is consistent with pre-CAFRA case law and authority because CAFRA was meant to reform the errors and overreaching by government agencies.

*FWS Response:* Prior to the enactment of CAFRA, some but not all civil forfeiture statutes contained an innocent owner defense. To “provide such a defense for all federal civil forfeitures, to make that defense uniform, and to ensure that it offers protection in all appropriate cases,” CAFRA requires an innocent owner defense now be recognized in all civil forfeitures it covers. CAFRA, H.R. 106-192, 106th Cong., 1st Sess. at 15 (1999). The pre-CAFRA case law we reference on page 39850 continues to be relevant because it shows the rationale used over time by various Federal courts for rejecting a good-faith defense in the majority of pre-2000 wildlife forfeiture cases, including their recognition of the importance of strict permitting requirements to restrict trade in protected species and of the corresponding need to reject good-faith defenses if there is a violation of wildlife protection laws.

*(10) Comment:* Commenter stated that directed reexport should not be used as punishment for noncommercial trade when it is too late to correct the error.

*FWS Response:* Directed reexport is a remedial action, not a punishment. Refusal of clearance (resulting in return to the exporting or reexporting country) instead of confiscation generally is disfavored by the CITES Parties. For example, the CITES Parties have recommended in CITES Resolution Conf. 17.8 (Rev. CoP19) that importing countries “consider that the seizure and confiscation” of the specimens exported or reexported in violation of CITES to be “generally preferable to the definitive refusal of the import” of such specimens. Reexport creates a risk that specimens may reenter into illegal trade. Consequently, the CITES Parties also have recommended that, when an importing country refuses clearance of specimens, the exporting or reexporting country should take measures necessary to ensure that the specimens not reenter into illegal trade, including monitoring their return to the exporting or reexporting country and providing for their confiscation. CITES Resolution Conf. 17.8 (Rev. CoP19). Under some circumstances, it may be appropriate for the Service to allow reexport of wildlife imported in violation of Federal wildlife laws (and refused clearance by the Service) instead of pursuing forfeiture. We note that this course of action would not be allowed where the trade involved commercial activity with an Appendix I species. We are guided by the limited noncommercial purposes that the CITES Parties have provided for disposal of Appendix I specimens in CITES Resolution Conf. 17.8 (Rev. CoP19) and as provided in 50 CFR part 23.

*(11) Comment:* Commenter stated that value should not be determined by FWS, and that market value or the cost of acquisition should govern.

*FWS Response:* A market value may not be available in all instances, particularly those involving protected species that may not be legally sold in the United States. Likewise, the cost of acquisition may not reflect the actual value of the item (particularly for illegally acquired items). The definition of value in the proposed regulation takes these possibilities into account, providing that the Service will use the reasonable

declared value or the estimated market value if there is a legal market for the property. For property that may not be sold in the United States, the Service may use other reasonable means. This approach to valuation is essentially the same as has been taken since 1982 in existing 50 CFR 12.12.

## **Process**

*(12) Comment:* Commenter stated that forfeiture should not be permitted unless and until criminal adjudication of guilt by court, and that property should be returned if no criminal charges are filed.

*FWS Response:* Congress has specifically authorized the use of administrative and civil judicial forfeiture procedures to forfeit property seized for violation of Federal law—not only by the Service but also by a variety of other Federal enforcing agencies. In general, all property subject to forfeiture under Federal law may be forfeited administratively by the enforcing Federal agency except for real property, personal property having a value of more than \$500,000 (except as noted in 19 U.S.C. 1607(a)), and property forfeitable under a statute that does not incorporate the Customs laws of 19 U.S.C. 1602 et seq. Seized property also may be forfeited to the United States judicially, in civil and criminal judicial proceedings brought by the U.S. Department of Justice (DOJ). The statutes identified in § 12.2 grant the Service the authority to seize and conduct administrative forfeiture and/or to dispose of property forfeited or abandoned to the United States, whether through administrative or judicial forfeiture. Many of those statutes provide an administrative forfeiture remedy, and the Service is complying by following the requirements set forth in these statutes.

*(13) Comment:* Commenter stated that the proposed regulation's handling of notice relieves the Service of any duty to provide actual notice to accused violators of seizure by defining a "Declaration of Forfeiture" to include a "description of efforts made

to deliver notice” instead of proof of actual notice.

*FWS Response:* The commenter references proposed § 12.13(b) for those circumstances when service of notice has been attempted, but it is effectively impossible. In that case, the declaration of forfeiture will describe the efforts made to deliver the notice of seizure and proposed forfeiture. However, the inclusion of that provision in § 12.13(b) does not mean that the Service has relieved itself of any duty to provide actual notice.

The proposed regulations at § 12.11(a) provide that the Service or the Solicitor will first send written notice of the seizure to each interested party by U.S. registered or certified mail, express mail, or commercial carrier, all with proof of delivery and return receipt requested. The notice will be sent to an address that has been provided on shipping or other documents accompanying the property or on the permit or license application, unless the Service or the Solicitor has actual notice of a different address. In addition, all seizures will be published either for at least 3 successive weeks in a generally circulated newspaper in the judicial district where the property was seized or on the official government internet site for at least 30 consecutive days (§ 12.12(a)). As a last resort, a property owner who does not receive a personal notice for any reason will have 30 days from the last posting of the public notice to file a petition for remission (§ 12.33(b)).

Finally, the notice provisions in part 12, subpart B, comply with the Supreme Court’s ruling in *Jones v. Flowers*, 547 U.S. 220 (2006). *Jones* says that the government must take additional reasonable steps to notify a property owner if a first attempt at notice fails, if it is practicable to take additional steps. *Id.* at 225.

*(14) Comment:* Commenter questioned why the filing dates for the claimant’s filing and for the government’s filing are different and why the government gets the benefit of the “mailbox rule,” but the claimant does not.

