

of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the safety zone is implemented do not have to depart the safety zone. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone must first request authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing lights, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Enforcement period.* This section will be enforced from 2 p.m. through 7 p.m. on May 25, 2012, and, if necessary due to inclement weather, from 2 p.m. through 7 p.m. on May 31, 2012.

Dated: February 10, 2012.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

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POSTAL SERVICE

39 CFR Part 233

Inspection Service Authority; Seizure and Forfeiture

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise its regulations with regard to forfeiture authority and proceedings. These new provisions would implement specific requirements in compliance with the Civil Asset Forfeiture Reform Act (CAFRA) of 2000.

DATES: Submit comments on or before March 28, 2012.

ADDRESSES: Mail or deliver written comments to the Postal Inspection Service, Room 3128, 475 L'Enfant Plaza SW., Washington, DC 20260-2100. Written comments may be inspected and photocopied (by appointment only) at the USPS Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday. Please call 202-268-2906 to make an appointment. Email comments, containing the name and address of the commenter, may be sent to: REMattes@uspis.gov with a subject line of "CAFRA comments." Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT:

R. Emmett Mattes III, Chief Counsel, U.S. Postal Inspection Service, 202-268-7732.

SUPPLEMENTARY INFORMATION:

I. Overview

First, this rulemaking consolidates the Postal Service's rules and regulations regarding the seizure and forfeiture of property into three sections, 39 CFR 233.7, 233.8, and 233.9 from the previous four sections, 39 CFR 233.7, 233.8, 233.9, and 233.10. The proposed revision consolidates sections 233.8 and 233.9, and treats seizures involving personal use quantities of controlled substances and the expedited release of conveyances being forfeited for a drug-related offense in the same manner. It also incorporates prior section 233.10, Special Notice Provisions, into new paragraph 233.8(f). The new rules also create a new section 233.9 that addresses regulations governing remission or mitigation of administrative, civil, and criminal forfeitures, and incorporates the rules and regulations previously contained in paragraph 233.7(j).

Second, this rulemaking identifies the scope of authority available to the Postal Service to seize property for forfeiture, updates definitions, and provides procedures governing practical issues regarding the seizure, custody, inventory, appraisal, settlement, and release of property subject to forfeiture. See proposed paragraphs 233.7(a)-(g).

Third, the rule proposes conforming the seizure and forfeiture regulations of the Postal Service to address procedural changes necessitated by CAFRA. The rule also incorporates CAFRA's innocent owner defense into the remission regulations. Where CAFRA is silent or ambiguous on a subject relating to administrative forfeiture procedure, the proposed rule interprets CAFRA

based on case law and agency expertise and experience.

Fourth, the rule proposes updating the regulations to conform with other authorities and current forfeiture practice. Thus, proposed paragraph 233.7(n) adds a provision to the regulations allowing for the pre-forfeiture disposition of seized property when the property is liable to perish or to waste or to be greatly reduced in value while being held for forfeiture; or when the expense of holding the property is or will be disproportionate to its value. Paragraph 233.7(l) clarifies that administrative and criminal judicial forfeiture proceedings are not mutually exclusive, and paragraph 233.7(r) affirms that the Postal Service is not liable for attorney fees in any administrative forfeiture proceeding. Paragraph 233.7(j)(1)(i)(B) updates the forfeiture regulations by adding the option of publishing notice for administrative forfeitures on an official Government Internet site instead of in a newspaper.

Fifth, the proposed rule amends the designated official provision at paragraph 233.9(a)(2)(A) governing petitions for remission or mitigation of forfeiture, clarifies the existing regulations pertaining to victims, and makes remission available to third parties who reimburse victims under an indemnification agreement.

II. Discussion

A. Consolidation of the Regulations Governing the Seizure and Forfeiture of Property

The proposed rule supersedes prior sections 233.7, 233.8, 233.9, and 233.10 and replaces them with new sections 233.7, 233.8, and 233.9. Section 233.7 contains generally applicable provisions for seizures and forfeitures by the Postal Service. Section 233.8 contains expedited procedures for property seized by the Postal Service for violations involving personal use quantities of a controlled substance, including conveyances. Section 233.9 replaces the prior paragraph 233.7(j), and more clearly defines the rules relevant to remission and mitigation of forfeitures.

B. CAFRA Procedural Changes Incorporated in the Proposed Rule

Section 2 of CAFRA enacted 18 U.S.C. 983, which includes the general rules for civil forfeiture proceedings. This rule proposes to implement certain procedural changes in the conduct of administrative forfeitures as required by 18 U.S.C. 983. These changes address procedures relating to notice of seizure,

filing of claims, hardship requests, and releases of property.

Notice of seizure. Section 983(a)(1) establishes time deadlines and other procedures for the sending of personal written notices of seizures to parties with a potential interest in the property. These time deadlines and procedures are in addition to, and in some respects different from, procedures under the Customs laws. The Customs laws concerning forfeiture procedures (19 U.S.C. 1602–1618), which are incorporated by reference “insofar as applicable” in forfeiture statutes enforced by the Postal Service, require that “[w]ritten notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized property.” See 19 U.S.C. 1607. CAFRA, as codified at 18 U.S.C. 983(a)(1), requires that notice be sent within 60 days of seizure, or within 90 days of a seizure by a state or local agency, or within 60 days of establishing the interested party’s identity if it is not known at the time of seizure. CAFRA also provides that a supervisory official of the seizing agency may grant a single 30-day extension if certain conditions are satisfied and that extensions thereafter may only be granted by a court. Paragraph 233.7(j) of the proposed rule incorporates these notice-related provisions of CAFRA.

Filing of administrative claims. Section 983(a)(2) of title 18 of the United States Code modifies the procedure for filing a claim to seized property. The Customs statute, which was previously applicable to claims in Postal Service forfeitures, provides that, to contest an administrative forfeiture, a claimant has 20 days after the first published notice of seizure to file with the seizing agency both a claim and a cost bond for \$5,000 or 10 percent of the property’s value, whichever is less, but not less than \$250. See 19 U.S.C. 1608. Section 983(a)(2) eliminates the cost bond requirement for forfeitures covered by CAFRA and allows the filing of claims not later than the deadline set forth in a personal notice letter. The deadline must be at least 35 days after the date the letter was mailed. Persons not receiving a notice letter must file a claim within 30 days after the date of final publication of notice of seizure. Section 983(a)(2) also adds provisions specifying the information required for a valid claim. It reflects the amendments to 18 U.S.C. 983(a)(2)(C)(ii) in the Paul Coverdell National Forensic Sciences Improvement Act of 2000, Public Law 106–561, 114 Stat. 2787, which retroactively deleted CAFRA’s original

requirements that claimants provide with their claims documentary evidence supporting their interest in the seized property, and state that their claims are not frivolous. Consequently, pursuant to section 21 of CAFRA (establishing CAFRA’s effective date), the amended section 983(a)(2)(C)(ii) applies to any forfeiture proceeding commenced on or after August 23, 2000. Paragraph 233.7(k) of the proposed rule incorporates these section 983(a)(2) changes to the claim procedures.

Release of seized property if forfeiture is not commenced. Paragraph 233.7(p) of the proposed rule provides procedures to implement 18 U.S.C. 983(a)(3). Section 983(a)(3) requires the release of seized property pursuant to regulations promulgated by the Attorney General and prohibits the United States from pursuing further action for civil forfeiture if the United States does not institute judicial forfeiture proceedings against the property within 90 days after an administrative claim has been filed and no extension of time has been obtained from a court.

Hardship request. Paragraph 233.7(m) of the proposed rule implements 18 U.S.C. 983(f), which provides procedures and criteria for the release of seized property (subject to certain exceptions) pending the completion of judicial forfeiture proceedings when a claimant’s request for such release establishes that continued Government custody will cause substantial hardship that outweighs the risk that the property will not remain available for forfeiture.

