

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 12**

RIN 1018-AC89

**Seizure and Forfeiture Procedures****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) proposes to revise its seizure and forfeiture procedures. These regulations will establish procedures relating to property seized or subject to administrative forfeiture under various laws enforced by the Service. This amendment is intended to provide uniform guidance for the bonded release, appraisal, administrative proceeding, petition for remission, and disposal of items subject to forfeiture under laws administered by the Service.

This amendment of the Service's seizure and forfeiture procedures is also intended to more clearly explain the procedures used in administrative forfeiture proceedings and to make the process more efficient and provide for greater consistency of the Service's seizure and forfeiture procedures with those of the U.S. Customs Service.

**DATES:** Comments must be submitted on or before January 26, 1996.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203-3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, Room 500, Arlington, Virginia, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Frank S. Shoemaker Jr., Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, telephone (703) 358-1949.

**SUPPLEMENTARY INFORMATION:** The Fish and Wildlife Service (Service) has oversight responsibilities under Federal wildlife conservation statutory and regulatory authorities to provide uniform rules, conditions, and procedures for the seizure and forfeiture of property. The regulations in 50 CFR 12, establish procedures relating to property seized or subject to forfeiture under various laws enforced by the Service.

Forfeiture may be defined as "the divestiture without compensation of property used in a manner contrary to

the laws of the sovereign". Forfeiture as a form of legal action has been enlarged by case law to include the divestiture of property acquired in an illegal manner. The mere fact, however, that property has been used or acquired illegally will not automatically provide the government with the authority to confiscate and condemn it. Property may be forfeited only when such forfeiture is specifically authorized by statute. Federal administrative forfeiture, as a particular class of forfeiture action, is the process by which property may be forfeited to the United States by the Federal agency that seized it in accordance with proscribed administrative procedures. This class of forfeiture will, therefore, take place in the absence of ordinary judicial procedure. For such non-judicial divestiture to occur, it must be specifically permitted by statute. The statutory language authorizing administrative forfeiture has been codified within the Customs laws at Title 19, United States Code § 1602-21.

The Service, in accordance with its oversight responsibility is proposing the following changes to 50 CFR 12, in order to update and revise its procedures to provide greater uniformity with the procedures used by the U.S. Customs Service. Section 12.2 entitled, Scope of Regulations, sets forth the statutory authority under which the Service is empowered to seize and administratively forfeit property. This section is being updated to delete outdated references to legal authorities and to include several additional legal authorities which are administered by the Service. Specifically, changes have been made to Section 12.2 to: eliminate the outdated reference to The Black Bass Act which was incorporated into the Lacey Act in 1981; add the African Elephant Conservation Act, 16 U.S.C. 4201 *et seq.*; and add the Wild Exotic Bird Conservation Act, 16 U.S.C. 4901 *et seq.* These statutes which have been newly referenced in this section all contain administrative forfeiture provisions.

Section 12.3, entitled Definitions, is being revised to include within the existing definition of disposal at 12.3(a)(2), the authorized disposal of seized wildlife items by transferring them to the Fish and Wildlife Service National Forfeited and Abandoned Wildlife Repository (National Repository).

Additional changes to Part 12.3 include the revision of the definition of the word "Solicitor." This definition is being revised to include "any person designated by the Solicitor to initiate and prosecute a civil penalty or

administrative forfeiture proceeding". This change is intended to prevent any confusion by the public as to who is authorized to act in forfeiture or civil penalty proceedings.

Section 12.5, entitled Seizure by other agencies, is being revised to indicate the current titles of responsible Service officials, the "Assistant Regional Director—Law Enforcement". The Assistant Regional Director—Law Enforcement being duly authorized to receive property seized by other agencies under laws administered by the Service. This change will be in keeping with the 1988 revision in 50 CFR Part 10.22 which references the Assistant Regional Director.

Section 12.6, entitled Bonded release, describes the process and requirements for the Service's acceptance of a bond for the release of seized property. The Service in the past has generally used this procedure in special cases such as when live wildlife requires specialized care or when property is liable to perish or become greatly reduced in price or value in storage. Additional text has been added to this section to require the monetary value of seized items to be established as of the time and place of release. The rationale for such a change is the Service's concern that in many importations of wildlife or wildlife products, the actual value of items declared by the importer are ordinarily understated. This undervaluation is often associated with foreign invoice values made on Customs declarations which do not realistically reflect actual domestic market values. When the Service accepts a bond based solely upon foreign or declared value and the goods are returned to the claimant, there can be an unintended incentive for the claimant to sell the goods at the higher domestic market value and forfeit the bond. The text of Section 12.6 has been revised to allow the Service the discretion to specify in what form, cash, check, or certified bank check, a bond may be posted. This change is due in large part to the many comments received from Service employees expressing concern about the difficulty encountered in the liquidation of posted surety bonds or other security instruments, where the bond has been forfeited by the claimant but the necessary preconditions for the bonds liquidation have not been satisfied.

The requirements of the "appraisal" Section 12.12 have also been revised. This section provides guidance for the determination of value of both saleable and unsaleable property seized by the Service. Section 12.12 has been revised to provide the Service with an additional method of determining the

market value of items, that can have no legitimate or lawful value because they are in fact illegal to possess in virtually all circumstances. This section has therefore been revised to allow for "other reasonable means" to be used when determining value of seized property.

The appraisal section is also revised by the elimination of the list of applicable statutes and by the addition of the statement; "any statute administered by the Service". This change will eliminate the redundant listing of laws administered by the Service. Similar changes have been made to Sections 12.22, 12.23(a) and 12.24(a).

Several administrative changes have been made to § 12.22, entitled, Civil actions to obtain forfeiture. This section outlines the Service's authority to initiate civil actions to obtain forfeiture of property seized under any statutory authority administered by the Service. Although this course of action is generally not preferred by the Service, several statutes expressly require the initiation of civil actions for the forfeiture of property. Section 12.22 has, therefore, been revised to clarify that, "For the purposes of section 3(a) of the Lacey Act (16 U.S.C. 3372(a)), the importation of a marine mammal or marine mammal product \* \* \* the importation of a migratory bird \* \* \* or the importation of any species of wildlife pursuant to 18 U.S.C. 42, is deemed to be a transportation of wildlife." This additional text is added to facilitate forfeiture of wildlife without penalty assessment.

