



United States Marshals Service POLICY DIRECTIVES

ASSET FORFEITURE

13.1 RE-DELEGATION OF AUTHORITY TO THE ASSISTANT DIRECTOR

- A. Proponent:** Asset Forfeiture Division (AFD)
- B. Purpose:** To delegate the Director's authority for the maintenance of custody, management control, and disposal of seized or forfeited property under the control of the United States Marshals Service (USMS).
- C. Authority:** Pursuant to [28 C.F.R. § 0.113](#), the Director is authorized to re-delegate his/her authority to any subordinate. The Director delegates to AFD the responsibility to oversee the USMS monitoring, custody, management, operation, storage, and disposal of all seized or forfeited property, including complex assets, pursuant to the authority delegated to the USMS under [28 C.F.R. § 0.111\(i\)](#) and the [Attorney General's Guidelines on Seized and Forfeited Property](#), (July 1990, amended November 2005).
- D. Policy:**
1. The Assistant Director for AFD is delegated the authority to:
 - a. Direct and oversee the Asset Forfeiture Program (AFP), including the investigation, seizure, management, and disposition of all property subject to forfeiture under the control of the USMS; and
 - b. Execute contracts for the sale, deeds, and any other necessary transfer of title documents concerning disposal of forfeited property.
 2. This delegation of authority does not negate the authority delegated to Chief Deputy United States Marshals (CDUSM) or Deputy United States Marshals (DUSM) by [28 § C.F.R. 0.156](#).
- E. Procedures:**
1. Any re-delegation by the Assistant Director for AFD will be executed in writing.
- F. Definitions:**
1. **Complex Assets:** Operating businesses, commercial real estate, and financial instruments (including marketable and non-marketable securities, interests in partnerships and insurance policies) that may have value.
- G. Cancellation:** This is a new policy for Policy Directive 13.1, *General*. The previous policy directive listed under 13.1 was moved to Policy Directive 13.2 and renamed *AFD Operations*.

H. Authorization and Date of Approval:

By Order of:

Effective Date:

 /S/

 03/04/2010

John F. Clark
Director
U.S. Marshals Service

13.2 PERSONAL PROPERTY

APPENDIX A

A. Definitions Used in This Manual

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

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

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

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

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

As is/where is: Words that are included in a contract to signify that no guarantees whatsoever are given regarding the subject property and that it is being purchased exactly as it is found. An *as is* indicator is intended to be a disclaimer of warranties or representations. Such a provision is inoperative when the seller actively misrepresents the condition of the property; however, if the buyer should be expected to discover a defect, not known to the seller, upon a reasonable inspection, the buyer will be charged with notice. A *where is* indicator denotes that the buyer takes the property as found and must remove it from the point of sale.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Settlement agreement: A contractual agreement to end legal disputes.

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

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

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

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

13.2 Personal Property

APPENDIX B

B. Acronyms

AFMLS - Asset Forfeiture and Money Laundering Section

AFO - USMS Asset Forfeiture Office

AFPM - *Asset Forfeiture Policy Manual*

AUSA - Assistant United States Attorney

CATS - Consolidated Asset Tracking System

C.F.R. - Code of Federal Regulations

COTR - Contracting Officer's Technical Representative

CSA - Controlled Substances Act

DOJ - Department of Justice

FHA - Federal Housing Administration

GSA - General Services Administration

HCOTR - Headquarters Contracting Officer's Technical Representative

MLCA - Money Laundering Control Act

PAR - Policy Authorization Review

RICO - Racketeer Influenced and Corrupt Organizations Act

SADF - Seized Asset Deposit Fund

USAO - United States Attorney's Office

U.S.C. - United States Code

USM-102 - Seized Property and Evidence Control Form

USMO - United States (District) Marshal's Office

USMS - United States Marshals Service

VA - Department of Veterans Affairs

13.2 Personal Property

APPENDIX C

C. Forfeiture Statutes Including Provision for Personal Property Enforced by the U.S. Department of Justice

[15 U.S.C. § 1177, Gambling](#)

Civil forfeiture of gambling devices.

18 U.S.C. § 793(h), Espionage

Criminal forfeitures against the proceeds of espionage, including personal property purchased with such proceeds.

18 U.S.C. § 981, Money Laundering, Civil Forfeiture

Civil forfeitures against personal property involved in a money laundering transaction or personal property constituting, derived from, or traceable to any proceeds of a money laundering offense.

18 U.S.C. § 982, Money Laundering, Criminal Forfeiture

Criminal forfeitures against personal property involved in a money laundering offense, or personal property constituting, or derived from any proceeds of a money laundering offense.

18 U.S.C. § 1467, Obscene Material

Criminal forfeitures against personal property constituting or traceable to gross profits or other proceeds obtained from an offense involving obscene material, or personal property used or intended to be used to commit or to promote the commission of such an offense.

18 U.S.C. § 1955(d), Gambling

Civil forfeitures against personal property used in illegal gambling businesses.

18 U.S.C. § 1963, Racketeering

Criminal forfeitures against personal property constituting or derived from racketeering activity or unlawful debt collection, and any personal property affording a source of influence over any racketeering enterprise.

18 U.S.C. § 2253 Child Pornography, Criminal Forfeiture

Criminal forfeitures against personal property constituting or traceable to gross profits or proceeds obtained from or involving child pornography, or personal property used or intended to be used to commit or to promote the commission or such an offense.

18 U.S.C. § 2254 Child Pornography, Civil Forfeiture

Civil forfeitures against personal property used or intended to be used to commit or promote the commission of a child pornography offense, or personal property constituting or traceable to gross profits or proceeds obtained from such an offense.

21 U.S.C. § 853 Drug Trafficking, Criminal Forfeiture

Criminal forfeitures against the proceeds of drug trafficking, personal property used to facilitate drug trafficking, and any personal property affording a source of control over a continuing criminal enterprise.

21 U.S.C. § 881(a)(2), (3), (4), (9), and (11) Drug Trafficking, Civil Forfeiture

Civil forfeitures against personal property used to facilitate drug trafficking.

21 U.S.C. § 881(a)(6) Drug Trafficking, Civil Forfeiture

Civil forfeitures against the proceeds of drug trafficking, including personal property purchased with drug proceeds.

13.2 Personal Property

APPENDIX D

D. Policy Authorization Review Decisions

PAR decisions packages may be submitted by a USMO in any unusual circumstance when the USMO requests AFO concurrence.

PAR decisions are **required** before USMOs undertake the following actions:

- Addressing disagreements between USAO and USMO regarding decision to forfeit personal property
- Accepting custody of exotic animals or animals identified as being endangered species
- Treating health problems of seized animals
- Race training and/or racing of seized animals
- Disposing personal property with an appraised value of \$500,000 or more
- Placing firearms into official use
- Authorizing repairs in ^{(b) (7)(E)} of the net equity of property prior to its sale or in ^{(b) (7)(E)}
- Selling personal property encumbered by a lien at an auction without reserve
- Selling firearms
- Destroying personal property with a market value in excess of \$5,000 or which is subject to an outstanding lien
- Removing hidden compartment before the sale of a vehicle

13.2 Personal Property

APPENDIX E

E. Legal Background Regarding Forfeiture of Personal Property

Forfeitures in General

A civil forfeiture is intended to confiscate property used in violation of the law or acquired in violation of the law. It can be pursued against property owned by someone other than the person who used it to violate the law. In contrast, a criminal forfeiture is imposed on a wrongdoer as part of his/her punishment following his /her conviction.

The procedures involved in the two types of forfeiture are very different. However, the result of either a civil or criminal forfeiture is the transfer of rights, title, and interests in the property to the United States.

- The purpose of civil forfeiture is to confiscate property used in violation of the law and to remove the profits of illegal conduct from the wrongdoer. The threat of forfeiture encourages property owners to take care in managing their property and ensures that they will not permit that property to be used for illegal purposes. Civil forfeiture can be pursued directly against property even if there are no criminal charges brought against an individual or even after an individual has been convicted.
- The purpose of criminal law is to punish a wrongdoer, and the criminal forfeiture is imposed as part of that punishment following his/her conviction.

Civil Forfeiture Procedure

Because a civil forfeiture action is an in rem action brought against the property allegedly involved in criminal conduct, the first step in a civil forfeiture action is to gain jurisdiction over the property subject to forfeiture. Most civil forfeiture statutes incorporate by reference the procedures set forth in the United States Customs forfeiture statutes.¹⁸ The Customs statutes provide that property subject to forfeiture may be seized pursuant to a lawful warrant.¹⁹ Once seized, the property remains in the custody of the United States until the forfeiture action is concluded.²⁰

Under certain circumstances, civil forfeiture may occur without a judicial proceeding. Property may be subject to *forfeiture* in an administrative proceeding conducted by a Federal investigative agency. The authority to institute an *administrative forfeiture* proceeding by the investigative agency depends upon the value of the property, or upon the fact it was intended to be used to facilitate drug trafficking. This proceeding is referred to as an *administrative forfeiture*.

Administrative Forfeiture

The Administrative forfeiture process. *Administrative forfeiture* proceedings were

established as a means to keep uncontested forfeiture actions out of the courts. Therefore, it is a form of default *forfeiture*. Also, it provides an alternative administrative remedy for property owners who were not involved in drug trafficking, even though their property may have been used to facilitate such trafficking.

Currently, the United States may commence *administrative forfeiture* proceedings against property valued at \$500,000 or less, except real property of any value must be judicially forfeited. Additionally, money **in any amount** is subject to *administrative forfeiture*, as is any conveyance (vehicle, vessel, or aircraft) that was used to import, export, transport, or store illicit drugs.²¹

An *administrative forfeiture* proceeding begins with *publication of notice*.²² The United States is required to publish *notice* of the *seizure* and of intent to forfeit.²³ An unreasonable delay between the time property is seized and the time notice is provided to interested parties may be considered a denial of due process.²⁴ Further, there is a statutory provision covering vehicles, vessels, and aircraft, 21 U.S.C. § 888, which the courts have interpreted as requiring that *notice* must be provided "at the earliest practicable opportunity after determining ownership."²⁵

The United States sends *notice* by mail²⁶ to all persons who may have an interest in the property. Also, it must publish *notice* of the *seizure* in a newspaper of general *circulation* in the judicial district in which the *seizure* was made.²⁷ Following the *publication* of the *notice*, anyone who has an interest in the seized property can elect to demand a judicial proceeding in Federal Court, or to seek administrative relief from the seizing Federal investigative agency.

Administrative relief from forfeiture. United States law provides for administrative relief from forfeitures "where the violations are incurred 'without willful negligence' or the intent to commit the offense."²⁸ A person seeking remission or mitigation must petition the Department of Justice for administrative relief.²⁹ The administrative relief can take the form of *remission* or *mitigation*. The relief granted is discretionary, and is not subject to judicial review, but is considered a matter of executive grace.³⁰ E2d 1540, 1543 (11th Cir. 1990). See *United States v. One 1987 Jeep Wrangler Auto*, 972 F.2d 472,479 (2nd Cir. 1992) (a claimant's election to proceed by *petition for remission or mitigation* binds that claimant to the administrative remedy); *Sarit*, 987 E2d at 17 (*the forfeiture statute precludes judicial review*); *Scarabin*, 919 E2d at 339 (the administrative denial of a *petition for remission or mitigation* is not subject to judicial review on the merits); *Willis*, 787 E2d at 1094 ("the remission proceeding is a matter of grace. . .").

Individuals who assert they have an interest in the seized property may file a *claim* to contest the forfeiture in Federal district court **and** a petition for remission.³¹ Most individuals, however, file **either a claim or a petition**. Under the regulations governing petitions for *remission* or *mitigation*³², the seizing agency has the responsibility to rule on petitions in administrative forfeitures³³ (when both a *claim* and a *petition* are filed), while the Criminal Division of the Department of Justice rules on petitions in Judicial forfeitures³⁴ (When both a *claim* and a *petition* are filed).

To remit the forfeiture is to return the property to the petitioner without any penalty. Generally, *remission* will be granted to a party whose property was used without his/her knowledge or negligence.³⁵ This includes financial institutions with a *security* interest in the property (*lien* or *mortgage*) and other innocent persons.

Mitigation simply means partial relief, usually conditioned upon the payment of a money penalty. *Mitigation* may be granted when the *remission* standards have not been met, but there are extenuating circumstances that justify some relief from the forfeiture.³⁶

Often, when *mitigation* of the forfeiture is granted, the property will be returned upon the payment of monetary penalty. *Mitigation* or *remission* may be granted if it is demonstrated that the *forfeiture* "was incurred without the willful negligence or without any intention on the part of the petitioner to violate the law."³⁷

Judicial Forfeiture

The judicial proceeding is normally initiated by the United States Attorney's Office in the Federal court for the judicial district in which the property was seized.³⁸ The judicial forfeiture action

begins when the United States files a pleading called a "verified complaint."³⁹ Generally, the complaint must contain: 1) a verification on oath by the Assistant United States Attorney prosecuting the *forfeiture* action attesting to the truth of the contents of the complaint; 2) a description of the property to be subject to *forfeiture*; 3) a statement that the property seized or to be seized is within the *jurisdiction* of the court; and 4) a statement of the facts of the offense justifying forfeiture. The statements in the complaint must be sufficiently detailed that anyone who wishes to contest the forfeiture will be able to file an answer responding to the complaint. Once the complaint is filed, the court issues a *warrant of arrest in rem* which gives the court *jurisdiction* to act on the *forfeiture*.⁴⁰ The property is placed in the custody of the United States Marshal

for that judicial district, who provides *notice* of the *forfeiture* action to all persons having an interest in the property.⁴¹ Any person who contests a judicial forfeiture is called a "claimant." Claimants are entitled to file an answer to the forfeiture complaint, to "discover"⁴² the United States' evidence and to demand a jury trial.⁴³

The burden of proof is on the United States to produce enough evidence to persuade the judge that *probable cause* exists to believe the seized property is forfeitable. *Probable cause* is "reasonable grounds for belief of [the] guilt [of the seized property] supported by less than *prima facie* proof but more than mere suspicion."⁴⁴ Once the United States demonstrates *probable cause*, the burden shifts to the claimant to show, by a preponderance of the evidence, that the property should not be forfeited.⁴⁵ Therefore, once the United States establishes probable cause for-forfeiture, as determined by the judge, the claimant to the property must produce some evidence in defense of the forfeiture of the property. If he/she does not, the judge must direct a verdict in favor of the United States.

