

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 and mitigation is delegated to the Chief, Asset Forfeiture and Money Laundering Section, Criminal Division.

(3) The powers and responsibilities delegated by these regulations in this part may be redelegated to attorneys or managers working under the supervision of the designated officials.

(c) The time periods and internal requirements established in this part 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 decisions on petitions for remission or mitigation made on or after February 3, 1997. The regulations will apply to decisions on requests for reconsideration of a denial of a petition under §§ 9.3(j) and 9.4(k) only if the initial decision on the petition was made under the provisions of this part effective on February 3, 1997.

(d) This part governs any petition for remission filed with the Attorney General and supersedes any Department of Justice regulation governing petitions for remission, to the extent such regulation is inconsistent with this part. In particular, this part supersedes the provisions of 21 CFR 1316.79 and 1316.80, which contain remission and mitigation procedures for property seized for narcotics violations. The provisions of 8 CFR 274.13 through 274.19 and 28 CFR

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8.10, which concern non-drug related forfeitures, are also superseded by this part where those regulations relate to remission and mitigation.

[Order No. 2064-96, 62 FR 316, Jan. 3, 1997, as amended by Order No. 2650-2003, 68 FR 4928, Jan. 31, 2003]

§ 9.2 Definitions.

As used in this part:

(a) The term *administrative forfeiture* means the process by which property may be forfeited by an investigative agency rather than through judicial proceedings.

(b) The term *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.

(c) The term *Assets Forfeiture Fund* means the Department of Justice Assets Forfeiture Fund or Department of the Treasury Asset Forfeiture Fund, depending upon the identity of the seizing agency.

(d) The term *Attorney General* means the Attorney General of the United States or his or her designee.

(e) The term *beneficial owner* means a person with actual use of, as well as an interest in, the property subject to forfeiture.

(f) The terms *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.

(g) The term *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.

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

(i) The term *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.

(j) The term *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:

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

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

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

(k) The term *net equity* means the amount of a lienholder's monetary interest in 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.

(l) The term *owner* means the person in whom 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 (v) of this section, may also be an owner if he or she 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 he or she is not its beneficial owner.

(m) The term *person* means an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property.

(n) The term *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