

**§ 356.1 Property subject to forfeiture procedures.**

This part sets forth procedures relating to the forfeiture of any plant, equipment, means of conveyance or other property<sup>1</sup> seized under the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 *et seq.*) or the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*),<sup>2</sup> in possession (actual or constructive) of the United States Department of Agriculture, and subject to forfeiture under these Acts because of activities pertaining to the importation, exportation, or reexportation of terrestrial plants.

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**§ 356.2 Appraisal.**

Promptly following the seizure or other receipt of property specified in § 356.1, the Deputy Administrator shall determine the retail value of such property in the same quantity or quantities as seized. If the property may lawfully be sold in the United States, the value thereof shall be determined

<sup>1</sup>Under section 11(e)(4) of the Endangered Species Act ("Act"; 16 U.S.C. 1540(e)(4)) any such equipment and means of conveyance would be subject to forfeiture upon conviction of a criminal violation pursuant to section 11(b)(1) of the Act (16 U.S.C. 1540(b)(1)); however, such a plant may be subject to forfeiture regardless of whether a criminal conviction is obtained.

<sup>2</sup>Under section 5(a)(2) of the Lacey Act Amendments of 1981 (16 U.S.C. 3374(a)(2)) USDA has authority to initiate forfeiture proceedings against all vessels, vehicles, aircraft, and other equipment used to aid in the importation or exportation of plants in a criminal violation of the Lacey Act Amendments of 1981 for which a felony conviction has been obtained if (a) the owner of such vessel, vehicle, aircraft, or equipment was at the time of the alleged illegal act a consenting part or privy thereto or in the exercise of due care should have known that such vessel, vehicle, aircraft, or equipment would be used in a criminal violation of the Lacey Act Amendments of 1981, and (b) the violation involved the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase plants. However, under section 5(a)(1) of the Lacey Act Amendments of 1981 (16 U.S.C. 3474(a)(1)) plants seized for violations of the Amendments are subject to forfeiture regardless of whether a civil penalty assessment or criminal conviction is obtained.

by ascertaining the price at which the property or similar property in the ordinary course of trade is freely offered for sale at the time of appraisal, and at a principal market as close as possible to the place of appraisal. If the property may not lawfully be sold in the United States, the value thereof shall be determined by other reasonable means.

**§ 356.3 Property valued at greater than \$10,000; notice of seizure and civil action to obtain forfeiture.**

Promptly following the seizures or other receipt of any property specified in § 356.1 and determined under § 356.2 to have a value greater than \$10,000, the Deputy Administrator shall mail a notice of seizure by registered or certified mail to the current or last known or reasonable ascertainable address, return receipt requested, to persons known or reasonably ascertained to be the owner or agent of the seized property and to any other person having an interest in the property. Such notice shall describe the seized property, shall state the time, date, place, and reason for the seizure, that there is a right to petition for remission or mitigation of forfeiture pursuant to § 356.7, and shall state that action shall be taken in accordance with this part. Promptly following the seizure of such property, the Secretary shall also submit a report concerning such property to the U.S. Attorney for the district in which the seizure was made for institution of forfeiture proceedings in the U.S. District Court. The report shall provide a statement of all the relevant facts and circumstances of the case, including the names of the witnesses, and a citation to the laws believed to have been violated and on which reliance may be had for forfeiture.

**§ 356.4 Property valued at \$10,000 or less; notice of seizure administrative action to obtain forfeiture.**

(a) *When authorized.* The Secretary shall take measures to obtain forfeiture in accordance with this section of any property specified in § 356.1 and determined under § 356.2 to have a value of \$10,000 or less.

(b) *Waiver of forfeiture procedures by owner of seized property.* A person

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claiming to be an owner or to have an interest in any property specified in §356.1 with a value of \$10,000 or less may waive any rights to any procedures relating to forfeiture under this subpart by signing a statement providing for waiver of such rights.

(1) The Deputy Administrator shall publish a copy of the notice of seizure and proposed forfeiture as provided in paragraph (c)(1) of this section, by posting for 21 days in a conspicuous place accessible to the public at the Plant Protection and Quarantine Enforcement office nearest the place of seizure. The time and date of posting shall be indicated on the notice.

(2) Upon the execution of such statement and following publication of the notice for 21 days as provided in paragraph (c)(1) of this section, any interest in such property by such owner shall become forfeited under the Act without further action under this subpart, and the Deputy Administrator shall not be required to send such owner any notices or declarations otherwise required by this subpart.

