

Department of Justice

§ 8.10

claim is not made within the time period, the FBI Property Management Officer shall declare the property forfeited.

[Order No. 1128-86, 51 FR 8818, Mar. 14, 1986, as amended by Order No. 1197-87, 52 FR 24448, July 1, 1987; Order No. 1476-91, 56 FR 8687, Mar. 1, 1991]

§ 8.9 Disposition of forfeited property.

(a) If the laws of a state in which an article of forfeited property is located prohibit the sale of such property or if the U.S. Marshals Service is 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 as the U.S. Marshals Service may direct.

(b) If, after the administrative forfeiture of property is completed, it appears that the proceeds of sale will not be sufficient to pay the costs of sale or the proceeds will be insignificant in relation to the expenses involved in the forfeiture, the U.S. Marshals Service may order the destruction of the property. Similarly, property forfeited under a decree of a court may be destroyed in accordance with section 611, Tariff Act of 1930 (19 U.S.C. 1611). Also, if the sale or use of any article is prohibited under any law of the United States or the state where it is stored, the U.S. Marshals Service may order it destroyed or cause alteration of the property into an article that is not prohibited.

(c) If arms and munitions are forfeited pursuant to 22 U.S.C. 401(c), the Secretary of Defense should be contacted to determine if he desires this property.

§ 8.10 Remission or mitigation of forfeiture.

(a) Any person claiming a legal or equitable interest in any property which has been forfeited pursuant to statutes identified in § 8.1, may file, in accordance with the provisions of 28 CFR part 9, a petition for remission or mitigation of the forfeiture or a petition for restoration of the proceeds of sale or for value of the property placed in official use. If the forfeiture proceedings are administrative, the petition shall be addressed to the Director of the FBI

and shall be filed in triplicate with the Special Agent in Charge of the FBI field office that seized the property. It must be executed and sworn to by the person alleging interest in the property. If the forfeiture proceedings are judicial, the petition shall be addressed to the Attorney General of the United States and filed in triplicate with the Special Agent in Charge of the FBI field office that seized the property. The petition for a judicial forfeiture shall be sworn to by the petitioner, or by his or her counsel upon information and belief.

(b) The petition shall include the following:

(1) A complete description of the property, including model and serial numbers, if any, and the date and place of seizure;

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

(3) The facts and circumstances, established by satisfactory proof, relied upon by the petitioner to justify remission or mitigation of the forfeiture. For further information regarding the content of a petition, see 28 CFR 9.5.

(c) Where the petition is for restoration of the proceeds of sale, or for value of the property placed in official use, it must be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration of forfeiture and was in such circumstances as prevented petitioner from knowing of the same.

(d) A petition for remission or mitigation of forfeiture should be filed within 30 days of the receipt of the notice of seizure. Once forfeited property is disposed of, a petition for remission or mitigation of forfeiture will no longer be accepted. A petition for restoration of proceeds of sale or for value of the property placed in official use must be filed within 90 days of the sale of the property, or within 90 days of the date the property is placed in official use.

(e) Upon receipt of a petition, an appropriate investigation shall be conducted by the FBI. No hearing shall be held. For administrative forfeitures,

the petition and the results of the petition investigation shall be forwarded to the Legal Counsel Division, FBI. Final decisions on petitions for property forfeited administratively shall be made by the Assistant Director, Legal Counsel, FBI or his designee within the Legal Counsel Division, FBI. For judicial forfeitures, the petition and the results of the petition investigation shall be forwarded to the U.S. Attorney who prosecuted the property. The U.S. Attorney shall forward the petition and the results of the investigation together with a recommendation as to allowance or denial of the petition to the Assistant Attorney General, Criminal Division. The matter shall be assigned to the Asset Forfeiture Office who shall either grant the petition by remission or mitigation of the forfeiture or shall deny it.

(f) A request for reconsideration of the denial of the petition for an administrative forfeiture must be submitted within 10 days from receipt of the letter denying the petition. Such request shall be addressed to the Director of the FBI for referral to the FBI Legal Counsel Division and shall be based on evidence recently developed or not previously considered. Only one request for reconsideration of a denial of a petition shall be considered. For further information regarding petitions see 28 CFR part 9.

PART 9—REGULATIONS GOVERNING THE REMISSION OR MITIGATION OF CIVIL AND CRIMINAL FORFEITURES

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AUTHORITY: 28 U.S.C. 509, 510, 515-518, 524; 8 U.S.C. 1324; 15 U.S.C. 1177; 17 U.S.C. 509; 18 U.S.C. 512, 981, 982, 1467, 1955, 1963, 2253, 2254, 2513; 19 U.S.C. 1613, 1618; 21 U.S.C. 853, 881; 22 U.S.C. 401.

SOURCE: Order No. 2064-96, 62 FR 316, Jan. 3, 1997, unless otherwise noted.

§ 9.1 Authority, purpose, and scope.

(a) *Purpose.* This part sets forth the procedures for agency officials to follow when considering remission or mitigation of administrative forfeitures under the jurisdiction of the agency, and civil judicial and criminal judicial forfeitures under the jurisdiction of the Criminal Division. The purpose of the regulations in this part is to provide a basis for ameliorating the effects of forfeiture through 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.

(b) *Authority to grant remission and mitigation.* (1) Remission and mitigation functions in administrative forfeitures are performed by the agency seizing the property. Within the Federal Bureau of Investigation, authority to grant remission and mitigation is delegated to the Forfeiture Counsel, who is the Unit Chief, Legal Forfeiture Unit, Office of the General Counsel; within the Drug Enforcement Administration, authority to grant remission and mitigation is delegated to the Forfeiture Counsel, Office of Chief Counsel; within the Bureau of Alcohol, Tobacco, Firearms, and Explosives, authority to grant remission and mitigation is delegated to the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives; and within the Immigration and Naturalization Service, authority to grant remission and mitigation is delegated to the INS Regional Directors.

(2) 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