Under the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, the Service is required to assess a civil penalty prior to the initiation of forfeiture proceedings involving marine mammals or marine mammal products. In instances of importations made by tourists entering the United States, of marine mammal products in violation of the MMPA, or migratory birds in violation of the Migratory Bird Treaty Act (MBTA), the Service may simply seek forfeiture of the item without the assessment of monetary fine. Products made from endangered species or species protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and imported contrary to the provisions of the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*, are routinely forfeited under those provisions with no prior assessment of a civil penalty. The legislative history of the ESA indicates a Congressional intent to provide for simple forfeiture in cases involving noncommercial tourist. The

MMPA allows the Service to accept voluntary abandonment of marine mammal products in noncommercial cases involving tourists. If the importer will not voluntarily abandon the item, however, the Service will then be forced to seek assessment of a civil penalty in order to seek forfeiture.

In order to avoid penalty assessment for these items when not warranted, and initiate administrative forfeiture, the Service frequently uses the Lacey Act, 16 U.S.C. 3372(a). The Lacey Act does not, however, require the prior assessment of a penalty as a prerequisite to forfeiture. Therefore, in order for the Service to remain consistent in cases involving innocent possession and importation of marine mammal products and migratory bird parts, the Service is revising Section 12.22 to clarify forfeiture under the Lacey Act. For this reason the words "importation is deemed to be a transportation" are being inserted at the end of Section 12.22. This wording is similar to that used in the Wild Exotic Bird Conservation Act (16 U.S.C. 4912(c)). The intent of these changes is to clarify for the public the process used to forfeit items under the MMPA and the MBTA, and enable the Service to treat similar violations in a similar fashion.

The administrative forfeiture Section at 12.23 has also been revised. This section is intended to: explain the process of administrative forfeiture; describe what a Notice of Proposed Forfeiture should contain; set a maximum value limit on property subject to administrative forfeiture; and explain how and with whom interested parties can file a claim and bond in order to stop the forfeiture proceeding. In revision of this Section, the Service is attempting to eliminate unnecessary paperwork, to minimize the number of certified mailings and publications required, to clarify the forfeiture process, and to bring the regulations up to date with current Customs regulations.

Specific changes to 50 CFR 12.23(a) will raise the upper value limit of property subject to administrative forfeiture from \$100,000 to \$500,000 to bring Part 12 into uniformity with applicable Customs requirements. The Service is also adding the words "or without regard to the value of the wildlife, if the importation of the wildlife is prohibited", to the text of this section. This change is intended to be consistent with current Customs regulations, and is to have the effect of reducing the number of uncontested forfeitures that the Solicitor will need to refer to the United States Department of Justice. The basis for making this change

is that under current regulations, all forfeiture actions involving seized property valued at over \$100,000 were referred to the Department of Justice even when such importations were specifically prohibited. The burden of preparing forfeiture cases for presentation to the Department of Justice has been substantial. The Service, therefore, is revising this section to reduce the number of referrals in uncontested forfeiture cases.

Section 12.23(b)(1)(A), entitled, Publication is revised to adjust the value of property to which the Service is required to provide notice of forfeiture to the public by newspaper publication. The Service is adjusting the stated value from \$1000 to \$2500 respectively. This change will allow the Service to post notices of forfeiture at Service enforcement offices, U.S. District courthouses, or U.S. customhouses, for property valued up to \$2500. This revision will bring the Service into uniformity with current Customs regulations, reduce the costs generally associated with publication and adjust this limit for changes to the comparable value of money since the last revision of this section.

Several other changes have been made to Section 12 in an effort to bring the Service's requirements into uniformity with current Customs regulations and to improve and clarify the notification process. The Service will no longer require that a notice of proposed forfeiture be made in the same form as a Federal Judicial complaint. The Service is also adding additional text to the section stating that "articles included in two or more seizures may be advertised as one unit". This change will allow the Service to use "one unit" advertising and will thereby reduce the number of advertisements needed to provide notice of proposed forfeiture for items of relatively minimal value. This change is expected to result in a significant cost saving for the Service in both advertising expenses and in costs associated with the issuance of multiple notices of proposed forfeiture.

Other changes to section 12.23(b)(1)(B) have been made to clarify the process by which interested persons may file a petition for remission of forfeiture. Section 12.23(b)(1)(B) has been revised to state that a petition for remission shall be filed with the "Solicitor's Office", in accordance with "and within the time limits set forth in section 12.24." This change will assist the public in knowing where, and within what time limits, they may file a petition. Additional wording has also been added to this section to clarify the

affects on claimants for the failure to file a timely claim with cost bond.

The Service is also revising its procedures to provide a single Notice of Proposed Forfeiture. Upon notice interested parties may respond by filing a claim with cost bond and/or a petition for remission within the required time limits. A potential claimant may, therefore, either stop the forfeiture proceeding by filing a petition or claim and bond, or allow the forfeiture to occur automatically by not responding. It should be noted, that in most forfeiture actions undertaken by the Service, the forfeitures are contested. The Service for this reason is interested in abolishing the redundant "Declaration of Forfeiture" notice currently required under section 12.23(c). The Service is proposing to use a single Notice of Proposed Forfeiture procedure which can result in automatic forfeiture if a claim or a petition for remission have not been filed within the appropriate time. In addition, as is the current practice, a Declaration of Forfeiture would not be issued. The Service is revising the contents of the notice of proposed forfeiture, as well as the text of the summary forfeiture section as follows: "The notice shall further provide that if the claim and costs bond are not timely received, that all claimants are deemed to admit the truth of the allegations of the notice and the property is summarily forfeited to the United States".

The Service is also making changes to Section 12.23(b)(2). This section outlines the requirements of filing a claim and bond by persons claiming rights to property seized by the Service. This section has been incorrectly interpreted by many individuals to pertain only to "bonds" as financial instruments. The Service, therefore, proposes to revise this section by deleting the word "bond", and by replacing it with the words "non-refundable certified or bank check made payable to Clerk, United States District Court." This new wording will also clarify for the public the essential "non-refundable" nature of such certified or bank check. A bond in generally required in order to provide for the payment of costs, and is therefore nonrefundable. The regulations will continue to require a bond in the amount of \$5000 or ten per centum of the value of the claimed property, whichever is less, but not less than \$250.