Expedited release of property. Section 233.8 of the proposed rule incorporates and amends, to the extent required by CAFRA, the pre-existing regulations for expedited forfeiture proceedings for certain property. The prior regulations, 39 CFR 233.9, provided expedited procedures for conveyances seized for drug-related offenses and property seized for violations involving personal use quantities of a controlled substance. By repealing 21 U.S.C. 888 (expedited procedures for seized conveyances), CAFRA eliminated the statutory basis for the expedited procedure regulations pertaining to drug-related conveyance seizures. Accordingly, section 233.8 omits provisions applicable to drug-related conveyance seizures. The remaining provisions apply only where property is seized for administrative forfeiture involving controlled substances in personal use quantities.

Remissions and mitigations. For consistency with CAFRA’s uniform innocent owner defense, 18 U.S.C. 983(d), the proposed rule incorporates the innocent owner provisions of

sections 983(d)(2)(A) and 983(d)(3)(A) in a new 39 CFR 233.9.

Forfeitures affected by CAFRA and the proposed rule. CAFRA’s changes apply to civil forfeiture proceedings commenced on or after August 23, 2000, with the exception of civil forfeitures under the following: the Tariff Act of 1930 or any other provision of law codified in title 19; the Internal Revenue Code of 1986; the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*); the Trading with the Enemy Act (50 U.S.C. App. sec. 1 *et seq.*) or the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*); or Section 1 of title VI of the Act of June 15, 1917 (22 U.S.C. 401).

C. Changes to the Previous Regulations Governing the Seizure and Forfeiture of Property by the Postal Service

Pre-forfeiture disposition. The provision providing for the pre-forfeiture disposition of seized property, paragraph 233.7(n), is needed to implement the authority of 19 U.S.C. 1612(b), one of the procedural Customs statutes incorporated by reference into the forfeiture statutes enforced by the Postal Service. Section 1612(b) authorizes pre-forfeiture disposal of seized property, pursuant to regulations, when the property is liable to perish or to waste or to be greatly reduced in value by keeping, or when the costs of maintaining the property pending forfeiture are disproportionate to the property’s value. The proposed rule enables the Postal Service to use the authority of section 1612(b) in appropriate cases.

Internet publication. The proposed rule updates the forfeiture regulations by adding, at paragraph 233.7(j)(1)(i)(B), a provision for the publication of administrative forfeiture notices on the Internet instead of in newspapers. The statute governing the publication of notice in administrative forfeiture proceedings, 19 U.S.C. 1607, does not require a specific means of publication. Paragraph 233.7(j)(1)(i)(B) will provide the Postal Service with the choice to use the Internet as a more effective and less costly alternative to the newspaper publication provided for in paragraph 233.7(j)(1)(i)(A).

This grant of authority parallels a similar one in Rule G(4)(a)(iv)(C) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. Pursuant to Rule G(4)(a)(iv)(C), in all civil judicial forfeitures, the Government may now employ the option of giving public notice through the Internet rather than in a newspaper. Section 233.7(j)(1)(i)(B) will permit the Postal Service likewise to use the

Internet to provide notice in administrative forfeitures, a cost savings that is particularly important as the volume of administrative forfeitures is much greater than judicial forfeitures. There is a strong statistical proof that Internet access is now available to the vast majority of United States residents. Internet access continues to grow, while newspaper circulation is declining; and in some markets, the option to publish in a traditional newspaper may not be available in the next few years.

D. Regulations at 39 CFR 233.9 Governing the Remission or Mitigation of Forfeitures

This proposed rule includes modifications to the regulations governing the remission or mitigation of forfeiture at 39 CFR 233.9. Paragraph 233.9(2)(A), (B) identifies the Chief Counsel of the Postal Inspection Service, or attorneys or managers working under that person's supervision, as the pertinent designated official to whom authority to grant remission and mitigation has been delegated.

Second, the definition of "victim" in paragraph 233.9(b) is modified to make remission available to qualified third parties who reimburse a victim pursuant to an indemnification agreement. In addition, paragraph 233.9(h) is modified to specify the procedures applicable to persons seeking remission as victims.

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

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

CAFRA also changed the procedure for filing administrative claims. Section 983(a)(2)(B) dictates that when the agency both publishes and sends notice of the seizure and its intent to forfeit the property, an owner who receives notice by mail has 35 days from the date of mailing, and if the personal notice is sent but not received, an owner has 30 days from the date of final publication to file a claim with the agency. In

addition, the notice provision in paragraph 233.7(j)(1)(i)(B) was updated to allow the agencies to publish administrative forfeiture notices on the Internet instead of in newspapers, consistent with the procedure for civil judicial forfeitures under Rule G(4)(a)(iv)(C).

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

Prior to CAFRA, claims in an administrative forfeiture required an accompanying bond of either \$5,000 or 10 percent of the value of the seized property, whichever was lower. Section 983(a)(2) eliminated the bond requirement to give the property owner greater access to Federal court. However, to prevent frivolous claims, CAFRA requires the claimant to state the basis for that person's interest in the property in the claim under oath.

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

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

majority of civil forfeitures are handled administratively.

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

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

In addition to implementing these CAFRA reforms, the new regulations allow the Postal Service to sell property that is deteriorating rapidly in order to preserve the property's value pending resolution of the forfeiture. This disposition must be authorized by agency headquarters. The regulations also specify that the seizing agency must promptly deposit any seized U.S. currency over \$5,000 into the Hold Account—Seizure and Forfeiture under the control of the Postal Inspection Service pending forfeiture. The only exception is for currency that must be retained because it has a significant, independent, tangible evidentiary purpose.

The new rule changes some of the procedures relating to crime victims. The definition of victim is modified to make remission available to qualified third parties who reimburse a victim pursuant to an insurance or other indemnification agreement. See proposed paragraph 233.9(b)(23). In addition, paragraph 233.9(h) is reorganized and a new paragraph (h)(1) is added to specify the filing procedures applicable to persons seeking remission as victims. This revision is necessary because the current petition filing procedures in paragraph 233.7(j) are applicable to owners and lienholders, but not to victims. Paragraph 233.9(h)(9) clarifies that the amount of compensation available to a particular victim may not exceed the victim's share of the net proceeds of the forfeiture associated with the activity that caused the victim's loss. In other words, a victim is not entitled to full compensation, but only the amount of compensation available from the forfeited property. Also, the new rule makes the statutory innocent owner provisions at 18 U.S.C. 983(d)(2)(A) and (d)(3)(A) applicable to all owner and lienholder petitions for remission.

List of Subjects in 39 CFR Part 233

Administrative practice and procedure, Crime, Law enforcement, Penalties, Privacy.

Accordingly, for the reasons stated, the Postal Service proposes to amend 39 CFR Part 233 as follows:

PART 233—INSPECTION SERVICE AUTHORITY

1. The authority citation for 39 CFR Part 233 is revised to read as follows:

Authority: 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 983, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Omnibus Budget Reconciliation Act of 1996, sec. 662 (Pub. L. 104–208).

2. Section 233.7 is revised to read as follows:

§ 233.7 Forfeiture authority and procedures.**(a) Scope of Regulations.**

(1) These regulations apply to all forfeitures administered by the United States Postal Service with the exception of seizures and forfeitures under the statutes listed in 18 U.S.C. 983(i). The authority to conduct administrative forfeitures derives from the procedural provisions of the Customs laws (19 U.S.C. 1602–1618) where those provisions are incorporated by reference in the substantive forfeiture statutes.

(2) These regulations will apply to all forfeiture actions commenced on or after [EFFECTIVE DATE].

(b) Designation of officials having administrative forfeiture authority—

(1) **Administrative forfeiture authority.** The Chief Postal Inspector is authorized to conduct administrative forfeitures under the statutes identified in paragraph (2) of this section, following, where applicable, the procedures provided by the customs laws of the United States (19 U.S.C. 1602–1618) and to pay valid liens and mortgages against property that has been so forfeited.