(c) *Procedure absent waiver of forfeiture procedures by owner.* (1) Notice of seizure and proposed forfeiture. Promptly following seizure of property, the Deputy Administrator shall issue a notice of seizure and proposed forfeiture. The notice shall be in substantially the same form as a complaint for forfeiture filed in the U.S. District Court. The notice shall describe the seized property, including any identification numbers, such as the license, registration, motor, and serial numbers for a motor vehicle. The notice shall state the time, date, and place of seizure; the reason for seizure; and shall specify the value of the property as determined under §356.2. The notice shall contain specific reference to the provisions of the Act, permit, certificate, or regulations allegedly violated and under which the property is subject to forfeiture. The notice shall state that any person desiring to claim the property must file a claim and a bond in accordance with paragraph (c)(2) of this section, and shall state that if a proper claim and bond are not received by the specified office within the time prescribed by such paragraph, the property will be declared forfeited to the

United States and disposed of according to law. The notice shall also advise interested persons of their right to file a petition for remission or mitigation of forfeiture in accordance with §356.7.

(i) Promptly following the seizure, The Deputy Administrator shall mail a copy of the notice by registered or certified mail, return receipt requested, to persons known or reasonably ascertained to be the owner or agent of the seized property, and to any other person having an interest in the property, if such owner or agent or other person and their address is known or reasonably ascertainable.

(ii) *Publication.* Promptly following the seizure, the Deputy Administrator shall publish a copy of the notice by posting for 21 days in a conspicuous place accessible to the public at the Plant Protection and Quarantine enforcement office nearest the place of seizure. The time and date of posting shall be indicated on the notice.

(2) *Filing a claim and bond.* Upon issuance of the notice of proposed forfeiture, any person claiming ownership of or other interest in the seized property may file with the office specified in the notice a claim to the property and a bond in the amount of \$250, with sureties to be approved by the Deputy Administrator, conditioned that in case of condemnation of the articles so claimed, the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation. Any claim and bond must be received in such office within 20 days after posting of the notice of proposed forfeiture, and shall state claimant's interest in the property. The Deputy Administrator may extend the 20 day period with an appropriate statement on the posted notice of proposed forfeiture, if necessary, to allow a person deemed to have an interest in the property at least 10 days to file such a claim and bond after receipt of a notice of proposed forfeiture. The bond shall be on a U.S. Customs Form 4615 or on a similar form provided by Plant Protection and Quarantine. There shall be endorsed on the bond a list or schedule in substantially the following form which shall be signed by the claimant in the presence of the witnesses to the bond, and attested by the witnesses:

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List or schedule containing a description of seized articles, claim for which is covered by the bond:

\_\_\_\_\_

The foregoing list is correct.

Claimant \_\_\_\_\_

Attest: \_\_\_\_\_

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

(3) *Transmittal to U.S. Attorney.* As soon as practicable after timely receipt by the specified office of a proper claim and bond in accordance with paragraph (c)(2) of this section, the Secretary shall transmit such claim, bond (with a duplicate list and description of the articles seized), and a report as described in §356.3 to the U.S. Attorney for the district in which seizure was made for forfeiture proceedings in the U.S. District Court.

(d) *Summary forfeiture.* If a proper claim and bond are not received by the specified office within the time periods as specified in paragraph (c)(2) of this section, the property shall be forfeited and the Deputy Administrator shall prepare a declaration of forfeiture. The declaration of forfeiture shall be in writing, and the Deputy Administrator shall send such declaration by registered or certified mail, return receipt requested, to each person whose whereabouts and prior interests in the seized property are known or reasonably ascertainable. The declaration shall be in substantially the same form as a default judgment of forfeiture entered in U.S. District Court. The declaration shall describe the property and state the time, date, place, and reason for its seizure. The declaration shall identify the notice of proposed forfeiture, describing the dates and manner of publication of the notice and any efforts made to serve the notice personally or by mail. The declaration shall state that in response to the notice a proper claim and bond were not timely received by the proper office from any claimant, and that, therefore, all potential claimants are deemed to admit the truth of the allegations of the notice. The declaration shall conclude

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

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**§ 356.5 Bonded release.**

(a) The Deputy Administrator may accept a bond or other security, in the amount of the value of the property as determined under §356.3, in place of any property specified in §356.1 and release the property to the owner or agent of the property, if such action would not frustrate the purposes of the Act and Convention. As an example, this section does not allow the release of terrestrial plants that are without documentation required under 50 CFR chapter I.

(b) Any request for the return of property based on the acceptance of a bond or other security shall be submitted in writing to the Deputy Administrator. The request shall include evidence to establish that the person making the request is the sole owner of the property referred to in the request or is the agent of the sole owner of such property. A response in writing, granting or denying the request, and the reasons therefor, shall be sent to the person making the request.

**§ 356.6 Storage of property.**

Following the seizure or other receipt of any property specified in §356.1 and valued at \$10,000 or less, the property shall remain in the custody of the Deputy Administrator pending disposition. Pending such disposition, the property shall be stored in such place, as, in the opinion of the Deputy Administrator, is most convenient and appropriate with due regard to the expense involved, whether or not the place of storage is within the judicial district in which the property was seized.

**§ 356.7 Petition for remission or mitigation of forfeiture.**

(a) Any person who has an interest in any property specified in §356.1 and valued at \$10,000 or less, or any person who has incurred or is alleged to have