

POLICY  **USMS Directives**

ASSET FORFEITURE

13.2 Personal Property

QUICK POINTS

This directive deals with the policies and procedures for the management and disposal of personal property subject to forfeiture. All the policies and procedures relating to personal property will be located in this manual, together with model forms and documents.

The manual's approach is performance-based rather than directive. It provides the standards that each district Marshal's office should achieve; but leaves to the district offices much of the decision-making on how to achieve those standards. For example, a sales standard is provided for different types of personal property -- ranging from [redacted] of market value for vehicles appraised at or under [redacted] or precious items (jewelry, gemstones, art, antiques, collectibles, precious metals and collector coins etc.). However, the district Marshal's office may choose the method of sale and may sell forfeited personal property below the sales standards without any clearances or approvals from Marshal's Headquarters, so long as an appropriate marketing effort is made and so long as the sales price covers the amount of any outstanding lien. Also, the district Marshal's office has the authority to make repairs to [redacted] of the forfeited net equity in the personal property ([redacted]).

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However, the USMS Asset Forfeiture Office (AFO) will be available to provide contracting assistance and financial management assistance, as well as financial and technical advice.

When decisions do need to be referred to the AFO for action, or when the district Marshal's office perceives that it needs assistance on matters beyond its expertise, the manual establishes a new Policy Authorization Review (PAR) decision procedures, which supercedes the previous Significant Seized Property Decisions (SSPD) procedure. The PAR procedure clearly delineates the information and documentation the district office needs to send to the AFO in order that the AFO has all the information necessary to address the problem or to make the decision. Issues that require the submission of a PAR include:

- dealing with disagreements between the district office and the United States Attorney's office that cannot be resolved at the local level;
- approval of disposal plans for forfeited personal property with an appraised value in excess of \$500,000 (vehicles and vessels over \$75,000).
- selling forfeited property at auction for less than outstanding encumbrances;
- destroying forfeited personal property with a market value in excess of \$5,000 or which is subject to an outstanding lien;
- making repairs to forfeited property in excess of [redacted] of the net equity in the personal property [redacted] and [redacted];
- dealing with other emergency situations beyond the expertise of the district office.

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The manual focuses on the need for pre-seizure planning and stresses the concept that the planning needs to be done by a team which would include representatives of the United States Attorney's Office, the investigative agency, and the United States Marshals Service. It makes clear the role that the district Marshal's office has in ensuring that problems related to the management and disposition of the personal property after forfeiture are addressed

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before the decision is made to seek forfeiture. Also, it provides information regarding the roles and responsibilities of the United States Attorney's Office and the investigative agency as generally stated in the Criminal Division's Asset Forfeiture Policy Manual - citing to that manual so that the district Marshal's office has a ready reference to regarding the roles of each agency involved in the asset forfeiture process.

The new manual emphasizes the need to consider the alternatives to forfeiture before the decision to seek forfeiture is made. This emphasis on alternatives to forfeiture recognizes that the underlying goal of any forfeiture action is to remove the personal property from the ownership of the person who is using, or allowing it to be used, in violation of the law—not to transfer the ownership to the United States. Such alternatives might include legal action by State or local authorities for either violations of State or local law, or for back taxes, or repossession by a lienholder.

The unique problems associated with a criminal forfeiture action against personal property represents a new area of the manual that was previously little addressed in instructions or directives to the district Marshal's offices, as was the distinction between civil settlement agreements and criminal pleas agreements.

The new manual provides guidance issues relating to the custody of seized or forfeited personal property, e.g., when to take custody of personal property, who should maintain custody, what responsibilities the custodians should assume, and how appraisals should be conducted. It also provides information on the responsibilities that the district Marshal's office has for property targeted for forfeiture that is geographically located in a different judicial district than the one in which the forfeiture action is taking place.

The section on disposal of personal property is expanded to deal with avenues of disposing other than sale, such as the conditions when forfeited property may be returned to lienholder or other parties who may have had an interest. Different methods of sale are described, together with appropriate circumstances for their use.

The standard established by this new manual for disposing of personal property is generally 120 days from date of forfeiture, reflecting the current but informal goal. Disposal standards for salvage vehicles is 60 days, while the standard for aircraft is 180 days.

The manual highlights the information that may need to be entered into the Computerized Asset Tracking System (CATS); however, substantive information regarding CATS will still be provided in other policy and procedure issuances.

Also, additional guidance is provided on the following:

- the handling of cost bonds in administrative forfeitures and on handling res bonds and substitute res.
- the level of security that may be required to seize personal property if there are security concerns resulting from the possible presence of weapons, dangerous animals or other hazardous conditions.
- the requirement for indoor storage and routine maintenance of vehicles (increased [REDACTED] b2, b7E
- the handling of difficult items of personal property, such as perishable, livestock and other animals, gambling devices and hazardous materials.
- the inventory of vehicles found to contain hidden compartments.
- the mandatory use of the national contract to dispose of aircraft.

A. SCOPE

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This topic covers policies and procedures for the management and disposal of personal property subject to *forfeiture*. It is intended to:

- Guide all U.S. Marshals Service (USMS) personnel, including the personnel of the District U.S. Marshal Offices (USMOs), who are involved in the asset *forfeiture* program.
- Provide information regarding the roles of the Criminal Division's Asset Forfeiture and Money Laundering Section (AFMLS), the U.S. Attorney's Office (USAO), and the investigative agencies in the *forfeiture* process.

This manual covers everything that is subject to ownership except for:

- Real property (real estate), which is covered in the *Real Property Manual*.
- Businesses, financial instruments, and intangibles (e.g., stocks and patents), which is covered in the manual entitled *Management and Disposal of Businesses, Commercial Real Property and Financial Instruments*.
- Cash, which will be covered in a subsequent manual.

This manual also provides guidelines for the administration of the National Jewelry, Art/Antiques and Collectibles Program (Jewelry Program). The Jewelry Program is a separate program that is managed at AFO by the Program Manager and the Contracting Officer's Technical Representative (COTR).

B. PERFORMANCE MANAGEMENT

Program Goals: The goals of the program are to:

1. Maintain seized personal property subject to *forfeiture* to ensure its security and availability upon *forfeiture*.
2. Dispose of personal property after *forfeiture* through commercially feasible means within the time period called for in the performance standards.
3. Achieve sales revenue consistent with the law enforcement objectives of the program.
4. Ensure that the public-at-large has an opportunity to bid on the personal property, except for certain restricted sales.
5. Transfer or release personal property that is forfeited to an *innocent party* or to a lienholder.
6. Transfer personal property to:
 - a. A Federal, state, or local agency when authorized by the Attorney General.
 - b. Private entities through programs sanctioned by the U.S. Department of Justice (DOJ).

Delivery Standard

1. **Sale Standards:** It is the objective of the program to sell personal property at minimum percentages of the appraised *market value*, as shown in the following table. It may not always be feasible to sell each item of personal property for the minimum percentage of market value.

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Type of Personal Property	Minimum Percentage of Market Value
[REDACTED]	

2. **Disposal Standard:** The USMOs shall dispose of all personal property within 120 days after it is available for sale. Generally, personal property will be available for sale when the USMOs receive an *administrative declaration of forfeiture, a civil judgment of forfeiture, or a final order of forfeiture* in a criminal case.

This requirement does not apply to vehicles sold for salvage or scrap or to aircraft or precious items sold under national contracts.

- a. The standard of vehicles for salvage is 60 days.¹
- b. Since aircraft are sold through the national contract administered by the Asset Forfeiture Office (AFO),² the USMOs have no responsibility for their disposal. The standard for aircraft is 180 days.
- c. USMOs, with the exception of Alaska, Hawaii, Puerto Rico, Virgin Islands and Guam, are required to utilize the national contracts for the appraisal, storage and disposal of all jewelry and precious items.³ For the excepted districts, use of the contracts is optional and based upon approval by the Jewelry Program Manager.
 - The Jewelry Program contracts are administered by the AFO.
 - USMOs have no responsibility for the disposal of Jewelry Program assets.
 - The Jewelry Program manages the following types of assets: jewelry, watches, colored stones and gems, collector coins and currency, precious metals (*i.e.*, bars, ingots, bolts, *etc.*), collector postage stamps, paintings, prints, drawings, sculptures, collectibles and antiques (including furniture, jewelry, *etc.*).

USMS Responsibilities: The following table lists the responsibilities of the AFO and the 94 district USMOs.

Office	Is Responsible For
	<ul style="list-style-type: none"> • Overseeing the asset <i>forfeiture</i> program • Providing policy and procedure for the pre-seizure, <i>seizure</i>, acceptance, management, and disposal of personal property • Providing contracting assistance, asset <i>forfeiture</i>



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	<p>assistance, financial management, and personal property support.</p> <ul style="list-style-type: none"> Managing the national contracts for the storage and sale of aircraft and for appraisal and storage/disposal services for the Jewelry Program assets.
AFO	<ul style="list-style-type: none"> Coordinating responses to legal questions submitted by USMO with the appropriate legal office [AFMLS, USMS Office of General Counsel (OGC), etc.].
USMOs	<ul style="list-style-type: none"> Coordinating the transfer of and accepting, managing, and disposing of all personal property Ensuring that seized property placed in the custody of the USMO is correctly entered in the Consolidated Asset Tracking System (CATS) (except for aircraft entries which are done by AFO) and in the USMS personal property case files. Ensuring that seized property is placed under the custody of the USMO property control function before the end of the day in which it is received.
AFO and USMOs	<ul style="list-style-type: none"> Coordinating with USAOs, seizing agencies, contractors, and vendors.

Policy Authorization Review (PAR)⁴ Decision Procedure: This decision procedure provides a mechanism through which USMOs can obtain approval for a management or disposal action from the AFO. It supersedes the Significant Seized Property Decisions (SSPD) procedure [also referred to as "Significant Property Decisions" in the DOJ *Asset Forfeiture Policy Manual (AFPM)*].

In This Situation	USMO is Responsible For
When a PAR is required by this manual	Preparing and submitting a PAR at least 7 working days before a response is needed
In emergencies beyond the USMO's control	Notifying the AFO immediately by telephone or e-mail.

Contents of PAR Decision Package: ⁵ Each PAR decision package will contain:

1. Relevant, pertinent case and *net equity* information, including:
 - a. The CATS asset identification number (CATS asset ID).
 - b. A description of the personal property.
 - c. The type of *forfeiture* (i.e., administrative, civil, or criminal).
 - d. Relevant *administrative declarations of forfeiture* or court orders that have been issued in the *forfeiture* case.
 - e. Date of *seizure*.
 - f. Date of *forfeiture* or an estimate of the time until *forfeiture*.
 - g. *Appraisal* date.
 - h. *Market value appraisals*.
 - i. *Outstanding liens*.
 - j. USMS expenses.
 - k. *Net equity*.
 - l. Offer(s), if any.
 - m. Equitable sharing information, if known.

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- n. Recent publicity concerning the property.
- o. The name and telephone number of the Assistant U.S. Attorney (AUSA) responsible for any judicial *forfeiture* action.
- p. The identity of the investigative agency involved for any *administrative forfeiture* or *judicial forfeiture*.

2. A clear statement of the approval being requested from the AFO.
3. Any additional relevant information regarding the case that may be useful to the decision making process (e.g., the presence of hidden compartments in vehicles and the shelf life of perishables).
4. The signature of the U.S. Marshal, the Chief Deputy U.S. Marshal, or the designee.⁶

Requests for Legal Advice

All requests for legal advice shall be coordinated through the AFO, in order to assure consistency in legal interpretation.

- USMOs needing legal advice regarding asset forfeiture matters, or regarding questions on disbursements to be made from the *Assets Forfeiture Fund* (Account #15X5042) or the Seized Asset Deposit Fund (SADF) account (15X6874), will submit the question to the Personal Property Program Staff in the AFO.
- The Personal Property Program Staff will review the question to determine if there has been a previous response to the question.
- If legal advice is required, the Personal Property Program Staff will forward the question to the appropriate legal office (AFMLS, OGC, etc), and will coordinate to ensure that USMO receives any necessary advice.

C. BACKGROUND

1. **Purposes of Forfeiture of Personal Property:** The primary purpose of *forfeiture* is to confiscate personal property that was used to violate the law or to remove the profits of illegal activity that may have been used to purchase personal property. The *forfeiture* action may be civil in nature (directed against the property) or may be part of a criminal prosecution.⁷ Civil *forfeitures* may be administrative actions (*administrative forfeitures*) conducted by the investigative agency or judicial actions prosecuted by the USAO.
2. **Regulations that Govern the Forfeiture of Assets:**
 - a. Code of Federal Regulations (CFR) 274.
 - b. 21 CFR 1316
 - c. 28 CFR 50.111(i).
 - d. 28 CFR 0.156.
 - e. 28 CFR 9.
3. **Policies Governing DOJ Asset Forfeiture Program** ⁸
 - a. Memorandum from the Associate Attorney General dated October 23, 1987, titled "The Designation and Custody of Assets Suitable for Official Use."

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- b. *Attorney General's Guidelines on Seized and Forfeited Property* (1990).
 - c. *A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies* (1994).
 - d. *Asset Forfeiture Policy Manual (AFPM)* (July 1996).⁹
 - e. Criminal Division Policy Directive 97-1 (March 17, 1997).
 - f. U.S. Marshals Service Standard Filing System (September 1997).¹⁰
4. **U.S. Investigative Agencies that Have Authority to Initiate Forfeiture**

a. **Judicial Forfeiture Actions Only:**

- (1) Department of Agriculture
- (2) Department of Labor
- (3) Federal Aviation Administration (FAA)
- (4) Federal Communications Commission (FCC)
- (5) Food and Drug Administration (FDA)
- (7) National Oceanic and Atmospheric Administration
- (8) Park Police
- (9) Postal Inspection Service
- (10) Other Federal entities, as appropriate

b. **Administrative and Judicial Forfeiture Actions:**

- (1) Drug Enforcement Administration (DEA)
- (2) Federal Bureau of Investigation (FBI)
- (3) Bureau of Alcohol, Tobacco, Firearms and Explosives

D. PROCEDURES

1. **Types of Forfeitures:** Generally, property subject to *administrative forfeiture* must be forfeited through the *administrative forfeiture process* and is not the subject of a civil judicial forfeiture.¹¹ *Administrative forfeiture* is the process by which property may be forfeited to the United States without judicial involvement by the investigative agency that seized it. *Judicial forfeitures* may be accomplished as either civil actions or criminal actions in Federal district court.

2. **Pre-Seizure Planning**

- a. **Description:** *Pre-seizure planning* is critical in *civil forfeitures* directly against personal property and in criminal prosecutions that include *forfeiture counts* against the defendant's interest in personal property. Pre-seizure planning includes:

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- The planning process prior to the United States undertaking *forfeiture* action against property.
- Decisions that must be made before *seizure* or *forfeiture* may occur.

Pre-seizure planning will normally not take place as a formal process when property is seized for *administrative forfeiture*. However, whenever practicable, *pre-seizure planning* is encouraged before seizing personal property subject to *administrative forfeiture* when there are complex management or disposal issues associated with, such property (e.g., aircraft or vessels in transit and/or occupied by crews and/or passengers).

b. **Goals:** The goals of *pre-seizure planning* are to:

- (1) Determine if the *net equity* in the personal property targeted for *forfeiture* meets DOJ value thresholds.
- (2) Determine what compelling law enforcement purpose is served by proceeding with the *forfeiture* if the *net equity* does not meet DOJ value thresholds.
- (3) Clarify the role and responsibilities of each member of the Government's team.
- (4) Determine if adequate resources are available to the USMO to address the property management and disposal requirements relating to the *forfeiture* of the personal property.
- (5) Identify any potential problems arising from the *seizure* or *forfeiture* of the property.
- (6) Determine viable alternatives to *forfeiture*.

c. **Guidelines:**¹² These guidelines are intended to:

- (1) Encourage practices that will minimize or avoid the possibility of the United States assuming unnecessarily difficult or insurmountable problems in the management and disposition of seized assets.
- (2) Ensure that the USMO is advised prior to all significant *seizures* and *forfeitures* of assets.
- (3) Ensure that participating agencies share pertinent information to complete their roles in the *seizure*, *forfeiture*, and/or disposal process.