(2) **Authority of the Chief Postal Inspector.** The Chief Postal Inspector is authorized to perform all duties and responsibilities necessary on behalf of the Postal Service and the Office of Inspector General to enforce 18 U.S.C. 981, 983, 2254; 21 U.S.C. 863(c), 881; and 31 U.S.C. 5317; following, where applicable, the procedures provided by the Customs laws of the United States (19 U.S.C. 1602–1618), and to pay valid liens and mortgages against property that has been so forfeited. The Chief Postal Inspector is authorized to delegate all or any part of this authority to Deputy Chief Inspectors, Inspectors in Charge, and Inspectors of the Postal

Inspection Service, and to issue such instructions as may be necessary to carry out this authority.

(3) **State adoption.** The seizure of property by a state or local law enforcement agency or other entity or individual may be adopted for forfeiture by the Postal Inspection Service, as appropriate under its seizure authority pursuant to subparagraphs (1) and (2).

(c) **Definitions.** As used in this section, the following terms shall have the meanings specified:

(1) **Administrative forfeiture** means the process by which property may be forfeited by the Postal Inspection Service rather than through judicial proceedings. Administrative forfeiture has the same meaning as nonjudicial forfeiture, as that term is used in 18 U.S.C. 983.

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

(3) **Appropriate official** means the Chief Postal Inspector or that person's designee, or where the term "appropriate official" means the office or official identified in the notice published or personal written notice in accordance with 233.7(j).

(4) **Contraband** means:

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

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

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

(6) **Domestic value** means the same as the term *appraised value* as defined in paragraph 233.7(c)(2).

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

(8) **File or filed** has the following meanings:

(i) A claim or any other document submitted in an administrative forfeiture proceeding is not deemed filed until actually received by the appropriate official identified in the personal written notice and the published notice specified in paragraph 233.7(i). A claim is not considered filed if it is received by any other office or official. In addition, a claim in an

administrative forfeiture proceeding is not considered filed if received only by an electronic or facsimile transmission.

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

(9) **Interested party** means any person who reasonably appears to have an interest in the property, based on the facts known to the Postal Inspection Service before a declaration of forfeiture is entered.

(10) **Judicial forfeiture** means either a civil or a criminal proceeding in a United States District Court that may result in a final judgment and order of forfeiture.

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

(12) **Nonjudicial forfeiture** has the same meaning as administrative forfeiture. See paragraph 233.7(b)(1).

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

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

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

(d) **Seizing property subject to forfeiture—**(1) **Authority to seize property.** Postal Inspectors may seize assets under any Federal statute over which the Postal Inspection Service has investigative or forfeiture jurisdiction.

(2) **Turnover of assets seized by state and local agencies.**

(i) Property that is seized by a state or local law enforcement agency and transferred to the Postal Inspection Service for administrative or civil forfeiture may be adopted for administrative forfeiture without the issuance of any Federal seizure warrant or other Federal judicial process.

(ii) Where a state or local law enforcement agency maintains custody of property pursuant to process issued by a state or local judicial authority, and notifies the Postal Inspection Service of the impending release of such property, the Postal Inspection Service may seek and obtain a Federal seizure warrant in

anticipation of a state or local judicial authority releasing the asset from state process for purposes of Federal seizure, and may execute such seizure warrant when the state or local law enforcement agency releases the property as allowed or directed by its judicial authority.

(e) *Inventory.* The Postal Inspection Service shall prepare an inventory of any seized property.

(f) *Custody.*

(1) All property seized by Postal Inspectors for forfeiture shall be delivered to the custody of the U.S. Marshals Service, or custodian approved by the U.S. Marshals Service, as soon as possible after seizure, unless it is retained as evidence.

(2) Seized U.S. currency (and to the extent practicable seized foreign currency and negotiable instruments) must be deposited promptly in the Holding Account—Seizure and Forfeiture under the control of the Postal Inspection Service pending forfeiture. Provisional exceptions to this requirement may be granted as follows:

(i) If the seized currency has a value less than \$5,000, and a supervisory official within the U.S. Attorney's Office determines in writing that the currency is reasonably likely to serve a significant, independent, tangible, evidentiary purpose, or that retention is necessary while the potential evidentiary significance of the currency is being determined by scientific testing or otherwise, or

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

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

(g) *Appraisal.* The Postal Inspection Service shall determine the domestic value of the seized property as soon as practicable following seizure.

(h) *Release before claim.*

(1) After seizure for forfeiture and prior to the filing of any claim, the appropriate official is authorized to

release property seized for forfeiture provided:

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

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

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

(i) *Commencing an Administrative Forfeiture.* An administrative forfeiture proceeding begins when notice is first published in accordance with paragraph 233.7(i)(1), or the first personal written notice is sent in accordance with paragraph 233.7(i)(2), whichever occurs first.

(j) *Notice of administrative forfeiture—*(1) Notice by publication.

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

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

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

(ii) The published notice shall:

(A) Describe the seized property;

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

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

(D) State the identity of the appropriate official of the Postal Inspection Service and address where the claim must be filed.

(2) *Personal written notice—*(i) *Manner of providing notice.* After seizing property subject to administrative forfeiture, the Postal

Inspection Service, in addition to publishing notice, shall send personal written notice of the seizure to each interested party in a manner reasonably calculated to reach such parties.

(ii) *Content of personal written notice.* The personal written notice sent by the Postal Inspection Service shall:

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

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

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

(D) State the identity of the appropriate official of the Postal Inspection Service and the address where the claim must be filed; and

(E) Describe the seized property.

(3) *Timing of notice—*(i) *Date of personal notice.* Personal written notice is sent on the date when the Postal Inspection Service causes it to be placed in the mail, or otherwise sent by means reasonably calculated to reach the interested party. The personal written notice required by 233.7(i)(2) shall be sent as soon as practicable, and in no case more than 60 days after the date of seizure (or 90 days after the date of seizure by a state or local law enforcement agency if the property was turned over to the Postal Inspection Service for the purpose of forfeiture under Federal law).

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

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

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

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

(4) *Subsequent Federal seizure.* If property is seized by a state or local law enforcement agency, but personal written notice is not sent to the person

from whom the property is seized within the time period for providing notice under paragraph 3(i), then any administrative forfeiture proceeding against the property may commence if:

(i) The property is subsequently seized or restrained by the Postal Inspection Service pursuant to a Federal seizure warrant or restraining order and the Postal Inspection Service sends notice as soon as practicable, and in no case more than 60 days after the date of the Federal seizure; or

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

(5) *Tolling.*

(i) In states or localities where orders are obtained from a state court authorizing the turnover of seized assets to the Postal Inspection Service, the period from the date an application or motion is presented to the state court for the turnover order through the date when such order is issued by the court shall not be included in the time period for providing notice under paragraph 3(i).

(ii) If property is detained at an international border or port of entry for the purpose of examination, testing, inspection, obtaining documentation, or other investigation relating to the importation of the property into, or the exportation of the property from the United States, such period of detention shall not be included in the period described in paragraph 3(i). In such cases, the 60-day period shall begin to run when the period of detention ends, if a seizing agency seizes the property for the purpose of forfeiture to the United States.

(6) *Identity of interested party.* If the Postal Inspection Service determines the identity or interest of an interested party after the seizure or adoption of the property, but before entering a declaration of forfeiture, the Postal Inspection Service shall send written notice to such interested party under paragraph 3(i) not later than 60 days after determining the identity of the interested party or the interested party's interest.

(7) *Extending deadline for notice.* The Chief Counsel for the Postal Inspection Service may extend the period for sending personal written notice under these regulations in a particular case for a period not to exceed 30 days (which period may not be further extended except by a court pursuant to 18 U.S.C. 983(a)(1)(C), (D)), if the Chief Counsel for the Postal Inspection Service determines, and states in writing, that there is reason to believe that notice may have an adverse result, including: endangering the life or physical safety of an individual; flight from prosecution;

destruction of or tampering with evidence; intimidation of potential witnesses; or otherwise seriously jeopardizing an investigation, or unduly delaying a trial.