Criminal Forfeiture

In contrast with civil forfeiture, a criminal forfeiture proceeding is part of the criminal prosecution. Because a criminal forfeiture action is in personam (against the person) it may not occur unless there is a conviction of the person charged with the underlying criminal activities. The Department of Justice has indicated that forfeiture counts should be included as part of the criminal case whenever practical instead of pursuing assets in a separate civil case.⁴⁶

Ancillary Hearings To Dispose of Third-Party Interests

The special verdict only forfeits the interest of the defendant. In order for the United States to have complete title to the property, it is necessary to resolve the interests that any third party may have in the property. This is done through *ancillary proceedings* following the criminal trial. These *ancillary proceedings* are similar to civil forfeiture proceedings, except they deal only with the ownership rights that third parties may assert to the forfeited property. After *notice* is published, any party asserting an interest in the property must *petition* the court for a hearing to adjudicate the validity of his/her interest in the property. The judge then conducts a hearing which is basically civil in nature. The petitioner must establish by a preponderance of the evidence that he/she is the legitimate owner of the property. Such ownership interest may include *liens* and mortgages on the forfeited property. After the hearing, the judge will issue a *final order of forfeiture* which will resolve and dispose of the interests of any third party.⁴⁷ This can include rejecting the third party's interest, or providing satisfaction of that interest.

Pretrial Seizure of Property Subject to Criminal Forfeiture

Under some circumstances, the United States may seek a restraining order or injunction to preserve the availability of the property upon the filing of the *indictment* or *information*.⁴⁸

Under other circumstances, before the *indictment* or *information* is filed, and after giving *notice* to the apparent property owner and announcing the opportunity for a hearing, the United States may

request such a *restraining order* or *injunction*. Under this alternative, the court will issue the order or injunction if it determines that there is a "substantial probability" that the property will be subject to forfeiture and that "failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture."⁴⁹ Such orders are effective for only 90 days unless extended by the court for good cause shown.

A third alternative provides that a pre-indictment temporary *restraining order* may be issued without *notice* and opportunity for a hearing if the United States demonstrates that there is "probable cause to believe the property would, in the event of conviction, be subject to forfeiture and that provision of notice will jeopardize the availability of the property for forfeiture."⁵⁰ This type of *restraining order* is valid for only 10 days unless good cause for an extension is demonstrated.

In addition to these pretrial options, the statutes covering drug *forfeitures*⁵¹ and money laundering⁵² provide that the United States may request the issuance of a *seizure warrant*, if the court determines that there is probable *cause* to believe the property will be forfeited, and if a *restraining order* may not be sufficient to assure the property's availability for forfeiture.

Substitute Assets

Under some forfeiture statutes, upon conviction and a special *verdict of forfeiture*, when

the property subject to forfeiture cannot be located, has been transferred to a third party, has been placed beyond the *jurisdiction* of the court, or has diminished in value or commingled with other property as a result of any act or omission of the defendant, the court has authority to "order the forfeiture of any other property of the defendant up to the value of any property" subject to forfeiture.⁵³



United States Marshals Service POLICY 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 (b) (7)(E) of market value for vehicles appraised at or under (b) (7)(E) for 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 (b) (7)(E) of the forfeited net equity in the personal property (b) (7)(E)

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 (b) (7)(E) of the net equity in the personal property (b) (7)(E) and (b) (7)(E) and
- dealing with other emergency situations beyond the expertise of the district office.

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 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 (b) (7)(E)
- 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

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.

Type of Personal Property	Minimum Percentage of Market Value
(b) (7)(E)	

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
AFO	<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> assistance, financial management, and personal property support. • Managing the national contracts for the storage and sale of aircraft and for appraisal and storage/disposal services for the Jewelry Program assets. • Coordinating responses to legal questions submitted by USMO with the appropriate legal office [AFMLS, USMS Office of General Counsel (OGC), <i>etc.</i>].
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.
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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.
 - 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 C.F.R. § 1316](#)
 - c. [28 C.F.R. § 50.111\(i\).](#)
 - d. [28 C.F.R. § 0.156.](#)

e. [28 C.F.R. § 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."
- 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,

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:

- 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
- (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 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.

- g. **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.
- 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 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 the to 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.
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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 *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?).

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

- i. **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

Item	Minimum Net Equity Value
(b) (7)(E)	

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
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<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 lien 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 may request that the AUSA document his/her decision.
A compelling law purpose mandates forfeiture.	Under DOJ policy, the AUSA must document this decision.
<i>Net equity</i> results are affected by ownership interests of apparent <i>innocent parties</i> .	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.	<p>The USMO advises the AUSA in the criminal case to:</p> <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.³⁶ 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 judicial <i>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

	<p>property is listed for 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

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
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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> .
Deputy U.S. Marshals	Without a <i>warrant</i> and where there is an immediate need to prevent its removal, may detain personal property in plain view until the appropriate investigative agency or the duty AUSA is contacted for possible <i>adoption</i> of a <i>forfeiture</i> 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 <i>forfeiture</i>, for placement into <i>official</i> 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 <ul style="list-style-type: none"> • Begins <i>administrative forfeiture</i> 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 <i>forfeiture</i>. 	Evidence

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:

- (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 an <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.I.

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 judicial <i>forfeiture</i> .
USAO	Transmits the <i>cost bond</i> to the USMO.
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.	The USMO: <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 U.S.C. § 983\(f\)](#). [**Note:** regulations implementing this provision of CAFRA have not yet been issued but are pending in DOJ.]

If	Then
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 <i>res</i> .
The owner requests the release of the property.	The owner must submit a substitute <i>res</i> to the investigative agency responsible for the <i>seizure</i> .
The investigative agency accepts the substitute <i>res</i> .	The agency notifies the USMO to release the seized property to the owner ⁶⁰ and gives the substituted <i>res</i> to the USMO.
The substitute <i>res</i> is a cashier's check, money order, or traveler's check.	The USMO deposits it in the SADF account. ⁶¹
The substitute <i>res</i> 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
<p>The AUSA commences a civil judicial <i>forfeiture</i> action.</p>	<p>The AUSA:</p> <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.
<p>Upon the receipt of the <i>warrant of arrest in rem</i>, the USMO must:</p> <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. 	<p>The USMO executes the <i>warrant of arrest in rem</i>.</p>
<p>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.</p>	<p>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 contemplated.</p>
<p>The AUSA is to coordinated <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</p>	<p>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.</p>

located). ⁶⁴	
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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>

	<p>action or named in the judicial forfeiture complaint.</p> <ul style="list-style-type: none"> • Examples of these items include currency, guns, cellular telephones, and electronic devices.
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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.	<p>The USMO must:</p> <ul style="list-style-type: none"> • Anticipate that violence or resistance may be encountered in executing the <i>warrant</i>. • 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.
Federal, State, or local law enforcement agents are to assist with executing a <i>warrant of arrest in rem</i> .	<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 warrant of arrest in rem.

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 C.F.R. § 9](#).

2. **Notice by certified mail:** Each identified *party-in-interest* must be separately 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, 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 U.S.C. § 1613(c).

	<ul style="list-style-type: none"> Returns property in its custody in accordance with terms of the <i>settlement agreement</i>.
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6. Criminal Forfeitures

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 and *indictment*.

Pre-indictment ⁷⁸	Post-indictment ⁷⁹
<p>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:</p> <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 the USMO following: <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 <i>forfeiture</i> and that provision of <i>notice</i> would jeopardize the availability of the property. 	<p>Before a <i>restraining order</i> can be issued, a full evidentiary hearing on the probable success of the United States may be required</p>

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
<p>A jury agrees on a <i>special verdict of forfeiture</i>.</p>	<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, they should commence within 30 days of the filing of a petition by a claimant.⁸⁴

g. **Final Orders of Forfeiture**⁸⁵

If	Then
<i>Ancillary proceedings</i> have been held and concluded.	A <i>final order of forfeiture</i> may be issued.
A <i>final order of forfeiture</i> has been issued.	The USMO may proceed to dispose of the property.
No petition has been received in response to <i>publication</i> and the deadline for claimants to file petitions has expired.	A <i>preliminary order of forfeiture</i> becomes a <i>final order of forfeiture</i> .

A <i>preliminary order of forfeiture</i> becomes a <i>final order of forfeiture</i> 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 <i>forfeiture</i> 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 <i>indictment</i> or <i>information</i> . 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 <i>indictment</i> or <i>information</i> .	The United States can only obtain the defendant's agreement that he/she will not contest a civil <i>forfeiture</i> of the personal property.
Third-party interests exist.	They cannot be extinguished. <i>Ancillary proceedings</i> 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 <i>forfeiture</i> of property named in an <i>indictment</i> or <i>information</i> . The receiving USMO must deposit such amount into the AFF pursuant to 19 U.S.C. § 1613(c). The USMO who has custody of the property shall return it upon notification that such amount has been deposited.
Installment payments ("partial	Under DOJ policy, ⁸⁹ the AFO

payments") in lieu of <i>forfeiture</i> of personal property are proposed.	must agree. 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.⁹⁰

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 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 evidence**⁹¹:

- 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

	<p>agency, or</p> <ul style="list-style-type: none"> 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).⁹²

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.⁹³

Substitute Custodian ⁹⁴	Conditions
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 <i>forfeiture</i>.⁹⁶
A state or local law enforcement agency	<p>May store seized property undergoing enforcement agency <i>forfeiture</i> 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.

	<ul style="list-style-type: none"> • Has executed a written custodial agreement. • Anticipates submitting an equitable sharing request that is supported by the investigative agency.
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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 <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
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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. (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 This section superseded 11/5/10.

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
 - (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.

<p>During the <i>inventory</i>, a previously unknown hidden compartment is discovered by USMO personnel or by contractor personnel.</p>	<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 compartment contains weapons, contraband, or the residue of contraband.
<p>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.</p>	<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
(b) (7)(E)	Indoor storage and routine maintenance.
(b) (7)(E)	Outdoor storage and routine maintenance.
(b) (7)(E)	Outdoor storage but no routine maintenance.

(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.
- 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.

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
Dry Storage: Aluminum, steel, and fiberglass hull vessels: <ul style="list-style-type: none"> • When dry storage is cost effective. • When the vessel can be removed from the water. 	The USMO should ensure that: <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

	<p>with the stern lower than the bow so that rain or other water accumulation will drain through the scuppers.</p> <ul style="list-style-type: none"> • 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 ^{(b) (7)(E)} [REDACTED] 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

	<p>investigative agency that the logs are considered part of the aircraft.</p> <ul style="list-style-type: none"> • Ensure the release of the logs to the USMO immediately upon a determination that they are no longer required as evidence.
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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
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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.
- (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 value¹²⁶ 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 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 (b) (7)(E) [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.)

(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.	<p>The USMO should make arrangements for storage at such sites that must:</p> <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.

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.

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 *appraisal*¹³¹ 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 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. • The AUSA in judicial cases.
Ammunition and explosive devices	Contact the local ATF office for advice and assistance.

- 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
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In administrative forfeiture cases	<p>Sales may be authorized by the investigative agency processing the <i>administrative forfeiture</i> under 19 U.S.C. § 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 U.S.C. § 9 2004, 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.

- 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:

(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 ¹⁴⁸	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 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 U.S.C. § 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 *appraisal*¹⁵³ 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 <i>forfeiture</i> 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.

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
<p>Lead investigative agency,¹⁶¹ if it previously designated the property for intended <i>official use</i> after <i>forfeiture</i>. (This may be done in CATS.)</p>	<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: <ul style="list-style-type: none"> - Provides documentation that its fleet management authority has approved the placing of such a vehicle into official use. - 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>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

A component of DOJ, including USMS. ¹⁶⁵	<p>official use.</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: <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.
 - 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.

- 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 (b) (7)(E) 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 (b) (7)(E) 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 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
<i>Reserve auction</i>	(b) (7)(E)
<i>Auction without reserve</i>	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

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 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</p>

	broker are: <ul style="list-style-type: none"> • Commissions are usually higher than expenses related to other methods (e.g., <i>auctions</i>). • The time period until the sale is completed is usually longer than for other sales methods.
Consignee	A consignee must agree in writing to accept the 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 (b) (7)(E) 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.

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
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	<p>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:</p> <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	<p>Sale by auction only if the vehicle can be modified to be compliant with U.S. vehicle standards.</p> <ul style="list-style-type: none"> • If the vehicle's net equity after deducting the estimated costs is reduced by more than (b) (7)(E) then the vehicle should either be destroyed or sold for export only. • A PAR decision package may be submitted to request that modifications be made even if the costs (b) (7)(E) of the net equity if the USMO determines that sale as an operating vehicle will net more than \$7,500 after deducting all costs.

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 ^{(b) (7)(E)} of the vehicle's adjusted net-equity value.