*FWS Response:* The “mailbox” rule referred to by the commenter is a pre-CAFRA notion. The provisions for claimant’s and the Government’s filings are different because of the notice and filing requirements set by CAFRA. For example, 18 U.S.C. 983(a)(2)(B) provides that one of the dates used to set the deadline for a claimant to file a claim should run from the date the Government issues a notice of proposed forfeiture, while 18 U.S.C. 983(a)(2)(A) and 983(a)(2)(B) require that a claimant actually file a claim “with the appropriate official” by a specified date. Consistent with these provisions, § 12.4(a) of the regulations specifies filings from claimants must be received by the Service (and not mailed on or prior to) by specified dates. Several courts have found that claims are considered to be filed in a civil forfeiture action when received by the agency and not when mailed by the claimant. See, e.g., *Sandoval v. United States*, 2001 WL 300729 at \*4 (S.D.N.Y. 2001).

(15) *Comment:* Commenter stated that the contents of the personal written notice sent to interested parties following seizure should contain a narrative statement of facts explaining the reason for the seizure. Commenter further stated that a reference to what laws and/or regulations were violated is not enough for a petitioner to respond to a notice of seizure.

*FWS Response:* Due process requires only that notice of a seizure and impending administrative forfeiture be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Lobzun v. United States*, 422 F.3d 503, 507 (7th Cir. 2005) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314). The Service’s notice of seizure and proposed forfeiture provides several pieces of information to the property owner. That information includes the port at which the property was seized, a description of the property and its value, citations to the regulations and laws violated, and the date of seizure. The information in the notice that the Service provides is

sufficient for property owners to contest a seizure. Moreover, property owners should have additional information relevant to their shipments. A property owner may always contact the Service to ask for more information.

### **Petition for Remission**

*(16) Comment:* Commenter stated it is unconstitutional to require a choice between filing a petition for remission or filing a claim.

*FWS Response:* While the commenter did not provide specific authority for the claim of unconstitutionality, we note that the comment was focused on due process concerns, which we addressed in comments 2 and 15 above. Under CAFRA, an interested party may choose to allow the forfeiture to proceed administratively or may compel the Government to initiate a judicial forfeiture action by filing a claim for the property. Moreover, several courts have considered due process claims challenging CAFRA's provision of alternative and not sequential remedies for administrative forfeiture and have upheld CAFRA's provisions, as described below. *Malladi Drugs & Pharmaceuticals, Ltd. v. Tandy*, 552 F.3d 885, 890 (D.C. Cir. 2009); *Conservation Force v. Salazar*, 677 F. Supp. 2d 1203, 1208 (N.D. Cal. 2009), *aff'd*, 646 F.3d 1240 (9th Cir. 2011).

Finding that the administrative remedy for forfeiture (i.e., sought through a petition for remission) is distinct from the judicial remedy initiated through a claim, the Ninth Circuit concluded in *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011), that applicable forfeiture statutes and regulations "provide alternative, not sequential, administrative and legal remedies for an administrative forfeiture." The Ninth Circuit further concluded that, if a party pursues the administrative path, files a petition for remission, and the petition is denied, then the "exclusive remedy" for setting aside an administrative declaration of forfeiture is that provided in CAFRA, in 18 U.S.C. 983(e), and which is available only if the notice of forfeiture is not received. Put another way, if

an interested party receives proper notice of a proposed administrative forfeiture and chooses to pursue an administrative path, filing a petition for remission that is reviewed and denied, then that party has “waived the opportunity for judicial forfeiture proceedings.” *Id.* The Ninth Circuit has followed its decision in *Conservation Force* in at least three subsequent opinions, *United States v. Barnes*, 647 Fed. Appx. 820, (9th Cir. 2016), *Pert v. United States*, 487 Fed. Appx. 396 (9th Cir. 2012), and *Phillips v. United States*, 464 Fed. Appx. 700 (9th Cir. 2011). Other courts have reached the same conclusion. See, e.g., *United States v. Paulino*, 2018 U.S. Dist. LEXIS 176893 (S.D.N.Y. Oct. 9, 2018); *Martin v. Leonhart*, 717 F. Supp. 2d 92 (D.D.C. 2010); *Patterson v. Haaland*, 2022 U.S. Dist. LEXIS 176407 (D.D.C. Sept. 28, 2022).

(17) *Comment:* Commenter stated that the notice of seizure and proposed forfeiture does not provide enough information to defend against, and claims are cost-prohibitive.

*FWS Response:* As discussed above, the contents of the notice of seizure and proposed forfeiture comply with the requirements of due process. The option of pursuing a claim is specifically provided for by statute, in CAFRA, as the judicial means of challenging a proposed forfeiture.

(18) *Comment:* Solicitors are not independent reviewers and often take the position that remission is to be granted too sparingly, even in cases of harmless error.

*FWS Response:* The Office of the Solicitor is a stand-alone office within the Department of the Interior and is separate and independent from the seizing bureau, the Service. Moreover, there is no doctrine of “harmless error” in forfeiture law. For cases involving illegal import of CITES species, CITES calls for strict enforcement, among other things, disfavoring the issuance of retrospective CITES permits (CITES Resolution Conf. 12.3 (Rev. CoP19)) and considering seizure and confiscation of specimens exported or reexported in violation of CITES to be generally preferable to refusal and

reexport (CITES Resolution Conf. 17.8 (Rev. CoP19)). Decisions on petitions for remission made by the Solicitor's Office are equitable decisions based on the presumption that the underlying seizure was valid, and remission is discretionary. However, the Solicitor's Office will consider the factors listed in the rule in § 12.34 when making decisions, including whether there was an honest and good-faith intent to comply with the law and whether there are mitigating circumstances justifying remission.