(8) *Certification.* The Chief Counsel for the Postal Inspection Service shall provide the written certification required under 18 U.S.C. 983(a)(1)(C) when the Government requests it and the conditions described in 18 U.S.C. 983(a)(1)(D) are present.

(k) *Claims—(1) Filing.* In order to contest the forfeiture of seized property in Federal court, any person asserting an interest in seized property subject to an administrative forfeiture proceeding under these regulations must file a claim with the appropriate official, after the commencement of the administrative forfeiture proceeding as defined in paragraph 233.7(h), and not later than the deadline set forth in a personal notice letter sent pursuant to paragraph 233.7(i)(2). If personal written notice is sent but not received, then the intended recipient must file a claim with the appropriate official not later than 30 days after the date of the final publication of the notice of seizure.

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

(i) Identify the specific property being claimed;

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

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

(3) *Availability of claim forms.* The claim need not be made in any particular form. However, the Postal Inspection Service will make claim forms generally available on request. Such forms shall be written in easily understandable language. A request for a claim form does not extend the deadline for filing a claim. Any person may obtain a claim form by requesting one in writing from the appropriate official.

(4) *Cost bond not required.* Any person may file a claim under paragraph 233.7(k)(1) without posting bond, except in forfeitures under statutes listed in 18 U.S.C. 983(i).

(5) *Referral of claim.* Upon receipt of a claim that meets the requirements of paragraphs (1) and (2), the Postal Inspection Service shall return the property or suspend the administrative forfeiture proceeding and promptly transmit the claim, together with a description of the property and a complete statement of the facts and

circumstances surrounding the seizure, to the appropriate U.S. Attorney for commencement of judicial forfeiture proceedings. Upon making the determination that the seized property will be released, the Postal Inspection Service shall promptly notify the person with a right to immediate possession of the property, informing that person to contact the property custodian within a specified period for release of the property, and further informing that person that failure to contact the property custodian within the specified period for release of the property will result in abandonment of the property pursuant to applicable regulations. The Postal Inspection Service shall notify the property custodian of the identity of the person to whom the property should be released. The property custodian shall have the right to require presentation of proper identification and/or to take other steps to verify the identity of the person who seeks the release of property, or both.

(6) *Premature filing.* If a claim is filed with the appropriate official after the seizure of the property, but before the commencement of the administrative forfeiture proceeding as defined in paragraph 233.7(i), the claim shall be deemed filed on the 30th day after the commencement of the administrative forfeiture proceeding. If such claim meets the requirements of paragraph (k)(2), the Postal Inspection Service shall suspend the administrative forfeiture proceedings and promptly transmit the claim, together with a description of the property and a complete statement of the facts and circumstances surrounding the seizure to the appropriate U.S. Attorney for commencement of judicial forfeiture proceedings.

(7) *Defective claims.* If the Postal Inspection Service determines that an otherwise timely claim does not meet the requirements of paragraph (k)(2), the Postal Inspection Service may notify the claimant of this determination and allow the claimant a reasonable time to cure the defect(s) in the claim. If, within the time allowed by the Postal Inspection Service, the requirements of paragraph (k)(2) are not met, the claim shall be void and the forfeiture proceedings shall proceed as if no claim had been submitted. If the claimant timely cures the deficiency, then the claim shall be deemed filed on the date when the appropriate official receives the cured claim.

(l) *Interplay of administrative and criminal judicial forfeiture proceedings.* An administrative forfeiture proceeding pending against seized or restrained property does not bar the Government

from alleging that the same property is forfeitable in a criminal case. Notwithstanding the fact that an allegation of forfeiture has been included in a criminal indictment or information, the property may be administratively forfeited in a parallel proceeding.

(m) *Requests for hardship release of seized property.*

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

(2) Any person filing a request for hardship release must also file a claim to the seized property pursuant to paragraph 233.7(k) and as defined in 18 U.S.C. 983(a).

(3) The timely filing of a valid claim pursuant to paragraph 233.7(k) does not entitle the claimant to possession of the seized property, but a claimant may request immediate release of the property while forfeiture is pending, based on hardship.

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

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

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

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

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

(v) The property is not:

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

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

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

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

(5) A hardship release request pursuant to this paragraph shall be deemed to have been made on the date when it is received by the appropriate official as defined in paragraph 233.7(c)(3), or the date the claim was deemed filed under paragraph 233.7(k). If the request is ruled on and denied by the appropriate official or the property has not been released within the 15-day time limit period, the claimant may file a petition in Federal district court pursuant to 18 U.S.C. 983(f)(3). If a petition is filed in Federal district court, the claimant must send a copy of the petition to the appropriate official to whom the hardship petition was originally submitted and to the U.S. Attorney in the judicial district where the judicial petition was filed.

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

(n) *Disposition of property before forfeiture.*

(1) Whenever it appears to the Postal Inspection Service that any seized property is liable to perish or to waste, or to be greatly reduced in value during its detention for forfeiture, or that the expense of keeping the property is or will be disproportionate to its value, the Chief Counsel for the Postal Inspection Service may order destruction, sale, or other disposition of such property prior to forfeiture. In addition, the owner may obtain release of the property by posting a substitute monetary amount with the Postal Inspection Service to be held subject to forfeiture proceedings in place of the seized property to be released. Upon approval by the Chief Counsel for the Postal Inspection Service, the property will be released to the owner upon the payment of an amount equal to the Government appraised value of the property if the property is not evidence of a violation of law, is not contraband, and has no design or other characteristics that particularly suit it for use in illegal activities. This payment must be in the form of a money order, an official bank check, or a cashier's check made payable to the Postal Inspection Service. A bond in the form of a cashier's check or official bank check will be considered as paid once the check has been accepted for payment by the financial

institution that issued the check. If a substitute amount is posted and the property is administratively forfeited, the Postal Inspection Service will forfeit the substitute amount in lieu of the property. The pre-forfeiture destruction, sale, or other disposition of seized property pursuant to this subsection shall not extinguish any person's rights to the value of the property under applicable law. The authority vested in the Chief Counsel for the Postal Inspection Service under this subsection may not be delegated.

(2) The Postal Inspection Service shall commence forfeiture proceedings, regardless of the disposition of the property under this paragraph. A person with an interest in the property that was destroyed or otherwise disposed of under this paragraph may file a claim to contest the forfeiture of the property or a petition for remission or mitigation of the forfeiture. No employee of the Postal Inspection Service shall be liable for the destruction or other disposition of property made pursuant to this paragraph. The destruction or other disposition of the property does not impair *in rem* jurisdiction.

(o) *Declaration of administrative forfeiture.* The Postal Inspection Service commences a timely proceeding against property subject to administrative forfeiture, and no valid and timely claim is filed, the appropriate official shall declare the property forfeited. The declaration of forfeiture shall have the same force and effect as a final decree and order of forfeiture in a Federal judicial forfeiture proceeding.

(p) *Return of property.*

(1) If, under 18 U.S.C. 983(a)(3), the Postal Inspection Service is notified by the U.S. Attorney in charge of the matter that the 90-day deadline was not met, the Postal Inspection Service is required to release the seized property. Under this subsection, the Postal Inspection Service is not required to return property for which it has an independent basis for continued custody including, but not limited to, contraband or evidence of a violation of law.

(2) Upon becoming aware that the seized property must be released, the Postal Inspection Service shall promptly notify the person with a right to immediate possession of the property, informing that person to contact the property custodian within a specified period for release of the property, and further informing that person that failure to contact the property custodian within the specified period for release of the property may result in the initiation of abandonment proceedings against the

property pursuant to 39 CFR 946, et seq. The property custodian will be notified of the identity of the person to whom the property should be released.