These guidelines direct that the USMO should be advised promptly before the:

- (1) Filing of civil *forfeiture* complaints
- (2) Return of *indictments* containing forfeiture counts

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(3) Issuing of *informations* containing *forfeiture* counts.

d. **Role of Federal Officials:** *Pre-seizure planning* involves a team of Federal officials addressing critical financial, property management, and disposal issues in a coordinated manner. In any individual instance, this team includes:

- (1) The AUSA prosecuting the case
- (2) Representatives of the investigative agency
- (3) Representatives of the USMO

Relevant issues must be addressed and resolved by the team before the decision is made to begin *forfeiture* proceedings.

e. **USAO'S Responsibilities Under DOJ Policy:**¹³ The USAO is responsible for ensuring that proper *pre-seizure planning* occurs. Formal *pre-seizure planning*—through meetings or telephone conferences—must occur at least once prior to the filing of judicial *forfeiture* actions against personal property:

(1) Formal *pre-seizure planning*—through meetings or telephone conferences—must occur at least once prior to the filing of judicial *forfeiture* actions against personal property:

- Such as animals, large quantities of assets that create potential storage problems, and unusual assets (e.g., valuable art or antiques).
- Including *adoption* of state or local cases by a Federal investigative agency.

(2) *Pre-seizure* conferences should include the following:

- The responsible AUSA (and, if appropriate, the AUSA in charge of related criminal matters).
- The investigative agency case agent(s).¹⁴
- Appropriate USMO representatives (including a representative from the district where the personal property is located, if different from the district where the action is to be filed).

Failure by the AUSA, the investigative agency, or the USMO to ensure that critical financial and property management issues are addressed prior to seizing personal property can result in ill-advised *forfeiture* actions against the property

f. **USMOs' Responsibilities Under DOJ Policy:** It is critical that USMOs document in their property files all *pre-seizure planning* activities as well as any failure by any member of the *pre-seizure planning* team to support *pre-seizure planning*.

USMOs have several duties early on in the *forfeiture* process:¹⁵

(1) Involvement in the *pre-seizure* process to ensure that critical financial and property management issues are addressed prior to seizing or continuing with the *forfeiture* of

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personal property.

- (2) Opposition to the initiation of a *forfeiture* action that is likely to cause serious problems for the USMS or the DOJ Asset Forfeiture program in general.
- (3) Documentation of any failures to include USMO representatives in *pre-seizure planning*. The AFO should be notified if such failures have resulted in significant management problems, have caused proportionately significant losses to the Assets Forfeiture Fund, or are continuous.

If	Then
A dispute over whether a <i>forfeiture</i> action should be taken against certain property cannot be settled between agencies.	Alternatives to <i>forfeiture</i> should be pursued until the issue is resolved. ¹⁶
Matters cannot be resolved at the district level.	They should be referred to the AFO through a PAR decision package. If necessary, the AFO will refer unresolved disputes to the AFMLS.

9. **Considerations in Pre-Seizure Planning: Is the judicial forfeiture action to be civil or criminal?** The AUSA must decide whether to seek the *civil forfeiture* or the *criminal forfeiture* of the personal property.

Civil forfeiture actions commence with the *seizure* of the personal property. Normally, this *seizure* will be accomplished by the investigative agency, which will then turn over the seized property to the custody of the USMO.

Usually, a criminal prosecution does not result in the seizure of property until after the defendant is convicted. However, the court may issue *restraining orders* or other orders relating to the management of the personal property (e.g., financial management) that may require implementation by the USMO. In addition, certain *forfeiture* statutes provide for the issuance of *criminal seizure warrants*.¹⁷

How is the judicial forfeiture action executed? The AUSA is responsible for determining the type and content of the *restraining order*, *seizure warrant*, or *warrant of arrest in rem* and for obtaining the court order or other authority to enter or cross private property.

Are there security concerns? The safety of law enforcement personnel who may be required to seize or monitor personal property is of primary importance. Available information that may affect the security of such personnel must be addressed during *pre-seizure planning meetings*.

- (1) When the USMO is required to seize personal property from third parties (as distinguished from taking custody of property seized by Federal investigative agencies or State and local law enforcement agencies), the USMO should consult the investigative agency and the AUSA for information regarding the individuals who possess the personal property and the premises on which the property is located, including:

- Alarms.
- The potential for weapons
- The presence of dangerous animals.
- The presence of hazardous materials.

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- The presence of personal property items that are valuable or otherwise require special handling because of their nature (e.g., precious items such as jewelry or fine art).
- Ongoing illegal activity.

(2) Information regarding these security concerns should be noted on the pre-seizure checklist¹⁸ and provided to all participants. The USMO will then determine that total number of personnel required to execute the seizure and the role of each participant. Other issues to be addressed in pre-seizure planning follow.

If	Then
It appears that personnel will encounter dangerous or unusual circumstances.	A written plan should be prepared to address specific circumstances and to provide guidance for the safe execution of the operation.
State and local law enforcement agency personnel are to be used in the operation.	Approval must be obtained from the AUSA before any information regarding the case may be disclosed to them.
No prior contact with State and local law enforcement agencies is authorized.	The USMO will notify the appropriate state or local law enforcement agency after the property is seized.
Additional personnel, assistance, or other resources will be needed to develop the operational plan.	The USMO should request support from the AFO.
Substitute custodial arrangements are desirable.	A written substitute custodian agreement shall be executed. ¹⁹

Are there management and disposal issues? Because the USMO is responsible for the management and disposition of assets, its input regarding logistical problems, management problems, and potential disposal difficulties must be considered prior to seizing personal property. The USMO must document in the personal property files any concerns that it raised during pre-seizure planning.

Are there ownership issues? Ownership records should be reviewed at the earliest practical time during the pre-seizure planning process and reviewed again immediately after seizure to ensure that there is a documented ownership link between the law violator and the targeted personal property.

Item	Where Ownership Is Registered
Such items as vehicles and recreational vessels	State offices
Commercial vessels	State offices or U.S. Coast Guard
Vessels registered outside the United States	U.S. Department of State
Aircraft	The FAA ²⁰

(1) Security interests in such personal property as vessels, commercial vehicles, construction equipment, large appliances, business equipment, and leased equipment are recorded in Uniform Commercial Code filings:

- In the county clerk's office for counties.
- With the Secretary of State's office or other commercial department in certain State offices.

(2) Possible impediments for forfeiture action include such ownership issues

- Joint ownership interests or ownership interests of a corporation in the personal

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property

- The existence of a fugitive owner.
 - In a *civil forfeiture*, the fact the owner is a fugitive does not excuse the United States from making reasonable efforts to provide *notice* [e.g., to the last known address(es) of the fugitive, to close relative, or to the fugitive's attorney]
 - In a *criminal forfeiture*, the *indictment* or *information* naming the property may stay outstanding with out a trial for an extensive period of time.

What happens when a compelling law enforcement purpose is cited as the basis to initiate judicial forfeiture action against personal property having insufficient net equity to meet DOJ guidelines?²¹ *Note:* Such purpose includes taking *forfeiture* action against personal property that is actively being used to violate the law.

- (1) Sometimes the purpose is apparent (e.g., weapons, equipment used to grow marijuana, vehicles with hidden compartments, or vehicles and vessels used to smuggle illegal aliens and that can be reused for this criminal activity).
 - When the compelling law enforcement purpose is not apparent, the AUSA is responsible for providing documentation of such compelling law enforcement purpose to the USMO.²²
- (2) If the purpose is not apparent, when personal property with insufficient *net equity* is targeted for *forfeiture*, the USMO will:
 - Notify the AUSA in writing that the targeted personal property has insufficient *net equity*.
 - Prepare a written request for a statement of the compelling law enforcement purpose from the AUSA.²³
 - Send a copy of this written request to the AFO.
 - Retain a copy of the statement provided by the AUSA in the case file.

Any downward departures from the minimum net equity thresholds must be approved by a USAO supervisory-level official.²⁴

If	Then
The AUSA does not provide a written statement justifying the compelling law enforcement purpose.	The USMO should write a memorandum to the file detailing the AUSA's orally stated reasons for the <i>forfeiture</i> action or not that the AUSA failed to give his/her reasons. Send a copy of this memorandum to the AUSA, as appropriate.

- h. **Special Considerations in Seizure of Perishables, Livestock and Other Animals:** Additional management issues must be considered during *pre-seizure planning* if perishables (e.g., foodstuffs or other property with a limited shelf life); livestock; or other animals are among the property to be seized. Perishable property is defined as property that is susceptible to deterioration, decay, or injury by being detained or that is excessively expensive to keep in custody.
- i. **Information Needed for Considering Seizure of Livestock and Other Animals:** The

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seizure of animals is strongly discouraged. *Pre-seizure planning* should result in an initial determination of:

(1) The estimated net value of the livestock or animals targeted for *seizure*.

- Only animals registered with the appropriate associations - e.g., the American Kennel Club- should be targeted for forfeiture.

(2) The name or unique identifier (e.g., tag number or tattoo number) of specific animals.

- The *seizure warrant* or *warrant of arrest in rem* must accurately identify the specific animal(s) to be seized.
- If appropriate, *warrants* should specify that any possible animal offspring are also subject to *forfeiture* and that the USMS can take necessary actions to maintain the value of the animals.

(3) Commercial sources for management, care, breeding, and disposal before taking animals into custody.

j. **Special Considerations in Seizure of Precious Items, Including Fine Art:** Additional management issues must be considered during *pre-seizure planning*. Extra measures may be necessary to safeguard and protect such items, until they are transported to the storage/disposal contractor, including:

(1) Providing suitable security measures (e.g., a safe, vault, or safety deposit box) or a secure room at the USMO or another suitable facility with 24-hour security for the storage of the precious items. If precious items are stored in a vault or secure room where access is not restricted to specific asset *forfeiture* personnel, such items should be segregated and secured in a separate, sealed container.

(2) Providing physical protection from the elements and appropriate packaging and labeling prior to storage for fragile, valuable items.

Contact AFO COTR immediately if there are any questions regarding storage of the assets.

k. **Special considerations in seizure of chemicals and pharmaceuticals:** Taking custody of chemicals or pharmaceuticals seized for forfeiture should be considered a "high risk" matter requiring thorough pre-seizure planning and close coordination between the seizing agency (generally, the DEA or the FDA) and the USMS. The USMO should never take custody of chemicals or pharmaceutical in the absence of advance planning²⁵ that provides the following information:

(1) A clinical, detailed description (e.g. chemical or clinical brand or generic name(s)).

(2) The drug classification (controlled substance, over-the-counter, etc.).²⁶

(3) The quantity involved.

(4) The degree of danger associated with the substance (*i.e.*, is it hazardous or volatile?).

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The seizing agency must provide the USMS with copies of the Material Safety Data Sheets (MSDS) form for each substance.²⁷

~~Pre-Seizure Checklist:²⁸ The Checklist:~~

- (1) Outlines critical issues to be addressed by the USMO during the *pre-seizure planning* process.
- (2) Must be completed by the USMO when the USMO participates in *pre-seizure planning*.

The USMO representative should:

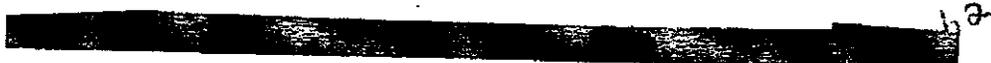
- (1) Review the checklist prior to the *pre-seizure planning* meeting.
- (2) Respond to items that can be completed with currently available information.

m. **Assessment of the Financial Impact of Forfeiture Action**

If in the Net Equity Analysis	Then
<p>The Financial Assessment indicates that:</p> <ul style="list-style-type: none"> • The aggregate of all liens and management and disposal costs approaches or exceeds the minimum value limitations when compared to the anticipated proceeds from the sale of the property, or • The property is in disrepair or presents difficult management issues. 	<p>Under DOJ policy, the USAO must:</p> <ul style="list-style-type: none"> • Either decline to prosecute or voluntarily dismiss the <i>forfeiture</i> action. • Acknowledge the potential loss and document circumstances that warrant continuation of the <i>forfeiture</i> action.²⁹

n. **Assessment of the Impact of Possible Forfeiture Action on an Investigation:** During *pre-seizure planning*, the USMO, in consultation with the investigative agents, should determine whether actions related to *forfeiture* will impede an investigation. Accordingly, the USMO should then determine the timing of the following activities:

- (1) Conducting a search of property records.
 - When information relating to *liens* cannot be acquired without compromising the investigation, this input into the financial analysis may be completed after the property has been seized.
 - The USMO may request that the investigative agency involved in the *forfeiture* action provides copies of reports that it previously obtained.
- (2) Determining an estimated value (expected sales price).



- The USMO should obtain a *market value appraisal* on personal property targeted for *forfeiture* whenever this can be done without compromising and ongoing investigation.³⁰

o. Plans for Interlocutory Sales

If	Then
Perishables and animals are among the property to be seized	The USMO will advise the AUSA to seek approval for an <i>interlocutory sale</i> from the court ³¹ prior to <i>forfeiture</i> . In <i>administrative forfeiture</i> cases, the investigative agency has the authority to direct the immediate sale of such seized property. ³²
An <i>interlocutory sales</i> order cannot be obtained for perishables	The USMO will immediately contact the AFO to seek assistance before seizing perishables
An <i>interlocutory sales</i> order cannot be obtained for animals	The USMO is to follow the procedures listed under "Information needed for considering seizure of livestock and other animals," section 13.2-3.B.7.

- p. Use of Net Equity Worksheets³³ to Calculate and Document Net Equity:** In addition to the name(s) of the property's reported owner(s), *net equity* worksheets must include calculations of anticipated expenses, the appraised value of the property, and any *liens* on the property.

Estimated expenses: Expenses to be calculated on net equity worksheets include:

- (1) Cost of appraisal(s).
- (2) Storage costs (for significant items of personal property, such as vessels or aircraft, or for items the present special storage requirements, such as precious items).
 - Arrange for storage in advance of seizure.
 - Estimate the storage costs based on a period of 4 months for *administrative forfeitures* and 12 months for *judicial forfeitures* unless the information available to the USMO indicates a different period should be used.
 - Under the National Jewelry Program, the USMS does not pay for storage.
- (3) Estimated management costs of personal property pending its disposal—for example, the care (including medical) and feeding of animals, maintenance of vessels, and special needs such as climate-controlled environments.

(5) Cost of publication of notice.

(6) Estimated disposal costs.

- q. Minimum net equity values:** A minimum *net equity* value must be established for personal property, including *adoptions*, before Federal *forfeiture* actions are instituted.³⁴

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Item	Minimum Net Equity Value
[REDACTED]	[REDACTED]

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Higher or lower thresholds can occur when:

- A USAO, in consultation with the investigative agencies and state and local law enforcement, institutes thresholds districtwide for judicial *forfeiture* cases.
- An investigative agency establishes higher thresholds for agency seizures.
- An overriding law enforcement benefit requires the *seizure* of an asset that does not meet the minimum threshold (e.g., *forfeiture* of a weapon, a bulletproof vest, child pornography, a conveyance with a hidden compartment or of a vehicle used in alien smuggling).

Any downward departure from the minimum *net equity* threshold must be approved by a supervisory-level official in the USAO or, for *administrative forfeitures*, the investigative agency.

- r. **Liens and other encumbrances:** When calculating *net equity*, the USMO is to consider all *liens* and other *encumbrances* as valid.

Item	Condition
<i>Mechanic's or materialman's lien</i>	Unpaid work and/or materials used in creating or repairing personal property may result in a <i>lien</i> .
<i>Judgment</i>	An uncollected monetary <i>judgment</i> in local, state, or Federal court against the owner of personal property may result in a <i>lien</i> on the property to enforce the judgment.
<i>Tax liens</i>	Payment of personal property taxes and interest thereon may be required. To calculate <i>net equity</i> , identify each tax <i>lien</i> on the <i>net equity</i> worksheet as if the <i>lien</i> will be paid upon forfeiture and sale.

- s. **Availability of Assets Forfeiture Fund:** Prior to *forfeiture*, USMOs are not authorized to use the Assets Forfeiture Fund to pay *liens* or *encumbrances*.

- t. **Worksheet results:** The following guidelines determine the appropriate action to take based on the results of the *net equity* worksheet analysis.

If	Then
The minimum <i>net equity</i> value is met.	The USMO provides a copy of the worksheet to the AUSA.
<i>Net equity</i> is less than the minimum value threshold.	The USMO notifies the AUSA. The final decision to seize property of lesser value rests with the AUSA. However, the USMO

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	may request that the AUSA document his/her decision.
A compelling law purpose mandates forfeiture.	Under DOJ policy, the AUSA must document this decision.
Net equity results are affected by ownership interests of apparent innocent parties.	The USMO informs the AUSA or the investigative agency, as appropriate.

If the USMO disagrees with the AUSA's decision to seize such property, it may submit a PAR decision package requesting the AFO's support to seek alternatives to forfeiture.

u. **Bail Collateral:** Seized personal property should not be used as collateral for bail.

If	Then
There are or will be criminal charges filed (as verified by the USMO with the investigative agency) and the defendant identifies seized property for bail collateral.	The USMO advises the AUSA in the criminal case to: <ul style="list-style-type: none"> Request a hearing where the defendant must identify other assets that may be used for bail collateral. Petition the court to prevent its use.

v. **Internal Revenue Service (IRS) Liens:** Generally, proceeds from the sale of forfeited property are not available to pay IRS tax liens.³⁹ However, the IRS is not required to release a pre-existing lien against personal property for forfeiture action to be undertaken.