*(19) Comment:* Commenter stated that the change to the practice of allowing the administrative process (petition for remission) and the judicial process (claim) for the return of seized property to proceed sequentially is not legally enforceable because no notice was published in the *Federal Register*.

*FWS Response:* Prior to October 7, 2014, the notice of seizure and proposed forfeiture used by the Service in administrative forfeiture proceedings advised interest holders that any petition for remission of forfeiture that interest holders submitted constituted a voluntary agreement that all forfeiture time periods would be suspended pending the outcome of the petition for remission, and in the event that a petition for remission was denied, the petitioner would be given the balance of time (if any) remaining to file a claim if the petitioner so chose. This opportunity to, in effect, suspend the period for filing a claim was provided by the Service as a matter of administrative discretion and not because of statutory mandate.

As discussed above in response to Comment 16, CAFRA itself provides alternative and not sequential remedies for administrative forfeiture. Effective October 7, 2014, the Service changed its notice letter to remove the provisions for suspending the period for filing a claim. This action was taken to address court decisions interpreting CAFRA, including, for example, the Ninth Circuit's decision in *Conservation Force*, 646 F.3d 1240 (9th Cir. 2011). The revision of the notice letter is not a binding rule, and consequently was not published for public notice and comment. Nevertheless, the Service

did provide a written notice to the wildlife import/export community regarding this change to the notice letter. The notice was dated September 23, 2014, and was distributed to a list of interested parties as well as published on the FWS website on the Office of Law Enforcement's webpage for Public Bulletins and Alerts (and currently available at <https://www.fws.gov/library/collections/ole-public-bulletins>).

(20) *Comment*: Commenter stated that the holding in *Conservation Force v. Salazar*, 646 F.3d 1240 (9th Cir. 2011), is incorrect, and that the citation of *Malladi Drugs & Pharmaceuticals, Ltd. v. Tandy*, 552 F. 3d 885 (D.C. Cir. 2009), for the premise that the administrative remedy and the judicial remedy for the return of seized property are not sequential is distinguishable.

*FWS Response*: The Service disagrees, for the reasons discussed above.

(21) *Comment*: Commenter wrote that the statement in the proposed rule that “during the remission consideration, a valid seizure is presumed” is confusing and requested further clarification.

*FWS Response*: As stated further down on page 39853 (81 FR 39848, June 17, 2016), the statement that “during a remission consideration, a valid seizure is presumed,” means that forfeitability is presumed and the petitioner seeks relief from forfeiture on fairness grounds. In other words, “a petition for remission is a request for leniency, or an executive pardon, based upon the petitioner's representations of innocence or lack of knowledge of the underlying unlawful conduct.” *Orallo v. United States*, 887 F. Supp. 1367, 1370 (D. Haw. 1995). In contrast, the proper route for someone who wants to contest the legitimacy of the underlying forfeiture would be to file a judicial claim. See *id.* Note that we changed § 12.34(c) to reflect that the Solicitor will review the basis for the seizure, but this is a separate step from the remission consideration. See Summary of Changes from the Proposed Rule, below.

(22) *Comment*: Commenter stated that the discussion of petitions for remission

being discretionary and retrospective CITES permits being disfavored violates CAFRA's proportionality requirement.

*FWS Response:* Remission or mitigation of penalties, fines, and forfeitures is discretionary. See 19 U.S.C. 1618. The text of CITES requires the grant of CITES documents prior to international trade and the presentation of valid CITES documents at the time of international trade in CITES specimens (CITES articles III–VII). The resolutions adopted by the Conference of the Parties to CITES have clearly stated that retrospective permits should be issued and/or accepted only in limited circumstances. See CITES Resolution Conf. 12.3 (Rev. CoP19). The proportionality section of CAFRA, 18 U.S.C. 983(g), allows a claimant to prove that a forfeiture is “grossly disproportional by a preponderance of the evidence at a hearing conducted by the court without a jury.” If the claimant meets the burden of proof and the court finds that the forfeiture is grossly disproportional to the offense, then the court shall reduce or eliminate the forfeiture “to avoid a violation of the Excessive Fines Clause of the Eighth Amendment of the Constitution.” *Id.* Thus, there are checks and balances in place to avoid a constitutionally excessive forfeiture. However, the fact that a petition for remission of forfeiture is denied or a retrospective CITES permit is not accepted does not equate to an automatic violation of CAFRA's proportionality requirement.

(23) *Comment:* Commenter inquired how the statement on page 39854 that forfeiture proceedings are brought against the guilty property itself and as such are in the nature of an in rem proceeding in which the property is the defendant and not the property owner works with Director's Order 212.

*FWS Response:* Director's Order 212 addresses using available legal and regulatory authority to deny wildlife violators (i.e., those with prior violations of Federal wildlife protection laws) from obtaining Federal permits and licenses. Director's Order 212 says that the Director can use any information available that is relevant to the issue

when considering a permit application under 50 CFR 13.21(d). Under that provision, the Service has discretion to consider past forfeitures that are relevant to the permit sought.

*(24) Comment:* Commenter stated that the requirement that a supplemental petition for remission be based on new evidence or evidence not previously considered would be more palatable if the original notice contained an adequate factual narrative.

*FWS Response:* As discussed above, the notice in current use by the Service as well as that required by the proposed regulations meets the requirements of due process.

## **Claims**

*(25) Comment:* Commenter stated that it is not possible to include any documentary evidence relied upon when a claim is filed because the Service does not provide factual narratives when issuing notices of seizure and proposed forfeiture.

*FWS Response:* As discussed above, the Service's Notice of Seizure and Proposed Forfeiture meets the requirements of due process and complies with CAFRA. The Notice puts potential petitioners/claimants on notice as to the date and time of seizure, the laws relied upon as a basis for the seizure, and the options available to the petitioner/claimant.