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

(q) *Disposition of forfeited property.*

(1) Whenever property is forfeited administratively, the Postal Inspection Service may:

(i) Retain the property for official use;

(ii) Transfer ownership of the property to any Federal, state or local law enforcement agency that participated in the investigation leading to the forfeiture;

(iii) Sell any property that is not required to be destroyed by law and that is not harmful to the public;

(iv) Destroy the property; or

(v) Dispose of the property as otherwise permitted by law.

(2) If the laws of a state in which an article of forfeited property is located prohibit the sale or possession of such property, or if the Postal Service and the Marshals Service are of the opinion that it would be more advantageous to sell the forfeited property in another district, the property may be moved to and sold in such other district.

(r) *Attorney fees and costs.* The Postal Inspection Service is not liable for attorney fees or costs in any administrative forfeiture proceeding, including such proceedings in which a claim is filed, the matter is referred to the U.S. Attorney, and the U.S. Attorney declines to commence judicial forfeiture proceedings.

3. Section 233.8 is revised to read as follows:

§ 233.8 Expedited Forfeiture Proceedings for Property Seizures Based on Violations Involving the Possession of Personal Use Quantities of a Controlled Substance.

(a) *Purpose and scope.*

(1) The following definitions, regulations, and criteria are designed to establish and implement procedures required by section 6079 of the Anti-Drug Abuse Act of 1988, Public Law 100-690, 102 Stat. 4181. They are intended to supplement existing law and procedures relative to the forfeiture of property under the identified statutory authority. These regulations do not affect the existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture, nor do these provisions relieve interested parties from their existing obligations and responsibilities in pursuing their interests through such courses of action. These regulations are

intended to reflect the intent of Congress to minimize the adverse impact on those entitled to legal or equitable relief occasioned by the prolonged detention of property subject to forfeiture due to violations of law involving personal use quantities of controlled substances. The definition of personal use quantities of a controlled substance as contained herein is intended to distinguish between those small quantities, which are generally considered to be possessed for personal consumption and not for further distribution, and those larger quantities generally considered to be subject to further distribution.

(2) In this regard, for violations involving the possession of personal use quantities of a controlled substance, section 6079(b)(2) requires either that administrative forfeiture be completed within 21 days of the seizure of the property, or alternatively, that procedures are established that provide a means by which an individual entitled to relief may initiate an expedited administrative review of the legal and factual basis of the seizure for forfeiture. Should an individual request relief pursuant to these regulations and be entitled to the return of the seized property, such property shall be returned immediately following that determination, but not later than 20 days after filing of a petition for expedited release by an owner, and the administrative forfeiture process shall cease. Should the individual not be entitled to the return of the seized property, however, the administrative forfeiture of that property shall proceed. The owner may, in any event, obtain release of property pending the administrative forfeiture by submitting to the agency making the determination property sufficient to preserve the Government's vested interest for purposes of the administrative forfeiture.

(b) *Definitions.* As used in this section, the following terms shall have the meanings specified:

(1) *Commercial fishing industry vessel* means a vessel that:

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

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

(iii) Commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or

from a fishing, fish processing, or fish tender vessel or fish processing facility.

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

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

(4) *Owner* means one having a legal and possessory interest in the property seized for forfeiture. Even though one may hold primary and direct title to the property seized, such person may not have sufficient actual beneficial interest in the property to support a petition as owner if the facts indicate that another person had dominion and control over the property.

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

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

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

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

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

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

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

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

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

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

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

(B) One gram of a mixture or substance containing a detectable amount of the following:

(1) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

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

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

(4) Any compound, mixture, or preparation that contains any quantity of any of the substances referred to in (ii)(B)(1) through (ii)(B)(3) of this definition;

(C) One-tenth gram of a mixture or substance described in (ii)(B) of this definition that contains cocaine base;

(D) One-tenth gram of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(E) Five hundred micrograms of lysergic acid diethylamide (LSD);

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

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

(iii) The possession of a narcotic, a depressant, a stimulant, a hallucinogen or a cannabis-controlled substance will be considered in excess of personal use quantities if the dosage unit amount

possessed provides the same or greater equivalent efficacy as described in (ii)(B) of this definition.

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

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

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

(c) *Petition for expedited release in an administrative forfeiture proceeding.*

(1) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities, the owner may petition the Postal Inspection Service for expedited release of the property.

(2) Where property described in paragraph (c)(1) of this section is a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations, which would be subject to seizure for administrative forfeiture for a violation of law involving controlled substances in personal use quantities, a summons to appear shall be issued in lieu of a physical seizure. The vessel shall report to the port designated in the summons. The Postal Inspection Service shall be authorized to effect administrative forfeiture as if the vessel had been physically seized. Upon answering the summons to appear on or prior to the last reporting date specified in the summons, the owner of the vessel may file a petition for expedited release pursuant to paragraph (c)(1) of this section, and the provisions of paragraph (c)(1) and other provisions in this section pertaining to a petition for expedited release shall apply as if the vessel had been physically seized.

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

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

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

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

(4) In addition to those factors listed in paragraph (c)(3), if an owner can demonstrate that the owner has other statutory rights or defenses that would cause the owner to prevail on the issue of forfeiture, such factors shall also be considered in ruling on the petition for expedited release.

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

(6) The petition shall include the following:

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

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

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

(d) *Ruling on petition for expedited release in an administrative forfeiture proceeding.*

(1) If a final administrative determination of the case, without regard to the provisions of this section, is made within 21 days of the seizure, the Postal Inspection Service need take no further action under this section on a petition for expedited release received pursuant to paragraph (c) of this section.

(2) If no such final administrative determination is made within 21 days of the seizure, the following procedure shall apply. The Postal Inspection Service shall, within 20 days after the receipt of the petition for expedited release, determine whether the petition filed by the owner has established the factors listed in paragraph (c)(3) of this section and:

(i) If the Postal Inspection Service determines that those factors have been established, it shall terminate the administrative proceedings and return the property to the owner (or in the case of a commercial fishing industry vessel for which a summons has been issued shall dismiss the summons), except

where it is evidence of a violation of law; or

(ii) If the Postal Inspection Service determines that those factors have not been established, the agency shall proceed with the administrative forfeiture.

(e) *Posting of substitute monetary amount in an administrative forfeiture proceeding.*

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

(2) If a substitute monetary amount is posted and the property is administratively forfeited, the Postal Inspection Service will forfeit the substitute amount in lieu of the property.

(f) *Notice provisions.* At the time of seizure of property defined in paragraph (b)(6) of this section for violations involving the possession of personal use quantities of a controlled substance, the Postal Inspection Service must provide written notice to the possessor of the property specifying the procedures for filing of a petition for expedited release and for the posting of a substitute monetary bond as set forth in section 6079 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

4. Section 233.9 is revised to read as follows:

§ 233.9 Regulations governing remission or mitigation of administrative, civil, and criminal forfeitures.

(a) *Purpose, authority, and scope*—(1) *Purpose.* This section sets forth the procedures for Postal Inspection Service officials to follow when considering remission or mitigation of administrative forfeitures under the jurisdiction of the Postal Inspection Service. The purpose of these

regulations is to provide a basis for the partial or total remission of forfeiture for individuals who have an interest in the forfeited property but who did not participate in, or have knowledge of, the conduct that resulted in the property being subject to forfeiture and, where required, took all reasonable steps under the circumstances to ensure that such property would not be used, acquired, or disposed of contrary to law. Additionally, the regulations provide for partial or total mitigation of the forfeiture and imposition of alternative conditions in appropriate circumstances.

(2) *Authority to grant remission and mitigation.*

(i) Remission and mitigation functions in administrative forfeitures under the jurisdiction of the Postal Inspection Service are performed by the Chief Counsel.