When the removal/conversion costs are ^{(b) (7)(E)} 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 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 COTR.¹⁷⁹

(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 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 images¹⁸⁴ 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 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 <i>forfeiture</i>:</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 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	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

	feasible (i.e., the vehicle's <i>net equity</i> after deducting the estimated cost of removal is reduced by more than (b) (7)(E) and there is no <i>lien</i> .	submit a PAR decision package requesting AFO approval to have the hidden compartment removed and the vehicle sold even if removal costs exceed (b) (7)(E) of the <i>net equity</i> if the USMO determines that sale as an operating vehicle will net more than (b) (7)(E) 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 (b) (7)(E). 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.

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 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



United States Marshals Service POLICY DIRECTIVES

ASSET FORFEITURE

13.2 Valuation

- A. **Proponent:** Asset Forfeiture Division (AFD). Telephone: 202-307-9221, Fax: 202-307-5020.
- B. **Purpose:** To set standards for determining the value of assets targeted or subject to forfeiture.
- C. **Authority:** The Assistant Director (AD), AFD, has delegated authority via Policy Directive 13.1, *General Management*.
- D. **Policy:**
 - 1. A United States Marshals Service (USMS) value must be established for all assets.
 - 2. A value will be obtained after the asset has been entered into the Consolidated Asset Tracking System (CATS) and custody has been transferred to the USMS.
 - a. All values will be established by determining the asset "base value" (i.e., fair market value, liquidation value, clean loan value, etc.) for the respective asset category as detailed in the [Asset Forfeiture \(AF\) eManuals](#).
 - b. Values will be determined from various sources depending on asset category, to include, but not limited to online sources, certified/licensed appraisers, commercially accepted products (i.e., the National Automobile Dealers Association (NADA), Broker's Price Opinion), financial/stock/precious metal markets, and this policy. In certain circumstances, values will be determined through a combination of valuation products/sources (i.e., the adjustment of a NADA online value to account for vehicle damage and/or enhancements, the decrease of an aircraft value due to missing log books, etc.). Specific valuation sources for asset categories are outlined in the [AF eManuals](#).
 - 3. Unless responsibility has been delegated to a specific district office, all district offices will consult with the AFD to obtain a value for the following assets types:
 - a. Aircraft
 - b. Jewelry, art, antiques and collectibles (JAAC)

- c. Real property
 - d. Businesses
 - e. Complex assets
 - f. Financial instruments
4. A value of \$1.00 will be entered into CATS for any assets listed below that will be destroyed upon forfeiture and its destruction will not generate any proceeds, regardless of forfeiture status (pending or forfeited). This applies to the following property categories:
- a. Weapons/Firearms
 - b. Chemicals
 - c. Pharmaceuticals
 - d. Electronic Equipment
 - e. Ammunition
 - f. Grow Equipment
5. Exceptions to this \$1.00 value policy apply to assets:
- a. Suitable for sale or placed into official use;
 - b. Asset value is requested by the Investigative Agency (IA); or
 - c. Asset value is requested by United States Attorney's Office (USAO).
6. The application of this \$1.00 value policy to assets outside of the above categories must be approved via a Policy Authorization Review (PAR).
7. For assets clearly worth less than \$1,000.00 a value can be established by the asset forfeiture personnel in control of the asset. However, the justification in determining the specific value must be documented in the official asset case file.
8. Timelines for establishing asset values for the different asset categories are detailed in the associated [AF eManuals](#); however, regardless of asset category, all values must be entered into CATS within 5 business days of receiving/determining asset value documentation.
9. Valuation must occur on an annual basis when:
- a. The asset storage location and/or storage rate is determined by the asset value (e.g., vehicle storage contract where the daily rate of storage and level of maintenance is contractually tied to the vehicle's value).

- b. The asset is being disposed of and the most recent value documentation is more than one year old, or if market conditions have significantly changed since the initial value was established (e.g., gold prices, real estate market conditions, etc.).
- c. The annual valuation requirement does not preclude the USMS from updating asset valuations more frequently based on program needs.

E. Procedures: Procedures for obtaining and updating valuations on specific asset types are located in the [AF eManuals](#) available on the AFD website and are incorporated into this policy by reference.

F. Definitions:

1. **Appraisal:** A valuation of property by the estimate of a licensed/certified expert.
2. **Base Value:** An asset specific standard, determined by the AFD, that establishes the value category (e.g., fair market value, liquidation value, clean loan value, etc.) to be used when valuing assets.
3. **Broker's price opinion:** The estimated value of a property as determined by a real estate broker or other qualified individual or firm. A broker's price opinion is based on the characteristics of the property being considered.
4. **Complex Assets:** Operating businesses, commercial real estate, and financial instruments (e.g., marketable and non-marketable securities, interests in partnerships, insurance policies, etc.).
5. **Investigative agency (IA):** A Department of Justice (DOJ) law enforcement agency (Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI)), or other federal agency that participates in the DOJ Asset Forfeiture Program, which is responsible for investigating the forfeiture action.
6. **Jewelry, Art, Antiques and Collectibles (JAAC):** Jewelry, art, antiques, and collectible assets, including but not limited to, watches, colored stones and gems, collector postage stamps and currency, numismatic coins, precious metals (e.g., bars, ingots, bolts, etc.), paintings, prints, drawings, and sculptures.

G. Cancellation: Supersedes USMS Policy Directive 13.2, *Personal Property* and USMS Policy Directive 13.3, *Real Property*.

H. Authorization and Date of Approval:

By Order of:

 / S /
John F. Clark
Director
U.S. Marshals Service

Effective Date:

11/05/2010



ASSET FORFEITURE

[| Appendix A, Definitions](#) | [Appendix B, Acronyms](#) | [Appendix C, Forfeiture Statutes](#) | [Appendix D, Policy Authorization Review Decisions](#) | [Appendix E, Legal Background](#) | [Appendix F, Interest Schedule](#) | [Appendix G, Attachments to Real Property Manual](#) |

13.3 Real Property

A. SCOPE

1. **Background:** This section describes the policies and procedures for the management and disposal of real property subject to forfeiture. It is intended to guide all U.S. Marshals Service (USMS) personnel involved in the asset forfeiture program (including employees of district U.S. Marshal Offices [USMOs]) and provide information regarding the roles of the U.S. Attorney's Office (USAO) and the investigative agencies in the forfeiture process.

B. PERFORMANCE MANAGEMENT

1. **Program Goals:** The objectives of the program are as follows:
 - a. Monitor real property subject to forfeiture to ensure its security and availability upon forfeiture.
 - b. Maintain the value of real property while in custody.
 - c. Through commercial sales, dispose of the real property following forfeiture within the time periods called for in the performance standards.
 - d. Achieve maximum sales revenue consistent with the law enforcement objectives of the program.
 - e. Transfer or release real property that is forfeited to an innocent party or to a lienholder.
 - f. Transfer real property to a Federal, State, or local agency when such transfer is authorized by the Attorney General.
 - g. Transfer real property to private entities through Department of Justice-sanctioned programs.
2. **Delivery Standards:** All real property is to be sold at no less than (b) (7)(E) of the appraised market value, except when approved through a Policy Authorization

Review decision package, and disposed of within 12 months following its availability for sale.

Generally, real property will be available for sale when the USMO receives a civil order of forfeiture, or a final order of forfeiture in a criminal case. However, title issues or contamination of real property may make the property unavailable for sale even after receipt by the USMO of the civil order of forfeiture or the final order of forfeiture. In such instances, the real property will be disposed of within 12 months of the resolution of the pertinent issues.

3. **USMS Responsibilities:** The following table lists the responsibilities of the Asset Forfeiture Office (AFO) and the 94 district USMOs:

Office	Is Responsible For
AFO	Overseeing the asset forfeiture program
AFO	Providing policy and procedure to govern the pre-seizure, posting, seizure, acceptance, management, and disposal of real property
AFO	Providing asset forfeiture assistance, technical advice, financial management assistance, contracting assistance, and property support to USMOs.
USMOs and AFO	Coordinating with USAOs, seizing agencies, vendors, subcontractors
USMOs	Coordinating, accepting, managing, and disposing of all property.

4. **Policy Authorization Review (PAR)¹ Decision Procedure:** This decision procedure provides a mechanism through which USMOs can obtain approval of a management or disposal action from the AFO. It supercedes the Significant Seized Property Decisions procedure [also referred to as Significant Property Decisions in the Department of Justice (DOJ) *Asset Forfeiture Policy Manual* (AFPM)]. When a PAR is required, it is prepared by the USMO and submitted to the AFO for approval. Except in emergencies that are beyond the control of a USMO, PARs are to be submitted to the AFO at least 7 working days before a response is required. In emergencies, the AFO should be notified immediately by telephone or e-mail.

Contents of PAR². Each PAR decision package will contain the following:

- a. Relevant case and net equity information, including:
 - (1) The Consolidated Asset Tracking System (CATS) number and the case number
 - (2) A description of the real property, including the legal description and address
 - (3) The type of forfeiture (civil or criminal)
 - (4) Relevant court orders that have been issued in the forfeiture case

- (5) Date of posting or seizure
 - (6) Date of forfeiture or an estimate of the time until forfeiture
 - (7) Appraisal date
 - (8) Market value appraisals
 - (9) Outstanding liens
 - (10) USMS expenses
 - (11) Net equity
 - (12) Offer(s), if any
 - (13) Income, if any
 - (14) Equitable sharing information
 - (15) Recent publicity concerning the property
 - (16) The name and telephone number of the Assistant U.S. Attorney (AUSA) responsible for the forfeiture action and the identity of the investigative agency involved
- b. A clear statement of the approval that is required of the AFO
 - c. Any additional information regarding the case that may be useful to the decision making process (e.g., the condition of the real property, its type, whether it is occupied)
 - d. The signature of the U.S. Marshal or the Chief Deputy U.S. Marshal

C. BACKGROUND

1. **Purpose of Forfeiture of Real Property:** The primary purpose of forfeiture is to confiscate real property that was used to violate the law or to remove the profits of illegal activity that may have been invested in real property. The forfeiture action may be civil in nature, may be directed against the property, or may be part of a criminal prosecution.
2. **Regulations that Govern the Forfeiture of Assets**
 - a. [21 Code of Federal Regulations § 1316 et seq](#)
 - b. [28 Code of Federal Regulations § 0.111\(i\)](#)
 - c. [28 Code of Federal Regulations § 0.156](#)

d. [28 Code of Federal Regulations Part 9](#).

3. **Policies Governing DOJ Asset Forfeiture Program**

- a. [Attorney General's Guidelines on Seized and Forfeited Property \(1990\)](#)
- b. [A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies \(1994\)](#)
- c. [Asset Forfeiture Policy Manual \(AFPM\) \(July 1996\)](#) published by the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, DOJ
- d. [Criminal Division Policy Directive 97-1 \(March 17, 1997\)](#)

4. **Investigative Agencies that Support Forfeiture Actions Against Real Property**

- a. Drug Enforcement Administration
- b. Federal Bureau of Investigation
- c. Bureau of Alcohol, Tobacco and Firearms
- d. Food and Drug Administration
- e. U.S. Park Police
- f. U.S. Postal Inspection Service

D. PROCEDURES

1. PRE-SEIZURE PLANNING

- a. **Description:** Pre-seizure planning is critical both in civil forfeitures and in criminal prosecutions that include forfeiture counts against the defendants' interests in real property. Pre-seizure planning describes the planning process prior to the United States undertaking forfeiture action against property and decisions that must be made before forfeiture may occur.
- b. **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 the AUSA prosecuting the case, representatives of the investigative agency and representatives of the USMO.

The relevant issues must be addressed and resolved by this team before the decision is made to begin forfeiture proceedings.

- c. **Conditions for Seizure:** Generally, real property will not be seized prior to forfeiture. DOJ policy (based on the Supreme Court's decision in *United States v. James Daniel Good Real Property*)³ provides that, in general, forfeiture actions commence with the posting of the real property rather than with its seizure.

Regardless of this provision, the same considerations applicable to pre-seizure planning of other types of property exist for real property, even though the actual seizure of the real property may not take place until after forfeiture.

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

- (1) Determine if the net equity in the real property targeted for forfeiture meets DOJ value thresholds.
- (2) Determine the compelling law enforcement purpose that 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 real property.
- (5) Determine whether the real property is contaminated with hazardous material.
- (6) Determine alternatives to forfeiture that may be considered.

- e. **DOJ Pre-seizure Planning Policy Guidelines:**⁴ These guidelines are intended to encourage practices that minimize or avoid unnecessarily difficult or insurmountable problems in the management and disposition of seized and forfeited assets. In particular, they are meant to ensure that the USMO is consulted prior to the seizure (or, in the case of real property, prior to the posting) and forfeiture of assets. These guidelines direct that the USMO should be advised promptly when real property forfeitures are included in the following:

- (1) Filing of civil forfeiture complaints
- (2) Return of indictments
- (3) Issuing of informations

- f. **USAO'S Responsibilities under DOJ Policy:**⁵ 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 forfeiture actions against real property (including the adoption of state or local cases involving real property by a federal investigative agency).

Pre-seizure conferences should include the responsible AUSA (and, if appropriate, the AUSA in charge of related criminal matters), the investigative agency case agent(s), and appropriate USMO representatives (including a representative from the district where the real property is located, if different from the district in which the action is to be filed).

- g. **Proper Planning under DOJ Policy:** Failure of the AUSA, of the investigating agency, or of the USMO to ensure that critical financial and property management issues are addressed prior to posting or seizing real property can result in ill-advised forfeiture actions when comparing the cost to forfeit, manage, and dispose of the real property to the law enforcement impact achieved.