A second change to the text of subsection (B)(2) has been made to clarify the regulation and explain the affects of filing a bond for seized property. The addition of the words

"Such filing only stops the summary forfeiture proceeding", is intended to emphasize that the mere filing of a bond will not ordinarily entitle the claimant or other person to possession of the property. This additional text will also provide conformity with current applicable Customs requirements.

The Service is revising Section 12.23(b)(4), entitled, Motion for Stay, in order to clarify the intent of its requirements. In certain instances forfeiture claimants, who are the subjects of ongoing criminal investigations, or criminal charges, have attempted to use the broad range of civil discovery to obtain information about the Service's criminal investigation. Use of civil discovery in this fashion has allowed individuals access to information they would not otherwise be entitled to receive. A Motion for Stay is considered a necessary addition to Part 12, however, in order to provide for circumstances in which a claimant defending a forfeiture action might be forced to make statements against their interest, which could eventually be used against them if they were also charged criminally for the same violation. In general, the United States Attorneys are generally cognizant of this issue and such forfeiture actions are often purposefully delayed pending resolution of the underlying criminal case. Since the existing text of the regulation does not indicate that a Motion for Stay is limited in the circumstances of its use, claimant's attorneys have often filed, or sought to file, such motions. Therefore, in order to more clearly explain the purpose of such motions, the additional words, "A Motion for Stay will be considered only if the owners of the property are also charged with a criminal violation based upon the same illegal act", have been added to the beginning of this section for clarification. The effect of this revision is to reduce the number of inappropriate motions filed, and ensure compliance with Rule 26 of the Federal Rules of Criminal Procedure.

The existing text to Section 12.23(c) entitled, Summary Forfeiture, has been substantially revised. This provision provided for the issuance of a written declaration of forfeiture and specifies the contents of such declarations. These requirements have been substantially eliminated. The proposed new text of this section is intended to be consistent with the changes being made in Section 12.23(b)(1)(B) and is made on the same basis. The Service is thereby eliminating the current practice of issuing a Service Declaration of Forfeiture, in favor of "automatic forfeiture", when a claim and bond have not been filed. To effect

this change a new Section 12.23(c), entitled, "Institution of forfeiture proceedings before completion of other administrative proceedings", is being added to Part 12. This new section will simply state that "nothing in these regulations is intended to prevent the institution of forfeiture proceedings before completion of penalty assessment or remission procedures." The basis for this change is that the Service has in the past sought civil penalties prior to forfeiting wildlife products when, for example, products were imported into the United States in violation of the Endangered Species Act. Several judicial decisions have caused the Service to revise its procedures in regards to the length of time the Service may hold property prior to the initiation of forfeiture proceedings, without incurring problems of a Due Process nature. The Service in most cases will generally seek forfeiture before initiating civil penalty proceedings, unless forfeiture proceedings have been delayed or remitted through a filing of a petition or a claim and bond. The Service, therefore, is seeking through this revision, a means of providing for such cases where the institution of forfeiture proceedings is made before the completion of other administrative proceedings. This change is also intended to conform with current Customs procedures.

Section 12.24, entitled, Petition for Remission of Forfeiture, has been revised by the Service. In addition to the elimination of certain redundant statutory citations in paragraph (a), the Service is proposing to modify paragraph 12.24(c). This paragraph currently requires that a petition be signed by the petitioner or the petitioners attorney at law. The Service proposes the addition of the word "or representative" after "attorney at law" in order to avoid an erroneous interpretation that a petitioner must act alone or through an attorney. The effect of this change will therefore be to clarify for the petitioner, that they may designate a representative, other than an attorney, to act on their behalf.

Changes reflecting the new Disposal definition are proposed at Sections 12.24 (b) and (e). Under paragraph (b), a petition for remission must be received prior to disposal of the property. Paragraph (e) will now require the Solicitor to determine if the property has been disposed of prior to deciding whether or not to grant relief.

The addition of a new section under Subpart C to be designated Section 12.26, and entitled, Summary Sale of Perishable and Other Property, is being proposed by the Service. This section

will allow the Service to sell any live wildlife, plant, or other seized property subject to forfeiture, when such item(s) have been determined likely to perish, deteriorate, decay, or likely to waste, provided that the item(s) seized can otherwise be lawfully sold. The proceeds of such sale will then become the object of the subsequent forfeiture action. The Service is proposing this new section for a variety of reasons based upon its past experience with such live or perishable seizures. Under the current disposal regulation at Section 12.33(c)(1), the Service cannot dispose or sell live or perishable property until such property has been forfeited or abandoned. The Service is currently required to petition a competent United States District Court of competent jurisdiction to allow a summary sale of the perishable items if they are not yet forfeited. This has resulted in substantial delays which in practice defeat the intent of the desired sale. These delays in the disposition of perishable items may also cause substantial storage and handling problems while summary sale or forfeiture is being sought. Attempting to place live wildlife in a suitable facility to prevent the animals (or plants) perishing while awaiting forfeiture has proven to be a difficult task, particularly when dealing with more common species. This task is often made more difficult because such placements may be only temporary in duration, due to the possibility of remission of forfeiture. To risk live wildlife perishing due to the lack of suitable placement while awaiting forfeiture would be inconsistent with the mission of the Service.

In the past the Service has attempted to prioritize administratively the destruction of abandoned property that was either perishable, constituted a health hazard to employees, or posed a threat of contamination to other more valuable seized property. This process is made difficult and time consuming when the property has not been forfeited or abandoned. The Service, therefore, is seeking a means by which perishable items can be sold immediately with the forfeiture action being directed against the proceeds of that sale. The addition of this section under Subpart C will also provide for conformity with Customs regulations, alleviate some of the burden placed upon law enforcement personnel in storing perishable items or finding placement for live wildlife, to minimize the risk of live and sometimes rare wildlife perishing, and to minimize the need for Judicial involvement in requests for summary sale.

