

[Directives Home Page](#) >> [Topics](#) >> [Asset Forfeiture](#)

POLICY



USMS Directives

ASSET FORFEITURE

13.2 Personal Property

APPENDIX A

A. Definitions Used in This Manual

Administrative declaration of forfeiture: An administrative ruling issued by the investigative agency processing an administrative forfeiture, following publication of notice of intent to forfeit, declaring that no claims to the property had been received and that the seized property has therefore been forfeited to the United States. Such a declaration has the force and effect of a court order.

Administrative forfeiture: The process by which property may be forfeited to the United States by the investigative agency that seized it, without judicial involvement.² (See also administrative declaration of forfeiture.)

Adoption: The acceptance by a Federal investigative agency of property seized by non-Federal law enforcement agencies, for the purpose of instituting a Federal forfeiture proceeding against the property.³ *County Bd. of Educ.*, 902 F. 2d 267 (4th Cir. 1990) State and local law enforcement agencies generally request Federal adoption when, after making a seizure, they determine that a State forfeiture proceeding is not possible or that a Federal forfeiture proceeding would be more advantageous.

Ancillary proceedings: Proceedings following a preliminary order of forfeiture in a criminal case. These proceedings are similar to civil forfeiture proceedings, except they deal only with the ownership rights that third parties may assert to the forfeited property. After notice of the hearing is published, any party asserting an interest in the property must petition the court for a hearing to adjudicate the validity of his/her interest in the property. At this hearing, the petitioner must establish by a preponderance of the evidence that he/she has a legal ownership interest in the property. Ownership interests may include liens and mortgages on the forfeited property. After the hearing, a final order of forfeiture will be issued, which will resolve and dispose of the interest of any third party.⁴ This can include rejecting that third party's interest or providing satisfaction of that interest.

Appraisal: The valuation of personal property by a person with suitable qualifications.

As is/where is: Words that are included in a contract to signify that no guarantees whatsoever are given regarding the subject property and that it is being purchased exactly as it is found. An as is indicator is intended to be a disclaimer of warranties or representations. Such a provision is inoperative when the seller actively misrepresents

the condition of the property; however, if the buyer should be expected to discover a defect, not known to the seller, upon a reasonable inspection, the buyer will be charged with notice. A *where is* indicator denotes that the buyer takes the property as found and must remove it from the point of sale.

Assets Forfeiture Fund: A fund in the Treasury of the United States into which forfeited cash and proceeds from the sale of forfeited property are deposited and from which expenses are paid to cover the management and disposition of forfeited property, equitable sharing distributions, awards for information, and other law enforcement costs.⁵

Auction: The sale of property to the highest eligible bidder where any and all persons participating in the *auction* may offer bids. Bids can be taken verbally, by mail, or other electronic means (e.g., e-mail, fax).

- **Auction without reserve:** An *auction* in which the property is sold to the highest eligible bidder, regardless of the size of the bid.
- **Reserve auction:** An *auction* in which the seller reserves the right to withdraw the personal property from sale if the bids fail to reach a minimum level.

Regardless of what type of *auction* is used to market personal property, the USMS shall always reserve the right to reject any bidder.

Bill of sale: A written agreement by which one person assigns or transfers his/her right to or interest in goods and personal property to another.

Civil order of forfeiture: In a civil case, the court order issued following a *judgment* for the United States declaring that the property, which is the named defendant in the case, is forfeited. The *civil order of forfeiture* affects "the whole world," including unknown claimants. (See also *final order of forfeiture*.)

Claim: A written notification filed by a party asserting an interest in property seized for forfeiture which requires the Government to proceed with a *judicial forfeiture* action against the seized property. 19 U.S.C. 5 1608 sets forth the requirement for a *claim* subject to *administrative forfeiture*, while Admiralty Rule C(6) sets forth the requirement for a *claim* subject to *judicial forfeiture*.

Cost bond: The *cost bond* is to defray certain costs that the Government incurs in bringing the forfeiture action. The bond is returned if the person filing the *claim* defeats the forfeiture in the subsequent judicial action. 19 U.S.C. § 1608. See also *AFPM*, Section 2.111.A for a list of the costs that may be deducted by the USMS upon *forfeiture* of the property.

Encumbrance: Any claim, lien, charge, or liability attached to and binding on personal property that may lessen its value or burden, obstruct, or impair the use of a property but not necessarily prevent transfer of title; a right or interest in a property held by one who is not the legal owner of the property.