If	Then
An IRS tax <i>lien</i> is served against personal property that has been posted or seized.	The USMO will accept service of the tax lien and immediately notify the AUSA or, in <i>administrative forfeiture</i> actions, the investigative agency.
The property is forfeited.	The AUSA will address the IRS <i>lien</i> in the <i>forfeiture</i> order or, in <i>administrative forfeiture</i> actions, the investigative agency will resolve the matter with the IRS.
<ul style="list-style-type: none"> The <i>forfeiture</i> action is dismissed, or The <i>forfeiture</i> action is not successful. 	The USAO or, in <i>administrative forfeiture</i> actions, the investigative agency should advise the IRS that it can proceed against the personal property. In a <i>judicial forfeiture</i> action, the USMO may notify the IRS of the time and place of the property's scheduled return to the owner but should not release the property directly to the IRS without a court order.

The local IRS office, Special Procedures Branch, may be contacted for assistance in dealing with the IRS tax *lien*.

w. **Alternatives to Forfeiture of Personal Property:** The decision regarding how best to proceed in lieu of *judicial forfeiture* rests with the USAO. However, during *pre-seizure planning*, the USMO will review alternatives, such as the ones in the following table, with the AUSA and will coordinated action, as appropriate, with other interested parties.

Authority	Alternative
AUSA	If <i>pre-seizure planning</i> reveals, or <i>seizure</i> action determines, that the personal property is listed for

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	<p>sale, allow the sale and seize the proceeds.</p> <ul style="list-style-type: none"> • Under this circumstance, the sale continues, and the USMO executes a <i>warrant of arrest in rem</i> against the sale proceeds. • This alternative is available only when the relevant statute authorizes <i>forfeiture</i> of proceeds traceable to the property originally subject to <i>forfeiture</i>.
State or local law enforcement authority	Legal action (including <i>forfeiture</i> actions under state law) or nuisance actions (when permitted under local ordinances).
State or local taxing authority	Foreclosure on a tax <i>lien</i> for delinquent State or local taxes
Lienholder	<p>Repossession when the lienholder has a <i>security interest</i> in the property and the <i>net equity</i> does not meet the minimum value threshold..</p> <ul style="list-style-type: none"> • This action deprives the owner of illegally acquired or illegally used property as effectively as <i>forfeiture</i>. • <i>Lien</i> contracts commonly contain acceleration provisions that make the lien immediately due if the owner allowed the property to be illegally used. • The dismissal of any <i>forfeiture</i> action in favor of repossession should be coordinated with the lienholder to ensure that the property is not redeemed for repossession by a party whose interest is subject to <i>forfeiture</i>.
FAA	<p>Decertification of aircraft used in drug smuggling to deprive the owner of its use and to effectively reduce it to scrap value.</p> <ul style="list-style-type: none"> • If <i>forfeiture</i> is not feasible or the <i>net equity</i> does not warrant <i>forfeiture</i>, decertification should be considered. • The AFO may be contacted for advice and information on initiating decertification.

x. **Considerations in Pre-seizure Planning Involving Criminal Prosecutions:** The USMO needs to take the following actions:

- (1) Complete the same pre-seizure checklist and *net equity* worksheets that are used for civil *forfeiture* action.
- (2) Advise the AUSA to include a *forfeiture* count in the *indictment* or *information* to subject any property to *forfeiture* as part of a criminal prosecution.
- (3) Determine joint ownership interests to assess their effects on the property's *net equity* and marketability

Under DOJ policy, the AUSA responsible for prosecuting the criminal action will ensure timely pre-indictment coordination with the USMO.³⁷

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The AUSA should consult with the USMO before submitting any proposed orders to the court that impose any restraint on, or provide for the seizure of, the personal property named in the *indictment* or *information*.³⁸

- If the AUSA fails to do so, the USMO should bring this requirement to his/her attention.
- The USMO will notify the AFO regarding continued consultation failures that cannot be resolved at the district level.
- The consulting requirement extends to an AUSA pursuing a *forfeiture* action against property located in another district.

3. **Seizures:** may be accomplished under the following specific circumstances:

a. **Seizures Without a Warrant:** Although DOJ policy encourages the use of *warrants* to seize property,³⁹ investigative agencies may seize property with out a warrant in the following circumstances:

- (1) Incident to an arrest
- (2) Incident to searches under a search *warrant* or to other-wise lawful searches.
- (3) When mandated by *exigent circumstances*,⁴⁰ such as the need to act promptly to prevent removal, destruction, or concealment of forfeitable property.

b. **Use of a Seizure Warrant:** *Seizure warrants* provide for a judicial determination of *probable cause* but do not confer *jurisdiction* on the court issuing the warrant. The following three steps must be taken.

Authority	Action
AUSA	Obtains a <i>seizure warrant</i> by submitting an application for <i>seizure</i> of particular property supported by a sworn affidavit setting forth the facts that substantiate <i>probable cause</i> for <i>forfeiture</i> .
Federal district courts	Issue <i>seizure warrants</i> .
Investigative agencies	Serve <i>seizure warrants</i> to seize property that generally will subject to <i>administrative forfeiture</i> . ⁴¹

c. **Adoptive Seizures:** Federal investigative agencies may adopt *seizures* that have been made by private parties or state or local law enforcement agencies.

- (1) Generally, state and local law enforcement agencies will request *Federal adoption* of the case when, after making a *seizure* under state authority, they determine that a state *forfeiture* proceeding is not possible or that a Federal *forfeiture* proceeding would be more advantageous.
- (2) The investigative agency takes into custody property adopted for *forfeiture* before turning it over to the USMO. It must enter information in CATS promptly after the *adoption* of the *seizure*.

d. **Seizures Involving USMO Personnel**

Authority	Action
USMO	May seize property for <i>forfeiture</i> pursuant to a <i>warrant of arrest in rem</i> .
	Without a <i>warrant</i> and where there is an immediate need to prevent its removal, may detain personal property in plain view until

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Deputy U.S. Marshals

the appropriate investigative agency or the duty AUSA is contacted for possible adoption of a forfeiture action against the property if they encounter such personal property while performing their law enforcement duties.⁴²

e. **Quick Release of Seized Property:** "Quick release" refers to an investigative agency's release of personal property after seizure but before administrative forfeiture action begins to any party having an immediate right to its possession.

The investigative agency may authorize a quick release if it determines that it is not in the interests of justice to initiate forfeiture proceedings if:⁴³

- The investigative agency has retained custody of the seized property, and the USMO has no involvement.
- After release to USMO's custody, the USMO obtains written authorization before releasing the property to the party directed by the investigative agency's forfeiture authority.⁴⁴

f. **Custodian of Seized Property:** Except as noted in the table below, as soon as possible after the seizure, the seized property is to be placed in the custody of the USMO in the district where the seizure was made.⁴⁵

Custodian	May Retain Custody of This Type of Property
Seizing investigative agency	<ul style="list-style-type: none">• Property tentatively identified as suitable, after forfeiture, for placement into official use, for undercover purposes by the investigative agency.⁴⁶• Contraband (e.g., drugs, pornography, illegal firearms, ammunition, or illegal destructive devices).
Seizing investigative agency when there is a criminal prosecution	Evidence
<ul style="list-style-type: none">• Begins administrative forfeiture actions against the property.• Coordinates with the AUSA prosecuting the criminal case.• Turns the property over to the USMO after determining that it is no longer needed as evidence but is still subject to forfeiture.	

4. **Commencing the Administrative Forfeiture:** This section describes the procedures required to institute an administrative forfeiture action and the circumstances that could instead lead to judicial forfeiture action. Before instituting an administrative forfeiture, the investigative agency must seize the property.⁴⁷ After such property is seized, it will generally be turned over to the custody of the USMO.⁴⁸

a. **Notice Requirements:** The investigative agency begins administrative forfeiture with the publication of notice that must include:

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- (1) A description of the seized property.
- (2) The time, place, and reason for the seizure.
- (3) The procedure and time period for filing a *claim* and cost bond, which is required for ~~contesting the forfeiture in court.~~

Notice must be disseminated in the following ways:

- (1) By certified mail (the method usually used) to all persons, including lien holders, whose identities and addresses are reasonably ascertainable and whose rights and interests in the seized property will be affected by the *forfeiture*.
 - (2) Published once per week for 3 consecutive weeks in a *newspaper of general circulation* in the judicial district where the property was seized.⁴⁹
- b. **Issuance of an Administrative Declaration of Forfeiture:** The administrative declaration of forfeiture has the force and effect of a court order.⁵⁰

If	Then
The investigative agency receives no <i>claim</i> during the time period allowed	It issues and <i>administrative declaration of forfeiture</i> .
The investigative agency receives <i>petitions for remission or mitigation</i> .	It must rule on them after <i>forfeiture</i> but before the forfeited property is disposed of. ⁵¹
The investigative agency issues an <i>administrative declaration of forfeiture</i> .	It enters data regarding the <i>administrative forfeiture</i> into CATS and provides the AFO with copies of the declaration of <i>forfeiture</i> ⁵² and of its decisions on any petitions.
The USMO receives copies of the <i>administrative declaration of forfeiture</i> and of any petition decisions.	It disposes of the forfeited property - consistent with any petition decisions-in accordance with procedures in "Disposal of Personal Property After Forfeiture," section 13.2-3.1.

c. **Claims and Cost Bonds:** To avoid an *administrative forfeiture* and to require that the United States proceed with a judicial forfeiture action, any interested party or claimant:

- (1) Must file a timely *claim* for return of the property with the investigative agency.
- (2) For administrative forfeitures that commenced before August 23, 2000, must also simultaneously submit a *cost bond*, generally in the form of a certified check or a cashier's check. The purpose of the *cost bond* is to secure the claimant's obligation to pay the Government's costs in the event that *forfeiture* results.⁵³ The requirement for a *cost bond* was removed by the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), Public Law No. 106-185, 114 Stat. 202 (April 25, 2000). CAFRA put new burdens and time limits on the Government in pursuing forfeiture actions, allows claimants to recover interest and attorneys fees, and gives the Government new procedural tools. Except for the elimination of the cost bond requirement, and for hardship releases of seized property, it has no direct impact on the seizure, maintenance and disposal of personal property.

Authority	Procedure
Investigative Agency	Forwards the <i>claim</i> , together with any <i>cost bond</i> , to the USAO for the prosecution of the <i>judicial forfeiture</i> .
USAO	Transmits the <i>cost bond</i> to the USMO.

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USMO	<ul style="list-style-type: none"> • Deposits the cost bond in the Seized asset Deposit Fund (SADF) account (15X6874)⁵⁴ • If the USAO does not forward the cost bond and the USMO has knowledge that a cost bond has been filed, the USMO should notify⁵⁵ the AUSA responsible for the cast that: <ul style="list-style-type: none"> – The <i>cost bond</i> may become non-negotiable after a period of time depending on its form (e.g., certified check or cashier's check) – The SADF account is forgoing interest that could be accruing on the cost bond.

d. **Judicial Forfeiture Action:** The AUSA decides whether or not to bring a judicial *forfeiture* action.

If	Then
A judicial <i>forfeiture</i> action is taken and the property is judicially forfeited	<ul style="list-style-type: none"> • The AUSA obtains a judgment for allowed costs (either in the forfeiture order or by a separate motion and order). • The AUSA advises the USMO of allowed costs.⁵⁶ • The USMO deducts all allowable costs and returns and remaining monies to the claimant or the claimant's designee.
The AUSA declines to undertake a judicial <i>forfeiture</i> action, or dismisses the <i>forfeiture</i> action, and the seized property in the actual or constructive custody of the USMO.	<p>The USMO:</p> <ul style="list-style-type: none"> • Seeks direction from the investigative agency regarding the property's release.⁵⁷ • Returns the <i>cost bond</i> to the claimant or the claimant's designee.⁵⁸
A <i>settlement agreement</i> is executed that directs the disposition of a <i>cost bond</i> .	The USMO acts in accordance with the terms of the settlement agreement.

e. **Substitute Res and Hardship Release:** In certain circumstances, an interested party may obtain the release of property subject to *forfeiture* by:

(1) Posting a substitute *res* in an *administrative forfeiture* action.⁵⁹

(2) Petitioning for release of seized property based upon hardship under 18 USC 983(f).
[Note: regulations implementing this provision of CAFRA have not yet been issued but are pending in DOJ.]

If	Then

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Property is a vehicle, vessel, or aircraft or "other things of value" subject to <i>administrative forfeiture</i> for a violation involving personal use of a controlled substance.	The owner may (subject to certain other conditions) request the release of the property upon deposit of an amount equal to the appraised value of the property in the form a substitute res.
The owner requests the release of the property.	The owner must submit a substitute res to the investigative agency responsible for the <i>seizure</i> .
The investigative agency accepts the substitute res.	The agency notifies the USMO to release the seized property to the owner ⁶⁰ and gives the substituted res to the USMO.
The substitute res is a cashier's check, money order, or traveler's check.	The USMO deposits it in the SADF account. ⁶¹
The substitute res is an irrevocable letter of credit.	The USMO files the letter of credit in the case file. ⁶²

5. **Civil Judicial Forfeiture:** Under DOJ policy, a single civil judicial *forfeiture* action should be brought against all items of property in which an individual has an ownership interest and that are subject to *forfeiture* under the same statutory authority and on the same factual basis.⁶³ The procedures outlined in this section apply generally to civil judicial *forfeiture* actions.

a. **Warrants of Arrest in Rem**

DOJ Policy	Procedure
The AUSA commences a civil judicial <i>forfeiture</i> action.	The AUSA: <ul style="list-style-type: none"> • Files a complaint against the property subject to <i>forfeiture</i>. • Prepares a <i>warrant of arrest in rem</i> to formally bring the property (including property previously seized by an Investigative agency) within the control of the court.
Upon the receipt of the <i>warrant of arrest in rem</i> , the USMO must: <ul style="list-style-type: none"> • Ensure that each <i>warrant</i> contains the word "arrest" on its face. • Ensure that the property targeted for <i>seizure</i> is adequately identified in the <i>warrant</i>. • Determine whether the required <i>seizure</i> is actual or constructive. If constructive, determine what, if any, security arrangements are needed to safeguard the res. • Determine if the <i>warrant</i> authorizes the USMO to enter certain premises to seize the named property. 	The USMO executes the <i>warrant of arrest in rem</i> .
When a <i>forfeiture</i> action includes personal property located outside the judicial district, the AUSA responsible for <i>forfeiture</i> action must inform the USMO.	The AUSA advises the USAO and the USMO for the district where the property is located that a <i>forfeiture</i> action against property located in that district is being

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	contemplated.
The AUSA is to coordinate <i>forfeiture</i> action with both USMOs (i.e., the USMO in the district where <i>forfeiture</i> action is to take place and the USMO in the district where the personal property is located). ⁸⁴	If the AUSA fails to contact both of these offices, the contacted USMO must bring this requirement to his/her attention and must contact the other USMO.

b. Limitations on Executing a Warrant of Arrest in Rem: Permissible actions taken during the execution of a *warrant of arrest in rem* are limited.

If	Then
During the <i>seizure</i> operation, evidence of a crime is observed.	The USMO should: <ul style="list-style-type: none"> • Preserve the evidence. • Secure persons. • Contact the investigative agency, which may obtain a search <i>warrant</i> through the USAO for the premises where the evidence is located.
The <i>warrant of arrest in rem</i> describes only specific property.	<ul style="list-style-type: none"> • The USMO may only seize the items named in the <i>warrant of arrest in rem</i> and those items that are considered an appurtenance of such property as vehicles, vessels, or aircraft named in the <i>warrant</i>. • Such appurtenances include standard equipment for a vehicle (e.g., spare tires and jacks), equipment related to aircraft (e.g., log books), and equipment necessary for the operation of a vessel (e.g., charts, navigation devices, and life vests).
Additional items that are not appurtenances to the personal property specified in the <i>warrant of arrest in rem</i> are found.	The USMO should contact the seizing agency and, in judicial cases, the AUSA. <ul style="list-style-type: none"> • Other items-such as those found in vehicles, vessels, or aircraft-may be subject to <i>forfeiture</i> if they are the subject of a separate <i>administrative forfeiture</i> action or named in the judicial forfeiture complaint. • Examples of these items include currency, guns, cellular telephones, and electronic devices.

c. Use of Federal, State, or Local Law Enforcement Agents to Assist with Executing Warrants of Arrest in Rem: Because a *warrant of arrest in rem* does not authorize a search other Federal and/or state or local law enforcement agents may only assist with executing a *warrant of arrest in rem* under certain circumstances.