*(26) Comment:* Commenter said there is an issue with the statement that the Solicitor will presume a valid seizure and will not consider whether the evidence is sufficient to support the seizure in determining whether remission should be granted because it suggests that the only way to challenge the legitimacy of a forfeiture is to go to court, which is a burden on hunters/owners.

*FWS Response:* The judicial route is not the only means of pursuing release of seized property. Either the administrative process (by filing a petition for remission with the Solicitor's Office) or the judicial process (by filing a claim with respect to the forfeiture, which causes the proposed forfeiture to be referred to the U.S. Attorney's Office for filing as a judicial forfeiture action) may be used to pursue release. However,

the commenter is correct in that these two processes do provide different remedies: “A petition for remission ‘asks the agency for discretionary return of the property,’ while a claim ‘initiate[s] the judicial process to decide whether the property should be forfeited.’” *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (quoting *Malladi Drugs & Pharms., Ltd. v. Tandy*, 552 F.3d 885, 889 (D.C. Cir. 2009)). Remission is an equitable remedy and is discretionary. See 19 U.S.C. 1618. Importantly, the Solicitor will follow the standards for remission in the rule at § 12.34 and consider the listed mitigating factors when deciding whether to return seized items. Also, as noted above, we made a change to § 12.34(c) noting that the Solicitor will review the basis for the seizure. We also explain this further below.

(27) *Comment*: Commenter stated that it is unlawful to require a claimant to file a civil judicial action requesting return of property pursuant to Federal Rules of Criminal Procedure (FRCP) Rule 41(g) when a judicial forfeiture action is not pursued within the required time period because CAFRA requires return of the property if a claim is not filed within 90 days. Commenter noted that there is no contraband exception to the 90-day requirement of subsection (a) of section 983 of CAFRA.

*FWS Response*: These two comments addressed § 12.38(b) and (c) of the proposed regulations. As we acknowledge below in Summary of Changes from the Proposed Rule, we removed those two paragraphs of § 12.38 for clarity and in response to the comments received.

## **Final Rule**

This rule changes our procedures for seizure and forfeiture under the laws we enforce, listed above. This rule conforms our procedures to those in CAFRA, and it will clarify and better organize the provisions in 50 CFR part 12. Here, we present a summary of the final rule’s provisions. In this summary, we do not attempt to capture every aspect

of the final rule's changes to part 12. For more detailed descriptions of the changes and a section-by-section analysis, refer to the proposed rule (81 FR 39848, June 17, 2016).

In general, in this rulemaking, we reorganized, renamed, and removed some subparts and sections in 50 CFR part 12, as we proposed. The subpart titles below are the same as in the final regulatory text.

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

We expanded the list of laws to which the regulations apply, as indicated above; removed, revised, and added definitions of key terms; changed requirements for filing and issuing documents; clarified how we handle seizures made by other agencies; and clarified how we release seized property under a bond. Some, but not all, definitions of note that we added or revised include “contraband,” “directed reexport,” “other property that is illegal to possess,” “petition for remission,” and “value.” We added “contraband” to address an exemption to three CAFRA procedures—two regarding release, and one regarding the innocent owner defense. We added “directed reexport” to indicate explicitly that we may offer it for shipments that we refuse to clear for entry into the United States. Further, we included a definition of “other property that is illegal to possess” to highlight that two CAFRA exemptions regarding release do not apply to protected fish, wildlife, and plants, depending on circumstances, and “petition for remission,” as these regulations expand on the procedures for such petitions. We also revised the definition of “domestic value,” changing the term to “value,” and explained how we are responsible for assigning value to property seized, as well as how we will do so for property seized with and without a legal market value in the United States.

### **Changes to Subpart B of 50 CFR Part 12—Notification Requirements**

We are changing subpart B to clarify and update notification requirements and

procedures in the case of seizure and proposed forfeiture. Electronic posting on our website is now an additional public notice method.

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

We clarify that there is a judicial and an administrative forfeiture option, the distinctions between them, and that they are mutually exclusive. We explain the standard for administrative forfeiture, how you will be notified of the Solicitor’s decision on your petition for remission, and when you should file a supplemental petition. In this subpart, we also explain how to file a judicial claim for return of your property and for conditional return of your property while your claim is pending.

### **Changes to Subpart D of 50 CFR Part 12—Abandonment Procedures**

We clarify how property can be abandoned and whether you can request return of your abandoned property.

### **Changes to Subpart E of 50 CFR Part 12—Disposal of Forfeited or Abandoned Property**

We added clarifications to most sections, and several remain largely the same as in the current regulations. We made more substantive changes to some sections, including, but not limited to, clarifying edits to indicate that forfeiture or abandonment ends the prior illegal status of property, but that owners must still comply with applicable laws. Other substantive changes include clarifying when we may dispose of forfeited or abandoned property to include donation to Tribes for traditional cultural practices, clarifying that we may reexport or destroy injurious species and recover associated costs, allowing donation of abandoned or forfeited property but not for human consumption, explaining when we may loan abandoned or forfeited property and that borrowers may

not sell the property or its offspring, and that destruction of forfeited or abandoned wildlife must happen in accordance with applicable laws.

## **Changes to Subpart F of 50 CFR Part 12—Recovery of Storage Costs and Return of Property**

This subpart is largely unchanged from the prior version of the subpart.

### **Summary of Changes from the Proposed Rule**

We are making some minor changes from the proposed rule. The following paragraphs include descriptions of these changes that go beyond small grammatical changes to the regulatory text.