(ii) Remission and mitigation functions in judicial cases are performed by the Criminal Division of the Department of Justice. Within the Criminal Division, authority to grant remission and mitigation is delegated to the Chief, Asset Forfeiture and Money Laundering Section.

(iii) The powers and responsibilities delegated by the regulations in this section may be re-delegated to attorneys or managers working under the supervision of the Chief Counsel.

(3) *Scope.* This section governs any petition for remission filed with the Postal Inspection Service and supersedes any Postal Service regulation governing petitions for remission, to the extent such regulation is inconsistent with this section.

(4) *Applicability.* The time periods and internal requirements established in this section are designed to guide the orderly administration of the remission and mitigation process and are not intended to create rights or entitlements in favor of individuals seeking remission or mitigation. The regulations will apply to all forfeiture actions commenced on or after February 27, 2012.

(b) *Definitions.* As used in this section:

(1) *Administrative forfeiture* means the process by which property may be forfeited by the Postal Inspection Service rather than through judicial proceedings. Administrative forfeiture has the same meaning as “nonjudicial forfeiture”, as that term is used in 18 U.S.C. 983.

(2) *Appraised value* means the estimated market value of an asset 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.

(3) *Assets Forfeiture Fund* means the Department of Justice Assets Forfeiture Fund, Department of the Treasury Assets Forfeiture Fund, or the Postal Service's Assets Forfeiture Fund, depending upon the identity of the seizing agency.

(4) *Attorney General* means the Attorney General of the United States or that official's designee.

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

(6) *Chief, Asset Forfeiture and Money Laundering Section*, and *Chief*, refer to the Chief of the Asset Forfeiture and Money Laundering Section, Criminal Division, United States Department of Justice.

(7) *General creditor* means one whose claim or debt is not secured by a specific right to obtain satisfaction against the particular property subject to forfeiture.

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

(9) *Judicial forfeiture* means either a civil or a criminal proceeding in a United States District Court that may result in a final judgment and order of forfeiture.

(10) *Lienholder* means a creditor whose claim or debt is secured by a specific right to obtain satisfaction against the particular property subject to forfeiture. A lien creditor qualifies as a lienholder if the lien:

(i) Was established by operation of law or contract;

(ii) Was created as a result of an exchange of money, goods, or services; and

(iii) Is perfected against the specific property forfeited for which remission or mitigation is sought (e.g., a real estate mortgage; a mechanic's lien).

(11) *Net equity* means the amount of a lienholder's monetary interest in the property subject to forfeiture. Net equity shall be computed by determining the amount of unpaid principal and unpaid interest at the time of seizure, and by adding to that sum unpaid interest calculated from the date of seizure through the last full month prior to the date of the decision on the petition. Where a rate of interest is set forth in a security agreement, the rate of interest to be used in this computation will be the annual percentage rate so specified in the security agreement that is the basis of the lienholder's interest. In this computation, however, there shall be no allowances for attorneys' fees, accelerated or enhanced interest

charges, amounts set by contract as damages, unearned extended warranty fees, insurance, service contract charges incurred after the date of seizure, allowances for dealer's reserve, or any other similar charges.

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

(13) *Owner* means the person in who primary title is vested or whose interest is manifested by the actual and beneficial use of the property, even though the title is vested in another. A victim of an offense, as defined in paragraph (b)(22) of this section, may also be an owner if that person has a present legally cognizable ownership interest in the property forfeited. A nominal owner of property will not be treated as its true owner if that person is not its beneficial owner.

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

(15) *Petition* means a petition for remission or mitigation of forfeiture under the regulations in this part. This definition includes a petition for restoration of the proceeds of sale of forfeited property and a petition for the value of the forfeited property placed into official use.

(16) *Petitioner* means the person applying for remission, mitigation, restoration of the proceeds of sale, or for the appraised value of forfeited property, under this part. A petitioner may be an owner as defined in paragraph (b)(13), a lienholder as defined in paragraph (b)(10), or a victim as defined in paragraph (b)(22), subject to the limitations of paragraph (h).

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

(18) *Record* means a series of arrests for related crimes, unless the arrestee was acquitted or the charges were dismissed for lack of evidence, a conviction for a related crime or completion of sentence within 10 years of the acquisition of the property subject to forfeiture, or two convictions for a related crime at any time in the past.

(19) *Related crime* as used in paragraphs (b)(18) and (f) means any crime similar in nature to that which gives rise to the seizure of property for forfeiture. For example, where property is seized for a violation of the Federal laws relating to drugs, a related crime would be any offense involving a violation of the Federal laws relating to drugs, or the laws of any state or political subdivision thereof relating to drugs.

(20) *Related offense* as used in paragraph (h) means:

(i) Any predicate offense charged in a Federal Racketeer Influenced and Corrupt Organizations Act (RICO) count for which forfeiture was ordered; or

(ii) An offense committed as part of the same scheme or design, or pursuant to the same conspiracy, as was involved in the offense for which forfeiture was ordered.

(21) *Ruling Official* means any official to whom decision making authority has been delegated pursuant to paragraph (a)(2).

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

(23) *Victim* means a person who has incurred a pecuniary loss as a direct result of the commission of the offense underlying a forfeiture. A drug user is not considered a victim of a drug trafficking offense under this definition. A victim does not include one who acquires a right to sue the perpetrator of the criminal offense for any loss by assignment, subrogation, inheritance, or otherwise from the actual victim, unless that person has acquired an actual ownership interest in the forfeited property; provided however, that if a victim has received compensation from insurance or any other source with respect to a pecuniary loss, remission may be granted to the third party who provided compensation, up to the amount of the victim's pecuniary loss as defined in paragraph (h)(3).

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

(c) *Petitions in administrative forfeiture cases*—(1) *Notice of seizure*.

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

(2) *Persons who may file*.

(i) A petition for remission or mitigation must be filed by a petitioner as defined in paragraph (b)(16), or as prescribed in paragraph (i)(7) and (8). A person or person acting on their behalf

may not file a petition if, after notice or knowledge of the fact that a warrant or process has been issued for his apprehension, in order to avoid criminal prosecution the person:

(A) Purposely leaves the jurisdiction of the United States;

(B) Declines to enter or reenter the United States to submit to its jurisdiction; or

(C) Otherwise evades the jurisdiction of the court in which a criminal matter is pending against the person.

(ii) Paragraph (c)(2)(A) applies to a petition filed by a corporation if any majority shareholder, or individual filing the claim on behalf of the corporation:

(A) Purposely leaves the jurisdiction of the United States;

(B) Declines to enter or reenter the United States to submit to its jurisdiction; or

(C) Otherwise evades the jurisdiction of the court in which a criminal case is pending against the person.

(3) *Contents of petition*.

(i) All petitions must include the following information in clear and concise terms:

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

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

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

(D) A description of the petitioner's interest in the property as owner, lienholder, or otherwise, supported by original or certified bills of sale, contracts, deeds, mortgages, or other documentary evidence. Such documentation includes evidence establishing the source of funds for seized currency or the source of funds used to purchase the seized asset.

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

(4) *Releases*. In addition to the contents of the petition for remission or mitigation set forth in paragraph (c)(3) of this section, upon request, the petitioner shall also furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the property releasing interest in such property.

(5) *Filing a petition*.

(i) A petition for remission or mitigation subject to administrative

forfeiture is to be sent to the official address provided in the notice of seizure and shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set out in paragraph (i)(7).

(ii) If the notice of seizure does not provide an official address, the petition shall be addressed to the Asset Forfeiture Unit at the following address: Asset Forfeiture Unit, Criminal Investigations, U.S. Postal Inspection Service, P.O. Box 44373, Washington, DC 20026-4373.

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

(6) *Agency investigation.* Upon receipt of a petition, the Postal Inspection Service shall investigate the merits of the petition and prepare a written report containing the results of that investigation. This report shall be submitted to the Ruling Official for review and consideration.