It is critical that the USMO document all pre-seizure planning activities in its property files and that failure by any member of the team to support pre-seizure planning is also documented. USMOs have several functions early on in the forfeiture process:

- (1) Involvement in the pre-seizure process to ensure that critical financial and property management issues are addressed prior to seizure or posting of real property.
- (2) Authority to disagree with decisions made by the USAO or by the investigating agency regarding the institution of a forfeiture action against real property.
- (3) Documenting failures to include USMO representatives in pre-seizure planning. The AFO is to be advised if such failures continue.

When a dispute over whether a forfeiture action should be taken against certain property cannot be settled between agencies, alternatives to forfeiture should be pursued until the issue is resolved. Matters that cannot be resolved at the district level are to be referred to the AFO in a PAR decision package. If necessary, the AFO will refer unresolved disputes to AFMLS.

- h. **Considerations in Pre-seizure Planning**

- (1) **Is the forfeiture action to be civil or criminal?** The AUSA must decide whether to seek the civil or criminal forfeiture of the real property.

In the past, civil forfeiture actions commenced with the seizure of the real property. As a result of the Supreme Court's decision in *United States v. James Daniel Good Real Property*, most civil forfeiture actions against real property start with the posting of the property instead of its seizure.⁶

Usually, criminal prosecutions do not result in the seizure of property until after a defendant is convicted. However, the court may issue restraining orders or other orders relating to the property or its financial management that may have to be carried out by the USMO.

- (2) **What interest is to be forfeited?** USAO representatives, the investigative agency, and the USMO must determine the full scope of forfeiture action (i.e., what interests in which specific real property is to be forfeited). In addition to the real property, individual personal property, contents, and related assets must be identified as included in or excluded from the forfeiture action.⁷
- (3) **Are there ongoing businesses?** The USMO must notify the AFO when an ongoing business is located on real property subject to forfeiture.
- (4) **Are there security concerns?**⁸ The safety of law enforcement personnel who may be required to approach or enter real property is of primary importance.

Information that may affect the security of such personnel must be addressed during pre-seizure planning meetings. The USMO will seek information from the investigative agency and from the AUSA regarding the occupants of the real property, as well as other information, such as the possibility of weapons on the premises, dangerous animals, alarms, hazardous materials or illegal activity.

The information relevant to security is to be noted on the pre-seizure questionnaire⁹ and presented to all participants in a posting or seizure operation. Conditions related to personnel required to execute the posting or seizure include the following:

- (a) The number of individuals required to execute the posting or seizure and the role of each participant must be determined and discussed in advance.
- (b) If 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.

- (c) If 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.
 - (d) When no prior contact is authorized with State and local law enforcement agencies, the USMO will notify the appropriate local law enforcement agency after the posting has been executed and, in the case of seizure, when the property has been secured.
 - (e) If additional support personnel or assistance in developing the operational plan will be needed, the USMO may request support from the AFO.
- (5) **Are there management and disposal issues?** Because the USMO is responsible for the management and disposition of assets, its input into logistical problems, management problems, and potential marketing difficulties must be considered prior to posting or seizing real property. The USMO must document in the real property files any such concerns that are raised during pre-seizure planning.
- (6) **Has a title report¹⁰ been obtained?** Immediately upon targeting real property—including commercial real property—for forfeiture, a preliminary title report (also known as an owners and encumbrances or O&E report) must be obtained. If a title report cannot be obtained prior to posting, it must be obtained immediately afterward.
- (7) **What happens when a compelling law enforcement purpose is cited as the basis to forfeit property with insufficient net equity to meet DOJ guidelines (e.g., (b) (7)(E) [REDACTED] (b) (7)(E) [REDACTED] (b) (7)(E) [REDACTED])?** Such a purpose includes taking forfeiture action against real property that is actively being used to violate the law (e.g., as a crack house or a clandestine laboratory).

According to DOJ policy, in the case of actions against real property that has insufficient net equity, the AUSA and/or investigative agency personnel are responsible for providing a statement regarding the compelling law enforcement purpose for forfeiture to the USMO.

- (a) The statement provided by the AUSA will be retained in the case file.
- (b) If a statement is not provided, the USMO is to notify the AUSA in writing and request a statement of the purpose from the AUSA.
- (c) A copy of the written request to the AUSA is to be sent to the AFO.
- (d) If the AUSA does not provide a statement, the USMO will provide

one for the file, detailing the AUSA's orally stated reasons for the forfeiture action or indicating that the AUSA failed to give his/her reasons. A copy of this memorandum should be sent to the AUSA.

(8) **How is forfeiture action executed?** In a civil forfeiture, the AUSA is responsible for preparing the documents that are to be posted by the USMO. Also, in either a criminal or civil forfeiture, the AUSA is responsible for determining the type and content of the restraining order or seizure order and obtaining the court order or other authority to enter or cross private property

i. **Pre-seizure Questionnaire:** The questionnaire¹³ is to be completed by the USMO even when real property is being posted rather than seized. The USMO representative should review the questionnaire, which outlines critical issues that the USMO should address, prior to the pre-seizure planning meeting and complete as much of it as possible based upon existing information.

j. **Assessment of the Financial Impact of Forfeiture Action:** DOJ policy requires that if the financial assessment indicates that the aggregate of all liens, mortgages, and management and disposal costs approaches or exceeds the anticipated proceeds from the sale of the property, or if the property is decaying or presents difficult management issues, the USAO must:

- (1) Determine not to go forward with the forfeiture action.
- (2) If forfeiture action has commenced, take action to dismiss the forfeiture action and to void any expedited settlement¹⁴ agreements (if any have been entered into).
- (3) Acknowledge the potential loss and document the circumstances that warrant the continuation of the forfeiture action.¹⁵

k. **Issues to Be Analyzed to by the USMO During Pre-seizure Planning**

(1) **Adequate Title Search Conducted Prior to the Decision to Begin Forfeiture Action Against Real Property:** In cases in which information relevant to titles and liens cannot be acquired without compromising the investigation, this material may be considered after the property has been posted or seized.

The USMO may request that the investigative agency involved in the forfeiture action provide copies of O&E reports or other title reports that it might have obtained.

(2) **A drive-by appraisal on real property targeted for forfeiture should be obtained whenever doing so will not compromise**

an ongoing investigation.¹⁶

A factor in determining appraised value is the nature of the real property being held (e.g., real property that supports an ongoing business would be valued higher than vacant land). The value of real property initially should be appraised at its highest and best use.

- l. Use of Net Equity Worksheets¹⁷ to Calculate and Document Net Equity:** Key categories to include in the calculations are appraised value of the property, identified liens, and anticipated expenses.

- m. Estimated Expenses:** For both real property in custody or not in custody, the following items should be calculated on net equity worksheets:
 - (1) Management costs for a 12-month period (e.g., repairs, maintenance, management fees, security, homeowner, condominium fees, utilities, and water and sewer taxes). Property in custody may have higher management costs than property not in custody.

 - (2) Liens and other encumbrances.

 - (3) Taxes up through final date of forfeiture.¹⁸
 - Real property taxes, plus interest and penalties, may continue to accrue during the pendency of the forfeiture action if they are not paid by the current owner.
 - These taxes will represent a tax lien against the property that will have to be paid before the forfeited property can be sold.
 - These taxes will continue to erode the equity in the property the longer it takes to obtain final forfeiture. For this reason it is necessary to continue to monitor the status of the outstanding tax, and if necessary, to advise the AUSA responsible for the forfeiture action that it may be appropriate to dismiss the forfeiture action in favor of action by the local taxing authority.

 - (4) Cost of the title reports (initial and updated).

 - (5) Cost of appraisal(s).

 - (6) Estimated costs of the site assessment, decontamination, and cleanup and abatement, if hazardous material was located, stored, or disposed of on the property. (A statement regarding potential

liability should be attached to the net equity worksheet for inclusion with the PAR decision package).

(7) Published notice costs.

(8) Estimated disposal costs, including sales commissions and seller's closing cost.

Ownership of the Property: The name of the reported owner(s) is to be included on the net equity worksheet. Other ownership interests may affect the net equity or may be impediments to the forfeiture action. The AUSA should be informed whenever such interests are identified. They include joint ownership interests, shared ownership interests, ownership interests in a corporation, ownership interests of apparent innocent parties and existence of a fugitive owner¹⁹

- n. **Liens and Other Encumbrances:** When calculating net equity, the USMO shall consider all liens and other encumbrances as valid. After forfeiture, the AUSA must determine the validity of each lien and include the resolution of the lien's status in the court order declaring the forfeiture.

Item	Conditions
Mortgage or deed of trust	<p>If information regarding the outstanding balance is not readily available, the date of the mortgage or deed of trust and the estimated amount paid may be used to estimate the outstanding amount.</p> <p>Unless there is information that the mortgage or deed of trust is delinquent, assume that it is current. Use [mortgage101.com] to compute the estimated outstanding balance given the date the mortgage or deed of trust was entered into and the number of years and months that have elapsed.</p>
Mechanic's or materialman's lien	Unpaid work and/or materials in erecting or repairing a structure may result in a lien on the property.
Judgment	An uncollected monetary judgment against a property owner in local, State, or Federal court may result in a lien on the property to enforce the judgment.
Tax liens	See "Internal Revenue Service liens" below

Use of Asset Forfeiture Fund: Prior to forfeiture, USMOs are not authorized to use the Assets Forfeiture Fund to pay mortgages or liens.

- o. **Minimum Net Equity Required for Forfeiture Against Real Property (Excluding Operating Commercial Enterprises):** The minimum amount is (b) (7)(E) Individual judicial districts may have higher minimum values. These minimum values apply to both forfeiture actions arising from federal investigations and those generated by state or local law enforcement agencies.

Worksheet Results: Analysis of results should be based on the following guidelines:

If	Then
The initial determination of net equity is less than the minimum value limitations.	The AUSA must be notified. A copy of the worksheet is to be provided to the AUSA to advise him/her that the minimum equity value has not been met.
A compelling law enforcement purpose mandates forfeiture of real property with insufficient net equity.	The AUSA must document this decision. The final decision to seize a property of lesser value rests with the AUSA.

- p. **Bail Collateral:** The property owner cannot use real property subject to forfeiture as collateral for bail.

If	Then
There are criminal charges against the property owner (as determined by the civil case AUSA's verifying the situation with the investigating agency).	USMO advises criminal case AUSA to request a hearing during which the defendant must identify other assets that may be used for bail collateral. The property owner cannot use seized/posted property as collateral for bail.
A defendant identifies property subject to forfeiture for bail collateral.	The criminal case AUSA may petition the court to prevent its use.

- q. **Forfeiture of Rental and Commercial Property:** Management issues can arise even if the property is merely going to be posted and not seized. For example, security deposits and rents may be held by or paid to the owner of record during the period of the forfeiture action. Under the terms of the forfeiture, these moneys may subsequently belong to the United States. It may be necessary, in coordination with the AUSA, to freeze or restrain the management accounts of the owner(s) or property manager(s).

- r. **Internal Revenue Service (IRS) Liens:** Generally, net proceeds from the sale of forfeited property will not be available to pay IRS tax liens.²⁰ The IRS is not required to release a pre-existing tax lien for forfeiture action to be undertaken.

If	Then
An IRS tax lien is served against real property that has been posted or seized.	The USMO will accept service and immediately notify the AUSA.
The property is forfeited.	The AUSA will address the IRS lien in the forfeiture order.
The forfeiture action is dismissed.	The USAO should advise the IRS that it can proceed against the real property. The local IRS office, Special Procedures Branch, may be contacted for assistance in dealing with an IRS tax lien.

- s. **Criteria for Determining Forfeiture Action on Contaminated Real Property²¹ (Including Property Built Prior to 1978 that May Have Lead-based Paint):** DOJ policy is applicable in all cases regardless of the type or source of the hazardous substance, including:

- (1) (b) (7)(E) net equity for contaminated or potentially contaminated real property (but excluding pre-1978 property that may have lead-based paint).
- (2) Environmental assessment may be contracted by the USMO, upon request of the USAO, to determine whether to proceed with a forfeiture action. The USAO may make such a request, and the assessment will be paid as a property management expense.²²
- (3) The marketability and the determination of net equity should be re-evaluated once the contamination has been cleaned or removed.

Steps to Forfeiture Action: The USMO will report all contaminated real property identified for forfeiture to the AFO before any forfeiture action is taken and prepare a PAR decision package with the assistance of the AUSA for approval from the AFO.

In addition, the PAR decision package must include a detailed description of the property, including whether it is occupied, and a detailed statement of the law enforcement purpose to be served and the reasons why it cannot be accomplished by alternative means.

Considerations for Not Pursuing Forfeiture Action Against Contaminated Property: When expectations to this general policy are

considered, the USAO in the district where the forfeiture action against the property is being pursued, and in consultation with the seizing agency and the USMO, must justify such action.

Real property should not be forfeited when there is reason to believe the property is substantially contaminated with hazardous substances and this contamination would render the property unmarketable.

If such a reason exists, alternatives to forfeiture must be explored.

Alternatives to Forfeiture of Contaminated Real Property: In addition to alternatives to forfeiture for real property, listed in the next section, options regarding contaminated real property include:

- (1) Moving for dismissal of forfeiture and removing the lis pendens, specifying contamination as the reason for such action.
- (2) Filing a notice of the contamination in the county deed records, if allowable under state law.
- (3) Notifying appropriate federal, state or local environmental, public health or safety agencies so they can proceed with condemnation or other action.
- (4) Taking action against the property and/or the persons responsible for contaminating it under environmental laws.

Pre-1978 Property that may Have Lead-based Paint

Contamination:²³ Forfeiture action is not to be taken against property built prior to 1978 (or an earlier date as may be applicable in a particular district) in the absence of a compelling law enforcement purpose and only after pre-seizure planning.²⁴

Unless a certified lead-based paint inspector²⁵ confirms that there is no lead-based contamination, the property will be treated as contaminated real property.