Section 12.33 is also revised by the addition of a new paragraph (e). This new paragraph will include, as an accepted method of disposal of forfeited fish, wildlife or plants, the transfer of such wildlife items to the Fish and Wildlife Service, National Forfeited and Abandoned Wildlife Repository. The rationale for this change is to provide a means for the seizing official to address all issues surrounding remission, or return, of the seized item prior to disposal, and for the seizing official or evidence custodian to address issues concerning prior illegality, as outlined in Section 12.32, prior to disposal. An example of a prior illegality is non-compliance with the requirements of a Department of Agriculture quarantine regulation affecting the importation of exotic birds. The Service in making this change, is of the belief that such issues are best left to be addressed by the seizing official. Changes relating to Disposal are also made at Sections 12.24 (b) and (e), as well as in Section 12.33.

In addition to the administrative advantages of this proposed change, as outlined in the prior discussion, the Service is seeking to resolve problems involving requests for remission, and to examine goods long after forfeiture has taken place. Under the current regulation at section 12.24(b) a petition for remission can be filed at any point prior to disposal. Since the National Repository is part of the Service, items transferred there were considered to still be in the possession of the Service and not "disposed of". This resulted in the filing of numerous petitions and requests for examination long after the items had been forfeited. The Service believes that the proper time for filing for remission, or dealing with other concerns of the owner, is before items are transferred to the National Repository. The Customs regulations establish a time limit, after which, if no petition for remission or claim and bond are filed, the proceeds of the forfeiture are dispersed. The Service has decided against proposing an arbitrary time limit on the filing of petitions, and instead, decided to make the National Repository a means of disposal in itself. This will alleviate the unnecessary burden of tracking time limits on each forfeited item of property, and ensure that all issues surrounding remission are resolved by the seizing official. The majority of forfeited property being handled by the Division of Law Enforcement is transferred to the National Repository since it was the intent in its establishment to make it the normal repository for such items.

## Background

On Thursday, November 14, 1991, (56 FR 57873) the Service published a Notice of Intent to Review 50 CFR Part 12 and requested that all interested parties submit written comments. The Service received comments from a total of 66 individuals and organizations.

Specifically, written comments were received from 36 individuals, 11 representatives of government agencies, 8 sportsman associations, 1 American Indian Tribe, 3 scientific associations, and 7 wildlife management and conservation associations. Only 7 of the comments to a Notice of Intent to Review Parts 12, 13, 14, 20, 21 and 22 pertained to Part 12. The Service has carefully considered all comments received in proposing these changes to Part 12. Public comments submitted in response to the Notice of Intent to Review that were directed at Parts 13, 14, 20, 21 and 22 will be addressed as each individual Part is proposed for revision.

## Summary of Comments and Information Received

In general, the comments recommended that the Service provide in its revision of Part 12 additional procedural safeguards in the regulations governing "Seizure and Forfeiture Procedures". Additional procedural safeguards were requested for the resolution of disputes in cases involving the identification of specimens seized, for determining when the forfeiture of an appearance bond or other security to the Service is warranted in lieu of seizure, and to set out in the regulations the "specific notices" and other required documentation necessary in seizure and forfeiture procedures. Other comments regarding this section ranged from requests to have the section thoroughly reviewed, to the addition of lengthy text pertaining to the detention of property.

## Comments Pertaining to 50 CFR 12.6

### *Bonded Release*

Several commenters suggested revising Part 12 to give the Service greater flexibility to require and liquidate performance bonds for the release of seized property. The Service's authority to accept bonded release of wildlife is authorized by the Endangered Species Act. Bonded release pertains to the discretionary release by the Service of wildlife or wildlife products after an importer or owner has produced cash, certified check, or other security to ensure the products return and availability to the Service. Liquidation of the bond may occur if the

conditions of the bond have not been satisfied. The Service recognizes that there have been problems in the liquidation of corporate surety bonds when the preconditions for their release have not been satisfied. The Service has addressed this problem in this revision by specifying within the applicable section, that a cash bond or certified bank check can under certain circumstances be an option available for bonded release.

One commenter noted that an important justification for the use of bonded release was to ensure proper specialized care for scientific specimens. Specialized care is often necessary to maintain scientific specimens and is an important reason for using bonded release. Situations requiring bonded release include cases where there is live wildlife that the Service can not reasonably care for, or other cases involving live falconry birds.

One commenter expressed concern regarding live falconry birds and requested that the Service ensure that such bird be bonded back to the falconer's custody, because as the commenter termed, the falconer can best care for such bird. The Service's regulations already provide for this in Section 12.6(b).

One commenter representing a sportsman's organization expressed concern about possible spoilage or death of wildlife specimens being detained by the Service while taxonomic identification is taking place. The commenter recommended bonded release as a remedy for this problem. The Service agrees that such concerns when legitimate would be valid grounds for the use of bonded release. When contemplating bonded release of an item, several factors are considered by the Service. Generally bonded release will not be allowed in situations where the Service would not have reasonable assurance that the property released is the same property to be returned for forfeiture or other proceeding. In addition bonded release is only allowed when possession of the property by the owner will not violate or frustrate the intended purpose or policy of applicable law or regulation. The release of an item under bond to an importer or owner, for example, is not allowed, when the taxonomic identification of an item is still in question for any release would be a bar to the necessary identification of the item. The Service intends for the provisions governing the bonded release to be narrowly construed. The Service has made efforts to ensure that its requirements for the possession of forfeitable property are

adequate to ensure safekeeping and in the best interest of compliance.

One commenter expressed concern over the Service's practice of "detaining" wildlife for identification. The commenter specifically admonished the Service for detaining shipments, when accompanying documentation reveals the correct taxon, and the movement of that specimen in commerce would not be illegal. The commenter further characterized such detention to a seizure without warrant. The Service has carefully considered the views of the commenter and disagrees with the prior characterization of the detention of shipments. Service personnel are trained to check declarations and other required documentation to determine when items being declared do not reflect what is being imported or exported.

