

§ 356.1

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AUTHORITY: 16 U.S.C. 1540(f), 16 U.S.C. 3374; 7 CFR 2.22, 2.80, 371.3.

SOURCE: 49 FR 42916, Oct. 25, 1984, unless otherwise noted.

§ 356.1 Property subject to forfeiture procedures.

This part sets forth procedures relating to the forfeiture of any plant, equipment, means of conveyance or other property¹ seized under the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 *et seq.*) or the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*),² in possession (actual or constructive) of the United States Depart-

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

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

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ment of Agriculture, and subject to forfeiture under these Acts because of activities pertaining to the importation, exportation, or reexportation of terrestrial plants.

[49 FR 46336, Nov. 26, 1984]

§ 356.2 Appraisement.

Promptly following the seizure or other receipt of property specified in § 356.1, the Deputy Administrator shall determine the retail value of such property in the same quantity or quantities as seized. If the property may lawfully be sold in the United States, the value thereof shall be determined by ascertaining the price at which the property or similar property in the ordinary course of trade is freely offered for sale at the time of appraisement, and at a principal market as close as possible to the place of appraisement. If the property may not lawfully be sold in the United States, the value thereof shall be determined by other reasonable means.

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

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