- (1) Pre-1978 residential property identified for seizure/forfeiture.
 - (a) The interim policy issued on August 16, 1996, under which the USMS was not to take custody of such residential property, is rescinded. There is no longer any limitation regarding forfeiture actions on residential property built between January 1, 1960 and December 31, 1977. Submission of a PAR decision package to AFO is no longer required.
 - (b) Each district office will notify the AFO, utilizing the PAR decision procedure, upon being advised that residential real property built before January 1, 1960, is targeted for

forfeiture. The district office shall take no action to post or take such property into custody until approval is received from the AFO.

- (c) If pre-1978 residential property is taken into custody, either before or after forfeiture.
 - if unoccupied, it shall not be leased out;
 - if occupied, the occupants must be provided the information set forth in this directive.

(2) Sale of pre-1978 residential property

- (a) Such property may be marketed and sold, using any USMS process, so long as the sale is completed within 270 days of the date of the final order of forfeiture.
 - The information set forth in this directive shall be provided to all potential purchasers.
 - Any contract of sale will provide that the purchaser shall have 10 days to undertake any inspection for lead-based paint, and, if such lead based paint is found, may (but is not required to) cancel the contract of sale.
- (b) If residential property that was built between January 1, 1960, and December 31, 1977, cannot be sold within 270 days of the final order of forfeiture, then
 - a lead-based paint inspection and risk assessment must be conducted and completed before the closing of the sale of the property; the results thereof must be made available to the prospective purchaser.

No abatement action is necessary.

- (c) If residential property that was built before January 1, 1960, cannot be sold with 270 days of the date of the final order of forfeiture, then
 - a lead-based paint inspection and risk assessment must be conducted and completed before the closing of the sale of the property;
 - The results thereof must be made available to the prospective purchaser,

- all identified lead-based paint hazards must be abated.

(d) If the abatement cannot be completed for pre-1960 property before the closing of the sale, then the USMS continues to be responsible for assuring that the abatement is completed before the property is occupied. This continued responsibility is applicable to the transfer of such residential real property under the "Weed and Seed" initiative or other transfer authorities.

(3) Lead-based paint inspection, risk assessment and abatement of pre-1978 residential property

The HUD regulations adopt the EPA standards for lead-based paint inspection, risk assessment and abatement when those actions are required.

(a) Effective August 29, 1999, all lead-based paint inspection, risk assessment and abatement work must be performed by individuals or firms that are certified by EPA.

(b) HUD has established two sources of information to locate such certified individuals and firms.

- Internet site www.leadlisting.org
- Telephone number 1-888-LEADLIST

(c) When USMS district offices require lead-based paint inspection, risk assessment or abatement services, the above-listed sources of information should be utilized to identify potential service providers.

t. **Alternatives to Forfeiture of Real Property:** The decision regarding how best to proceed in lieu of forfeiture rests with the USAO. However, the USMO will review these alternatives with the AUSA and coordinate action, as appropriate, with other interested parties.

Legal Action by State or Local Authorities: In certain high-crime areas, low-value real property (e.g., "crack houses") may be taken from the violator by coordinating with local authorities to have the building condemned on the basis of health and sanitary code violations or public nuisance.

Seizure by the State or Local Taxing Authority: When an owner is delinquent on state or local taxes, the real property may be seized for back taxes by the taxing authority.

Foreclosure by a Lienholder: Mortgage contracts commonly contain acceleration provisions that make the mortgage immediately due if the owner allows the property to be used for illegal activities. The dismissal of any forfeiture action in favor of foreclosure should be coordinated with the mortgagor to ensure that the property is not redeemed from forfeiture by a party whose interest is subject to forfeiture.

Posting of Substitute Res: When the forfeiture is based upon the purchase of the real property with proceeds from criminal activity, the owner may post a substitute res in lieu of forfeiture of the asset.

Allowance of Sale and Seizure Out of Escrow: This type of sale is permissible under the following conditions:

- (1) If pre-seizure planning or posting reveals that the real property is listed for sale, the AUSA should allow the sale to proceed and seize the proceeds rather than the property.
- (2) Under these circumstances, the sale continues normally, except that the USMO executes a warrant of arrest *in rem* against the sale proceeds before they are transferred from the escrow account to the seller.
- (3) This alternative is available only when the relevant statute authorizes the forfeiture of "proceeds" traceable to the property originally subject to forfeiture.

u. **Historically Significant Properties:**²⁶ There are restrictions on the disposition of historically significant real property:²⁷

- (1) The USMO will notify the AFO immediately upon discovering that real property might be historically significant. (Historical markers or plaques are obvious signals).
- (2) Before taking any action to dispose of such a property following forfeiture, the USMO will submit a PAR decision package to the AFO seeking approval of the disposal action.

v. **Criminal Prosecutions that Include Real Property Forfeitures:**
Factors in pre-seizure planning include the following:

- (1) Completion of the same pre-seizure questionnaire and worksheets that are used for civil forfeiture action.
- (2) Inclusion of a forfeiture count in the indictment or information charging the defendant before any property can be subject to

forfeiture as part of a criminal prosecution.

- (3) Determination of joint or shared ownership interests at the time of indictment because such ownership interests can impede the property's sale after forfeiture.
- (4) Inclusion of the impact of joint ownership in determining net equity (e.g., innocent spouses' ownership interest).

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

The AUSA must consult with the USMO before submitting to the court proposed orders that impose any restraint, seizure, property management, or financial management relating to the real property named in the indictment or information. If the AUSA fails to do so, the USMO should bring this requirement to his/her attention. The AFO should be notified regarding consultation failures that cannot be resolved at the district level.

2. MONITORING REAL PROPERTY SUBJECT TO FORFEITURE

- a. **USMO Responsibility after the Forfeiture Action Has Begun.** The USMO has the following responsibilities:

- (1) Monitoring the condition of real property that has been posted in a civil forfeiture action.

- (a) It may consist of monthly drive-by inspections or other inspections as allowed in court orders issued in the forfeiture action.

- (b) It will not consist of entering posted real property without court authorization.

- (2) Monitoring the condition of real property in criminal forfeiture action after a *lis pendens* is filed on property named in an indictment or information.

- b. **USMO Responsibility for Appraisal If One Has Not Been Obtained:**²⁸ If an appraisal has not been obtained, the USMO shall:

Civil Forfeiture	Criminal Forfeiture
Order a drive-by appraisal no later than 10 working days after the posting of the real property.	Obtain a drive-by appraisal within 10 days of being notified of the property's inclusion in an indictment or information.

c. **USMO Responsibility Regarding Net Equity**²⁹

- (1) Obtain, if possible, the payoff amount for all mortgages and liens.
- (2) Recalculate the net equity if market conditions or other factors have caused a significant change in the value of the property or when the annual appraisal is due.
- (3) Monitor the net equity so that timely action can be taken if the net equity diminishes. Some of the reasons that net equity declines are a decline in market value, an increase in maintenance expenses, accrual of interest on liens, and the discovery of previously unknown liens.
- (4) Advise the AUSA to consider the following alternatives if the net equity diminishes:
 - (a) Seek an interlocutory sale, either with the concurrence of the property owner(s) or by court order.
 - (b) Move to dismiss the case if the property has not yet been forfeited.

d. **Foreclosure Actions Against Real Property Subject to Forfeiture:**

Foreclosure may be undertaken by a lienholder when a mortgage is in arrears. State laws vary regarding the terms under which a lienholder may foreclose and the time period allowed for redemption.

If This Situation Exists	USMO Will
Liens exist against real property	Arrange for the mortgagor to advise the USMO immediately if the mortgage is in arrears. Refer inquiries or notifications from lien holders to the AUSA.
The mortgage is in arrears.	Advise the AUSA to notify the court and seek the necessary protective order to preserve the U.S. interest in the real property.
After the property has been forfeited, the United States is notified that the property is being subjected to foreclosure proceedings.	Advise the AUSA to seek to remove the foreclosure action to the U.S. District Court.
The foreclosure action cannot be removed to the U.S. District Court.	Submit a PAR decision package requesting approval to redeem the property from foreclosure using moneys from the Assets Forfeiture Fund.

3. **CIVIL FORFEITURE:** The procedures outlined in this section are generally those applicable to civil forfeiture actions, which in the past commenced with the seizure of the real property, but which now have been affected by the Supreme Court's decision in United States v. James Daniel Good Real Property and by the Civil Asset Forfeiture Reform Act of 2000 (Public Law 106-185, April 25, 2000)(CAFRA).

a. **Current Policies and Procedures:** The USMO has primary responsibility for execution of warrants of arrest in rem. However, in light of the Good decision, forfeiture action against real property usually is commenced by posting³⁰ the property rather than by seizing it.³¹

The USMO will review each warrant of arrest in rem for real property to ensure that:

- (1) It contains the word "arrest" (to meet the requirements of the Admiralty Rules and to establish actual jurisdiction of the court).
- (2) It includes a statement that the real property is not being seized or otherwise taken into custody.
- (3) It does not place on the USMS responsibility for the care or maintenance of the property while the forfeiture action is pending.

When real property must be seized, through a warrant of arrest in rem, a judicial hearing usually must be held before seizure. If it cannot be held prior to seizure, it must be held as soon as practicable following seizure. The AUSA is responsible for requesting such a hearing.

A seizure warrant is normally served by the investigative agency and is not to be used unless the owner(s) of the real property to be seized is afforded both notice of and opportunity for a hearing prior to issuance of the warrant. It is also not to be used unless exigent circumstances justify issuance of an ex parte seizure warrant.

When a forfeiture action is against real property located outside the judicial district, DOJ policy requires that the AUSA responsible for the forfeiture action:

- Advise the USAO and the USMO for the district in which the property is located that a forfeiture action is being contemplated.
- Coordinate the forfeiture action with those offices. If the AUSA fails to contact these offices, the USMO must bring this requirement to his/her attention, and will contact the other USMO.

b. **Judicial Hearing Prior to Taking Property into Custody:** USMO personnel will advise the AUSA of situations in which a seizure should be undertaken, following a judicial hearing. Such situations include:

- (1) Vacant or unimproved real property that appears to be abandoned and is vulnerable to being vandalized.
- (2) Reason to believe the owner is not applying rental proceeds to payment of the mortgage, taxes, expenses, etc., or is allowing the property to deteriorate.
- (3) The presence of a business on the property, the income from which is necessary for its continued operation or is at risk of being misappropriated.
- (4) Illegal activity that is occurring on the real property.

c. **Seizure Based Upon Exigent Circumstances:** [32](#)

The AUSA is responsible for determining if exigent circumstances that justify a seizure exist. Advance ex parte judicial approval may still be required, even when the seizure is based upon exigent circumstances. Even when exigent circumstances exist, the United States must show that less restrictive measures will not suffice.

d. **Entry and Inspection at the Time of Posting or Seizure.** A warrant of arrest in rem does not in and of itself authorize the United States to search an occupied dwelling. However, the USMO may consider three alternatives that would allow entry onto the property upon the execution of the warrant of arrest in rem.

There are three alternatives for entry and inspection:

Alternatives	Conditions
Inclusion of right of entry in the warrant of arrest in rem.	A U.S. District Court judge must review and sign the warrant.
Right of entry generally not included in the warrant of arrest in rem.	A hearing—at which all interested parties must be given the opportunity to appear—is required.
Right of entry follows execution of the warrant of arrest in rem.	This right is subject to the direction of a U.S. District Court judge.
Use of a writ of entry for property inspection and inventory, ³³ which may be requested by the AUSA and issued by a U.S. District Court for use in executing a warrant of arrest in rem against a residence.	<p>The writ of entry specifies:</p> <p>The terms and conditions of the USMO's right of entry following posting.</p> <p>That the USMO is authorized to conduct an inventory and structural inspection of the dwelling at the time of posting.</p> <p>It does not authorize a search for contraband or other evidence of criminal activity</p>
Consent of the occupants for inspection and inventory of real property.	<p>Consent must be voluntarily given in writing.</p> <p>USMO personnel will take no coercive action to obtain consent.</p> <p>If consent is withdrawn, USMO personnel shall exit the premises.</p>

e. **Disposition of Evidence Found During Execution of a Warrant of Arrest In Rem:**

If, during the USMO's inventory or structural inspection, evidence of a crime is observed, the inspection will be halted, evidence will be preserved, and persons will be secured. The investigative agency will be contacted and a search warrant obtained through the USAO.

f. **Contents of Real Property**³⁴

- (1) **Subject to Forfeiture:** Before contents of real property can be subject to forfeiture, they must be named in the forfeiture complaint. Even in the case of a seizure following a pre-seizure hearing or based upon exigent circumstances, a warrant of arrest in rem that includes only the address or legal description of the real property does not authorize the USMO to seize personal property found in or on the real property.

- (2) **Not Subject to Forfeiture:** Contents of real property not subject to forfeiture may be located in either occupied or unoccupied real property.
- (a) **Occupied Real Property:** If the warrant of arrest in rem does not include the contents of the real property for seizure, the USMO will conduct a video inventory of the condition of the real property subject to forfeiture, including appurtenances and fixtures. Contents not subject to forfeiture need not be inventoried, unless case-specific circumstances dictate otherwise.
- (b) **Unoccupied Real Property:** If the warrant of arrest in rem for real property does not identify specifically its contents as subject to forfeiture and if the real property is vacant, the contents will be considered subject to Federal abandonment proceedings, when there is a seizure, or when the United States takes possession after forfeiture.
- g. **Use of Federal, State or Local Agents to Assist in Executing the Warrant of Arrest in Rem:** A warrant of arrest in rem does not authorize a search. Other federal, state or local law enforcement agents may assist in executing a warrant of arrest in rem if their involvement will not prejudice the case and if the USMO anticipates that violence or resistance may be encountered in executing the warrant, believes that available USMO resources are insufficient to meet the threat of violence or resistance, and has consulted the AUSA and has obtained his/her consent.