First, we removed the phrase “seized by the Service” in the definition of “abandon” in § 12.3, so the clause now reads: *Abandon* means to relinquish to the United States all legal right you have to own, claim, or possess property.... We made this change to clarify that voluntary abandonment is authorized. We added the phrase “or any other entity” in the definition of “authorized officer” to define the term more broadly. We also added the word “bred” to the definition of “contraband” in § 12.3, due to the passage of the Big Cat Public Safety Act on December 20, 2022, 117 Pub. L. 243, 136 Stat. 2336, which, among other prohibitions, makes it unlawful to breed any prohibited wildlife species as defined in that Act. Next, we are changing “sent” to “delivered” in the definition of “declaration of forfeiture” in § 12.3. Specifically, the clause will now read: if notice was never successfully delivered. That change aligns the clause logically with the remainder of the sentence, as we use the word “deliver” later in the sentence. We also removed the phrase “under the criteria in § 12.11(a)” in the definition of “interested party” in § 12.3, and we replaced the phrase with “in property.” Section 12.11(a), which is a notice provision, does not overtly state criteria that we use to identify interested

parties, but it does describe ways the Service often identifies them. For example, we may infer that a person is an interested party based on their name and address appearing on shipping documents or on their permit or license application and send them a notice of seizure and proposed forfeiture. Thus, we made this change for clarity.

Next, we moved § 12.11(g)(1)–(2) to § 12.33(b) because the provisions concern deadlines for filing petitions for remission, not personal notification of seizure and forfeiture, so the heading of § 12.33 is a better fit.

We changed the heading of § 12.13 to “How is a declaration of forfeiture issued?” to better reflect the substance of the section. The previous heading implied that the section was only about the contents of the declaration of forfeiture.

We removed the requirement to provide a social security number or taxpayer identification number in a petition for remission. This requirement was in proposed § 12.33(c)(1). We do not need this information to manage or dispose of petitions. We also reworded § 12.33(d) and § 12.34(a) for clarity.

We revised § 12.34(b) to clarify that the petitioner carries the burden of proof for both initial petitions for remission and for supplemental petitions. Next, we address changes we are making to § 12.34(c): The first is a minor wording change regarding the scope of the information that the Solicitor will review. The proposed rule said that the Solicitor would consider any other available information relating to the matter, which arguably could unduly burden the Solicitor’s Office with extensive independent investigating and fact-finding. We removed the word “any,” which is a reasonable choice given the extent of some of the cases that come before the Solicitor’s Office that can involve many parties and several foreign countries. Moreover, the burden should be on the petitioner to bring the information to the Solicitor, as stated elsewhere in that section. We also qualified the type of information that the Solicitor will consider from the petitioner as “relevant” information; the Solicitor will not consider irrelevant

information. Further, we clarified that the Solicitor will consider other information that is available to the Solicitor. Finally, we removed the first sentence of proposed § 12.33(h), which is inconsistent with these changes to § 12.34(c).

Second, we changed § 12.34(c) to reflect that a petitioner may submit relevant evidence showing that a seizure was invalid, and the Solicitor will consider that information. However, if nothing suggests the seizure was invalid or unlawful, the Solicitor will presume the seizure was valid. The first sentence of proposed § 12.34(c) stated that the Solicitor will presume that a seizure is valid and will not consider whether the evidence supports the seizure when considering a petition for remission. Our intent in drafting that sentence was to emphasize that remission is about equity, and that the standard for making a decision on the petition is based in equitable principles. We capture those principles in § 12.34(e). We also explain this issue in more detail in the proposed rule (81 FR 39848, June 17, 2016) at pages 39853–39854.

We made this change in the final rule because seizure and forfeiture must follow from a violation of the underlying law, whether it be the Endangered Species Act, the Lacey Act, or another law we enforce, and we need to follow the proper procedures in seizing and forfeiting the property. In first reviewing the seizure for validity, the Solicitor makes the determination that forfeiture should proceed. The Solicitor will confirm the existence of a violation and whether proper procedures were followed, among other things. Then the Solicitor will review the petition for remission, applying the equitable principles in § 12.34(e). We also amended the introductory language of § 12.34(e) for clarity.

This change provides property owners and petitioners with greater clarity on how we process petitions for remission. Specifically, they will understand that the Solicitor will review the underlying seizure before considering the petition. Relatedly, they will

understand the value of submitting any evidence they have that questions the validity of the seizure.

Next, we added the phrase “but not limited to” to § 12.34(e)(3) to clarify that the Solicitor may consider cumulative conservation impacts other than the ones listed in § 12.34(e)(3).

Next, we removed proposed § 12.38(b) and (c) to better align § 12.38 with CAFRA requirements. If we seize property and send the owner a notice under § 12.11, one option for the owner is to file a claim under § 12.36. Filing a claim causes the Solicitor to refer the matter to DOJ. Under CAFRA, DOJ has 90 days to file a complaint for forfeiture, return the property, obtain a criminal indictment that includes a claim against the property, or otherwise comply with any applicable criminal forfeiture statute if DOJ chooses to hold the property. The property must be returned to the owner if DOJ does not do one of those things when 90 days have passed since the owner filed a claim.

Under proposed § 12.38(b), the Solicitor would send the owner a letter if 90 days had passed since the claim was filed and DOJ had not acted. We proposed that the letter would inform the owner that the 90 days had expired and state that, to have the property returned, the owner needed to file a motion under FRCP 41(g) in the district where the property was seized. We also proposed to publish a public notice, as in § 12.12, with the same information as the letter.

In proposed § 12.38(c), we stated that the disposal provisions in proposed §§ 12.61–12.70 would apply if a court determined that seized property was contraband or property illegal to possess under FRCP 41(g). We also stated that we would apply the disposal provisions if the owner did not file a motion for return of the property within 6 years of the Solicitor’s letter and public notice.

We agree with the commenter who noted that CAFRA requires the government to release property to its owner if DOJ does not act after 90 days of the owner filing a claim,

as explained above. CAFRA does not add any requirements beyond the expiration of the 90 days. It does not require agency counsel to send the owner a letter notifying the owner that the 90 days have expired or post a public notice, nor does it require the owner to file a motion under FRCP 41(g) for the government to return the owner's property.