Exigent circumstances: Events that prompt the need for immediate action and call for immediate action or remedy; something that needs to be done at once.

b2

Ex parte: A judicial proceeding, order, injunction, etc., taken or granted at the instance and for the benefit of one party only, and without *notice* to or input from any person adversely interested.

Final order of forfeiture: In a criminal case, the court order issued following the disposition of all petitions, or if no petitions are filed in a timely manner, by which the United States gains clear title to property subject to the *preliminary order of forfeiture*. The *preliminary order of forfeiture* becomes final as to the whole world only when the *ancillary proceeding* is concluded. ⁶

Forfeiture: A Federal forfeiture is the taking by the United States of property that has been used or acquired illegally, without compensating the owner. ⁷

Indictment: A formal written accusation originating with a prosecutor and issued by a grand jury against a party charged with a crime. ⁸

Information: An accusation in the nature of an *indictment*, which differs from an *indictment* only in that it is being presented by a competent public officer on his/her oath of office, instead of by a grand jury. ⁹ An *information* may only be used when the accusation is a misdemeanor, or when the accusation is a felony and the accused has waived *indictment*.

Innocent party: A party (1) free from guilt and acting in good faith and (2) without knowledge of incriminatory circumstances, defects, or objections.

Interlocutory sale: A sale of the property before a final decision is entered in the *forfeiture* action, with the proceeds provisionally held under the *jurisdiction* of the court, to be released to whichever party finally prevails in the judicial action.

Inventory: A detailed list of articles of property; a list or schedule of property containing a designation or description of each specific article, and including its actual or estimated value.

In personam: Any legal proceeding directed against an individual. In the context of asset forfeiture, *in personam* decisions determine ownership of property in relation only to the parties before the court. The power of a court to issue *in personam* decisions depends upon its ability to obtain *jurisdiction* over the individual, and affects only the interests of that individual.

In rem: Any legal proceeding directed solely against property that will determine the ownership of that property. The defendant in an *in rem* proceeding is the property itself, and the proceeding is totally independent of any criminal action taken against the owner. ¹⁰ *In rem* decisions affect "the whole world," including unknown claimants.

Judgment: The official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit before it. *Judgments* may include:

Consent judgment, the provision and terms of which are settled and agreed upon by the parties to the action.

Default judgment, rendered as a result of the nonappearance of the

defendant.

Judgment after trial, rendered on the merits of the case.

Summary judgment, following a motion by one or both parties based upon the court's determination that there is no genuine issue of fact and that the party requesting *summary judgment* is entitled to prevail as a matter of law.

Jurisdiction: The power and authority to hear and determine a case.

Lien: Qualified rights that a creditor has in certain property of his/her debtor, as security for the debt, or his/her performance of some act for the debtor.

Market value: The price that a purchaser might be willing but not compelled to pay to purchase, and the lowest price a seller, willing to but not compelled to sell, would accept. It assumes a motivated buyer and seller, and reasonable marketing time. For vehicles, vessels, and aircraft, current NADA or BUC guidebooks may be used to determine *market value*.

Mechanic's or materialman's lien: A *lien* to secure priority for payment for work performed and/or materials furnished in repairing property.

Net equity: The potential amount of sales revenue (proceeds) that the United States will realize after the property is sold, deducting all of the Marshal's expenses (including sales commissions, the transaction costs to dispose of personal property) and recognized liens.

Newspaper of general circulation: A *publication*, usually in sheet form, intended for general circulation, and published at short intervals, containing information and editorials on current events and news of general interest.

Notice: Information, advice, or written warning intended to apprise an individual of some proceeding in which his/her interests are involved.

Official Use: The transfer of ownership of forfeited property to a Federal agency or a State or local agency for its use when authorized by the forfeiture statute¹¹ and approved by the Attorney General.

Party-in-interest: An individual who participates in the performance of any act, or who is directly interested in any affair, contract, or conveyance, or who is actively concerned in the prosecution and defense of any legal proceeding relevant to the property.¹²

Personal service: Actual delivery of a pleading, *notice*, or other paper to any party or person interested in an action so as to charge him/her with the receipt of it and subject him/her to its legal effect.

Petition for remission or mitigation: A *petition* submitted to a DOJ official requesting administrative relief from the effects of the forfeiture.