If	Then
The USMO requires assistance.	The USMO must: <ul style="list-style-type: none"> • Anticipate that violence or resistance

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	<p>may be encountered in executing the <i>warrant</i>.</p> <ul style="list-style-type: none"> • Believe that available USMO resources are in sufficient to meet the threat of violence or resistance. • Have consulted the AUSA and obtained his/her concurrence.
<p>Federal, State, or local law enforcement agents are to assist with executing a <i>warrant of arrest in rem</i>.</p>	<ul style="list-style-type: none"> • Their involvement must be necessary to the execution of the <i>warrant of arrest in rem</i> and must not prejudice the case. • The USMO should advise such personnel that the <i>warrant</i> does not, in and of itself, authorize an entry onto private premises or a search for contraband or other evidence of criminal activity.⁶⁵ • The law enforcement agents may not enter the premises for any purpose not directly related to the execution of the <i>warrant of arrest in rem</i>.

d. **Notice Requirements:**⁶⁶ *Notice* of the United States' intent to forfeit such property must be given to all known persons or entities who may have a possessory or ownership interest in or claim against the defendant property in a judicial *forfeiture* action. Generally, both individual written *notice* and *notice* by *publication* should be made. The USAO is required to prepare such *notices*.

(1) **Notice by publication:** Although the USMS is not responsible for preparing and publishing *notices* in newspapers, USMOs may arrange for publishing such *notices* prepared by the USAO in judicial *forfeiture* cases. The following actions will be required if the USMO takes on this responsibility:

(a) Upon execution and *posting* of a *warrant of arrest in rem*, the United States will within 10 days cause a public *notice* of action to be given in a *newspaper of general circulation*, as designated by an order of the court.

(b) Generally, the *notice* is to be published once per week for 3 consecutive weeks in a *newspaper of general circulation* in the district where the property is located and, if different, in the district where the *forfeiture* action is being heard. Note: Local court rules may provide for different *publication* requirements.

(c) The *notice* must include:

- A description of the personal property
- The CATS asset ID, *forfeiture* case name and number, and the name of the judicial district where the case is proceeding.
- Notification that parties with an interest in the property who seek to contest the *forfeiture* must intervene in the *forfeiture* action by the date specified and in accordance with the Admiralty Rules.
- The procedures for filing a *petition for remission or mitigation of forfeiture* in accordance with 28 CFR 9.

2. **Notice by certified mail:** Each identified *party-in-interest* must be separately

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notified. These parties include, but are not limited to, possessors, record owners, lienholders, mechanic lienholders, and claiming an interest in the property.

The *notice* must include, at a minimum, all information contained in the published notice.

3. **Personal service:** The USMO should consult with the AUSA responsible for the *forfeiture* action to determine if *personal service* should be undertaken instead of notice by certified mail. Effective *personal service* requires that:
- (a) The receipt of the *notice* is acknowledged in writing by either the potential *party-in-interest* or one authorized to accept service for the potential *party-in-interest*.⁶⁷
 - (b) The person who is authorized to serve *notice* on behalf of the United States and who executes service states in writing that service was made to the potential *party-in-interest* or to one authorized to accept service for the potential *party-in-interest*.
- e. **Civil Forfeiture by Settlement:** Settlements of *forfeiture* actions are encouraged to conserve the resources of both the United States and the claimant(s).
- (1) Any settlement binds only the parties to it.
 - (2) Settlements should not provide for installment payments ("partial payments") of settlement amounts in lieu of personal property *forfeiture* unless approved by the AFMLS in consultation with the AFO.⁶⁸
- f. **Responsibilities in Civil Settlements**

Authority	Responsibility
Investigative agency	Must receive and refer a proper and timely <i>claim</i> to the USAO before the AUSA ⁶⁹ can settle an <i>administrative forfeiture</i> case.
AUSA	Consults with the USMO and the investigative agency before entering into a settlement. ⁷⁰
USMO	<ul style="list-style-type: none"> • Provides the case AUSA with an updated <i>appraisal</i> of the personal property's⁷¹ <i>market value</i>, together with information on <i>liens</i>, <i>net equity</i>, and current and prospective expenses, to ensure that the settlement is fiscally sound. • Advises the case AUSA to include in and <i>settlement agreement</i>⁷² a hold harmless provision, as well as any waivers of actions based on the Federal Torts Claims Act⁷³, <i>Bivens</i>,⁷⁴ or the Constitution. • Obtains copies of the executed settlement documents (<i>notice</i> of dismissal or stipulations for compromise settlement, consent orders, or court-approved stipulation of <i>forfeiture</i> for property that is intended for transfer to the Government) from the AUSA and retains them in case file. • Deposits any monetary amount received in settlement in the Assets Forfeiture Fund (Account 15X5042), pursuant to 19 USC 1613(c). • Returns property in its custody in accordance with terms of the <i>settlement agreement</i>.

6. Criminal Forfeitures

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a. **Criminal Prosecutions Including Forfeiture Counts:** Criminal *forfeiture* actions are part of the criminal prosecution against a person and are, therefore, *in personam* and not *in rem*. In other words, in a criminal *forfeiture*, the person's interest in the property is forfeited; this does not necessarily involve the complete ownership of the entire property. Criminal *forfeiture* actions require:

- (1) An *indictment* of, or an *information* against, an individual.
- (2) A separate count in the *indictment* or *information* that lists the property subject to *forfeiture* upon conviction of the individual charged,⁷⁵ which may also include the *forfeiture* of substitute assets in place of forfeitable assets that have been dissipated or removed or which cannot be located after *forfeiture*.
- (3) Conviction of the individual charged.
- (4) A separate verdict (the *special verdict of forfeiture*) finding the defendant's interest in the property forfeited.⁷⁶
- (5) A *preliminary order of forfeiture* authorizing *seizure* of the property.
- (6) *Ancillary proceedings* after *forfeiture*, which would consider the claims of third parties to the forfeited property.
- (7) A *final order of forfeiture*.

b. **Criminal Indictments or Informations**

When Personal Property Is Named	When Personal Property Is Not Named
Usually assets, including personal property, will not be seized until there is a <i>preliminary order of forfeiture</i> .	Such personal property CANNOT BE FORFEITED through a <i>plea agreement</i> , since only the defendant's interest in the property is subject to <i>forfeiture</i> ⁷⁷
If assets are to be <i>restrained</i> or seized under the provisions of a criminal <i>forfeiture</i> statute, USMOs will execute the orders of the court issued as part of the criminal prosecution.	<i>Substitute assets</i> may be forfeited only if: <ul style="list-style-type: none"> • Permitted by the specific <i>forfeiture</i> statute. • A provision for substitute assets is included in the <i>indictment</i> or <i>information</i>.

c. **Restraining Orders:** *Restraining orders* may be issued by the court and served by the USMO before or after an *indictment*.

Pre-indictment ⁷⁸	Post-indictment ⁷⁹
A <i>restraining order</i> may be issued following <i>notice</i> and opportunity for a hearing. It is effective for no more than 90 days unless: <ul style="list-style-type: none"> • It is extended at the request of the AUSA for good cause. • An <i>indictment</i> or <i>information</i> is filed charging the defendant with the underlying offense and alleging that the property named is subject to <i>forfeiture</i> upon conviction. An <i>ex parte restraining order</i>⁸⁰ may be issued and executed by 	Before a <i>restraining order</i> can be issued, a full evidentiary hearing on the probable success of the United States may be required

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<p>the USMO following:</p> <ul style="list-style-type: none"> • The AUSA's application to the court. • A demonstration of <i>probable cause</i> that the property at issue is subject to criminal forfeiture and that provision of <i>notice</i> would jeopardize the availability of the property. 	
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d. **Seizure Warrants:** Under certain forfeiture statutes, seizure warrants may be issued at any time before conviction.⁸¹ It is the responsibility of the investigative agency to serve seizure warrants. Unless the seized property is to be held as evidence, it shall be placed in the custody of the USMO.⁸²

e. **Preliminary Order of Forfeiture Following a Forfeiture Conviction of Forfeiture:** The jury must find that the personal property is subject to *forfeiture* by a separate verdict, referred to as a *special verdict of forfeiture*.

If	Then
A jury agrees on a <i>special verdict of forfeiture</i> .	<ul style="list-style-type: none"> • The court issues a <i>preliminary order of forfeiture</i>. • The USMO takes custody of the personal property.⁸³
<p>The USMO:</p> <ul style="list-style-type: none"> • Anticipates encountering violence or resistance. • Believes that available USMO resources are insufficient to meet such a threat. • Consults the AUSA and obtains his/her concurrence for additional assistance. 	Other Federal, State, or local law enforcement agents may assist with executing the orders of the court.
Other Federal agency personnel assist.	The USMO should advise such personnel that no search can be made of the premises holding the personal property unless such a search is authorized.

f. **Ancillary Proceedings Following a Preliminary Order of Forfeiture:** *Ancillary proceedings* may be required to resolve third-party interest(s) in the forfeited property.

Notice of the ancillary proceedings must be sent to all possessors, lienholders, owners-of-record, and others with a potential interest in or claim against the property.

- Generally, both individual written *notice* and *notice by publication* should be made.
- *Publication* procedures similar to those for civil *forfeiture*, as described in "Notice requirements" may be used.

if *ancillary proceedings* can be held in a timely manner without affecting the rights of private parties or without unduly jeopardizing the Government's legitimate interests,

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they should commence within 30 days of the filing of a petition by a claimant.⁸⁴

9. Final Orders of Forfeiture ⁸⁵

If	Then
Ancillary proceedings have been held and concluded.	A final order of forfeiture may be issued.
A final order of forfeiture has been issued.	The USMO may proceed to dispose of the property.
No petition has been received in response to publication and the deadline for claimants to file petitions has expired.	A preliminary order of forfeiture becomes a final order of forfeiture.
A preliminary order of forfeiture becomes a final order of forfeiture because no petition was received.	<p>The AUSA must provide the USMO with written notification stating that:</p> <ul style="list-style-type: none"> • The forfeiture was properly published. • No petitions were filed. <p>The USMO may proceed to dispose of the property.</p>
The AUSA does not provide the USMO with written notification.	The USMO must notify the AFO of any failure or refusal by an AUSA to provide such written notification.

h. Plea Agreements: The AUSA may agree to accept unencumbered personal property in a plea agreement only if:

(1) The defendant in the criminal action:

- Is the only owner of the personal property, as shown in the property records.
- Agrees to convey clear title to the United States.⁸⁶

(2) The plea agreement includes an order of forfeiture signed by the court.

If	Then
The property was named in the indictment or information. ⁸⁷	The United States can obtain the defendant's consent to forfeit his/her interest in the property.
The property was NOT named in the indictment or information.	The United States can only obtain the defendant's agreement that he/she will not contest a civil forfeiture of the personal property.
Third-party interests exist.	They cannot be extinguished. Ancillary proceedings may be required to dispose of the rights of such third parties.
A court order so provides.	A monetary amount ⁸⁸ may be accepted in lieu of forfeiture of property named in an indictment or information. The receiving USMO must deposit such amount into the AFF pursuant to 19 USC 1613(c). The USMO who has custody of the property shall return it upon notification that such amount has been deposited.
Installment payments ("partial payments")	Under DOJ policy, ⁸⁹ the AFO must agree.

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in lieu of <i>forfeiture</i> of personal property are proposed.	The USMO must immediately advise the AFO when it is informed of any proposal by an AUSA to enter into a <i>plea agreement</i> that would provide for such payments.
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The AUSA must provide the USMO with copies of the *plea agreement* and any related documents (e.g., titles of owner-ship). These documents are to be retained in the personal property case file.⁹²

7. Custody of Personal Property: The USMS has been designated by the Attorney General as the official custodian of all property seized for forfeiture. As such, USMOs cannot refuse to take custody of property seized by the investigative agencies listed in this directive. However, under certain circumstances, the investigative agencies may retain custody or may be required to retain custody. This section offers guidance on issues relating to the custody of seized or forfeited personal property, e.g., when to take custody of personal property, who should maintain custody, what responsibilities the custodians should assume, and how *appraisals* should be conducted.

a. Taking Custody Before Civil Forfeiture

Authority	When
Agents of the investigative agency (usually)	<ul style="list-style-type: none"> • Upon a showing of <i>exigent circumstances</i>. • Upon execution of a <i>seizure warrant</i>.
USMO	<p>Upon execution of a <i>warrant of arrest in rem</i>.</p> <ul style="list-style-type: none"> • The USMO must advise the AUSA to include a provision in the <i>warrant</i> that authorizes the USMO to manage the property in a manner best suited to maintaining its value and condition. • The USMO should determine whether a writ of entry or equivalent language in the <i>warrant of arrest in rem</i> is, or should be, included to enable the USMO to enter the premises where the personal property is located.

b. Taking Custody after Civil or Criminal Forfeiture: If the personal property has not been seized before *forfeiture*, the USMO should take custody after the issuing of a *forfeiture order*.

Type of Case	When to Take Custody
Civil case	In accordance with the terms of the court order, after the court issues a <i>civil order of forfeiture</i>
Criminal case	<ul style="list-style-type: none"> • Following a <i>special verdict of forfeiture</i>, as authorized by the <i>preliminary order of forfeiture</i>. • Following a <i>final order of forfeiture</i>; issuance of this order gives the USMO the same authority to deal with personal property as does a <i>civil order of forfeiture</i>.

c. Personal property held as evidence: When personal property subject to forfeiture

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is also evidence in a criminal case, the agency conducting the criminal investigation must retain the property as evidence, and will not turn the property over to the USMO. Although the forfeiture proceeding may continue, the property will not be turned over to the USMO until its need as evidence has ended.

d. **Actual or Constructive Custody:** The USMO will have either actual or constructive custody over personal property, **except contraband or property held as evidence⁸¹:**

- While any civil judicial *forfeiture* proceeding is pending.
- During the *ancillary proceedings* following a criminal *forfeiture* of personal property.

Unless a court order provides otherwise, the USMO shall make all decisions regarding the custodian, maintenance, and security of seized property subject to *forfeiture* action, including contracting for services and facilities and/or identifying Government facilities suitable for storage.

Type	Definition
Actual custody	<p>The ability to have direct custodial control over the management of, and access to, the personal property that</p> <ul style="list-style-type: none"> • Has been seized by an investigative agency, made the subject of an <i>administrative forfeiture</i>, and relinquished to the USMO by the seizing investigative agency, or • Has been made subject to the <i>jurisdiction</i> of the court through its <i>seizure</i> pursuant to a <i>warrant of arrest in rem</i>.
Constructive custody	<p>Custody but not physical control, of the personal property that</p> <ul style="list-style-type: none"> • Has been made subject to the <i>jurisdiction</i> of the court (by the <i>posting</i> of the complaint and other pertinent court documents designated by the AUSA in a civil <i>forfeiture</i> action). • Cannot be maintained by the USMO because the character or situation of the property renders actual possession impracticable (e.g., a large vessel that remains at anchor and cannot be transported to a property storage facility).⁸²

e. **Actual Custody by Substitute Custodians:** The USMO must monitor property in the possession of substitute custodians to ensure that it is being properly maintained. Substitute custodians include:

(1) The Federal seizing investigative agency.

(2) A state or local law enforcement agency.⁸³

Substitute Custodian ⁸⁴	Conditions

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The Federal seizing investigative agency ⁹⁵	<p>May retain custody of seized property if the agency has:</p> <ul style="list-style-type: none"> • Demonstrated the capability and capacity to properly store and maintain the property. • Indicated an intention to place the personal property into <i>official use</i> in an undercover capacity after forfeiture.⁹⁶
A state or local law enforcement agency	<p>May store seized property undergoing enforcement agency forfeiture action if the agency:</p> <ul style="list-style-type: none"> • Has the capability and capacity to store and maintain the property. • Has been determined to be a suitable storage alternative by USMO. • Has executed a written custodial agreement. • Anticipates submitting an equitable sharing request that is supported by the investigative agency.

f. **Policy on Using Property Management Contractors:** The same contractor should not be used to appraise and manage as well as to sell particular personal property unless it can be demonstrated that there would not be a conflict of interest if the same contractor performed all such services.

(1) Use of a property management contractor does not relieve a USMO of the responsibility for ensuring proper management of the property in United States custody.

- A property management contractor is not a substitute custodian even though it has possession of the property.
- The USMO remains the legal custodian of the property even though it is using the expertise, resources, and personnel of the contractor to care for the property.

(2) Expenses incurred in managing property, including storage, shall be entered into CATS when incurred.

(3) Custody by a Federal, state, or local law enforcement agency pursuant to an agreement with the USMO places that agency in the category of a property management contractor, not a substitute custodian.

g. **Contracting with Property Management Contractors:** The size of a USMO's personal property *inventory* determines contracting options.