The Service is authorized under the Endangered Species Act, the Lacey Act, the Marine Mammal Protection Act, and the Wild Bird Conservation Act, to detain for inspection and seize without warrant, wildlife and wildlife products imported into or exported from the United States contrary to these laws. The Service regards such detentions as a "refusal of clearance" of the wildlife until certain necessary matters pertaining to the import or export of the item are satisfactorily resolved. Generally searches of persons or property will ordinarily require as a standard, a showing of "probable cause". In situations involving the international border or its functional equivalent, however, probable cause is ordinarily not required to detain and inspect when such activity is accomplished in a fashion consistent with constitutional limitations and are made pursuant to existing statutory authorities. The rationale for this special case exemption to the usual constitutional restraints has been termed by the Federal courts as the "compelling" interest of the United States in maintaining control of its own borders. In general, the Service's authority to conduct inspections and the authority to refuse clearance of wildlife and wildlife items at designated ports or designated border crossings are based upon a "reasonable suspicion" standard. This standard is in keeping with the generally accepted practice used by all federal agencies when conducting inspections at the international border. The Service, therefore, is not required to show actual probable cause, or to obtain a "warrant", to inspect shipment or refuse entry thereof and detain wildlife products when such activities are done consistent

with its established authority at an International Border or the functional equivalent thereof.

One commenter suggested that the Service should be responsible for the identification of wildlife specimens entering the United States. The Service has clearly stipulated in 50 CFR 14.53, that the burden of proof for identification lies with the owner, importer or consignee of the wildlife. The Service will identify wildlife in order to determine if a violation of the law has occurred. The importer, owner, or consignee of imported wildlife, or wildlife products, however, is required to establish the identity of wildlife being imported to the satisfaction of the Service.

One commenter expressed the opinion that in most cases documents submitted by importers and exporters indicating the taxonomic identity of the wildlife being imported or exported are correct. The Service has found through experience that such information is unfortunately often incorrect. Importers and exporters have in many instances submitted paperwork incorrectly declaring the wildlife being shipped, and have presented CITES permits which contained erroneous or false information. Although a majority of such imports and exports of wildlife are done correctly and in full compliance with the law, the Service occasionally deals with persons who intentionally misrepresent wildlife and forge documents or use falsified permits to circumvent the law. In order to remain diligent for criminal activity and provide an effective deterrent to such activity, the Service will not ordinarily accept documentary evidence merely at face value. The Service pursuant to its treaty obligation under CITES and a statutory obligation under the Lacey Act, Endangered Species Act, etc. is required to maintain a level of diligence in regards to the required documentation and, in such capacity, question the validity of documents that may be false and otherwise circumvent the purpose of the convention and domestic laws. It is important to note, that the movement in commerce of a particular wildlife specimen may in itself be illegal. The lawful movement of wildlife in commerce is dependent upon its taxonomic identification. The fact that an importer may, in good faith, believe his importations of wildlife to be legal, and therefore lawful in commerce, does not legitimize such importations. In order to carry out its enforcement function properly, the Service cannot automatically make assumptions as to the status of wildlife shipments relative to the law. The Service requires that

importers show, via Declaration, that a wildlife item(s) complies with the law. The Service, therefore, in the exercise of due diligence will routinely inspect such shipments to ensure compliance with applicable law.

Comments pertaining to 50 CFR 12.11

#### *Notification of seizure*

One commenter representing an organization, expressed dissatisfaction with the contents and procedures of the Service's notification of seizure. The commenter noted that, in his experience, the Service's Regions will differ on how the owner or consignee is notified of a seizure. The commenter also noted that owners or consignees are "merely informed" of seizures and the contemplation of forfeiture or civil penalty proceedings, and are not informed of procedures available to resolve the problem. The Service does not agree with this characterization, and would direct members of the interested public to Sections 12.11 and 12.23 of Title 50. Section 12.11 requires that the owner or consignee is personally notified of a seizure. This notice specifies the time, place, and reason for the seizure. Section 12.23, which also requires a Notice of Proposed Forfeiture contain specific reference to the provisions of the laws or regulations allegedly violated, and also states that any person desiring to claim the property must file a claim and bond. Service procedures for filing a claim and bond, filing a motion for stay, and filing a petition for remission, which allows the petitioner an opportunity to file a statement of facts and circumstances.

Another commenter noted that in his opinion the Service has not established procedures for resolution of ambiguities over species identification and documentation. The commenter also noted that owners or consignees of wildlife imports are not consulted regarding CITES document verification. In response to this comment it is the Service's policy that the importer, owner, or consignee of wildlife imports be vested with the responsibility for making a proper declaration of the wildlife to the Service upon importation. Any ambiguities arising from the declaration would be grounds for refusal of clearance and/or seizure of the item in question. Matters involving ambiguities in documentation, e.g. the verification of CITES documents, are generally internal to the workings of the CITES convention and may involve official communication between the Government of the United States and foreign governments through the State Department. The Service is not

obligated to consult with the owner or importer of wildlife items in discussions with foreign governments, when official documents meant to communicate information between governments are involved.

One commenter expressed the concern about the adequacy of due process and about any necessary involvement in administrative proceedings prior to civil or criminal trial. The Service notes, in response to the concerns expressed by the commenter, that 50 CFR Parts 11 and 12 contain specific procedures, which require the involvement of the owner. Nothing contained in these regulations, however, will restrict an individual's ability to produce evidence of any form in their defense, or restrict their access to administrative or judicial process. In the case of civil penalty assessment the violator (respondent) may undertake informal discussion with the Director in resolution of the proposed penalty, or in the case of proposed forfeiture may produce a statement of all facts and circumstances as authorized by § 12.24. The Service, however, is bound by the established procedures found in the Federal Rules of Criminal and Civil Procedure, Titles 18 and 28 of the United States Code, respectively.

One commenter expressed concern about not being informed as to the Service's determination of the identity of a species of wildlife whose identity is in question. The Service procedures established at Section 12.23(B) requires the Service to describe the property, as well as the specific laws or regulations violated. Rule 16 of the Federal Rules of Criminal Procedure and Rule 26 of the Federal Rules of Civil Procedure also require the release of this information to owners, importers, or consignees of imported wildlife.

Comments Pertaining to 50 CFR 12.24

#### *Petition for Remission of forfeiture*

One commenter recommended revision of this section due to a perceived dissatisfaction with the length of time the Service takes to affect forfeiture after the seizure of a wildlife item. The commenter also suggested that the Service should detain wildlife for a period of time that is no longer than that allowed by the various Circuit Courts of Appeal. The commenter also expressing the opinion that the Service has "egregiously" violated reasonable time limits as a matter of routine. The commenter further suggested that a remedy to the perceived problem is to require the Solicitor's Office to issue an order to delay any initiation of forfeiture proceedings, until after "the proceeding

is finally disposed of by a written decision." The Service does not agree with the view expressed by the commenter and does not believe that the further delays that would be incurred by such additional requirements in forfeiture proceedings, would contribute in any meaningful way to the adequacy of the process.