If other Federal, State, or local law enforcement agency personnel are to assist in the execution of a warrant of arrest in rem, the USMO should advise such personnel that the warrant does not in and of itself authorize entry into the real property or a search for contraband or other evidence of criminal activity; nor does a writ of entry authorize such a search.

- h. **Notice Requirements:**³⁵ The USAO's responsibility to provide (publish) notice involves preparing notice³⁶ to all known persons or entities who may have an ownership interest in or claim against the defendant's property of the intent to forfeit and placing notices in appropriate newspapers.
- (1) **Notice by Publication:** Although the USMO is not responsible for publishing notice, many USMOs have assumed this duty because, by doing so, the USMO may avoid disposition problems associated with unknown claimants. If the USMO takes on the responsibility for publishing the notices, the following actions will be required:
- (a) Upon the 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 weekly for three 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. Local court rules may provide for different publication requirements. The notice must include:

The legal description of the real property.

The street or mailing address of the real property.

The forfeiture case name, case number, and judicial district.

A statement 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 Mail:** Parties-in-interest—who are identified based upon a current title report—must be notified. These parties include but are not limited to possessors, record owners, lienholders, mechanic lienholders, and others who claim to have an interest in the property. The notice must include, at a minimum, all information contained in the published notice.

(3) **Personal Service:** In lieu of notice by mail, the USMO should consult with the AUSA responsible for the forfeiture action to determine if personal service should be undertaken. Effective personal service requires that:

(a) The receipt of the notice is acknowledged in writing by the served party-in-interest.

(b) The receipt of the notice is acknowledged by one authorized to accept service for the potential party-in-interest.

(c) 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.

i. **Lis Pendens:** Where state law allows, a *lis pendens* should be filed simultaneously with the filing of the complaint to prevent the transfer or encumbrance of the real property subject to forfeiture.

- (1) The filing of a *lis pendens* does not preclude transfer of the title to the property through sale or foreclosure, but it does place the public on notice that the forfeiture action is pending and that any transfer may be subject to the subsequent forfeiture.
- (2) If the property is sold or foreclosed in spite of the *lis pendens*, and if this information comes to the USMO's attention, then the USMO will notify the AUSA.
- (3) The filing of a *lis pendens* does not fulfill the requirement regarding notice of the intent of the United States to forfeit, and service of process is still required.

The USMO will verify whether the AUSA has or has not filed a *lis pendens*. If a *lis pendens* has not been filed with the recorder or registrar of deeds in the county where the property is located, the AUSA in the district executing the warrant of arrest in rem must file the *lis pendens*.

j. **Civil Forfeiture by Settlement:** Settlements of forfeiture actions are encouraged to conserve the resources of both the United States and claimants. Any settlement binds only the parties to it.

- (1) Settlements shall not include the transfer of real property to the United States by consent or stipulation (even when a deed is executed by the owner) without an order of forfeiture.
- (2) Settlements shall not provide for installment payments ("partial payments") of amounts in settlement in lieu of forfeiture of real property unless such an arrangement has been approved by the AFMLS in consultation with the AFO.

k. **Responsibilities in Civil Settlements**

Office	Responsibility
AUSA ³⁷	Consults with the USMO and the investigating agency before entering into a settlement.
USMO	Advises the case AUSA regarding the real property's appraised market value, net equity, and current and prospective expenses to ensure that the settlement is fiscally sound.
USMO	Advises the case AUSA to include in any settlement agreement a hold harmless provision, ³⁸ as well as waivers of actions regarding any and all past, present, or future claims against the United States, the DOJ, its agencies, offices, employees, and assigns
USMO responsible for the property being returned	Deposits any monetary amount received in settlement ³⁹ into the Marshal's Account 5042 in the Assets Forfeiture Fund, pursuant to 19 USC 1613(c) , which does not require further order of the court.
USMO	Obtains copies of the executed settlement documents (notice of dismissal or stipulation for compromise settlement approved by the court) from the AUSA and retains them in the case file.

4. CRIMINAL FORFEITURE PROCEDURE

a. **Criminal Prosecutions Including Forfeiture Counts:** Criminal forfeiture actions are part of a criminal prosecution and are, therefore, in personam and not in rem. Criminal forfeiture actions require the following:

- (1) An indictment of or an information against an individual
- (2) A separate count in the indictment or information that identifies the property subject to forfeiture upon conviction of the individual charged
- (3) Conviction of the individual charged
- (4) A separate verdict (the special forfeiture verdict) that finds the property subject to forfeiture
- (5) A preliminary order of forfeiture authorizing seizure of the property

(6) Ancillary proceedings following forfeiture

(7) A final order of forfeiture

b. Criminal Indictments or Information

When Real Property Is Named	When Real Property Is Not Named
Usually real property will not be seized.	Such real property CANNOT BE FORFEITED through a plea agreement.
<p>If assets are to be restrained under the provisions of a criminal forfeiture statute, USMOs will execute the orders of the court issued as part of the criminal prosecution.</p> <p>Such court orders may place upon the USMO certain custodial responsibilities to manage the property, collect rents, etc.</p>	<p>Substitute assets belonging to a defendant may replace unavailable forfeited assets:</p> <p>When permitted by the specific forfeiture statute.</p> <p>Only if a provision for substitute assets was included in the indictment or information.</p>

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

Pre-indictment ⁴⁰	Post-indictment
<p>A restraining order may be issued following notice and opportunity for a hearing. It is effective for no more than 90 days unless:</p> <p>It is extended for good cause.</p> <p>An indictment or information is filed charging the defendant with the underlying offense and alleging that the property named in the indictment or information is subject to forfeiture upon conviction.</p>	<p>A full evidentiary hearing on the probable success of the United States may be required before such restraining orders can be issued. The AUSA should consult with the AFMLS regarding whether a post-indictment restraining order should be sought.</p>
<p>An ex parte restraining order (effective for no more than 10 days, unless extended for good cause) may be issued following:</p>	

<p>The AUSA's application to the court.</p> <p>A demonstration of probable cause that the property at issue is subject to criminal forfeiture and that provision of notice would jeopardize the availability of the property.</p>	
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- d. **Preliminary Order of Forfeiture After a Conviction:** The jury must find that the real property is subject to forfeiture by a separate verdict referred to as a special forfeiture verdict.

Based upon such a verdict, the court will issue a preliminary order of forfeiture under which the USMO will be authorized to take custody of the real property or to take whatever action is directed by the court.⁴¹

Other federal, state or local law enforcement agents may assist in executing the orders of the court if the USMO anticipates that violence or resistance may be encountered, believes that available USMO resources are insufficient to meet the threat of violence or resistance, and consults the AUSA and obtains his/her concurrence.

If other federal, state or local law enforcement agency personnel are to assist in the execution of the orders of the court, the USMO should advise such personnel that no search will be made of the real property unless such a search is authorized.

- e. **Ancillary Proceedings After a Preliminary Order of Forfeiture:** Ancillary proceedings may be held 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 possible interest in or claim against the property.

- (1) Generally, both individual written notice and notice by publication should be made.

(2) Publication procedures similar to those for civil forfeiture, as described in "Notice requirements" above, may be used.

If a timely hearing can be held without affecting the rights of private parties or without unduly jeopardizing the government's legitimate interests, the ancillary proceedings should commence within 30 days of the filing of the claimant.⁴²

f. Final Order of Forfeiture

Under These Conditions	This Action Occurs
Ancillary proceedings have concluded	A final order of forfeiture may be issued.
No petitions have been received in response to publication and the deadline for claimants to file petition has expired.	A final order of forfeiture is not required, or a preliminary order of forfeiture becomes a final order of forfeiture.

The AUSA must notify the USMO, in writing, when the court does not issue a final order of forfeiture because no petition was received. Written notification must document that the forfeiture was properly published, no petitions were filed and the USMO may proceed to dispose of the property.

The USMO will notify the AFO in case of any failure or refusal by an AUSA to provide such written notification.

g. Plea Agreements: Plea agreements shall not include the transfer of real property to the United States by consent or stipulation (even when a deed is executed by the owner) without an order of forfeiture.

If	Then in a Plea Agreement
The property was named in the indictment or information.	The United States can obtain the defendant's consent to forfeit his/her interest in real 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 real property.
The real property is unencumbered and the defendant is the sole owner and agrees to convey clear title to the United States.	The United States may agree to accept the real property; conveyance must be by the execution, by the defendant, of a deed to the United States. However, a final order of forfeiture is still required.
Third-party interests exist.	Ancillary proceedings are required to dispose of the rights of third parties.
A court order is provided.	A monetary amount ⁴³ may be accepted in lieu of forfeiture of property named in an indictment or information. Such amounts must be deposited by the USMO responsible for the property being returned into the Marshal's Account Number 5042 in the Assets Forfeiture Fund, pursuant to 19 USC 1613(c).
Installment payments ("partial payments") of a monetary amount in lieu of forfeiture on real property are proposed.	Under DOJ policy, ⁴⁴ the AFO must agree. The USMO will advise the AFO immediately when it is informed of any proposal by an AUSA to enter into a plea agreement that would provide for such payments.

The AUSA must provide the USMO with copies of the plea agreement and any related documents (e.g., deeds). These documents are to be retained in the case file.

5. CIVIL AND CRIMINAL FORFEITURE PROCEDURES

- a. **Payment of State and Local Real Property Taxes:** Because of the doctrine of sovereign immunity, the Federal Government does not pay State and local real property taxes on property that it owns, including real property that it obtains ownership of through forfeiture. However, before property is forfeited, such taxes may accrue even if the property is being managed by the USMO. If taxes for the year have been paid in advance for the year by the USMO as a management expense, and a final order of forfeiture is issued during that year, then a rebate may be due to the USMO when the ownership transfers to the Federal

Government. The USMO should have the State law reviewed to determine if a rebate is due.

- (1) **Civil Forfeiture Cases:**⁴⁵ DOJ policy authorizes payment of previously incurred and unpaid ad valorem real property taxes accrued up to the date of entry of a civil order of forfeiture.

If	Then
A civil order of forfeiture is issued.	The AUSA initiates appropriate legal action to remove the real property from the tax rolls.
The AUSA fails to undertake legal action.	The USMO should notify the AUSA of the need to do so.
After notification from USMO, AUSA does not take action in a timely manner.	The USMO shall notify the taxing authority to remove the forfeited property from the tax rolls and shall advise the AUSA.

- (2) **Criminal Forfeiture Cases:**⁴⁶ Payment of state and local taxes on criminally forfeited real property may be made in the same manner and to the same extent as is authorized for civilly forfeited real property.

- d. **Taxes Paid in Advance:** The date of the final order of forfeiture is the date after which the United States will no longer pay state or local taxes.

If taxes for the year have been paid in advance for that year by the USMO as a management expense, and a final order of forfeiture is issued during that year, then a rebate may be due to the USMO when the ownership transfers to the Federal Government. The USMO should have the State law reviewed to determine if a rebate is due.

- c. **Payment of Interest and Penalties on Real Property Taxes:** Generally, interest but not penalties may be paid on overdue taxes in accordance with the formula set forth by statute.⁴⁷

(1) USAOs, with the concurrence of the AFMLS,⁴⁸ may agree to a higher rate of interest.

(2) USMOs may make payments at the higher rate when the AUSA provides documentation that the rate has been approved.

Such taxes and interest may be paid only after the final order of forfeiture.

A decrease in the value of the real property may not have been reflected in the assessed value upon which the State and local real

property taxes were based.

(3) The USMO will compare the current appraised value of the real property to the assessed value shown on the tax records and notify the local taxing authority of any decline in value.

c. **Expedited Settlements:** Expedited settlement agreements through which mortgagees' and lienholders' interests may be paid upon forfeiture should include a provision allowing the USAO to void such a settlement agreement within 90 days after execution, if the liens along with the management and disposal costs exceed the net equity of the United States at the time of forfeiture.

(1) For the AUSA to enter into informed settlement agreements, the USMO must provide the AUSA with an estimate of the potential net equity in real property as soon as possible after posting or seizure. Generally, the potential net equity in real property should be ^{(b) (7)(E)} [REDACTED], whichever is greater.

(2) Expedited settlements that allow the pre-forfeiture payment of liens and mortgages are authorized only in limited circumstances.⁴⁹ The USAO is responsible for drafting the proposed expedited settlement agreement. Such agreements must be submitted in advance to the AFMLS for approval.

d. **Real Property in Custody:** Real property subject to forfeiture⁵⁰ may be seized either upon the execution of a *warrant of arrest in rem* (following a preseizure hearing) or upon a showing of exigent circumstances.

The USMO should advise the AUSA that the warrant of arrest *in rem* must include a provision authorizing the USMO to manage the property in a manner that maintains its value and condition, including renting out the property.

e. **Section 13.3.D.5.e Superseded 11/5/2010**

- f. **Petitions for Remission or Mitigation.** Petitions for remission or mitigation filed in either civil or criminal actions may be granted either before or after forfeiture by the chief of AFMLS.⁵³

If	Then
Remission is granted	The real property will be released in accordance with the written terms of the remission decision.
Mitigation is granted	An amount may be received from the petitioner in exchange for the release of the real property.

Moneys from mitigation will be deposited into the Assets Forfeiture Fund. Alternatively, the mitigation may take the form of a money amount to be paid to the petitioner from the proceeds of sale of the real property.

A copy of the decision will be sent to the USMO from the deciding official in the AFMLS setting forth the terms of the mitigation to be executed by the USMO.