Conditions for Property Management Services ⁹⁷	Contracting Options
When USMO procurement authority is limited to \$25,000	Purchase orders up to \$25,000.
When costs do exceed \$25,000 but do NOT exceed \$100,000	Either purchase orders that use simplified acquisition procedures or a formal contract. ⁹⁸

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	<ul style="list-style-type: none"> • In districts with few personal properties in custody, using purchase orders may be the most suitable option.
When costs exceed \$100,000	Formal contracts.

h. Oversight of Property Management Contractors:⁹⁹ Except for remote site contractor facilities,¹⁰⁰ the Contracting Officer's Technical Representative (COTR) will inspect the contractor's facility, security, files, *inventory* control, and the seized and/or forfeited property in custody at least once per month. Remote site contractor facilities are to be inspected quarterly. The COTR should:

(1) Be sure that some visits are unannounced to ensure contractor compliance with the contract statement of work.

(2) Focus on identifying problems in these areas:

- Compliance with the contract
- Quality of services being performed
- Accuracy of invoices (i.e., that they do not contain improper or unauthorized payment requests).

(3) Document each inspection and his/her findings in writing¹⁰¹ immediately after the inspection and:

- Retain the report in the contract file
- If the inspection revealed noncompliance with contract terms, forward a copy of the report to the contracting officer.

i. Responsibilities for the Security of Personal Property in Custody

Authority	Responsibilities
USMO	<ul style="list-style-type: none"> • Prevent unauthorized use, access, theft, or vandalism of the personal property. • Report to an appropriate authority any incidents in which personal property is lost, stolen, or damaged or destroyed through vandalism.¹⁰² • Maintain the property, at a minimum, in the same condition as when it was seized. • Ensure that appropriate measures are undertaken to safeguard and store personal property requiring special handling, such as animals or precious items including fine art.
Property management contractor, or state or local law enforcement agency storing seized property.	<ul style="list-style-type: none"> • Develop a physical security plan that provides adequate internal safeguards on a 24-hour-per-day, 7-day-per-week basis to prevent unauthorized entrance to the storage facility, vandalism, pilferage, larceny, sabotage, and fire damage to the property. • Procure and maintain at its expense adequate insurance covering workers' compensation, employers' liability, and general public liability (including automobile liability insurance if appropriate) during the entire contract period of performance.

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(State and local law enforcement agencies may be self-insured).

- Ensure that no other property is stored with the seized/forfeited property unless the consent of the COTR is obtained.

j. Restricted Use of personal Property in Custody: Except for necessary maintenance and preservation purposes, seized personal property may not be used by any party - including the USAO, the seizing agency, or the USMS- for any purpose before it has been forfeited and placed into official use. For personal property in its custody, the USMO is responsible for ensuring that:

(1) No person, including DOJ personnel, uses seized personal property for any purpose until the *administrative declaration of forfeiture*, the *civil order of forfeiture*, or the *final order of forfeiture* has been issued.

(2) DOJ personnel do not permit others, including contractor personnel or person(s) acting as substitute custodians, to use personal property for any purpose prior to *forfeiture* except as authorized for normal maintenance required to keep the personal property in good condition. For example, vehicles are not to be driven, except as necessary to relocate within the storage facility.

k. Placing Forfeited Personal Property into Official Use: Following *forfeiture*, property may be placed into *official use* in accordance with the procedures set forth under "Authority for placing forfeited personal property into official use" on section 13.2-3.1.11.

l. Appraisal Following the Seizure of Personal Property:¹⁰³ The following table shows the source that is to be used to obtain *appraisals* for the listed property types. If the property type is not listed, individual *appraisals* should be obtained for all seized property apparently valued at \$500 or more.

Property Type	Source for Appraisal
Vehicles, generally	The National Automobile Dealers Association (NADA) <i>Official Used Car Guide's</i> ¹⁰⁴ loan value. <ul style="list-style-type: none">• When valuing salvage/rebuilt-titled vehicles (as designated by the state department of motor vehicles) [REDACTED]• When valuing non-U.S. standard (gray market)¹⁰⁵ vehicles [REDACTED]
Vehicles, new model year	Contact AFO via FAX at [REDACTED] or E-mail with all applicable information (year, make, model, mileage, accessories, condition, etc.). The invoice price will be provided by AFO.

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Vehicles, early models (1950-1980)	Contact AFO via FAX at [REDACTED] or E-mail with all applicable information (year, make, model mileage, accessories, condition – e.g., poor, good, excellent). The valuation will be provided by AFO.
Trailers and Older Model Tractors	<p>Top Bid (a valuation service company that derives value from historical data provided by major auction companies conducting auctions nationwide).</p> <ul style="list-style-type: none"> • The valuation will be provided by USMO, [REDACTED] Southern District, Texas (ATTN: Ricardo Ruiz or Ricky Rodriguez) via FAX at (713) 718-4849 or E-mail at [PO:ruiz or PO:rodrigu] (no telephone requests) for the following: District of Arizona, Southern District of California, District of New Mexico, Southern District of Texas, and Western District of Texas. • For all other USMOs the valuation will be provided by the AFO via FAX at [REDACTED] or Email (no telephone requests). • Provide the following information for the trailer or older model tractor. <ul style="list-style-type: none"> • Year, make, model number • Serial number and VIN • The VINASSIST printout (provided by NICB)
Drag-racers, stock cars	Licensed appraisers.
Vessels	Either the <i>BUC Boat Guide</i> ¹⁰⁸ or the <i>NADA Marine Appraisal Guide</i> . ¹⁰⁷
Other vessels not listed in the published guides	<ul style="list-style-type: none"> • Consultations with marine brokers or financial institutions, or • Evaluation by a marine surveyor who can also make storage, maintenance, and repair recommendations.
Aircraft	Request appraisals through [REDACTED] for the aircraft contract, telephone [REDACTED] COTR
Jewelry Program assets ¹⁰⁸	Under the National Jewelry Program contract, all appraisal services are ordered and managed at AFO. The USMO does not have to obtain another appraisal report prior to shipment to the Storage/Disposal Contractors

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Miscellaneous personal property, including:	facility. Contact AFO via E-mail or FAX ([redacted]) to obtain appraisal. Include the manufacturer, year, model/type and serial number (as applicable). Information regarding the condition of the item must be included ¹⁰⁹ .
<ul style="list-style-type: none"> • Audio equipment • Cameras • Car stereos • Computers • Copiers • Firearms • Guitars & musical instruments • Professional sound equipment • Power tools • Video equipment & televisions • Vintage & collectable guitars 	<p>The appraised value will be faxed back within 24 hours of receipt of request. USMOs have the option to contact [redacted] directly at [redacted]. Official [redacted] research appraisals will cost \$10.00 per item for a 3 business day turnaround. Next day appraisals may be obtained for an additional \$2.50. The charge is applicable only [redacted] is able to process your requests. The fee may be charged to your District's Impact card as a case related expense.</p>

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- (1) Arrangements to conduct an *appraisal* should be completed following the transfer of custody to the USMO.
- (2) The USMO may accept an *appraisal* that has been obtained by the investigative agency provided that the *appraisal* meets the standard set forth below and is not more than 12 months old and that the original document is provided. Specifications for carrying out *appraisals* are:

- If an *appraisal* was not previously obtained, the USMO will obtain an *appraisal* for property listed in the above table no later than 30 business days after taking the property into custody.
- Appraisals for property not listed in the above table should be obtained through an appraiser no later than 30 business days after taking the property into custody by seizure or by transfer from the seizing agency.
- As an alternative to an *appraisal*, the manufacturer may be contacted directly to obtain an estimated value for the property. This may be done for certain items the value of which does not justify the cost of an *appraisal* or when the information obtained from the manufacturer can be considered reliable.
- Except as indicated in the table above, *appraisals* must be obtained only from appraisers certified by organizations that are members of affiliated with the Appraisal Foundation,¹¹⁰ or the American Society of Appraisers.
- The *appraisal* report must include adequate supporting factual data and must relate the appraiser's conclusion based on those facts.
- The *appraisal* must be based on the *market value* of the property.

8. Management of Specific Types of Personal Property: This section offers guidance on accepting custody, maintaining an *inventory*, and storing and maintaining particular types of seized personal property, including vehicles, vessels, aircraft, precious items (e.g., jewelry), firearms, and animals (e.g., livestock and registered animals).

- a. **Before Accepting Custody of all Types of Personal Property:** No personal property should be taken into custody by the USMO unless there is a CATS number assigned to the property.
- b. **Before accepting custody of seized vehicles, including heavy equipment:**¹¹¹

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- (1) Request that the seizing agency verify that the vehicle has not been reported stolen.¹¹²
- (2) Check all heavy equipment through the National Equipment Register (NER) to determine if it has been reported stolen.¹¹³
- (3) Ensure that the seizing agency has removed all personal property that is not subject to *forfeiture* from the vehicle.¹¹⁴
- (4) Inspect all gray market vehicles to ensure that they meet U.S. Department of Transportation (DOT) and U.S. Environmental Protection Agency (EPA) standards for importation into the United States (e.g., standards for safety glass, catalytic converters, tires, and bumpers).
- (5) Verify the USM-102¹¹⁵ information on such matters as ownership, *liens*, and other information [e.g., vehicle identification number (VIN) and license numbers] that the investigative agency entered in the custody business function screen of the CATS system.
- (6) Ensure the CATS number is legibly written on the vehicle's windshield.
- (7) Obtain color photographs of the front, back, side and interior of all of the vehicles¹¹⁶ valued at \$500 or more. Also obtain a photograph of the odometer showing the current reading. The photograph of the front of the vehicle should show the information marked on the windshield.
 - Record the vehicle's VIN, make, model, and year on the photograph.
 - Note the date the picture was taken on the photographs. Use a self-dating digital camera whenever possible.
 - Retain the photograph in the case file.

c. **Inventory of Seized Vehicles:** The USMO must *inventory* all personal property located in a seized vehicle that is subject to *forfeiture* and must process the property in accordance with the procedures for that type of personal property.

If	Then
There are accessories permanently installed in a vehicle (e.g., radar detectors, cellular telephones, or stereos).	<ul style="list-style-type: none"> • They are usually considered part of the vehicle but should be inventoried as separate items. • Such accessories should be listed on the special equipment screen in CATS and secured.
During the <i>inventory</i> , a previously unknown hidden compartment is discovered by USMO personnel or by contractor personnel.	<ul style="list-style-type: none"> • The vehicle should be immediately secured. • The investigative agency should be notified so that an investigative search can be performed to identify if the

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	compartment contains weapons, contraband, or the residue of contraband.
During the <i>inventory</i> , it is discovered by USMO personnel or by contractor personnel that tires on the vehicle are subject to a recall order.	<ul style="list-style-type: none"> • The case file should be annotated to that effect. • Upon sale of the vehicle with the tires subject to recall: <ul style="list-style-type: none"> • A release will be obtained from the purchaser, and will be signed by the selling contractor and a USMO representative.¹¹⁷ In consideration for the release, the purchaser will receive the sum of \$1.00. The contractor will provide payment, and will subsequently invoice the USMO. • An agreement to hold harmless will be signed by the purchaser.¹¹⁸

- d. **Storage and Maintenance of Seized Vehicles:** The level of storage and maintenance depends on the vehicle's value which is based on the NADA guide or on a written *appraisal*, and by other considerations, as determined by District Asset Forfeiture Unit Chiefs and vehicle contract COTR's.

Vehicle's Value	Level of Storage and Maintenance
[REDACTED]	Indoor storage and routine maintenance.
[REDACTED]	Outdoor storage and routine maintenance.
[REDACTED]	Outdoor storage but no routine maintenance.

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- (1) Examples of other considerations in addition to value that may warrant indoor storage include, but are not limited to:

- The vehicle's condition.
- Convertible tops.
- Special paint finishes.
- Classic and antique vehicles.

- (2) Certain types of vehicles may be stored outdoors irrespective of their value, such as tractor-trailers and buses.

- (3) Storage facilities must provide:

- Adequate safety and security.
- Controlled access, except for public viewing and sales areas.

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- Segregation of vehicles seized for forfeiture from other vehicles stored in the facility.

(4) The USMO must inspect contractor facilities monthly and document the inspections to ensure proper maintenance of stored vehicles, as provided by the contract statement of work.

e. **Before Accepting Custody of Seized Vessels:** Before accepting custody of a seized vessel, the USMO must:

(1) Verify the USM-102 information on such matters as ownership and liens and other information (e.g., registration numbers and a description of the vessel) that the investigative agency entered into the custody business function screen of CATS.

(2) Ensure that the investigative agency has removed all personal property from the vessel.¹¹⁹

(3) Obtain and retain in the case file color photographs of the vessel that:

- Reflect the condition of the vessel,
- Show the flag (if not U.S.)
- Show the hull number (if the vessel has a hull number).

f. **Posting of Seized Vessels:** USMOs shall take constructive custody of vessels that are too large to be placed in secure storage facilities through *posting*.

g. **Inventory of Seized Vessels:** The USMO must *inventory* all personal property located on a vessel that is subject to *forfeiture* and must process the property in accordance with the procedures for that type of personal property.

If	Then
There are items necessary to operate and maintain a vessel (e.g., life jackets, fire extinguishers, charts, engines, outboard motors, lines, rigging, sails, and electronic equipment).	<ul style="list-style-type: none"> • They are usually considered part of the vessel and should be listed on the USM-102 as inventory. • They should be secured if they could be subject to theft or weather damage or otherwise lost.
During the <i>inventory</i> , a previously unknown hidden compartment is discovered by USMO personnel or by contractor personnel.	<ul style="list-style-type: none"> • The vessel should be immediately secured. • The investigative agency should be notified so that an investigative search can be performed to identify if the compartment contains weapons, contraband, or the residue of contraband.

h. **Storage and Maintenance of Seized Vessels:** The USMO may seek recommendations from contractors and/or vendors as to what type of storage and maintenance a vessel should receive.

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The type of storage and maintenance will depend upon the category and value of each vessel. The following table sets forth minimum requirements.

Type of Storage	USMO Responsibility
<p>Dry Storage:</p> <p>Aluminum, steel, and fiberglass hull vessels:</p> <ul style="list-style-type: none"> • When dry storage is cost effective. • When the vessel can be removed from the water. 	<p>The USMO should ensure that:</p> <ul style="list-style-type: none"> • All drain plugs are removed. • The freshwater cooling system, sewage holding tanks, and water tanks are drained and prepared for long-term storage. • The vessel is covered with a tarpaulin, canvas, or other protective material suitable for that particular vessel and is positioned with the stern lower than the bow so that rain or other water accumulation will drain through the scuppers. • A cradle, if used, is strong enough to support the vessel's weight. • A trailer, if used, is jacked up and blocked to raise its tires from contact with the ground.
<p>Water Storage:</p> <p>Wooden hull vessels; they will dry out and crack in dry storage.</p>	<p>The USMO should ensure that vessels are:</p> <ul style="list-style-type: none"> • Equipped with a bilge alarm and an automatic bilge pump. • Given monthly visual inspections of the bilge by either USMO personnel or contract personnel to determine water intake. • Protected against freeze damage.

If necessary, the USMO may contract with a marine surveyor to assess the storage and maintenance requirements for large or valuable vessels appraised at or above \$7,501.

- i. **Before Accepting Custody of Seized Aircraft:** The USMS maintains a national contract for the relocation, storage, maintenance, and disposal of seized aircraft. All payments for service and proceeds from sale under this contract are handled by the AFO based on invoices submitted by the contractor directly to the AFO. Copies of the contractor's invoices and proceeds checks for each aircraft will be faxed to the appropriate USMO of its records.

Before accepting custody, the USMO must:

- (1) Receive and secure aircraft log books from the investigative agency before accepting custody of the aircraft; separate logs may be kept for each engine, the airframe, and possibly the propellers.

- If log books are missing,¹²⁰ verify with the investigative agency personnel that they cannot be located. The seizing agencies have been advised of the value and importance of seizing log books.
- Because the value of the aircraft can be reduced by as much as 50 percent

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if there are no log books, all efforts must be made to locate them.

- The airframe log books annotate what repairs have been performed to the plane itself, along with any work on the interior of the plane, any painting that was performed, and any work that was done on the landing gear.

- The engine and/or propeller log books detail any repair or maintenance work/overhauls, etc.

- The flight log books record the exact number of flying hours, length of flights taken, and destinations traveled by the aircraft.

(2) Submit form AFO-44¹²¹ via fax to report the seizure to the aircraft contract's Headquarters Contracting Officer's Technical Representative (HCOTR), who is located in the AFO. The HCOTR will, in turn, contact the national aircraft contractor to begin planning the relocation.