The Service acknowledges that some clarification of the terminology of forfeiture is in order. Some confusion exists between the terms detention, refusal of clearance, and seizure. The "refusal of clearance" of wildlife is generally used by the Service to provide for time to verify permits or obtain positive identification of the wildlife in question. This process is in many ways analogous to "investigatory detention" which has been upheld by the courts as long as the reason for detention and length of detention are not unreasonable. It is essential to the work of the Service, that wildlife be properly identified to determine whether or not a violation of the law has in fact occurred. The outcome of this identification may eventually lead to an items forfeiture. Wildlife is, as a matter of policy, to be held no longer than necessary to determine identity or verify permits allowing entry. The Service, in carrying out this responsibility, will routinely work with foreign governments to verify permits and will often seek the advice of experts in various wildlife fields of study. Specialists in these fields are not always readily available, whether in the United States or abroad, and such permit verification or wildlife identification may take additional time. The Service, in such cases, will leave in effect a refusal of clearance of wildlife for a period of time no longer than that which is reasonable to ensure compliance with the law. Upon the completion of this process, the wildlife in question, is either seized, released, abandoned by the importer or owner, or re-exported.

The Service is of the view that the commenter may be confusing "detention" with the "refusal of clearance" of wildlife upon the importation of such wildlife, as stated in § 14.53. When the correct identity of wildlife has not been established by the importer or owner, or can not be established, the Service may refuse to clear the wildlife for entry into the United States. Refusal will occur when there is reasonable suspicion to believe that an item is not in compliance with U.S. laws or regulations. The Service is under no obligation to identify or "seize" (take custody of an item) simply because it has refused to allow the item into the United States. This may lead to

the perception that the item has been detained for a long period of time because the importer cannot take possession, when, in many cases, the item may be re-exported to the country of origin or abandoned. The Service agrees, that refusal to clear wildlife with no reasonable suspicion of wrongdoing, or when longer than necessary to ensure compliance with the law, is unacceptable.

The conditions for the seizure of wildlife are distinctly different from that of refusal of clearance and should be distinguished. In a seizure scenario, the Service will take actual custody of the item in question. The Service will generally seize wildlife in instances where an importer is either unable to provide the required documents, is unable to satisfy applicable Service requirements, or is in clear violation of applicable law. Wildlife parts or products may, therefore, be seized and held subject to eventual forfeiture. The Service has been charged with the responsibility for wildlife law enforcement and to thereby take such measures to detect the illegal importations and exportations of wildlife items. In many cases items of wildlife are not contraband "per se", and therefore, require additional identification to establish legality. Exigent circumstances have generally been held by the courts to exist at the border, where wildlife is being imported or exported, because once such items are released they are often unrecoverable. The importation of illegal wildlife into the U.S. is subject to prosecution as a criminal felony violation under certain conditions. The Service must balance its responsibilities in conservation law enforcement against the rights of property owners to fair and adequate legal process. The Service believes it can accomplish its conservation role effectively without adversely affecting the rights of individuals to fair and adequate process in law, and believes its procedures are a reasonable approach to seizure and forfeiture.

Comments Pertaining to 50 CFR 12.33

#### *Disposal*

One commenter from a scientific organization expressed concern about the Service's potential destruction of forfeited property that might have scientific value. The commenter recommended that a record be maintained of attempts to donate, sell, or transfer forfeited property with scientific value prior to its destruction. The Service strongly agrees with the concept of using scientific specimens

rather than destroying them. The Service is of the view that adequate safeguards are already in place to ensure this does not occur, and refers the public to 50 CFR 12.33(a) and 12.36(a). Section 12.33 stipulates that the Director must attempt to dispose of any wildlife or plant by the order in which the disposal methods appear in the regulation. This part applies unless destruction is by court order. The options; return to the wild; use by the Service or transfer to another government agency; donation or loan; and Sale, all appear before destruction. Section 12.36 specifically authorizes the donation or loan of wildlife and plants for scientific purposes.

Comments Pertaining to 50 CFR 12.34

#### *Return to the Wild*

One commenter expressed concern about "the release of plant or wildlife species with broad or fragmented geographic ranges." The commenter was concerned that such species should not be released indiscriminately within the species range because of the possible introduction of deleterious genes or pathogens. The Service understands this concern and would note that this section includes the words "released to \* \* \* suitable habitat." Suitable habitat would include areas where the possibility of introduction of pathogens or undesirable genes would not occur. One of the legal authorities under which the Service is authorized is Executive Order 11987, entitled, "Exotic Organisms." This Executive Order directs Federal agencies to restrict the introduction of exotic species into natural ecosystems of the United States. The intent of E.O. 11987 is clear and a species' return to the wild in the U.S. should be limited to suitable historic range. The service recommends consultation with biologists familiar with species of concern, prior to the release of any live wildlife.

Comments Pertaining to 50 CFR 12.35

#### *Use by the Service or Transfer to Another Government Agency for Official Use*

One commenter representing a scientific association recommended that scientific research should be added as one of the options for the use or transfer of forfeited property under this section. The commenter suggested that research be given first priority for the use or transfer of such property. The Service agrees that research is a legitimate use for appropriate forfeited items. The Service believes that the option to allow return to the wild of live forfeited specimens should, however, remain the

number one option under this section. The Service believes that returning wildlife to the wild whenever possible is the option most consistent with the mission of the Service. Research is authorized under the current regulation as the number two option for use or transfer of forfeited items. The scientific research option appears as the number five option also, as "other scientific purpose."

Comments Pertaining to 50 CFR 12.36

#### *Donation or Loan*

One organization recommended revision of this section to include within its provisions, the "conservation and captive propagation" of live forfeited wildlife. The Service supports the premise raised by the commenter, but believes the present regulation adequately provides for such purposes. The concept of "conservation", although not always easily distinguished, nonetheless, underlies all of the Service's efforts with regard to the donation or loan of forfeited items. The Service, however, believes that it would be nearly impossible to list all of the authorized purposes that any particular forfeited item could be used for. The donation or loan of such property, as a basic rule, must be consistent with appropriate scientific, educational, or public display purposes. When the captive propagation of live wildlife is consistent with these purposes, and not for individual personal gain, nothing in the revised regulation would preclude it as a legitimate use for donated or loaned wildlife or plants.