Therefore, those requirements in proposed § 12.38(b) are inconsistent with CAFRA, and we will not finalize proposed § 12.38(b).

Proposed § 12.38(c) followed proposed § 12.38(b) by stating how we would dispose of property if a court upheld the forfeiture of the owner's property under FRCP 41(g) or if the owner did not respond to the Solicitor's letter or public notice under proposed § 12.38(b). Because we are not finalizing proposed § 12.38(b), we are likewise not finalizing § 12.38(c).

Next, we are making a minor change to § 12.51, which addresses voluntary abandonment of seized property. The revised language clarifies that a property owner who wants to voluntarily abandon seized property may use a form other than the Service's Form 3-2096 or may write a letter, as long as the form or letter provides substantially the same information as the Service form. The previous language was less clear in terms of what an alternative form or letter needed to contain. Also, this revision will standardize the information that property owners must provide to abandon their property. We will treat all abandonments the same in this regard, which is fairer. It also ensures that we have the same information about each abandonment.

Next, we amended § 12.63(c) to clarify that there may be a variety of options regarding costs associated with returning confiscated specimens to the wild in countries with suitable habitat and in accordance with applicable law, such as requiring the violator or others, as provided by law, to meet the costs. CITES contemplates these options in Resolution Conf. 17.8 (Rev. CoP19), paragraph 5. We also amended § 12.63(c) for better flow and clarity.

Next, we streamlined language related to the applicable law in §§ 12.64(a), 12.67(b)(6), 12.68(b)(6), and 12.69(d) that speaks to duties of subsequent holders of abandoned or seized property. Specifically, the provisions note that subsequent holders of the property must follow applicable Federal, State, Tribal, and foreign laws and regulations. We deleted the phrase “or any applicable conservation, health, quarantine, agricultural, or Customs laws or regulations” because those applicable laws are covered by the revised text. We also noted that the Service may donate or loan property in §§ 12.67 and 12.68, respectively, when consistent with applicable law.

In addition to the revisions clarifying the applicable laws in §§ 12.67 and 12.68, we added “or their offspring” to §§ 12.67(b) and 12.68(b) to clarify that any offspring bred from live specimens donated or loaned by the Service is subject to all of the same requirements, consistent with the definition of “fish or wildlife” in 50 CFR 10.12.

We deleted § 12.67(b)(8), which concerned the re-transfer of donated property without the Service’s prior authorization, because § 12.67(b)(7) already requires prior authorization for any subsequent transfers. We deleted the similarly worded clause in the next section, § 12.68(b)(8), which concerned the re-transfer of loaned property, for the same reason.

Next, we changed the reference to the genus of African elephants in § 12.69(a) to make it more general. Our proposed rule included both *Loxodonta africana* and *Loxodonta cyclotis* under the entry for African elephant in § 12.69(a)(7). However, we did not mean to imply that the species *Loxodonta africana* had been reclassified under the ESA or CITES. We note that the Service has been petitioned to reclassify the African elephant as endangered and to recognize two species of African elephants and classify them both as endangered under the ESA. Review of those petitions, through a process separate from this rulemaking, is ongoing. Accordingly, we are finalizing with the more general text “*Loxodonta* species” to account for any future changes in taxonomy of the

African elephant that might occur. We also added three statutes to § 12.69(a) limiting when the Service can sell forfeited or abandoned property: the Wild Bird Conservation Act, the Rhinoceros and Tiger Conservation Act, and the Big Cat Public Safety Act, because these statutes limit the commercialization of the species they protect.

Here we address the change we are making to § 12.70(c). We proposed to require ourselves to “comply with all Federal health, safety, and environmental protection laws” when destroying fish, wildlife, or plants or disposing of wastes or residues from destruction, as applicable. A commenter noted that we did not reference animal welfare laws and require ourselves to comply with them in disposing of and destroying animals. The commenter mentioned the Animal Welfare Act, 7 U.S.C. 2131 et seq. We acknowledge the commenter’s concern, and we are revising the text at § 12.70(c) to require ourselves to comply with all laws applicable to destruction of fish, wildlife, and plants and disposal of residue or wastes. This language includes but is not limited to the Animal Welfare Act.

Lastly, we inadvertently proposed to remove current § 12.51, Return Procedure, from part 12. Current § 12.51 explains how property owners can get their property back from the Service if their petition for remission or claim is successful. Specifically, in repealing and replacing all of part 12, we neglected to bring current § 12.51 forward into the proposed rule, and by doing so, we proposed to remove it from part 12. Instead, we want to retain the substance of current § 12.51. Therefore, we are redesignating current § 12.51 as § 12.82 and including it in the final rule. We are also retitling it: How will my property be returned if my petition or claim is successful? We also made two minor wording changes: We changed “bailee” to “custodian” to use a more modern term, and we indicated that either the Solicitor or the Service may provide a property receipt for signature.

## **Required Determinations**

### *Regulatory Planning and Review (Executive Orders 12866 and 13563)*

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

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

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

The Department has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Neither a regulatory flexibility analysis nor a small entity compliance guide is required.

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency publishes a notice of rulemaking for any proposed or final rule, the agency must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (such as small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility

analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

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

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

#### *Congressional Review Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review Act, as it will not have an annual effect on the economy of \$100 million or more. Moreover, this rule will not cause a major increase in costs or prices for consumers,

individual industries, Federal, State, or local government agencies, or geographic regions. The changes to the regulations contained in this rule will ensure that 50 CFR part 12 complies with CAFRA, as well as clarify what procedures are available to claim items potentially subject to forfeiture. Finally, this rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because foreign-based enterprises are subject to the same procedures as U.S.-based enterprises relating to property seized or subject to administrative forfeiture under various laws enforced by the Service.

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

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), this rule will not “significantly or uniquely” affect small governments. A small government agency plan is not required.