6. **PROPERTY MANAGEMENT:** Generally, real property in the custody of the USMO is to be placed under the control of a property management contractor. Occupied properties require different management services than do unoccupied properties.

a. **Contracting Options**

Conditions	Then
For services not to exceed \$100,000	Purchase orders that utilize simplified acquisition procedures or a formal contract. ⁵⁴
For property management services exceeding \$100,000 (e.g., when there is a large property inventory)	Formal contracts. ⁵⁵

Although a property management services contract may be used to perform a variety of property management services, when practicable, the same contractor should not be used to appraise, manage, and sell a given piece of real property unless adequate performance requirements are included in the contract to protect the United States' interest.

- (1) Use of a property manager does not relieve the USMO of the responsibility for ensuring that property in the custody of the United

States is managed properly.

- (2) Property management fees for all reimbursable expenses are invoiced to the district and are paid from the Assets Forfeiture Fund or from the joint individual property account opened for the rental property.

The property management contract should provide that it is the responsibility of the property manager to find a tenant. Any proposed tenant must be approved by the USMO.

The USMO must inspect property being maintained by a property management services contractor on a monthly basis. The extent of the inspection would depend upon the degree of management and control the contractor has over the property.

If the contractor has complete control of the property, both the exterior and interior of the property should be inspected.

- Generally the USMO will undertake no direct inspections but will rely on report and/or photographs provided by the property management services contractor.
- However, if information or complaints are received regarding the actions or conduct of the property management, then the USMO will inspect the property.

If the property is occupied, access will be governed by the occupancy agreement.

- Under such circumstances, the inspection may be limited to a drive-by inspection of the exterior to assess the condition of the property and to assure it is being properly maintained (e.g., the grass is being cut).

b. Guidelines for Rental Income

- (1) For each property that produces rental income, the USMO will establish with the property management contractor a joint individual property account for the deposit of rental income that may accrue.

- (a) The account balance should NEVER exceed one month's estimated operating expenses.

- (b) Any net income above one month's operating costs and after payment of budgeted expenses or extraordinary expenses

[separately authorized by the Contracting Officer's Technical Representative (COTR)] must be returned to the USMO payable to "U.S. Marshal," in Marshal's Account Number 15X6874.

(2) Types of expenses that should be paid from rental income include:

- (a) Mortgages that have been validated by the AUSA should receive priority for payment from rental income.
 - (b) If rents do not cover the total amount of the mortgage payment, the USMO will consult with the mortgagee and attempt to negotiate partial payments of the mortgage with the rent proceeds that are received.
 - (c) Other types of expenses (e.g., lawn maintenance, utilities, minor repairs, and association fees). Property manager's fees are to be billed to the USMO; they would be considered secondary.
- c. **Protective Order or Occupancy Agreement:** If the court authorizes the seizure of the property prior to forfeiture, the AUSA should request that the U.S. District Court issue a protective order or authorize the USMS to enter into an occupancy agreement with the occupants of the property.

The USMO will advise the AUSA that the protective order should provide that the property is maintained in a condition that is the same as or better than the condition it was in when the forfeiture action commenced.

The occupancy agreement⁵⁶ must provide that the occupants agree to:

- (1) Maintain the property and keep the premises in good repair or in the condition that existed at the time the warrant of arrest in rem was served.
- (2) Avoid illegal activity.
- (3) Provide for sufficient casualty, fire, and liability insurance with the USMS named as the coinsured.
- (4) Make timely payment of any and all mortgages and loan, rent, utility, tax, and/or other obligations.
- (5) Allow reasonable, periodic inspections with adequate and reasonable advance notice to the occupants (at least 48 hours).
- (6) Acknowledge, if the property was built before 1978,⁵⁷ that it may

contain a lead-based paint hazard.

(7) Acknowledge that they may be required to vacate the property within 30 days of a final order of forfeiture or when otherwise notified by USMO.

d. **Conditions for Continued Occupancy of Rental Property.**

Continued occupancy of rental property does not require the approval of the District Court.

If	Then
A lease exists.	The USMO should obtain a copy. Generally, existing leases are honored.
An existing lease expires or a copy of the existing lease cannot be obtained.	Continued occupancy is allowed on a month-to-month basis, pursuant to a USMS occupancy agreement.
The USMO cannot obtain an occupancy agreement or the AUSA cannot obtain an order from the court.	The USMO will coordinate eviction proceedings with the AUSA.

e. **Continued Occupancy or Eviction**

(1) If the property is found to be occupied by third parties not related to the forfeiture action (e.g., other persons with an ownership interest in the property, tenants, children of persons involved in the forfeiture action, or squatters), the USMO will advise the AUSA who may:

(a) Allow continued occupancy:

Requesting that the U.S. District Court issue a protective order.

Authorizing the USMO to enter into an occupancy agreement with the residents of the property.

(b) Determine to remove occupants through eviction proceedings brought in U.S. District Court, if possible, otherwise, State court.

(2) USMOs will advise the AUSA when circumstances exist that may warrant eviction action. Conditions that warrant eviction include:

(a) Nonpayment of rent as required under the terms of the lease or occupancy agreement

- (b) Serious damage, destruction, or threatened damage to the property (e.g., signs that the property is falling into disrepair)
 - (c) Extreme degradation in health and safety conditions (e.g., major code violations or evidence of contamination)
 - (d) Violation of the use provisions of the lease (e.g., conducting a business in a rental unit restricted to residential use)
 - (e) Evidence of illegal activity
 - (f) Other circumstances that could jeopardize the real property
- (3) USMOs must document in writing the factual circumstances as they arise that led to the decision to seek eviction so that there is a contemporaneous record for use in any eviction proceeding.

Before commencing eviction proceedings, the occupants are to be asked to vacate the premises voluntarily.

- f. **Rental of Unoccupied Real Property:** Generally, seized real property that is vacant or that becomes vacant while forfeiture proceedings are taking place will not be rented.

Issue	Result
Contains lead-based paint contamination.	No rental is possible. 58
Occupied rental property becomes vacant and disposal of the property is anticipated to take more than 6 months.	The USMO may seek the assistance of the AUSA in requesting an order for rental of the property and the court's approval of an occupancy agreement. (An occupancy agreement authorized by an order from District Court is more enforceable if eviction is required.)

- g. **Multi-unit Commercial Property.** In addition to the considerations relevant to the management of residential property, matters may need to be addressed in dealing with multiunit commercial property. If the asset is part of a business or is organized as a business, the management and disposal procedures applicable to business properties will be followed rather than the management and disposal procedures for real property.

In either case, upon the targeting of a business for forfeiture, the AFO will be notified immediately when the USMO is advised of the proposed action.

- h. **Contamination and Safety Considerations in Real Property in Custody:** The USMO must endeavor to ensure that contamination does not occur while the property is in its custody. Contamination is most likely to occur during the operation of businesses that have the potential to produce contaminants (e.g., chemical companies, gasoline stations with obsolete underground storage tanks, metal plating shops); and on real properties with attractive nuisances (such as swimming pools, ponds), which present special management risks that may require installation of safety devices (e.g., enclosures).

i. **Responsibilities for Security**

- (1) **Occupied Real Property:** Security is the occupant's responsibility, as provided in the occupancy agreement and/or lease.

- (2) **Unoccupied Real Property:** If the property is unoccupied at the time of seizure and will remain so, the USMO must ensure that the level of security is proportional to the degree of risk. Actions that may be appropriate to ensure security include:

(a) Changing entry locks.

(b) Boarding up⁵⁹ vacant buildings or equipping them with alarm systems when there is a strong likelihood of vandalism or trespassing. The net equity and the estimated costs of the alarm system should support the expense.

(c) Obtaining guard services. These services, however, can be expensive and should be used only on an interim basis. USMOs should monitor the cost of the service measured against the property's equity. If the payment of guard services would cause the net equity to fall below the greater of either (b) (7)(E) the USMO will immediately advise the AUSA and will follow the procedures regarding forfeiture actions against real property with a net equity value below the prescribed minimum threshold, as discussed in "Considerations in pre-seizure planning," above.

(d) Ensuring that unnecessary utilities are terminated. If a need for utility service(s) exists; e.g., to operate a security system or a pool filter, appropriate service(s) should be continued.

(e) Winterizing vacant properties in areas where the temperatures are likely to fall below freezing.⁶⁰

Access to keys will be restricted to those who manage the property. A record of duplicate keys made and issued to contractors or real property brokers must be kept in the case file.

- j. **Restricted Use of Real Property in Custody:** Real property may

only be used while in custody by U.S. agencies under specific conditions. USMO has responsibility for:

- (1) Ensuring that persons who are not entitled to be on the real property (including DOJ personnel) do not use real property in custody for any purpose before the civil order of forfeiture or the final order of forfeiture is issued and then only after proper approval.⁶¹
- (2) Ensuring that DOJ personnel do not make such real property available for use by others, including person(s) acting as substitute custodians, for any purpose prior to the forfeiture, except as authorized as follows:
 - (a) Use of real property subject to forfeiture in emergency situations may be approved only by DOJ.
 - (b) Requests for such use may be made on a case-by-case basis through the submission of a PAR decision package to the AFO.
 - (c) The AFO will determine whether to forward a request to DOJ for approval.

k. **Taking Real Property into Custody After Forfeiture:** In general, the procedures set forth above, regarding taking real property into custody before forfeiture, are applicable to real property taken into custody after forfeiture.

This is particularly the case when the real property is subject to a preliminary order of forfeiture in a criminal case in which the interests of innocent parties have not been resolved through ancillary proceedings.

However, the following additional requirements are applicable to real property subject to a civil order of forfeiture or a final order of forfeiture in a criminal case:

Civil Proceeding	Criminal Case
The USMO will seize real property, in accordance with the terms of the court order, after the court issues a civil order of forfeiture.	The USMO will seize real property following a special forfeiture verdict, when authorized to do so by the preliminary order of forfeiture. Once the final order of forfeiture is issued, the USMO has the same authority to deal with real property as under a civil order of forfeiture.

(1) **13.3.D.6.k(1) Superseded 11/5/2010**

- (2) **Occupied Real Property:** If the property is found to be occupied by third parties not related to the forfeiture action (such as other persons with an ownership interest in the property, tenants, children of persons involved in the forfeiture action, or squatters), the USAO should be consulted about seeking the removal of the occupants following forfeiture.
- (3) **Unoccupied Real Property:** Experience has proved that occupied property is better maintained than vacant property:
 - (a) If an occupied property becomes vacant and its disposal is expected to take longer than 6 months, the USMO should consider renting it provided that it is not a pre-1978 property.
 - (b) The property management contract should provide that it is the responsibility of the property manager to find a tenant. However, any proposed tenant must be approved by the USMO.

7. DISPOSAL OF REAL PROPERTY AFTER FORFEITURE

- a. **Policies and Process:** The disposition of property forfeited to the United States is an executive branch decision and not a matter for the court.

Orders of forfeiture will be drafted broadly to direct forfeiture of the property to the United States "for disposition in accordance with the law." It is inappropriate for the court to confirm the manner and conditions of sale of forfeited property, except in certain civil settlements.

The Attorney General has the authority to dispose of forfeited property "by sale or any other commercially feasible means," without subsequent court approval. This is generally called a "forfeiture sale" of the property.⁶² However, under certain circumstances, forfeited real property may nonetheless be disposed of under the terms of a court-authorized judicial or stipulated sale.

- (1) **Judicial Sale:** Interlocutory sales⁶³ will follow the procedures contained in [28 USC 2001](#) requiring judicial confirmation. When property is sold in this manner, the transaction is called a "judicial sale."⁶⁴

The USMO will undertake any such interlocutory sale only under the terms authorized by a U.S. District Court order. The procedures set forth below in "USMS's authority to dispose of real property" after forfeiture may be utilized provided they are not inconsistent with the court order directing the judicial sale.

- (2) **Stipulated Sale:** Real property that has been targeted for forfeiture

also may be sold by the owner of record, with the proceeds subject to forfeiture.

(a) The AUSA is responsible for preparing the agreement by which the United States will stipulate the sale of the real property and the conditions under which the proceeds of sale will be preserved so that they may be subject to forfeiture.

(b) Such proceeds of sale will be treated not as a real property forfeiture but rather as the forfeiture of cash.

b. Civil Forfeiture of Real Property - Judgment of Forfeiture

Issues	Results
Either a consent judgment or a default judgment.	The USMO may immediately dispose of the forfeited property.
After trial or upon summary judgment	The USMO should delay the execution of the judgment for a period of 10 working days to allow for the filing of an appeal.
On the 11th working day following a judgment after trial or a summary judgment, if the AUSA documents in writing that no motions or requests for additional stays have been filed.	The USMO will proceed with the disposal of the forfeited property.
The AUSA fails to provide such documentation.	The USMO should bring this requirement to the AUSA's attention. The AFO should be notified of continued failures to provide documentation if the failures cannot be mediated at the district level.

c. **Civil Order of Forfeiture:** Every effort should be made to include language in the civil order of forfeiture that provides that:

- (1) The Marshal is authorized to dispose of the forfeited real property in accordance with law.
- (2) The first charge against sale proceeds will be the recovery of the Marshal's management and other costs.
- (3) All liens and encumbrances are identified by amount and priority, and validated or disallowed.
- (4) Any attorneys' fees are disallowed.

- (5) If validated, liens and encumbrances are to be paid from and limited to the proceeds of sale after recovery of management costs.
- (6) If sufficient proceeds to cover the management and disposal costs cannot be generated by the sale of the property, the USMO will attempt to negotiate the return of the property to the lienholder in exchange for the USMO's expenses.