Comments Pertaining to 50 CFR 12.51

#### *Return Procedure*

One organization commented on modification of this part to provide for the return of seized property within 30 days. The Service agrees that any unnecessary delay in the return of seized property is unwarranted. In general in cases which require the return of seized property, the Service has sought to ensure that the 30 day standard mentioned by the commenter is satisfactorily met. Under the current regulation the Service is required to promptly return property when the reason for seizure is not sustainable, either criminally or civilly.

#### *Required Determination*

This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. This proposed rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

This action is not expected to have significant taking implications, as per Executive Order 12630. This proposed rule does not contain any additional information collection requirements, beyond those approved under OMB approval Number 1018-0022, that would require the approval of OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action does not contain any federalism impacts as described in Executive Order 12612. These proposed changes in the regulations in Part 12 are regulatory and enforcement actions which are covered by a categorical exclusion from National Environmental Policy Act procedures under Section 516 of the Department Manual. An Environmental Action Memorandum is on file at the U.S. Fish and Wildlife Service Office in Arlington, Virginia. The determination has been made pursuant to section 7 of the Endangered Species Act that the proposed revision of Part 12 will not effect federally listed species. These proposed regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

#### Author

The originators of this proposed rule are Law Enforcement Special Agent John M. Neal and Special Agent Jerome S. Smith of the Division of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia.

#### 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 set out in the preamble, Title 50, Chapter I, Subchapter B of the Code of Federal Regulations is proposed to be amended as set forth below:

### PART 12—SEIZURE AND FORFEITURE PROCEDURES [AMENDED]

1. The authority citation for Part 12 is revised to read as follows:

Authority: 16 U.S.C. 4222-4241; 4901-4916; 18 U.S.C. 42

2. Section 12.2 is amended by revising paragraphs (f) and (i), and adding a paragraph (k), to read as follows:

#### § 12.2 Scope of regulations.

\* \* \* \* \*

(f) The African Elephant Conservation Act, 16 U.S.C. 4201 *et seq.*;

\* \* \* \* \*

(i) The Lacey Act, 18 U.S.C. 42;

\* \* \* \* \*

(k) The Wild Exotic Bird Conservation Act, 16 U.S.C. 4901 *et seq.*

3. Section 12.3 is amended by revising paragraphs (a)(2) and (a)(4) to read as follows:

#### § 12.3 Definitions.

(a) \* \* \*

(2) "Disposal" includes, but is not limited to, remission, return to the wild, use by the Service or transfer to another government agency for official use, donation or loan, sale, or destruction; and forfeited and/or abandoned wildlife transferred to the Fish and Wildlife National Forfeited and Abandoned Wildlife Repository.

\* \* \* \* \*

(4) "Solicitor" means the Solicitor of the Department of the Interior and any person designated by the Solicitor to initiate and prosecute a civil penalty or administrative forfeiture proceeding.

\* \* \* \* \*

#### § 12.5 [Amended]

4. Section 12.5 is amended by removing the words "Special Agent in Charge", and by adding in their place "Assistant Regional Director—Law Enforcement."

5. Section 12.6 is amended by revising paragraph (a) to read as follows:

#### § 12.6 Bonded release.

(a) Subject to the conditions set forth in paragraphs (b) and (c) of this section, and to such additional conditions as may be appropriate, the Service, in its discretion, may accept, cash, check, or certified bank check or other security (including, but not limited to, payment of the value as of the time and place of release) in place of any property seized under the African Elephant Conservation Act, 16 U.S.C. 4201 *et seq.*, Endangered Species Act, 16 U.S.C. 1531 *et seq.*; Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*; Lacey Act, 18 U.S.C. 42, and 16 U.S.C. 3371 *et seq.*; Airborne Hunting Act, 16 U.S.C. 742j-1; Eagle Protection Act, 16 U.S.C. 668 *et seq.*; or Wild Exotic Bird Conservation Act, 16 U.S.C. 4901 *et seq.*

\* \* \* \* \*

6. Section 12.12 is revised to read as follows:

#### § 12.12 Appraisalment.

The Service shall determine the value of any property seized under any statute administered by the Service. If the seized property may lawfully be sold in the United States, its domestic value shall be determined in accordance with § 12.3. If the seized property may not lawfully be sold in the United States, its

value may be determined by other reasonable means.

7. Section 12.22 is revised to read as follows:

#### § 12.22 Civil actions to obtain forfeiture.

The Solicitor may request the Attorney General of the United States to file a civil action to obtain forfeiture of any property subject to forfeiture under any statute administered by the Service. If the Solicitor intends to assess a civil penalty, no forfeiture action under the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, may be initiated until such civil penalty has been assessed; the administrative action to obtain forfeiture must be commenced within 30 days after such assessment. For the purposes of Section (3)(a) of the Lacey Act (16 U.S.C. 3372(a)), the importation of a marine mammal or a marine mammal product, as defined in 16 U.S.C. 1362, the importation of a migratory bird, part, nest, or egg, as regulated pursuant to 16 U.S.C. 703 *et seq.*, or the importation of any species of wildlife, as regulated pursuant to 18 U.S.C. 42, is deemed to be a transportation of wildlife.

8. Section 12.23 is amended by revising paragraphs (a), (b)(1)(A), (b)(1)(B), and (b)(2), (b)(4) introductory text, paragraphs (b)(4)(ii), and (c) to read as follows:

#### § 12.23 Administrative forfeiture proceedings.

(a) *When authorized.* The Solicitor may obtain forfeiture of property under any authorizing statute administered by the Service in accordance with this section when the property is determined under 12.12 to have a value of not greater than \$500,000, or, without regard to the value of the wildlife, when the wildlife being imported is determined to be prohibited.