(7) *Ruling.* Upon receipt of the petition and the agency report, the Ruling Official for the Postal Inspection Service shall review the petition and the report, if any, and shall rule on the merits of the petition. No hearing shall be held.

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

(9) *Petitions denied.* If the Ruling Official denies a petition, a copy of the decision shall be mailed to the petitioner or, if represented by an attorney, to the petitioner's attorney of record. A copy of the decision shall also be sent to the U.S. Marshals Service, or other property custodian. The decision shall specify the reason that the petition was denied. The decision shall advise the petitioner that a request for reconsideration of the denial of the petition may be submitted to the Ruling Official in accordance with paragraph (c)(10).

(10) *Request for reconsideration.*

(i) A request for reconsideration of the denial of the petition shall be considered if:

(A) It is postmarked or received by the office of the Ruling Official within 10 days from the receipt of the notice of

denial of the petition by the petitioner; and

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

(ii) In no event shall a request for reconsideration be decided by the same Ruling Official who ruled on the original petition.

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

(11) *Restoration of proceeds from sale.*

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

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

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

(ii) Such a petition shall be submitted pursuant to paragraphs (c)(2) through (c)(5) of this section within 90 days of the date the property is sold or otherwise disposed of.

(d) *Petitions in judicial forfeiture cases—(1) Notice of seizure.* The notice of seizure and intent to forfeit the property shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission or mitigation within 30 days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until such time as the forfeited property is placed in official use, sold, or otherwise disposed of according to law, except in cases involving petitions to restore property. A notice of seizure shall include the title of the Ruling Official and the mailing and street address of the official to whom petitions should be sent, the name of the agency seizing the property, an asset identifier number, and the district court docket number.

(2) *Persons who may file.* A petition for remission or mitigation must be filed by a petitioner as defined in paragraph (b)(16), or as prescribed in paragraph (i)(7) and (8).

(3) *Contents of petition.*

(i) All petitions must include the following information in clear and concise terms:

(A) The name, address, and Social Security or other taxpayer identification

number of the person claiming an interest in the seized property who is seeking remission or mitigation;

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

(C) The district court docket number;

(D) A complete description of the property, including the address or legal description of real property, and make, model, and serial numbers of personal property, if any; and

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

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

(4) *Releases.* In addition to the content of the petition for remission or mitigation set forth in paragraph (d)(3) of this section, the petitioner, upon request, also shall furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the property releasing the interest in such property.

(5) *Filing petition with Department of Justice.* A petition for remission or mitigation of a judicial forfeiture shall be addressed to the Attorney General; shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set forth in paragraph (i)(7) of this section; and shall be submitted to the U.S. Attorney for the district in which the judicial forfeiture proceedings are brought.

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

(7) *Ruling.* The Chief shall rule on the petition. No hearing shall be held. The Chief shall not rule on any petition for remission if such remission was previously denied by the administrative agency pursuant to paragraph (c) of this section.

(8) *Petitions granted.* If the Chief grants a remission or mitigates the forfeiture, the Chief shall mail a copy of the decision to the petitioner (or, if represented by an attorney, to the petitioner's attorney), and shall mail or transmit electronically a copy of the decision to the appropriate U.S. Attorney, the U.S. Marshals Service or other property custodian, and the seizing agency. The written decision shall include the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures the petitioner must follow to obtain release of the property or the monetary interest therein. The Chief shall advise the petitioner or the petitioner's attorney to consult with the U.S. Attorney as to such terms and conditions. The U.S. Attorney shall confer with the seizing agency regarding the release and shall coordinate disposition of the property with that office and the U.S. Marshals Service or other property custodian.

(9) *Petitions denied.* If the Chief denies a petition, a copy of that decision shall be mailed to the petitioner (or, if represented by an attorney, to the petitioner's attorney of record), and mailed or transmitted electronically to the appropriate U.S. Attorney, the U.S. Marshals Service or other property custodian, and the seizing agency. The decision shall specify the reason that the petition was denied. The decision shall advise the petitioner that a request for reconsideration of the denial of the petition may be submitted to the Chief at the address provided in the decision, in accordance with paragraph (d)(10) of this section.

(10) *Request for reconsideration.*

(i) A request for reconsideration of the denial shall be considered if:

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

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

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

(ii) In no event shall a request for reconsideration be decided by the Ruling Official who ruled on the original petition.

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

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

(11) *Restoration of proceeds from sale.*

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

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

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

(ii) Such a petition must be submitted pursuant to paragraphs (d)(2) through (d)(5) of this section within 90 days of the date the property was sold or otherwise disposed of.

(e) *Criteria governing administrative and judicial remission and mitigation.*

(1) *Remission.*

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

(ii) For purposes of this paragraph, the knowledge and responsibilities of a petitioner's representative, agent, or employee are imputed to the petitioner where the representative, agent, or employee was acting in the course of that person's employment and in furtherance of the petitioner's business.

(iii) The petitioner has the burden of establishing the basis for granting a petition for remission or mitigation of forfeited property, a restoration of proceeds of sale or appraised value of forfeited property, or a reconsideration of a denial of such a petition. Failure to provide information or documents and to submit to interviews, as requested, may result in a denial of the petition.

(iv) The Ruling Official shall presume a valid forfeiture and shall not consider

whether the evidence is sufficient to support the forfeiture.

(v) Willful, materially false statements or information made or furnished by the petitioner in support of a petition for remission or mitigation of forfeited property, the restoration of proceeds or appraised value of forfeited property, or the reconsideration of a denial of any such petition shall be grounds for denial of such petition and possible prosecution for the filing of false statements.

(2) *Mitigation.*

(i) The Ruling Official may grant mitigation to a party not involved in the commission of the offense underlying forfeiture:

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

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

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

(iii) Mitigation may take the form of a monetary condition or the imposition of other conditions relating to the

continued use of the property, and the return of the property, in addition to the imposition of any other costs that would be chargeable as a condition to remission. This monetary condition is considered as an item of cost payable by the petitioner, and shall be deposited into the Postal Inspection Service's Fund as an amount realized from forfeiture in accordance with the applicable statute. If the petitioner fails to accept the Ruling Official's mitigation decision or any of its conditions, or fails to pay the monetary amount within 20 days of the receipt of the decision, the property shall be sold, and the monetary amount imposed and other costs chargeable as a condition to mitigation shall be subtracted from the proceeds of the sale before transmitting the remainder to the petitioner.

(f) *Special rules for specific petitioners*—(1) *General creditors*. A general creditor may not be granted remission or mitigation of forfeiture unless that person otherwise qualifies as petitioner under this part.

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

(3) *Voluntary bailments*. A petitioner who allows another to use the petitioner's property without cost, and who is not in the business of lending money secured by property or of leasing or renting property for profit, shall be granted remission or mitigation of forfeiture in accordance with the provisions of paragraph (e) of this section.

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

(5) *Straw owners*. A petition by any person who has acquired a property interest recognizable under this part, and who knew or had reason to believe that the interest was conveyed by the previous owner for the purpose of circumventing seizure, forfeiture, or the regulations in this part, shall be denied. A petition by a person who purchases or owns property for another who has a record for related crimes as defined in paragraph (b)(19), or a petition by a lienholder who knows or has reason to believe that the purchaser or owner of record is not the real purchaser or owner, shall be denied unless both the

purchaser of record and the real purchaser or owner meet the requirements of paragraph (e) of this section.

(6) *Judgment creditors*.

(i) A judgment creditor will be recognized as a lienholder if:

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

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

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

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

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

(g) *Terms and conditions of remission and mitigation*—(1) *Owners*.

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

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

(iii) Where the Government sells or disposes of the property prior to the grant of the remission, the owner shall receive the proceeds of that sale, less any costs incurred by the Government in the sale. The Ruling Official, as a matter of discretion, may waive the deduction of costs and expenses incident to the forfeiture.

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

(2) *Lienholders*.