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

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

*Executive Order 12630 (Takings)*

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

*Executive Order 13132 (Federalism)*

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

*Executive Order 12988 (Civil Justice Reform)*

Under Executive Order 12988, the Office of the Solicitor has determined that this rule does not overly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The purpose of this rule is to simplify and update our regulations regarding seizure and forfeiture of property. Specifically, this rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize lawsuits, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

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

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

### *National Environmental Policy Act*

The Service has conducted a NEPA review in accordance with NEPA, the CEQ NEPA regulations (40 CFR parts 1500–1508) and the Department of the Interior NEPA regulations (43 CFR part 46), and the 516 Departmental Manual Chapters 1–4 and 8. This rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement is not required. This rule is categorically excluded from further NEPA requirements under 43 CFR 46.210(i). This categorical exclusion addresses policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis under NEPA and will later be subject to the NEPA process, either collectively or case-by-case. We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

### *Endangered Species Act*

Section 7 of the ESA, as amended (16 U.S.C. 1531 et seq.), provides that Federal agencies shall “ensure that any action authorized, funded or carried out ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat.” This rule changes our administrative and seizure and forfeiture procedures and more closely aligns them with CAFRA. It is strictly administrative in nature and has no effect on endangered or threatened species. As a result, no section 7 consultation is required for this rule.

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

Under the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951),

Executive Order 13175, and 512 DM 2, we have evaluated this rule and have determined that there are no substantial direct effects on federally recognized Native American Tribes or on the government-to-government relationship between the Federal Government and Native American Tribes. Therefore, consultation under the Department's Tribal consultation policy is not required. This rule changes aspects of our seizure and forfeiture procedures, but it is strictly administrative in nature and will not affect how we enforce the underlying laws protecting fish, wildlife, and plants. For this reason, it also will not be more or less protective of Tribal trust resources. Further, individual Tribal members are subject to the same procedures as other individuals relating to property seized or subject to administrative forfeiture under various laws enforced by the Service, except for § 12.65(a)(2), which is wholly beneficial to Tribal members. Under that provision, we may transfer forfeited wildlife to a Tribe.

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

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

**List of Subjects in 50 CFR Part 12**

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

**Regulation Promulgation**

For the reasons described above, we revise part 12, subchapter B of Chapter I,

title 50 of the Code of Federal Regulations to read as follows:

## **PART 12—SEIZURE AND FORFEITURE PROCEDURES**

### **Subpart A—General Provisions**

Sec.

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

### **Subpart B—Notification Requirements**

- 12.11 How is personal notification of seizure and proposed forfeiture provided?
- 12.12 How is public notification of seizure and proposed forfeiture provided?
- 12.13 How is a declaration of forfeiture issued?
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### **Subpart C—Forfeiture Proceedings**

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

### **Subpart D—Abandonment Procedures**

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

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- 12.61 What is the purpose of this subpart?
- 12.62 How does the Service keep track of forfeited or abandoned property?
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- 12.64 How does forfeiture or abandonment affect the status of the property?
- 12.65 How does the Service dispose of forfeited or abandoned property?
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- 12.67 When may the Service donate forfeited or abandoned property?
- 12.68 When may the Service loan forfeited or abandoned property?
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- 12.70 When may the Service destroy forfeited or abandoned property?

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

- 12.81 When can the Service assess fees for costs incurred by the transfer, boarding, handling, or storage of property seized or forfeited?
- 12.82 How will my property be returned if my petition or claim is successful?

AUTHORITY: 16 U.S.C. 470aa et seq., 470aaa et seq., 668 et seq., 668dd et seq., 703 et seq., 718a et seq., 742j-1, 1361 et seq., 1531 et seq., 2401 et seq., 3371 et seq.,

4201 et seq., and 5301 et seq.; 18 U.S.C. 42 and 981 et seq.; 19 U.S.C. 1602–1624; 28 U.S.C. 2465; 42 U.S.C. 1996; and E.O. 13751, 81 FR 88609, amending E.O. 13112, 64 FR 6183.

## **Subpart A—General Provisions**

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

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

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

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

- (1) The Bald and Golden Eagle Protection Act, 16 U.S.C. 668 et seq.;
- (2) The Airborne Hunting Act, 16 U.S.C. 742j–1;
- (3) The Endangered Species Act, 16 U.S.C. 1531 et seq.;
- (4) The Lacey Act, 18 U.S.C. 42;
- (5) The Lacey Act Amendments of 1981, 16 U.S.C. 3371 et seq.;
- (6) The Rhinoceros and Tiger Conservation Act, 16 U.S.C. 5301 et seq.;
- (7) The Antarctic Conservation Act, 16 U.S.C. 2401 et seq.;
- (8) The Paleontological Resources Protection Act, 16 U.S.C. 470aaa et seq.; and
- (9) The African Elephant Conservation Act, 16 U.S.C. 4201 et seq.

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

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

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

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

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

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

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

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

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

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

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

*Abandon* means to relinquish to the United States all legal right you have to own, claim, or possess property and to forever give up any right, title, and interest in the property and waive any further rights or proceedings relative to the property other than whatever rights to seek relief expressly were reserved in the abandonment document you signed.

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

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

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

- (1) Timely submission;
- (2) Containing required information regarding identification of the specific property being claimed;
- (3) Stating the claimant's interest in the property;
- (4) Requesting the initiation of judicial forfeiture proceedings; and
- (5) Made under oath subject to penalty of perjury.

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

- (1) Is inherently illegal to import, export, or possess; or
- (2) Has been taken, possessed, bred, imported, exported, acquired, transported, purchased, sold, or offered for sale or purchase contrary to law.

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

*Detention* means the holding for further investigation of fish, wildlife, or plants and any associated property that is neither immediately released nor seized but is temporarily held by Service officers under 50 CFR part 14.