(b) *Procedure—*

(1) \* \* \*

(A) *Publication.* The notice will be published once a week for at least three successive weeks in a newspaper of general circulation in the locality where the property was seized. If the value of the seized Property as determined under § 12.12 does not exceed \$2500, the notice may be published by posting, instead of newspaper publication, for at least three successive weeks in a conspicuous place accessible to the public at the Service's enforcement office, the U.S. District Court or the U.S. Customhouse nearest the place of seizure.

(B) *Contents.* Articles included in two or more seizures may be advertised as one unit. The notice must describe the property, including, in the case of motor

vehicles, the license, registration, motor, and serial numbers. The notice must state the time and place of seizure, as well as the reason therefor, and will specify the value of the property as determined under § 12.12. The notice will contain a specific reference to the provisions of the laws or regulations alleged to be violated and under which the property is subject to forfeiture. The notice will state that any person desiring to claim the property must file a claim and a bond in accordance with paragraph (b)(2) of this section, and will state that if a proper claim and bond are not received by the proper office within the time prescribed by such paragraph, the property is summarily forfeited to the United States and will be disposed of according to law. The notice will advise interested persons of their right to file a petition for remission of forfeiture with the Solicitor's office, in accordance with and within the time limits set forth in § 12.24. Such petition for remission may be filed in lieu of, or in addition to, the aforementioned claim and bond. The notice will further provide that if the claim and costs bond are not timely received, that all potential claimants are deemed to admit the truth of the allegations of the notice and the property is summarily forfeited to the United States.

(2) *Filing a claim and bond.* Upon issuance of the Notice of Proposed Forfeiture, any person claiming the seized property may file with the Solicitor's office indicated in the notice, a claim to the property and a non-refundable certified or bank check made payable to Clerk, United States District Court in the penal sum of \$5,000, or ten per centum of the value of the claimed property, whichever is lower, but not less than \$250. Any claim and bond must be received in such office within 30 days after the date of first publication or posting of the notice of proposed forfeiture. The claim will state the claimant's interest in the property. There will be endorsed on the bond a list or schedule in substantially the following form which must be signed by the claimant in the presence of the witnesses to the bond, and attested by the witnesses:

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

\_\_\_\_\_
The foregoing list is correct.
Claimant: \_\_\_\_\_
Attest: \_\_\_\_\_

[Note: The claim and bond referred to in this paragraph will not entitle the claimant or any other person to possession of the

property. Such filing only stops the summary forfeiture proceeding.]

(3) \* \* \*

(4) *Motion for stay.* A Motion for Stay will be considered only if the owners of the property are also charged with a criminal violation based upon the same illegal act. Upon issuance of the notice of proposed forfeiture, any person claiming the seized property may file with the Solicitor's regional or field office indicated in the notice a motion to stay administrative forfeiture proceedings. Any motion for stay must be filed within 30 days after the date of first publication or posting of the Notice of Proposed Forfeiture. Each motion must contain:

(i) \* \* \*

(ii) The claimant's offer to pay, in advance, all reasonable costs anticipated to be incurred in the storage, care, and maintenance of the seized property for which administrative forfeiture is sought. Where a stay of administrative forfeiture proceedings would not injure or impair the rights of any third parties, and where the claimant has agreed to pay in advance, anticipated, reasonable storage costs associated with the granting of a stay, the Solicitor may, in his discretion, grant the motion for stay and specify reasonable and prudent conditions therefor, including but not limited to the duration of the stay, a description of the factors that would automatically terminate the stay, and any requirement for a bond (including amount) to secure the payment of storage and other maintenance costs.

\* \* \* \* \*
(c) *Institution of forfeiture proceedings before completion of other administrative proceedings.* Nothing in these regulations is intended to prevent the institution of forfeiture proceedings before completion of penalty assessment or remission procedures.

9. Section 12.24 is amended by revising paragraphs (a), (b) introductory text, (c), and (e) to read as follows:

**§ 12.24 Petition for remission of forfeiture.**

(a) Any person who has an interest in any property utilized in unlawful taking and subject to forfeiture under statutes cited in section 12.2 of this Part or any person, who has incurred or is alleged to have incurred, a forfeiture of any such property, may file with the Solicitor or, when forfeiture proceedings have been brought in United States District Court, the Attorney General of the United States, a petition for remission of forfeiture.

(b) A petition filed with the Solicitor need not be in any particular form, but it must be received before disposal (See

section 12.3) of the property has occurred and must contain the following: \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

10. Section 12.25 is revised to read as follows:

**§ 12.25 Transfers in settlement of civil penalty claims.**

At the discretion of the Solicitor, an owner of wildlife or plants who may be liable for civil penalty under statutes cited in Section 12.2 of this Part, may be given an opportunity to completely or partially settle the civil penalty claim by transferring to the United States all right, title, and interest in any wildlife or plants that are subject to forfeiture. Such transfer may be accomplished by the owner's execution and return of a United States Customs Form 4607 or a similar compromise transfer of property instrument provided by the Service.

11. Section 12.26 is added to Subpart C to read as follows:

**§ 12.26 Summary sale of perishable and other property.**

Any live wildlife or plant or other seized property which the Director has determined is liable to perish, deteriorate, decay, waste, or is perishable and which can lawfully be sold, shall be advertised for sale and sold at public auction at the earliest possible date. The Director shall proceed to give notice by advertisement of the summary sale for such time as he considers reasonable. This notice shall be of sale only and not notice of seizure and intent to forfeit. The proceeds of the sale shall be held subject to the claims of parties in interest in the same manner as the seized property would have been subject to such claims.

12. Section 12.33 is amended by revising paragraph (a) introductory text and by adding paragraph (e) to read as follows:

**§ 12.33 Disposal.**

(a) The Director shall dispose of any wildlife or plant forfeited or abandoned under the authority of this part, subject to the restrictions provided in this subpart, by one of the following means, unless the item is the subject of a petition for remission of forfeiture under 12.24 of this part, or disposed of by court order:

\* \* \* \* \*

(3) Transfer to the Fish and Wildlife Service National Forfeited and Abandoned Wildlife Repository.

\* \* \* \* \*

(e) All forfeited and abandoned wildlife or plants which are transferred to the Fish and Wildlife Service National Forfeited and Abandoned Wildlife Repository shall be deemed disposed property for the purposes of this section.

Dated: April 13, 1995.

George T. Frampton, Jr.

*Assistant Secretary for Fish and Wildlife and Parks.*

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