(3) Verify the USM-102 information regarding the aircraft that the investigative agency entered in the custody business function screen of the CATS system.¹²²

- If the aircraft has an engine hour meter, the time shown on it should be recorded on the USM-102.

(4) Ensure that the aircraft is properly secured pending evaluation by the USMS aircraft contractor.

(5) Ensure that the investigative agency has removed all personal property not subject to forfeiture from the aircraft.¹²³

If	Then
Aircraft repair shops, storage sites, and fuel companies seek to take possession of aircraft logs to secure payment of their bills.	Contact the HCOTR before releasing the logs.
The investigative agency desires to retain the original logs for evidence.	<ul style="list-style-type: none">• Obtain certified photocopies before releasing them.• Retain the certified photocopies of the logs with the aircraft while the investigative agency has possession of the originals.• Provide written notification to the investigative agency that the logs are considered part of the aircraft.• Ensure the release of the logs to the USMO immediately upon a determination that they are no longer required as evidence.

j. Posting of Seized Aircraft: To meet the *posting* requirements, the USMO shall:

(1) Post the *warrant of arrest in rem* on the aircraft as soon as it is issued.

- (2) Mount the USMS "No Trespassing" sign on cardboard and place it on the dashboard of the aircraft.

Posters and tape should not be attached to the aircraft (especially to a plexiglass windshield) as they will cause damage.

- k. **Inventory of Seized Aircraft:** The USMO is to *inventory* all personal property located in an aircraft that is subject to *forfeiture* and process the property in accordance with the procedures for that type of personal property.

If during the *inventory*, the USMO or contractor personnel find previously unknown hidden compartments:

- (1) The aircraft should be immediately secured.
- (2) The investigative agency should be notified so that an investigative search can be performed to identify if the compartment contains weapons, contraband, or the residue of contraband.

- l. **Storage and Maintenance of Seized Aircraft:** All seized aircraft is to be stored at the national contractor's facility unless there is written authorization from the HCOTR to do otherwise.

Authority	Responsibility
HCOTR	<ul style="list-style-type: none"> • Coordinates the aircraft's relocation with the USMO. • Approves all estimates for relocations, repairs and disposals. • Orders all services via task orders. • Certifies all invoices for payment. • Provides the USMO with copies of all task orders pertaining to the aircraft.
AFO	<ul style="list-style-type: none"> • Makes payment on the invoices; maintains the information on the USM-27 and enters the information into CATS.
USMO	<ul style="list-style-type: none"> • Submits form AFO44A ("District request for disposal of aircraft") to the AFO at the conclusion of the <i>forfeiture</i> action.
Aircraft Contractor	<ul style="list-style-type: none"> • Wire transfers gross sales proceeds to applicable USMO bank account.

- m. **Before Accepting Custody of Seized Precious Items:** Before accepting custody of seized precious items, ¹²⁴ the USMO will:

- (1) Obtain an itemized *inventory* from the investigative agency.

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- (2) Verify the USM-102 information regarding the precious items that the investigative agency entered in the custody business function screen of the CATS system.

n. Inventory of Seized Precious Items: The USMO:

- (1) Will verify that the individual items match the items listed on the investigative agency's *inventory* and will report any discrepancies to the investigative agency.
- (2) Will retain all original boxes or containers in which the precious items were transferred from the investigative agency to the USMO.
- (3) May choose to photograph or videotape precious items before placing them in storage or transferring them to a contractor when:
 - There could be subsequent challenges regarding their identification or condition.
 - Photographing or videotaping the items may facilitate inventorying them.

n. Storage and maintenance of seized precious items under the seized Jewelry Program: The USMS maintains two separate contracts for *appraisals*, and storage/disposal services for seized and forfeited Jewelry Program assets.

- (1) Use of these contracts is mandatory, with the exception of Alaska, Hawaii, Puerto Rico, Virgin Islands and Guam.
 - There are no storage costs under the national contract.
 - Low value precious items sent to the national contractors shall be sent by registered and insured¹²⁵ U.S. mail (using the *market value*, not replacement value).
 - The total value of all precious items sent to the national contractor shall not exceed \$25,000 per parcel.
- (2) High value¹²⁸ precious items can either be picked up by the storage/disposal contractor or sent by the USMO utilizing a secure and insured shipping company (e.g., Brinks, UPS, etc.).
- (3) Those districts not required to use the national contract must ensure that measures are taken, appropriate to the type and value of the precious items, including:
 - Ensuring that there is an accountable person responsible for the precious items.
 - Providing appropriate security (e.g., storage in a safe, vault, safety deposit box, a secured room at the USMO, or another suitable facility with 24-hour security).
 - Providing appropriate physical protection (e.g., fine art should be protected from the elements, packaged and labeled prior to storage, and retained in a

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climate-controlled environment).

o. Before Accepting Custody of Seized Firearms: Before accepting custody of seized firearms, the USMO must verify the USM-102 information regarding the firearms, including the serial number, that the investigative agency entered in the custody business function screen of the CATS system.

p. Inventory of Seized Firearms: Firearms are to be inventoried by make, model, serial number, and caliber.

A string tag with the case and item numbers on it shall be affixed to the trigger guard of each firearm.

q. Storage of Seized Firearms: Firearms may be stored at any suitable facility as determined by the USMO. Effective March 3, 2003, under a Memorandum of Agreement (MOA) with the Special Operations Group (SOG), a program was begun to have the SOG provide storage and disposal services to the USMOs for seized and forfeited firearms at a centralized location.¹²⁷

(1) Under this MOA, USMOs will ship all firearms in their custody to SOG. The Fedex account number to be used to ship firearms is [REDACTED] The account number is to be used only to ship seized and forfeited firearms to SOG's facility. (SOG may use this account number in those instances where a firearm is to be released to the owner/lienholder.)

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(2) The following chart provides storage options for interim storage prior to sending seized firearms to the SOG and for USMOs not under this program. All USMOs will be in this program by October 1, 2003.

Suitable Facilities	Requirements
USMO office vaults or other secure storage facilities	<ul style="list-style-type: none">• Adequate space available.• Segregated from USMS-owned firearms.• 24-hour security.
Other storage sources, such as the local Bureau of Alcohol, Tobacco and Firearms (ATF) offices; National Guard facilities; military bases; and police and sheriff's departments.	The USMO should make arrangements for storage at such sites that must: <ul style="list-style-type: none">• Ensure adequate 24-hour security.• Be cost effective.

r. Before Accepting Custody of Seized Animals:

Type	USMO Responsibility
Livestock or registered animals	<ul style="list-style-type: none">• Verify the USM-102 information regarding the animals that the investigative agency entered in the custody business function screen of the CATS system.
Exotic animals or animals identified as being an endangered species	<ul style="list-style-type: none">• Submit a PAR decision package to the AFO for approval.

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s. **Management of Livestock and Registered Animals:** ¹²⁸ The USMO must:

- (1) Notify appropriate animal registries of the *seizure* of specific animals to facilitate their future sale.
- (2) Attempt to locate and, if located, secure registration paperwork, inoculation forms, pedigrees, and other related documentation
- (3) Secure a veterinarian's examination of the seized animal(s).
 - Maintain copies of the results and related paperwork in the case file.
 - Submit a PAR decision package to the AFO for approval on any proposed treatment of significant or potential health problems.
- (4) Obtain an *appraisal* on each seized animal by a professional appraiser knowledgeable about the type of live- stock or animal.
- (5) Arrange for the boarding or placing of seized animals in appropriate facilities (e.g., in kennels or on farms and ranches).
- (6) Provide for seized livestock and animals in a cost-effective manner that will maintain or enhance their value consistent with normal industry practices.
 - Management may include breeding, showing, and non-race training.
 - The USMO must request AFO approval through the PAR decision package for race training and/or racing of seized animals.

t. **Before Accepting Custody of Seized Gambling Devices:** ¹²⁹ The USMO shall meet with the seizing investigative agency to coordinate the initial transportation and storage of the seized gambling devices.

- (1) The investigative agency should be advised that the seized gambling devices should be handled as assets, rather than contraband, unless the devices are not properly marked as required by the Johnson Act (the Act).¹³⁰
- (2) The USMO will not accept custody of gambling devices being held as evidence. These devices will be retained by the seizing agency.
 - In judicial cases, the court should issue an order designating the investigative agency as the substitute custodian.

All coins and currency should be removed from the devices by the investigative agency prior to the USMO taking custody.

u. **Inventory of Seized Gambling Devices:** DOJ regulations require that the FBI, as the seizing agency, prepare an *inventory* of seized gaming devices. Upon accepting custody of the devices:

- (1) The USMO will obtain copies of any prior inventories.
- (2) If there are no prior inventories, the USMO will conduct a joint *inventory* of the gaming devices with the seizing agency.

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In addition, the USMO will:

(1) Verify the USM-102 information regarding the devices that the investigative agency entered in the custody business function screen of the CATS system.

(2) Obtain color photographs and videotapes of the seized devices.

(3) Ensure that descriptions of individual devices provided by the investigative agency are adequate and correct.

(4) Inspect each device to determine if there is any damage or any missing parts.

- Video devices will be inspected to determine if such devices are operable and to determine the type of software gaming program that is installed in the device (e.g., Cherry Poker).
- Mechanical or slot machine devices will be examined to determine their operability.

(5) Flag for destruction devices not properly marked or labeled as required by the Act after forfeiture or upon the order of the court to immediately destroy the devices.

(6) Affix a prominent label, preferably to an unobtrusive area of the cabinet of each device. The labels and their placement should be able to withstand any moving of the devices.

- The label shall contain:
 - The CATS asset identification number.
 - The item number if there is more than one item in the case.
 - Any other descriptive data that will assist the USMO in its inventory control.

(7) Obtain an appraisal¹³¹ on devices that are suitable for disposal by sale, such as:

- Legitimate machines not covered by the Act but which were used for an illegal purpose.
- Machines that were properly marked under the Act.

(8) The USMO will not obtain an appraisal on gambling devices determined to be contraband.

v. **Storage and Maintenance of Seized Gambling Devices:** If coins or currency are found in the devices after the USMO takes custody, the USMO will contact the investigative agency to determine how the coins or currency are to be handled.

(1) If the coins or currency are subject to forfeiture, such money shall be deposited into the SADF account: 15X6874 upon initiation of the forfeiture action.

(2) If the coins or currency are not subject to forfeiture, such money shall be returned to

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the investigative agency.¹³²

Gaming devices should be packed, transported, stored, secured, and maintained in a manner that:

- (1) Reflects normal industry practices.
- (2) Provides adequate care at a cost that is commensurate with the devices' value
- (3) Has a bill of lading that clearly states that gaming devices are being shipped and clearly identifies the shipper and consignee.

In addition, the USMO shall:

- (1) Review the suitability of the storage facility if the investigative agency has stored the devices on an interim basis before turning them over to the USMO.
- (2) Obtain security services:
 - That are consistent with the level of the threat.
 - Whose cost is reasonable in relation to the value of the devices.

w. **Before Accepting Custody of Items That Present Special Management Issues:** Items that may present special management issues include laboratory equipment, dangerous chemicals, perishable foodstuffs, ammunition, and explosive devices. The USMO will:

- (1) Verify the USM-102 information regarding the property that the investigative agency entered in the custody business function screen of the CATS system.
- (2) Determine whether it has the ability to safely protect and safeguard such items or should seek other alternatives such as those listed in the following table.

For These Items	The USMO Should
Contaminated laboratory equipment and dangerous chemicals	Contact the DEA regarding the use of DEA contractors to take possession of these items.
Chemicals and Pharmaceuticals [Note: Illegal drugs are considered contraband <i>per se</i> and are not to be taken into USMS custody.]	Contact the DEA or the FDA, as appropriate, regarding the use of their current or their recommended qualified contractors to transport and store these items. Only commercial contractors with the appropriate Federal, state and local licenses to relocate, store, and dispose of chemical and pharmaceuticals shall be utilized.
Perishable property (e.g., foodstuffs) or other property subject to waste	Obtain authority ¹³³ to immediately sell such items ¹³⁴ by contacting: <ul style="list-style-type: none">• The investigative agency's <i>forfeiture</i> authority¹³⁵ in administrative cases.

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Ammunition and explosive devices	<ul style="list-style-type: none"> The AUSA in judicial cases. Contact the local ATF office for advice and assistance.
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x. **Other Seized Personal Property:**¹³⁶ Before accepting custody of other seized personal property, the USMO will verify the USM-102 information that the investigative agency entered in the custody business function screen of the CATS system.

Such property is to be stored in a manner that will ensure its preservation and value; if appropriate, it should be placed with a substitute custodian or with a property management contractor.

9. Disposal of Personal Property After Forfeiture

a. **Policies and Processes:** The disposition of property forfeited to the United States is an Executive Branch decision and not generally a matter for the courts.

(1) Orders of *forfeiture* should be broad and should direct the forfeiture of property to the United States for disposition in accordance with the law.¹³⁷ It is inappropriate for the courts to specify the manner and conditions of sale of forfeited property, except in certain civil settlements.

(2) *Administrative declarations of forfeiture* issued by investigative agencies have the force and effect of a court order.¹³⁸

The Attorney General has the authority to dispose of forfeited property "by sale or any other commercially feasible means" without subsequent court approval.¹³⁹

(1) This is generally called a *forfeiture* sale of the property.¹⁴⁰

(2) However, under certain circumstances, personal property may be disposed of under the terms of a stipulated or *interlocutory sale*.

b. Stipulated Sales

Description	Responsibility
Refers to personal property targeted for <i>forfeiture</i> that is sold by the owner-of-record, ¹⁴¹ but the proceeds of which are subject to <i>forfeiture</i> . Such proceeds will become the subject of the <i>forfeiture</i> action.	The AUSA is responsible for preparing the agreement by which the United States will stipulate specifications for the sale of personal property and the conditions under which the proceeds are to be preserved so that they can be made subject to <i>forfeiture</i> .

c. Interlocutory Sales:¹⁴²

Conditions	Actions
In administrative forfeiture cases	Sales may be authorized by the investigative agency processing the <i>administrative forfeiture</i> under 19 USC

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	<p>5 1612(a) when the property is:</p> <ul style="list-style-type: none"> • "Liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof."
	<p>The USMO must receive the documentation from the investigative agency authorizing the <i>interlocutory sale</i> before the property can be sold.</p>
In civil judicial forfeiture cases	<p>The sales are:</p> <ul style="list-style-type: none"> • Undertaken under the authority of 28 USC 9204, which requires judicial confirmation; these are known as "judicial sales."¹⁴³ • Executed by the USMO under terms authorized by a U.S. District Court order. • Handled under procedures for the disposal of personal property after <i>forfeiture</i> provided that these procedures are consistent with the court order directing the judicial sale.
In criminal forfeiture cases	<p>The sales may be undertaken after a <i>preliminary order of forfeiture</i> only if:</p> <ul style="list-style-type: none"> • The defendant does not obtain a stay of the <i>forfeiture</i> order and all third-party claimants agree to sell the property and to substitute the sales proceeds for the forfeited property in the <i>ancillary proceedings</i>, or • The AUSA obtains a court order to sell the property pending resolution of third-party claims.

d. **Civil Forfeiture of Personal Property:** A civil forfeiture of personal property occurs under an *administrative declaration of forfeiture* or a *civil order of forfeiture*.

(1) **Administrative declaration of forfeiture:**¹⁴⁴ An *administrative declaration of forfeiture* permits personal property to be disposed of immediately unless the investigative agency advises the USMO that there is an outstanding *petition for remission or mitigation* that must be ruled on before disposal.

(2) **Civil order of forfeiture:**¹⁴⁵ A *judgment of forfeiture* is entered by a U.S. District Court through a *civil order of forfeiture*. The USMO should advise the AUSA to make every effort to include language in the *civil order of forfeiture* that provides that:

- The U.S. Marshal is authorized to dispose of the forfeited personal property in accordance with law.
- The first charge against sale proceeds should be the recovery of the USMO's management and other costs relating to the forfeited property (e.g., notice publication costs and sales costs).¹⁴⁶
- All *liens* and *encumbrances* are identified and either validated or disallowed.

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- Validated *liens* and *encumbrances* should be ranked in priority order, and the amount of each should be specified.

- All right, title, and interest in the property are vested in the United States free and clear of all *liens* and *encumbrances*, with any such *liens* and *encumbrances* to be satisfied or extinguished by the proceeds of the sale, as may be applicable

- Payment must be from the proceeds of the sale.

- The amount that can be paid is limited to the proceeds remaining after recovery of the Government's costs.

- Generally, attorneys' fees, late charges, and penalties sought by lienholders are disallowed. If the USMO receives an order directing it to pay any or all of these charges, the USMO should contact the AUSA promptly for instructions.