(i) When the forfeited property is to be retained for official use or transferred to a state or local law enforcement agency or foreign government pursuant to law, and remission or mitigation has been granted to a lienholder, the recipient of the property shall assure that:

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

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

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

(A) *Return of property*. The lienholder may obtain possession of the property after paying the United States, through the Ruling Official, the costs and expenses incident to the forfeiture, the amount, if any, by which the appraised value of the property exceeds the lienholder's net equity in the property, and any amount specified in the Ruling Official's decision as a condition to remit the property. The Ruling Official, as a matter of discretion, may waive costs and expenses incident to the forfeiture. The Ruling Official shall forward a copy of the decision, a memorandum of disposition, and the original releases to the division or field office responsible for the seizure and custody of the property or, if applicable, to the U.S. Marshals Service, who shall thereafter release the property to the lienholder; or

(B) *Sale of Property and Payment to Lienholder*. Subject to the provisions of paragraph (i)(1), upon sale of the property, the lienholder may receive the payment of a monetary amount up to the sum of the lienholder's net equity, less the expenses and costs incident to the forfeiture and sale of the property, and any other monetary conditions imposed. The Ruling Official, as a matter of discretion, may waive costs and expenses incident to the forfeiture.

(iii) If the lienholder does not notify the Ruling Official of the selection of one of the two options set forth in paragraph (g)(2)(ii) of this section within 20 days of the receipt of notification, the Ruling Official shall direct the division or field office responsible for the seizure or custody, or if applicable, the U.S. Marshals Service, to sell the property and pay the lienholder an amount up to the net equity, less the costs and

expenses incurred incident to the forfeiture and sale, and any monetary conditions imposed. In the event a lienholder subsequently receives a payment of any kind on the debt owed for which he or she received payment as a result of the granting of remission or mitigation, the lienholder shall reimburse the Postal Service Forfeiture Fund to the extent of the payment received.

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

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

(1) *Remission procedure for victims—*
(i) *Where to file.* Persons seeking remission as victims shall file petitions for remission with the appropriate deciding official as described in paragraph (c)(5) (administrative forfeiture) or (d)(5) (judicial forfeiture) of this section.

(ii) *Time of decision.* The Ruling Official or that person's designee as described in paragraph (a)(2) of this section may consider petitions filed by persons claiming eligibility for remission as victims at any time prior to the disposal of the forfeited property in accordance with law.

(iii) *Request for reconsideration.* Persons denied remission under this section may request reconsideration of the denial, in accordance with paragraph (c)(10) (administrative forfeiture) or (d)(10) (judicial forfeiture) of this section.

(2) *Qualification to file.* A victim, as defined in paragraph (b)(22) of this section, may be granted remission, if in addition to complying with the other applicable provisions of paragraph (h) of this section, the victim satisfactorily demonstrates that:

(i) A pecuniary loss of a specific amount has been directly caused by the criminal offense, or related offense, that was the underlying basis for the forfeiture, and that the loss is supported by documentary evidence including invoices and receipts;

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

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

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

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

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

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

(5) *Denial of petition.* As a matter of discretion, the Ruling Official may decline to grant remission where:

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

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

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

(6) *Pro rata basis.* In granting remission to multiple victims pursuant to this section, the Ruling Official

should generally grant remission on a pro rata basis to recognized victims when petitions cannot be granted in full due to the limited value of the forfeited property. However, the Ruling Official may consider, among others, the following factors in establishing appropriate priorities in individual cases:

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

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

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

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

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

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

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

(i) *Miscellaneous provisions—*(1) *Priority of payment.* Except where otherwise provided in this part, costs incurred by the Postal Inspection Service, the U.S. Marshals Service, and other agencies participating in the forfeiture that were incident to the forfeiture, sale, or other disposition of the property shall be deducted from the amount available for remission or mitigation. Such costs include, but are not limited to, court costs, storage costs,

brokerage and other sales-related costs, the amount of any liens and associated costs paid by the Government on the property, costs incurred in paying the ordinary and necessary expenses of a business seized for forfeiture, awards for information as authorized by statute, expenses of trustees or other assistants pursuant to paragraph (i)(3) of this section, investigative or prosecutorial costs specially incurred incident to the particular forfeiture, and costs incurred incident to the processing of petitions for remission or mitigation. The remaining balance shall be available for remission or mitigation. The Ruling Official shall direct the distribution of the remaining balance in the following order or priority, except that the Ruling Official may exercise discretion in determining the priority between petitioners belonging to classes described in paragraph (i)(1)(iii) and (iv) of this section in exceptional circumstances:

- (i) Owners;
- (ii) Lienholders;
- (iii) Federal financial institution regulatory agencies (pursuant to paragraph (i)(5) of this section), not constituting owners or lienholders; and
- (iv) Victims not constituting owners or lienholders pursuant to paragraph (h) of this part.

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

- (i) Payment of the Government's expenses incurred incident to the forfeiture and sale, including court costs and storage charges, if any;
- (ii) Payment to the petitioner of an amount up to that person's interest in the property;
- (iii) Payment to the Postal Service Forfeiture Fund of all other costs and expenses incident to the forfeiture;
- (iv) In the case of victims, payment of any amount up to the amount of that person's loss; and
- (v) Payment of the balance remaining, if any, to the Postal Service Forfeiture Fund.

(3) *Trustees and other assistants.* As a matter of discretion, the Ruling Official, with the approval of the Chief Postal Inspector, may use the services of a trustee, other Government official, or

appointed contractors to notify potential petitioners, process petitions, and make recommendations to the Ruling Official on the distribution of property to petitioners. The expense for such assistance shall be paid out of the forfeited funds.

(4) *Other agencies of the United States.* Where another agency of the United States is entitled to remission or mitigation of forfeited assets because of an interest that is recognizable under this part or is eligible for such transfer pursuant to 18 U.S.C. 981(e)(6), such agency shall request the transfer in writing, in addition to complying with any applicable provisions of paragraphs (c) through (e) of this section. The decision to make such transfer shall be made in writing by the Ruling Official.

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

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

(7) *Filing by attorneys.*

(i) A petition for remission or mitigation may be filed by a petitioner or by that person's attorney or legal guardian. If an attorney files on behalf of the petitioner, the petition must include a signed and sworn statement by the client-petitioner stating that:

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

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

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

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

(8) *Consolidated petitions.* At the discretion of the Ruling Official in individual cases, a petition may be filed by one petitioner on behalf of other petitioners, provided the petitions are based on similar underlying facts, and the petitioner who files the petition has written authority to do so on behalf of

other petitioners. This authority must be either expressed in documents giving the petitioner the authority to file petitions for remission, or reasonably implied from documents giving the petitioner express authority to file claims or lawsuits related to the course of conduct in question on behalf of these petitioners. An insurer or an administrator of an employee benefit plan, for example, which itself has standing to file a petition as a "victim" within the meaning of paragraph (b)(22) of this section, may also file a petition on behalf of its insured or plan beneficiaries for any claims they may have based on co-payments made to the perpetrator of the offense underlying the forfeiture, or the perpetrator of a "related offense" within the meaning of paragraph (b)(20), if the authority to file claims or lawsuits is contained in the document or documents establishing the plan. Where such a petition is filed, any amounts granted as remission must be transferred to the other petitioners, not the party filing the petition; although, as a matter of discretion, the Ruling Official may use the actual petitioner as an intermediary for transferring the amounts authorized as a remission to the other petitioners.

5. Section 233.10 is reserved.

§ 233.10 [Reserved].

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2010-0936-201150, FRL-9637-9]

Approval and Promulgation of Air Quality Implementation Plans; State of Georgia; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval of a revision to the Georgia state implementation plan (SIP) submitted by the State of Georgia through the Georgia Department of Natural Resources, Environmental Protection Division (GA EPD), on February 11, 2010, as supplemented on November 19, 2010, that addresses regional haze for the first implementation period. This SIP