

§ 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 Appraisalment.

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 appraisalment, and at a principal market as close as possible to the place of appraisalment. If the property may not lawfully be sold in the United States, the value thereof shall be determined by other reasonable means.

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

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

names of the witnesses, and a citation to the laws believed to have been violated and on which reliance may be had for forfeiture.

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

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

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

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

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

(c) *Procedure absent waiver of forfeiture procedures by owner.* (1) Notice of seizure and proposed forfeiture. Promptly following seizure of property, the Deputy Administrator shall issue a notice of seizure and proposed forfeiture. The notice shall be in substantially the same form as a complaint for forfeiture filed in the U.S. District Court. The notice shall describe the seized property, including any identification numbers, such as the license, registration, motor, and serial numbers for a motor vehicle. The notice shall state the time, date, and place of sei-

zure; the reason for seizure; and shall specify the value of the property as determined under § 356.2. The notice shall contain specific reference to the provisions of the Act, permit, certificate, or regulations allegedly violated and under which the property is subject to forfeiture. The notice shall state that any person desiring to claim the property must file a claim and a bond in accordance with paragraph (c)(2) of this section, and shall state that if a proper claim and bond are not received by the specified office within the time prescribed by such paragraph, the property will be declared forfeited to the United States and disposed of according to law. The notice shall also advise interested persons of their right to file a petition for remission or mitigation of forfeiture in accordance with § 356.7.

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

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

(2) *Filing a claim and bond.* Upon issuance of the notice of proposed forfeiture, any person claiming ownership of or other interest in the seized property may file with the office specified in the notice a claim to the property and a bond in the amount of \$250, with sureties to be approved by the Deputy Administrator, conditioned that in case of condemnation of the articles so claimed, the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation. Any claim and bond must be received in such office within 20 days after posting of the notice of proposed forfeiture, and shall state claimant's interest in the property. The Deputy Administrator