If sufficient proceeds to cover management costs cannot be generated by the property's sale, the USMO will ask the AUSA to:

- Negotiate the return of the property to the lienholder in exchange for payment of the USMO's expenses.
- Request the court to amend the *civil order of forfeiture* accordingly.

e. Judgment of Forfeiture

If	Then
Either a <i>consent judgment</i> or a <i>default judgment</i> is issued.	The USMO may immediately dispose of the forfeited property.
Either a <i>judgment after trial</i> or a <i>summary judgment</i> is issued.	The USMO shall delay the execution of the <i>judgment</i> for a period of 10 working days to allow for the filing of an appeal.
On or after the 11th working day following a <i>judgment after trial</i> or a <i>summary judgment</i> , the AUSA documents in writing that no motions or requests for additional stays have been filed.	The USMO may proceed with the disposal of the forfeited property.
The AUSA fails to provide such documentation.	The USMO should: <ul style="list-style-type: none"> • Bring this requirement to the AUSA's attention. • Notify the AFO of continued failures to provide documentation if the problem cannot be resolved at the district level.

- f. **Criminal Forfeiture of Personal Property:**¹⁴⁷ Before the disposal of criminally forfeited personal property, the USMO must obtain a copy of the *final order of forfeiture* or written documentation from the AUSA that states that:

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(1) Notice of the United States' intent to dispose of criminally forfeited property has been published and served, together with appropriate certificates of service.

(2) Ancillary proceedings have been held (if required).

(3) All claims and/or appeals have been resolved or barred.

g. **Petitions for Remission or Mitigation:** *Petitions for remission or mitigation generally are granted after or mitigation forfeiture. In civil or criminal judicial cases, they may be granted before forfeiture.*

Petition Decisions Are Made By	In These Cases
The investigative agency ¹⁴⁹	In <i>administrative forfeitures</i> after the issuance of a declaration of <i>forfeiture</i> .
Chief, AFMLS ¹⁴⁹	In civil or criminal judicial <i>forfeitures</i> .

Monies from mitigation are to be deposited in the AFF.¹⁵⁰ Alternatively, monies for *mitigation* may be paid to the petitioner based on the proceeds of sale of the personal property.¹⁵¹

If	Then
<i>Remission</i> is granted.	The personal property will be released in accordance with the written terms of the <i>remission</i> decision.
<i>Mitigation</i> is granted.	A monetary amount may be received from the petitioner in exchange for the release of the personal property. A copy of the decision that sets forth the terms of the <i>mitigation</i> to be executed by the USMO will be sent to the USMO from the deciding official in the AFMLS for <i>judicial forfeitures</i> or in the investigative agency for <i>administrative forfeitures</i> .

If the property is to be released, the USMO shall obtain a release from the party receiving the property.

h. **Adjusting the Value of Certain Assets That Will Produce Little or No Proceeds Upon Disposal:** Certain assets will produce little or no proceeds upon disposal, because they must be destroyed or disposed of through methods other than sale. In the case of these assets, the appraised value that was placed in CATS upon seizure must be adjusted once such assets have been forfeited.

(1) Once it has been determined that such assets are to be disposed of without a sale, such as through destruction, then change the value in CATS to reflect a nominal value of \$1.00.

(2) The following categories of assets must be adjusted to a nominal value of \$1.00 upon

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forfeiture:

- Firearms
- Sudafed
- Ephedrine
- Pseudophedrine
- Vehicles that are to be crushed.
- Weapons (other than firearms) and other items of a controversial or derogatory nature.

i. **Forfeiture Sales:** Forfeiture sales do not require judicial confirmation pursuant to 28 USC 5 2004. Except in unusual cases, the USMS has the authority to determine the best method and conditions of sale of forfeited property in its custody.¹⁵²

The USMO shall:

(1) Order an updated appraisal¹⁵³ or a reappraisal before offering a property for sale:

- If market conditions for the personal property change significantly, or
- If the last appraisal is more than 1 year old.

(2) Retain in the forfeiture file copies of sale contracts and any other pertinent documents relating to the sale of the personal property.

j. **USMS's Responsibility to Dispose of Personal Property**

Authority	Responsibility
Attorney General	<ul style="list-style-type: none">• Is authorized to dispose of property forfeited under laws enforced or administered by the DOJ (cited specifically in each forfeiture statute).¹⁵⁴• Has delegated this authority to the U.S. Marshal in each judicial district.¹⁵⁵
U.S. Marshal or the Marshal's designee	Has been delegated authority in writing to dispose of property, ¹⁵⁶ but is not authorized to place personal property into <i>official use</i> or to transfer title of personal property to another Federal agency that will place it into <i>official use</i> . ¹⁵⁷
USMO	Should submit a PAR decision package for approval of the sales plan of any forfeited personal property with an appraised value of \$500,000 or more. [\$75,000 or more for vehicles]

k. **Methods of Disposal:** To determine the appropriate method of disposal, the USMO will consider the *market value* of the personal property and the projected management and disposal costs. Property disposal includes return to a lienholder, placement into *official use*, or sale.

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l. **Return to a Lienholder:** ¹⁵⁸ In a judicial action, a lienholder may be given possession of personal property if:

- (1) Its claim has been validated by the U.S. District Court
- (2) It is in the Government's financial interest to return the property.

The USMO should attempt to recover the USMS's expenses from the lienholder in return for releasing the property. However, the USMO may use its discretionary authority to release the personal property without recovering expenses.

In either a judicial action or an administrative forfeiture action, property may be returned to the lienholder upon the granting of a petition for remission or mitigation.¹⁵⁹

m. **Place Into Official Use:** Any forfeited personal property—except for three-wheel all-terrain vehicles (ATVs)¹⁶⁰ may be placed into *official use*.

(1) Firearms may be placed into *official use* only upon the AFO's approval of a PAR decision package.

- Generally, firearms may be placed into *official use* with a law enforcement agency only if the firearms are new, unused, had not been sold on a retail basis when seized, and meet the specifications for government-authorized firearms.
- Antique firearms or collectible firearms may be transferred to a Federal agency, including a Federal museum such as the Smithsonian Institute, for display purposes.

(2) Gray market vehicles may only be placed into official use with the Marshals Service upon the approval of the Fleet Management Team, Management Support, Business Services Division (BSD).

- Such approval normally will be given only when the vehicle is to be used outside the United States.
- Gray market vehicles that are brought up to United States standards and which can be registered with the respective state Department of Motor Vehicles are no longer considered "gray market" and can be placed into official use without additional approvals.

Authorized Agency	Action
Lead investigative agency, ¹⁶¹ if it previously designated the property for intended <i>official use</i> after forfeiture. (This may be done in CATS.)	<ul style="list-style-type: none">• Notifies the USMO of its intention to place the property into official use within 30 days after the execution of an administrative declaration of forfeiture or within 30 days of being notified of a judicial forfeiture.¹⁶²• Places property that it seized into official use after forfeiture; each agency has its own procedures.• In the case of gray market vehicles or vehicles with hidden compartments which cannot be removed:

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	<p>- Provides documentation that its fleet management authority has approved the placing of such a vehicle into official use.</p>
	<p>- States in writing that, in the case of gray market vehicles, the vehicles will be reconstructed to U.S. standards; in the case of vehicles with hidden compartments, the compartments will be removed, prior to a subsequent sale; or that such vehicles will be destroyed upon being removed from official use.</p>
<p>State and local law enforcement agencies.¹⁶³</p>	<ul style="list-style-type: none"> • Accepts transfer of personal property for its official use through equitable sharing.¹⁶⁴ However, forfeited firearms cannot be transferred. • In the case of gray market vehicles or vehicles with hidden compartments: <ul style="list-style-type: none"> - Provides a certification from the appropriate state agency that such use is permitted under state law and regulations. - States in writing that, in the case of gray market vehicles, the vehicles will be reconstructed to U.S. standards; in the case of vehicles with hidden compartments, the compartments will be removed, prior to a subsequent sale; or that such vehicles will be destroyed upon being removed from official use.
<p>A component of DOJ, including USMS.¹⁶⁵</p>	<p>Requests authority to place forfeited personal property into <i>official use</i> only if:</p> <ul style="list-style-type: none"> • The investigative agency does not choose to place the property into <i>official use</i>. • The property is not transferred to a State or local law enforcement agency. • The proposed use of the property is consistent with a law enforcement purpose. • In the case of gray market vehicles or vehicles with hidden compartments which cannot be removed;

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	<p>- Provides documentation that its fleet management authority has approved the placing of such a vehicle into official use.</p> <p>- States in writing that, in the case of gray market vehicles, the vehicles will be reconstructed to U.S. standards; in the case of vehicles with hidden compartments, the compartments will be removed, prior to a subsequent sale; or that such vehicles will be destroyed upon being removed from official use.</p> <p>USMOs may request to place personal property into <i>official use</i> by submitting a request to the Property Management Team, BSD.</p>
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n. **Procedures for Transferring Forfeited Property to Non-Participating Federal Agencies:** A non-participating Federal agency includes both DOJ and other Federal agencies that did not participate in actions leading up to a seizure or forfeiture.

(1) A non-participating Federal agency interested in obtaining forfeited property for official use must identify the particular item prior to submitting a request.¹⁶⁶ Any property requested for transfer must be forfeited at the time it is requested.

(2) The request is to be submitted in writing to the United States Marshal of the District having custody of the property.

- All requests must clearly define the intended use of the requested property.
- Unless the request is from a DOJ agency, it must indicate that the agency requesting the property has agreed in writing to pay all liens and costs associated with the property.
- The request shall contain identifying information, including the forfeiture case number and description of the property. In order to provide a complete description, the following identifying information shall be included:
 - The Vehicle Identification Number (VIN) for vehicles.
 - Hull Number for vessels.

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- Tail Number for aircraft.
- Other serial number, when appropriate.

(3) In the case of a gray market vehicles or vehicles with hidden compartments the request must:

- Provide documentation that its fleet management authority has approved the placing of such a vehicle into official use.
- State in writing that, in the case of gray market vehicles, the vehicles will be reconstructed to U.S. standards; in the case of vehicles with hidden compartments, the compartments will be removed, prior to a subsequent sale; or that such vehicles will be destroyed upon removal from official use.

Upon receipt of the request from a non-participating Federal agency, the USMO will:

- (1) Verify that the property has not been claimed for official use by the seizing agency.
- (2) Ensure that there are no outstanding equitable sharing requests for the property.

Once it is determined that the property is available for transfer, the USMO will:

- (1) Complete the "Checklist for Transfer of Forfeited Property to a Non-participating Federal Agency."¹⁶⁷
- (2) Forward the agency request, completed checklist, and copies of the forfeiture declaration of forfeiture, along with a cover memorandum recommending approval or disapproval of the request to the AFO.

The AFO will process the request, prepare the approval/disapproval letter for signature, and forward the entire request package to the Director.

- (3) The appraised value of the property determines who has the final decision making authority.

Appraised Value	Authority	Action
Less than \$50,000	Director or Deputy Director, USMS	Approves or disapproves all non-DOJ Federal agency requests to place personal property into <i>official use</i> .
\$50,000 or more	AFMLS	Notifies the USMO in custody of the forfeited property, through the AFO, of its decision.

After the decision is made, the AFO will inform the USMO whether or not to transfer the property to the requesting non-participating Federal agency.

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- o. **Selecting the Method of Sale:** The USMO will arrange for the sale of available personal property to minimize the holding time while achieving sales revenues that are consistent with the law enforcement objectives of the program.

(1) It is anticipated that most sales will be by *auction*. However, USMOs have discretionary authority to select other methods of sale if conditions and circumstances warrant.

(2) The USMO will select the method of sale on the basis of:

- The type, value, and quantity of the personal property.
- The most appropriate sales techniques, considering:
 - The limited resources available to the USMO.
 - The need to maximize the return for the efforts expended.
 - The nature of the property.

(2) *Repairs* costing up to 25 percent of the *net equity* of the property may be made if needed to effectuate its sale. USMOs must submit a PAR decision package seeking AFO approval if *repairs* in excess of 25 percent of the *net equity* of the property or greater than \$25,000 are proposed.

- P. **Bill of Sale:** Irrespective of the method of sale, title to the forfeited property is conveyed by a United States Marshal's Bill of Sale, either Form USM-190a or Form USM-190b.¹⁶⁸

(1) Form USM-190a is to be used to convey property in a Federal court-ordered sale conducted by the United States Marshal or his/her designee.

(2) Form USM 190b (Rev. 3/00) is to be used to convey property which has been forfeited to the United States through a Federal administrative procedure, and sold by the United States Marshal or his/her designee.

q. **On-line sales**

Certain types of property may be suitable to sell on-line.

(1) The AFO utilizes Bid4Assets to sell high-end valued vehicles, vessels, aircraft and unique personal property.

- Due to contract limitations, only unique, high value or difficult to dispose of assets should be considered for disposal through online sales.
- AFO Points-of-Contact (POC) will work with USMO personnel to determine if an on-line sale is the best disposal method.

(2) The General Services Administration (GSA) also has an online sales website for the sale of mid-range vehicles, vessels, aircraft and other select personal property.

(3) USMOs considering selling property online may contact the Bid4Assets POCs. Complete the PIP checklist and the vehicle description sheet prior to submitting a request package to the designated POC.

Requests to have property considered for on-line sale are to be sent to the AFO

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via E-mail and include the following information:

- (1) Digital pictures of the asset (between 6 and 10 pictures from all vantage points). Example: take pictures of a vehicle's front, both sides, rear, interior, including the dash board and the engine if the look and condition of the engine will enhance the sale. Take all pictures away from all other vehicles, vessels and other assets.
 - (2) A detailed description of the asset.
 - (3) A copy of the Forfeiture Order or Declaration of Forfeiture (via fax).
 - (4) Current appraised value that is no more than 1 year old.
 - (5) Information on the type of case, such as drug trafficking, money laundering, restitution, etc.
 - (6) If the asset is a vehicle:
 - Include mileage.
 - Identify whether or not it is a gray market vehicle.
- r. **Sale Options:** Generally, the USMS sells properties "as is/where is", with the goal of achieving the percentage of *market value* set forth in "Sale standards."

Type	Conditions
Reserve auction	[REDACTED]
Auction without reserve	The USMO: <ul style="list-style-type: none"> • Is authorized to place personal property in an <i>auction without reserve</i> when the condition of the property and market considerations indicate that it is not feasible to establish a minimum sales price. • If <i>liens</i> exist on the personal property, must submit a PAR decision package to the AFO for approval before placing property in an <i>auction without reserve</i>.
Sealed bid sales	The USMO or its contractor will: <ul style="list-style-type: none"> • Prepare a sealed bid package.¹⁶⁹ • Advertise the property for sale by sealed bid. • Distribute the bid package to bidders. • Hold a public bid opening. • Award the property to the highest acceptable bidder.
Sales by agents	USMOs may place personal property for sale with agents, such as brokers or consignees.
Dealer Only Auctions	PROHIBITED

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- s. **Rejection of Offers:** Regardless of the sales option chosen, the USMS must reserve the right to reject any individual offeror. Individual offerors may be rejected because of their relationship to a defendant in a related criminal matter or for other

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law enforcement reasons.

t. Agents for Sale

Agent	Conditions
All agents (e.g., auctioneers, brokers, and consignees)	<p>All contracts with agents will:</p> <ul style="list-style-type: none"> • Prohibit charges above the sales price (such as buyer's premiums, processing fees, and admissions fees) from being made against potential purchasers. • Provide that the USMS will not be charged any sales fees, commission, etc., for assets that are not sold. <p>The agent's compensation (such as sales fee, commissions, and percentage of sale) will be specified in its contract with the Government.</p>
Auctioneer ¹⁷⁰	<p>An auctioneer must be:</p> <ul style="list-style-type: none"> • Licensed by the State if the State has a licensing procedure. • A member of the National Auctioneers Association or the Certified Auctioneers Institute if the State does not have a licensing procedure. • A school-trained auctioneer
General Services Administration (GSA) ¹⁷¹	<p>GSA must:</p> <ul style="list-style-type: none"> • Agree to sell the property at the minimum acceptable price set by the USMO. • Within 2 weeks of sale, deposit the gross sales revenue into the account the USMO specifies. • Submit an itemized list of its expenses to the USMO after the sale.¹⁷²
Broker	<p>A broker must agree in writing to sell the property on terms specified by or acceptable to the USMO, most likely under the following circumstances:</p> <ul style="list-style-type: none"> • A significant marketing effort is required to find a buyer. • Sale by broker is mandated by court order. <p>Considerations for the USMO not to use a broker are:</p> <ul style="list-style-type: none"> • Commissions are usually higher than expenses related to other methods (e.g., auctions). • The time period until the sale is completed is usually longer than for other sales methods.
Consignee	<p>A consignee must agree in writing to accept the</p>

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property for consignment sale. The USMO must evaluate whether the goal of timely disposal can be met through a consignment sale.

u. Sale of Vehicles

Checking through the National Information Crime Bureau (NICB), Carfax Vehicle History Reports, and the National Equipment Register

- (1) All vehicles must be checked through the NICB and Carfax before being offered for sale to determine if a vehicle:
 - has been reported stolen
 - has VIN problems
 - has been issued a salvage title or
 - has odometer discrepancies
- (2) NICB history reports are free to law enforcement agencies. Requests for NICB reports may be made by telephone to [REDACTED] and must be made by a USMS staff member.
- (3) Carfax reports will cost approximately \$7.00 which is chargeable to a USMS Impact Card as a case related expense. Requests for Carfax reports may be made by telephone to 1-800-789-6232 or by Internet at www.carfax.com. Requests may be made by a USMS staff member or by a vehicle contractor. If a vehicle contractor is to obtain the report, the USMO Contracting Officer must be contacted first to determine if a contract modification is necessary.
- (4) Heavy equipment (e.g., equipment used in construction, agricultural, mining and forestry) must be checked through the NER.