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

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

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

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

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

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

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

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

*Value* means the value of property as determined by the Service. For property having a legal market in the United States, the Service will use the reasonable declared value or the estimated market value at the time and place of seizure, if such or similar property was freely offered for sale between a willing seller and a willing buyer. For property that may not be sold in the United States, the Service will use other reasonable

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Subpart B—Notification Requirements**

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

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

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

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

- (1) A description of the seized property;
- (2) The name, title, and business address to whom any petition for remission or claim for judicial proceedings must be filed, as well as a seizure tag number;
- (3) The date and place of seizure, and the estimated value of the property as determined under § 12.3;
- (4) A reference to provisions of law or regulations under which the property is subject to forfeiture;
- (5) A statement that the Service or the Solicitor intends to proceed with

administrative forfeiture proceedings;

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

(7) The deadline for filing claims for judicial forfeiture proceedings, which is 35 days after the personal written notice is sent, as well as the deadline for filing petitions for remission; and

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

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

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

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

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

(2) For the purposes of this section, we do not consider property that has been

refused entry, held for identification, held for an investigation as evidence, or detained for less than 30 days under part 14 of this chapter, to be seized.

(3) If, before the time period for sending notice expires, the Government files a civil judicial forfeiture action against the seized property and provides notice of such action as required by law, personal notice of administrative forfeiture is not required under paragraph (a) of this section.

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

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

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

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

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

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

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

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

(b) The published notice will:

(1) Describe the seized property;

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

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

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

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

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

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

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

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

**Subpart C—Forfeiture Proceedings**

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

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

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

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

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

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

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

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

(b) You must file your petition for remission within 35 days from the date of the delivery of the notice of seizure and proposed forfeiture, if you or any interested party receives the notice of seizure and proposed forfeiture. If you do not receive the notice of seizure and proposed forfeiture, we must receive the petition for remission that you file not later than 30 days from the date of last posting of the public notice of the seizure of the property.

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

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

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

(3) A complete description of the property.

(4) A description of the petitioner's interest in the property as owner, lienholder,

or otherwise, supported by original or certified bills of sale, contracts, deeds, mortgages, or other documentary evidence.

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

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

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

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

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

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

- (1) The lawyer has the authority to represent you in the proceeding;
- (2) You have fully reviewed the petition; and

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

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

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

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

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

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

(2) The knowledge and responsibilities of the petitioner's representative, agent, or employee are ascribed to the petitioner where the representative, agent, or employee was acting in the course of his or her employment and in furtherance of the petitioner's business.

(b) The petitioner has the burden of establishing the basis for granting a petition for remission of property and for granting a reconsideration of a denial of such a petition. Failure to provide information or documents or to submit to interviews, when requested by the Solicitor, may result in a denial of the petition.

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

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

of false statements.

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

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

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

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

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

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

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

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

(E) The return of the property combined with imposition of monetary and/or other conditions of mitigation in lieu of a complete forfeiture will promote the interest of justice.

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

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

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

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

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

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

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

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

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

(5) Any decision to grant remission is separate from and does not preclude or otherwise provide relief from civil enforcement against the person or persons who committed the violations associated with the seizure and proposed forfeiture of the property. To expedite the resolution of any civil penalties that may be brought against you under the ESA (16 U.S.C. 1531 et seq.), the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.), or the Bald and Golden Eagle Protection Act (16 U.S.C. 668 et seq.) in connection with violations involving any wildlife for which remission is to be granted,

the Solicitor has the sole discretion to give you the opportunity to completely or partially settle the civil penalty claim at the same time that remission is granted by executing a written agreement setting forth the terms and conditions of the civil penalty settlement. Such an agreement may be included in the written documentation of the terms and conditions of the parallel remission of forfeiture provided that:

(i) The terms and conditions of the civil penalty settlement are clearly delineated as relating separately and solely to any civil penalty claims; and

(ii) The wildlife owner agrees in writing to waive any notice of violation and notice of assessment required by part 11 of this subchapter and the opportunity for a hearing as conditions of civil penalty settlement.

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

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

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

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

(a) If you receive a notice of seizure and proposed forfeiture, you may file a claim to the property by the deadline stated in the notice of seizure and proposed forfeiture.

This deadline will be 35 days after the notice is mailed.

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

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

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

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

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

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

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

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

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

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

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

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

## **Subpart D—Abandonment Procedures**

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

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

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

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

signed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

violation of those conditions.

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

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

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

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

(3) Donation or loan;

(4) Sale; or

(5) Destruction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The importer, exporter, or transporter will be responsible for all costs associated with the reexport or destruction of any seized injurious fish or wildlife

imported, exported, or transported in violation of our injurious species regulations in part 16 of this subchapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The recipient must have the demonstrated ability to provide adequate care and security for the fish, wildlife, or plants.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The Service may sell, or offer for sale, forfeited or abandoned fish, wildlife, or plants, except any species, which at the time of sale or offer for sale, is:

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

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

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

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

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

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

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

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

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

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

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

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

(c) The Service may transport fish, wildlife, or plants that may not be possessed lawfully by purchasers under the laws of the State where the fish, wildlife, or plants are held to a State where possession of the fish, wildlife, or plants is lawful and the fish, wildlife, or plants may be sold.

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

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

(a) The Service may destroy fish, wildlife, or plants under the provisions set forth

in §§ 12.65 and 12.66.

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

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

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

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

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

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

(2) You must make payment under terms of the bill. If you fail to pay, you may be subject to collection proceedings under the Federal Claim Collection Act, 31 U.S.C. 3711

et seq., as well as the Federal Debt Collection Act, 31 U.S.C. 3701 et seq., and the possible refusal of clearance of future shipments, and disqualification from receiving or exercising the privileges of any Service permit.

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

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

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

**Shannon Estenoz,**

*Assistant Secretary for Fish and Wildlife and Parks.*