Remission of the forfeiture returns the property to the petitioner without any penalty. Generally, *remission* will be granted to a party whose property was used without his/her knowledge or negligence. This includes financial institutions with a *security interest* in the property (*lien* or *mortgage*) and other innocent persons. *Mitigation* is partial relief from the *forfeiture*, usually conditioned upon the payment of a money penalty.

Plea agreement: The process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. *Plea agreement* procedures in Federal courts are governed by Fed. R. Crim. P. 11(e).

Posting: The form of service of process specified by Admiralty Rule C(4)(b). It consists of affixing, in a conspicuous place, a copy of the forfeiture complaint and the *warrant of arrest in rem*, issued by the clerk of the court pursuant to Admiralty Rule C(3), to the defendant property *in rem*.

Preliminary order of forfeiture: The order entered by the court forfeiting all the defendant's interests and assets that the jury has found to be forfeitable in its special verdict.¹³ The order should identify specifically each forfeited asset and state that the interest of the defendant in each asset is "forfeited to the United States for disposition in accordance with law." In addition, the order "must authorize the Attorney General to seize the interest or property subject to forfeiture on terms that the court considers proper."¹⁴

Pre-seizure planning: Planning that involves the USAO, the seizing agency, and the USMO and that anticipates and makes decisions about **what** property is being seized, how and **when** it is going to be seized, and most important, **whether** it should be seized.¹⁵

Probable cause: The existence of facts and circumstances within an individual's knowledge and of which the individual has reasonably trustworthy information, that lead someone of reasonable caution to believe that, in the context of an arrest, a crime has been committed or that, in the context of a search and *seizure*, property subject to *seizure* is at a designated location.

Publication: The placement-under the conditions prescribed by law-of an advertisement in a newspaper to give *notice* of the suit to interested parties upon whom *personal service* cannot be made. Admiralty Supplemental Rule C(4) requires that *notice* of the forfeiture action be published in a *newspaper of general circulation* in the district where the lawsuit was filed. Local district court rules govern the specific requirements as to the number and frequency of *publication of notice*.

Repairs: As used in this manual, *repairs* include any actions necessary to mend, remedy, restore, or renovate personal property to its original condition, including modifications necessary to bring the property back to factory specifications, such as removing previously made modifications (e.g., hidden compartments).

Restraining order: An order of the court forbidding a party to perform certain acts until a hearing can be held.

Security interest: An interest in personal property which secures payment or performance of an obligation; any interest in property acquired by contract for the purpose of securing payment or performance of an obligation.

b2

Seizure: The act of taking possession of property by virtue of a *warrant* or by legal authority. ¹⁶ As used in this manual, it includes the transfer of property into the custody of the court or investigative agency.

Seizure warrant (warrant of seizure): A form of process issued pursuant to Fed. R. Crim. Proc. Rule 41, and authorized by 21 U.S.C. § 881(b) and 18 U.S.C. 5 981(b)(2) that secures a judicial determination of probable cause but does not confer *jurisdiction* upon the court issuing the *warrant*.¹⁷

Settlement agreement: A contractual agreement to end legal disputes.

Special verdict of forfeiture: A special verdict that may be returned by a jury after conviction when the *indictment* contains a forfeiture allegation.. As authorized by Fed. R. Crim. P. 31(e), the special verdict must specify "the extent of the interest or property subject to forfeiture, if any."

Substitute assets: Assets belonging to a defendant that the court may order forfeited in lieu of directly forfeitable assets if the forfeitable assets are unavailable at the time the jury returns its *special verdict of forfeiture* due to any act of omission by the defendant. Such assets, up to an equivalent value of those that are unavailable, may be forfeited upon motion to the district court filed by the AUSA. See 21 U.S.C. 5 853(p). *Substitute assets* are subject to criminal forfeiture only.

Warrant: A writ from a competent authority in pursuance of law directing the officer, or otherwise competent person, to perform an act and affording him/her protection from damages in doing so.

Warrant of arrest in rem: A written order of the court, based upon a verified complaint, issued under the authority of Admiralty Rule C(3), which commands the Marshal to arrest (seize) the property named therein, and which gives the court *jurisdiction* over the property to be seized.

Appendix C - Forfeiture Statutes

Appendix D - Policy Authorization Review Decisions

Appendix E - Legal Background

Appendix F - Referenced Policies

b2