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License Plates: Prior to the sale of a forfeited vehicle, appropriate action must be taken on the license plates.

If	Then
State has relevant laws or regulations.	Retain, remove, or destroy plates, as mandated.
State does not have relevant laws or regulations.	Destroy license plates. (The USMO shall place a certification regarding the destruction of license plates in the personal property case file.)

Titles: The title to most operating vehicles is to be transferred using a SF-97, ~~CERTIFICATE TO OBTAIN TITLE TO A VEHICLE~~ ¹⁷³

Vehicle Type	Use SF-97	Do Not Use SF-97
Regular production vehicle found in NADA guidebooks	X	
High-value ¹⁷⁴ or unique vehicle not found in NADA guidebooks	X	
ATV		X
Farm equipment		X

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Construction equipment		X
Low-value vehicle sold for salvage or scrap ¹⁷⁵		X
"Gray market" vehicle		X

The SF-97 is to be completed, without erasure, in accordance with the instructions on the reverse side of the form. Each SF-97 is to be recorded in a log maintained by the USMO.¹⁷⁶

If the SF-97 is reported lost by the purchaser and the USMO is requested to issue another certificate, the purchaser must make such a request in writing, explaining how the loss occurred. Upon receipt of such a written request, the SF-97 may be re-issued using the identical information included in the original SF-97, and by checking the box on the form for "DUPLICATE".

Methods for Vehicle Sales

Type of Vehicle	Sales Methods
Regular production vehicle ¹⁷⁷ found in NADA guidebooks	Sale by <i>auction</i> preferred
Unique vehicle or one not listed in NADA guidebooks, but that is appraised at \$10,001 to \$74,999	Sale by auction, by broker through negotiation, by sealed bid, or by consignment with a licensed dealer.
Vehicles with an appraised value of \$75,000 or above	Sale by auction, by broker, by sealed bid, or by consignment with a licensed dealer. USMOs must develop a marketing and advertising plan and submit the plan in a PAR to AFO for approval in advance of the proposed sale date. The AFO will review the plan and consider alternative sales strategies such as Internet sales or relocation to another USMO to enhance the sale potential.
Low-value vehicle, appraised at \$500 or below	Expedited disposal by the USMO no later than 60 days after receipt of the declaration or <i>judgment of forfeiture</i> via sale to licensed salvage, junk, or scrap dealers or recyclers by: <ul style="list-style-type: none"> • Sale at <i>auction</i> by sealed bid, or • Sale to a rotating list of dealers <p>The <i>bill of sale</i> issued by the USMO must state that the vehicle is being sold for salvage and/or scrap purposes only and is not to be titled or registered as an operating motor vehicle.</p>
Four-wheel ATV	Sale only to a licensed ATV dealer
Grey market vehicle	Sale by auction only if the vehicle can be modified to be compliant with U.S. vehicle standards. <ul style="list-style-type: none"> • If the vehicle's net equity after deducting the estimated costs is reduced by more than [REDACTED], then the vehicle should either be destroyed or sold for export only. • A PAR decision package may be submitted to request that modifications be

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	made even if the costs exceed 50 percent of the net equity if the USMO determines that sale as an operating vehicle will net more than \$7,500 after deducting all costs.
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Forfeited vehicles valued above \$500 that must be sold as salvage/scrap or crushed:

Certain vehicles valued above \$500 may have to be sold as salvage/scrap or crushed because:

- (1) The vehicle is contaminated (these vehicles must be crushed).
- (2) The vehicle has hidden compartment(s)/trap(s) that cannot be economically repaired or removed.
- (3) The vehicle is not manufactured for use in the United States ("gray market vehicle"), and has no market potential for sale to the public, unless such vehicle is:
 - A 1998 or newer model year, and
 - Conversion to U.S. standards is feasible and cost-effective.
 - Suitable from a cost-effective perspective for export sale.

To evaluate a vehicle for hidden compartment removal/conversion to U.S. standards, complete a conveyance net-equity worksheet¹⁷⁸ using the NADA loan value of a comparable vehicle that meets U.S. standards, deducting:

- (1) The cost for removal of any hidden compartment(s) (if any).
- (2) The cost for the conversion, including catalytic converter, emissions system, windows, tires, etc.
- (3) Any liens.
- (4) All Federal and USMS expenses.

The USMO may approve removal/conversion costs that do not exceed 50 percent of the vehicle's adjusted net-equity value.

When the removal/conversion costs are 50 percent or greater of the vehicle's adjusted net equity, the USMO shall submit a PAR decision package proposing disposal alternatives to AFO for review and consideration if the removal/conversion is cost effective, or if other disposition should be made (export sale, salvage/scrap sale, or crushed.).

Upon sale of a gray market vehicle after conversion, only a bill of sale will be issued. No Standard Form 97 will be issued.

Use of Rotating Salvage or Scrap Dealers: If the USMO chooses to use dealers to sell low-value vehicles, it should:

- (1) Establish a list of dealers in a manner that promotes competition within the

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industry.

- Any and all licensed salvage, junk, or scrap dealers or recyclers who are involved in legitimate business operations are eligible to be on the list.
- Sources for compiling the list include, but are not limited to, telephone directories and trade and industry association directories.

- (2) Contact dealers on a documented, rotational basis.
- (3) Offer the vehicles on an all-or-none basis to at least three dealers. If someone refuses to bid, contact the next dealer on the list until three bids are received.
- (4) Sell the vehicles to the dealer with the highest bid.
- (5) Keep notes of dealers' negative responses in the file. When dealers refuse to bid on three successive offers, they may be removed from the list.
- (6) Record the disposition of such vehicles in CATS as being sold (code 05), not destroyed.

v. **Methods for Vessel Sales:** Vessels may be sold at *auction*, through GSA, by sealed bid, through the use of a broker, or through consignment.

If Vessel is Appraised At	Then
\$7,500 but less than \$75,000	Select a method of sale appropriate to the sales market
\$75,000 or more	Submit a PAR decision package proposing a method of sale to the AFO for approval. The decision package should include the USMO proposed marketing and advertising plan. The AFO will review the plan and consider alternative sales strategies such as Internet sales or relocation to another USMO to enhance the sales potential.

w. **Methods for Aircraft Sales:** To handle aircraft sales, upon the receipt of form AFO-44A (Request for Disposal of Aircraft) from the USMO, the AFO:

- (1) Approves marketing and sales plans.
- (2) Administers implementation of the plan by the national contractor, the GSA, or a commercial auctioneer
- (3) Advises USMOs of the dates and locations of sales.
- (4) Sends bidder packages and advertisements of the sales to the USMO in the district where the aircraft was forfeited.

x. **Methods for the sale of Jewelry Program assets:** All USMOs, except for Alaska, Hawaii, Puerto Rico, Virgin Islands and Guam, are required to utilize the National Jewelry Program storage/disposal contractor for the disposal of Jewelry Program assets. If the excepted USMOs chose not to use the services of the storage/disposal contractor, then those USMOs shall determine the appropriate method of sale, based upon the market conditions.

- (1) The storage/disposal contract is managed and administered by the AFO

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(2) The USMO in the district where the property was forfeited will complete the national contract subdelivery order form.¹⁸⁰

(2) The AFO or the national contractor will inform the USMO of *auction* dates and sales locations.

(3) The national contractor will send bidder catalogs, which contain such specific information as case numbers, lots, and *appraisals*, to the USMO.

(4) The USMO will enter information regarding sales in CATS and the case file.

If the USMO does not use the national contract, then the USMO shall determine the appropriate method of sale, based on market conditions.

y. **Methods for the Sale of Livestock or Registered Animals:** Such animals shall generally be sold at *auction*. Whenever possible, *interlocutory sales*¹⁸¹ should be pursued.

z. **Sale of Items That Cannot Be Sold to the General Public:** In addition to four-wheel ATVs¹⁸² other items of personal property that may not be sold to the general public include the examples in the following table.

Item	Restrictions
Hydroponic equipment and other equipment used to grow plants	Sale only to licensed nursery dealers.
Alcohol and tobacco	Sale according to State legal or licensing restrictions, most likely to specially licensed dealers.
Gambling equipment	Sale only to parties registered under the Johnson Act. ¹⁸³
Chemicals	Sale of chemicals in original sealed containers only, and only to manufacturers or authorized distributors.
Products containing material composed of endangered species (e.g., eagle feather, ivory, the fur of endangered species).	Transfer to Federal museums or to the U.S. Fish and Wildlife Service, return to native American tribes, or other disposition approved by the AFO.
Jewelry Program assets shaped into drug paraphernalia	Sold as scrape gold or silver after being mutilated.
Counterfeit/Replica Watches (e.g., Rolex, Breitling, etc.)	Will not be sold. If there is no value in the metal content of the bracelet or watchband, then the asset must be destroyed. If there is value in the metal content or precious stones, the watch will be separated and sold for parts. The watch movement will be returned by the national contractor to the USMO for destruction.

AFO assistance should be requested when dealing with the sale of such items.

aa. **Disposal of Weapons (Other Than Firearms) and Other Items of a Controversial or Derogatory Nature:** The USMO shall review the inventory of all forfeited property before placing such property for sale or transferring such

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property to other Federal agencies, or state or local agencies, and identify the items that are within the scope of this section.

(1) The following listed weapon-type items are not to be sold to the general public without the concurrence of AFO:

- Items the sale of which is prohibited under state and/or local law because of the potential for their use as weapons (e.g., brass knuckles).
- Items that are commonly considered weapons, such as military style knives (bayonets, swords, combat knives), hunting knives, throwing knives, concealed blades, switch-blade knives, gravity blade knives, cane swords, throwing stars and other cutting edge weapons; nunchakus, police style batons and other throwing sticks and club-like devices; and missile projectors (cross bows and professionally manufactured sling shots).
- Military or police equipment that is designed to use in combat or law enforcement, such as Kevlar vests and protective clothing, gas masks, and handcuffs.
- Other items that are used for offensive or defensive purposes, such as mace, tear gas pens, and stun guns.
- Items that can cause harm because of their design, such as laser pens, but excluding sports equipment, such as baseballs, baseball bats, hockey sticks, etc.
- Other weapon-type items.

(2) The following items of a controversial or derogatory nature which could subject the USMS to contempt, derision or ridicule are not to be sold to the general public without the concurrence of AFO:

- Items the sale of which is prohibited under state and/or local law.
- Memorabilia of controversial organizations, such as the Nazi Party, the Communist Party, the Ku Klux Klan and "outlaw" motorcycle gangs.
- Memorabilia or collectibles that may offend certain ethnic groups, such as items related to the Confederacy and items that depict specific ethnic groups in a negative fashion (e.g., "lawn jockeys," caricatures depicting exaggerated ethnic stereotypes).
- Material of an erotic nature, whether or not legally pornographic, including computers used to store such images^{1&4} unless it can be technically assured that the images cannot be retrieved or recovered.

(1) When the USMO is uncertain if such items fall within the scope of this policy, it shall seek clarification from the AFO.

(2) All such weapons and other items within the scope of this section are to be destroyed, unless they have significant value.

(3) Inform AFO prior to disposal of such weapons and other items (other than through destruction), such as by transfer to other government agencies (including transfer for official use by Federal agencies, or equitable sharing transfers to state or local agencies) or by transfer to museums or other public institutions.

- Submit a PAR decision package to AFO for approval of the disposal option, including forwarding all requests that are received to place such

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items into official use.

- When, in the opinion of the USMO, the items should not be destroyed because of their intrinsic or historical value.

- Where the sale of the items are prohibited by state and/or local law.

- Include photographs of the items when such photographs will assist the AFO in reaching a decision.

- The AFO will review and approve/disapprove all disposal proposals other than destruction.

bb. **Methods for the Sale of Other Personal Property:** The sale of other personal property may be accomplished by any appropriate commercial means, including consignment.

Distribution of sale proceeds of all Disposal of personal property

Who	Is Responsible For
Sales Contractor	Ensuring that gross proceeds of the sale are made payable to the USMS. No deductions from gross sales proceeds shall be made for any purpose, including paying expenses of the sale.
USMO	<ul style="list-style-type: none">• Depositing all proceeds of the sale in the AFF.• Making all properly authorized disbursements from the AFF.

Destruction: It may be advisable to destroy some forfeited personal property (e.g., electronic equipment such as cellular phones and pagers, hydroponic equipment, and chemicals) because expenditures required to care and dispose of the property or to rectify deficiencies (e.g., environmental, health, or safety problems such as those with three-wheel ATVs) may exceed the value of the property.

Except for firearms, ammunition and explosives, USMOs must submit a PAR decision package to obtain AFO approval before destroying forfeited personal property having a market value in excess of \$5,000 or an outstanding lien.¹⁸⁵

Generally, firearms, ammunition and explosives will be destroyed. Some vehicles, in addition to low-value vehicles, may have to be destroyed. Computers and other electronic equipment may contain hazardous material. Specific guidelines for destroying firearms, vehicles and computers follow.

Item	Conditions	Specifications for Destruction
Firearms ¹⁸⁶ , ammunition and explosives	A PAR decision package permitting destruction does not need to be submitted and approved.	<p>After forfeiture:</p> <ul style="list-style-type: none">• Any reputable organization or company having the capability to destroy firearms can crush, cut, break, melt, or deform the firearm to render it inoperative forever.• The ATF, military bases, or local

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		police or fire departments which have the capacity can be used to destroy firearms, ammunition and explosives.
Vehicle (other than low-value vehicle sold for salvage or scrap)	The removal of specially designed hidden compartments from a vehicle is not economically feasible (i.e., the vehicle's net equity after deducting the estimated cost of removal is reduced by more than 50 percent or falls below \$1,000), and there is no lien.	The vehicle is to be destroyed or sold for scrap under circumstances that ensure it cannot be subsequently retitled and resold as an operating vehicle. However, the USMO may submit a PAR decision package requesting AFO approval to have the hidden compartment removed and the vehicle sold even if removal costs exceed [redacted] of the net equity if the USMO determines that sale as an operating vehicle will net more than [redacted] after deducting all costs, including the cost of removing the hidden compartment.
Computer monitors and other equipment containing hazardous material	Federal or state environmental laws limit or restrict methods of disposal.	<ul style="list-style-type: none"> • Arrange for disposal in accordance with Federal and state law. • Effective March 3, 2003, the AFO has entered into a MOA with UNICOR providing for the transfer of computer equipment and other specified electronics equipment for recycling or reuse.¹⁸⁷ • When shipping such equipment to UNICOR, the following FEDEX account number will be used [redacted]. This number is to be used only to ship forfeited electronics equipment to UNICOR's recycling facilities. • Contact the AFO for advice and assistance when needed.

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Destruction must be witnessed by two individuals. The primary witness must be a USMS Government employee. The options for witnesses will be in the following priority One administrative and one operational USMS employee.

- (1) Two administrative USMS employees.
- (2) One administrative USMS employee and one CSC (or successor contractor) contract employee.

A destruction witness form must be completed for each destruction.¹⁸⁸

Disposal of Firearms: All firearms not placed into official use, or transferred to Federal museums in the case of historical or antique firearms, are to be destroyed. A MOA became effective on March 3, 2003, which provides that the destruction will be accomplished by the SOG at its facility at Camp Beauregard in

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Alexandria, Louisiana, for those firearms transferred to the SOG.

(4) Other items that are used for offensive or defensive purposes, such as mace, tear gas pens, and stun guns.

~~(5) Items that can cause harm because of their design, such as laser pens; but excluding sports equipment, such as baseballs, baseball bats, hockey sticks, etc.~~

Appendix A - Definitions

Appendix B - Acronyms

Appendix C - Forfeiture Statutes

Appendix D - Policy Authorization Review Decisions

Appendix E - Legal Background

Appendix F - Referenced Policies

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