All rights, title, and interest of the property are vested in the United States free and clear of all liens and encumbrances, with any such liens and encumbrances attached to the proceeds of sale, as may be applicable.

If it has not already been done, the USMO will advise the AUSA that the lis pendens filed in the action should be withdrawn, and a copy of the civil order of forfeiture is to be filed in its place.

- d. **Written Notification of Criminal Forfeiture:** Prior to the disposal of criminally forfeited property, if no final order of forfeiture has been issued, the AUSA must provide written notification to the USMO in the district in which the forfeited real property is located, documenting that:

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

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

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

- e. **USMO Responsibility upon Receipt of Forfeiture Order**

- (1) Upon Receipt of a Civil Order of Forfeiture or a Final Order of Forfeiture in a criminal case, the USMO should ensure that the order is recorded, the title is transferred to the United States and the property is removed from the tax rolls.⁶⁵

- (2) If the USMO is unable to remove the property from the tax rolls, the matter must be referred to the AUSA for resolution. The USMO shall notify the AFO regarding any matter that cannot be resolved by the AUSA

- (3) **Inclusion of Appurtenances, Fixtures and Contents in a Forfeiture Sale:** Appurtenances and fixtures are subject to forfeiture unless the court orders otherwise.

f. **Property's Contents and Forfeiture**

Contents Subject to Forfeiture	Contents NOT Subject to Forfeiture
<p>The order of forfeiture for a residence specifically identifies the contents as forfeited.</p> <p>The USMO must:</p> <p>Conduct a complete inventory of the contents.</p> <p>Prepare a written report of that inventory.</p> <p>Obtain photographs of the inventoried contents.</p> <p>Obtain an appraisal⁶⁶ of the contents.</p> <p>Determine if the contents should be moved to a secure storage area.</p>	<p>The order of forfeiture does not identify the contents contained in the real property as being subject to forfeiture.</p> <p>The real property is vacant. Upon taking possession, the USMO must:</p> <p>Conduct a complete inventory of the contents.</p> <p>Update the inventory if the owners do not claim the contents. When the United States takes possession following forfeiture, the USMO must initiate abandonment procedures against unclaimed personal property in order to dispose of it.⁶⁷</p> <p>Determine whether the contents should be packaged and stored in a secure storage area.</p>

To determine the most appropriate action to take regarding the contents of forfeited real property, the USMO must evaluate:

- (1) The value of the contents and the point at which the cost of securing them will exceed their value.
- (2) The probable length of time that the property has been and/or will be in custody.
- (3) Geographic factors that may mandate special levels of security (e.g., the location of the property is a high-crime area or in a remote area).
- (4) The cost of moving the assets to a storage facility.
- (5) Whether the real property is and will continue to be occupied.

g. **Forfeiture Sale:** Forfeiture sales do not require judicial confirmation

pursuant to 18 USC 2001. Except in unusual cases, the USMO has the authority to determine the best method and conditions of sale of forfeited property in its custody.⁶⁸

- (1) **Update Appraisal:** See "Appraisal following the seizure of real property," above.
 - (a) Properties must be listed for sale based upon an appraisal that is current within six months.
 - (b) If market conditions for the real property have changed suddenly and significantly, an updated appraisal or a re-appraisal should be ordered before the property is listed for sale.
- (2) **Updated Title Report:** Prior to disposal, an updated title report must be obtained. In addition, a physical inspection of the property by the USMO or the property manager may indicate the need for a survey to disclose any existing encroachments, easements, party walls, or noncompliance with setback requirements.
- (3) **Title Insurance:** Under a title insurance policy, the title company agrees to defend the policyholder's title against any lawsuits that may arise as a result of defects covered in the policy and to make good a loss arising from defects in a title to real property or any liens or encumbrances thereon. However, a title insurance company will not insure a title that has unresolved issues associated with it.

h. Issues that Could Hinder the Sale

Problem	Action
Any liens or encumbrances disclosed by the title report that would delay or prevent the transfer of title.	These must be brought to the attention of the AUSA, along with a request that the order of forfeiture be amended to resolve the status of the lien.
Any other unresolved recorded objections to clean title—such as encroachments, easements, or other problems—disclosed by the title report or survey.	<p>The USMO will provide a copy to the AUSA and request his/her assistance.</p> <p>If the AUSA is unable or unwilling to promptly address the unresolved title issues, including objections to clean title (e.g., encroachments or easements) after consulting with the AUSA, the USMO may retain private counsel for the purpose of clearing the title.</p> <p>Copies of all requests for an</p>

	<p>opinion regarding the title issue are to be provided to private counsel.</p> <p>If litigation is required, prior approval must be obtained from the USAO for the continued use of private counsel.</p> <p>Alternatively, the USMO may provide the relevant information to the listing agent so that the listing discloses that the property sale is subject to the resolution of certain disputes.</p>
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- i. **USMS's Authority to Dispose of Real Property:** The USMO authority to dispose of real property is derived from the following delegations.

Authority	To
Attorney General	Dispose of property forfeited under laws enforced or administered by the DOJ (cited specifically in each forfeiture statute ⁶⁹).
Attorney General's authority delegated to the U.S. Marshal in each judicial district ⁷⁰	<p>Issue a quitclaim deed.</p> <p>Issue a special warranty deed covering the process used to forfeit the property conveyed.⁷¹</p>
The U.S. Marshal or deputy U.S. Marshal ⁷²	Dispose of real property up to \$1 million in value. This applies provided that the property is being sold at a (b) (7)(E) of its appraised market value.
The U.S. Marshal or deputy U.S. Marshal	Transfer title by a special warranty deed with indemnifications, but a PAR approved by the AFO is needed.
USMO	Submit a PAR decision package for approval of a sales plan before the sale of any property with an appraised value of \$1 million or more.

The U.S. Marshal or the deputy U.S. Marshal is not authorized to place real property into official use or to transfer title of real property to another federal agency to be placed into official use. The attorney general must approve the official use by any federal agency of real property.

8. **METHODS OF DISPOSAL:** To determine the appropriate method of disposal, the USMO will consider the market value of the real property and the projected management and disposal costs.

a. **Return to Lienholder**

(1) A lienholder may make claim to the real property if:

(a) The United States has little or no net equity in a forfeited property.⁷³ The USMO will release the property to the sole or primary lienholder using a Marshal's quitclaim deed,⁷⁴ provided that the lienholder will take the property.

(b) A lienholder's claim to real property has been validated by the U.S. District Court.

(c) The AUSA dismisses the forfeiture action in favor of a lienholder's claim.

(2) The USMO should then:

(a) Attempt to recover USMS expenses from the lienholder in return for releasing the property. However, it is within the discretionary authority of the USMO to release the real property even if it cannot recover expenses.

(b) Seek assurances from the lienholder in the form of a statement in writing signed under penalty of perjury that the property will not be returned to the party from whom it was forfeited. If the lienholder refuses to provide these assurances, the USMO will notify the AUSA and seek his/her assistance.

b. **Place into Official Use**

(1) **By Federal Agencies:**⁷⁵ A component of the DOJ, including the USMS, may request authority to place forfeited real property into official use only if the proposed use of that real property would be consistent with a law enforcement purpose.

(a) The USMO will notify and forward the request to the AFO regarding a DOJ component placing forfeited real property into official use.

(b) The request must be submitted through the DOJ approval process.

(c) The attorney general must approve the transfer prior to placing forfeited real property into official use.

(2) **By State and Local Law Enforcement Agencies:**⁷⁶ Under the equitable sharing program, real property may be transferred to a state or local law enforcement agency for official use. Such transfers require the approval of the Office of the Deputy Attorney General.

(3) **Transfer to Private Entities:** The USAO may request that the USMO assist in identifying forfeited real property for transfer to State or local law enforcement agencies and for the use of public or private nonprofit organizations under the "Weed and Seed" initiative⁷⁷ or other transfer authorities.

All proposals to transfer such real property will be submitted by the USAO, through the USMO and the AFO, to the Office of the Deputy Attorney General for approval.

c. **Sale by Broker:** Forfeited real property may be sold through the use of a licensed real estate broker who is a member of the local Multiple Listing Service.

(1) **Listing Agreements:** To market forfeited properties through a broker, listing agreements are required.

(a) Exclusive listing agreements, in which the seller agrees to appoint only one broker to sell the property for a specific period of time, are preferred. Such agreements will generally be for 3 months. Additional extensions of 3 month periods may be ordered.

(b) Open listings are given to any number of brokers who can work simultaneously to sell the forfeited property. USMOs may use open listings if the specific circumstances in a particular district so warrant.

(c) Generally, listing agreements will contain a provision that the broker will be paid his/her commission if a willing and able buyer is presented, but the USMO cannot proceed with the closing.

(2) **Special Conditions:** They are required in listing agreements because of the nature of the USMO's role in disposing of forfeited real property. They permit the broker to know in advance important conditions of the sale so he or she can advise potential purchasers and submit appropriate offers to the USMO. The sale of forfeited property is subject to the following conditions:

(a) Generally selling a property "as is." The USMS will not routinely make capital improvements to the property.

- (b) Undertaking capital improvements that would cost in (b) (7)(E) of the market value of the real property only after the approval of a PAR decision package by the AFO.
 - (c) Making repairs (including removal of lead paint) or making minor marketing enhancements as long as potential costs are compared carefully to the value of the property, and as long as such costs do not exceed the net equity.
 - (d) Paying for title insurance. Relevant listing agreements should clearly state that the expense of title insurance will be borne by the buyer even if, in a particular State, it is an expense generally borne by the seller
- (3) **List Price:** The USMO should establish the list price based on all the factors within its knowledge and with due regard for the broker's opinion.
- (a) The list price generally should equal the market value.
 - (b) If the property will be used for residential purposes, the list price for real property built prior to 1978 (or an earlier date if applicable in a particular district) may be reduced to (b) (7)(E) of the market value by a reasonable amount in order to compensate the buyer for the cost of abatement of lead-paint contamination.

d. Sale by Auction

Type	Conditions
Auction	The minimum bid that can be accepted is (b) (7)(E) of the property's market value.
Reserve Auction	The minimum sale price must be at least equal to the sum of the Marshal's expenses and all liens.
Auction Without Reserve	<p>Only after a 9-month marketing effort has been unsuccessful, can the USMO place real property in an auction without reserve. Overage real property may be sold at this type of auction in accordance with "Disposal of overage real property," below.</p> <p>The District Marshal may authorize the sale of overage real properties at below-market price by written approval, which will be retained in the property file.</p> <p>If there are liens on the real property, a PAR decision package must be submitted and approved by the AFO.</p>

(b) (7) (E)

Under all conditions, the USMO 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 law enforcement reasons.

- (1) **Brokers:** At any auction type, a broker's participation payment (payable to a broker who brings a successful bidder to the auction) is allowed up to 2 percent of the sales price. The broker must register prior to the auction in order to be eligible for the participation payment.
- (2) **Auctioneers:** They should be licensed by the state. If the state does not have a licensing procedure, they must be members of the National Auctioneers Association or the Certified Auctioneers Institute.

e. Sale by Sealed Bid

- (1) After real property has been on the market for nine months, the USMO may conduct a sealed bid sale. In conducting a sealed bid sale, the USMO will:
 - (a) Prepare a sealed bid package.⁷⁸
 - (b) Advertise the real property for sale by sealed bid.
 - (c) Distribute the bid package to responding bidders.
 - (d) Hold the bid opening.
 - (e) Award the sale to the highest acceptable bidder.
- (2) If the highest sealed bid is (b) (7)(E) of market value, then a PAR decision package must be submitted to and approved by the AFO before the sealed bid may be accepted.

f. Sale by General Services Administration (GSA)⁷⁹

- (1) The GSA may be used as an agent of the USMO for the purpose of selling real property. The USMO:
 - (a) Sets the minimum acceptable price when GSA sells a property.
 - (b) Pays GSA's approved sales expenses even if the sale is unsuccessful.

- (c) Uses an escrow company to conduct the settlement, as with other types of sales.
 - (d) Requests, immediately after settlement, that GSA submit an itemized list of expenses that were previously approved in GSA's marketing plan.
- (2) Within two weeks of settlement, GSA must deposit the sales revenue (less settlement expenses) into an account specified by the USMO.

g. Sale Through Private Negotiations (Unsolicited Offers): The USMO may accept unsolicited offers to purchase forfeited real property if the unsolicited offer ^{(b) (7)(E)} of market value. Negotiations may not take place with an unsolicited offeror; however, the offeror may be advised that its offer is not acceptable.

- (1) Since all properties must be offered to the public and are subject to the requirements for fair and open competition, a sales advertisement must appear weekly for three consecutive weeks in a newspaper of general circulation in the judicial district where the real property is located. The advertisement must state the amount of the unsolicited offer and invite others to submit an offer at least ^{(b) (7)(E)} (whichever is greater) above the unsolicited offer.
- (2) If any higher offers are received, the unsolicited offeror will be notified, (although he/she will not be told the amount of the highest offer) and given the opportunity to submit a best and final offer.
- (3) After receipt of the unsolicited offeror's best and final offer, the property will be sold to the highest offeror.

h. Disposal of Overage Real Property

- (1) After 12 months, the District Marshal may authorize the sale of the overage real property at below-market price.
 - (a) The District Marshal's written approval will be retained in the property file.
 - (b) An updated appraisal is not required.
- (2) Overage real property that is in poor condition, in a poor location, or in a location where market conditions are depressed

may be sold at an auction without reserve and without AFO approval if there is no lien on the property.

- i. **Destruction:** In rare situations (e.g., numerous code violations, unsafe or dangerous physical conditions, or contamination), it may be advisable to destroy structures on forfeited real property because the expenditures required to rectify the deficiencies may exceed the value of the property.

USMOs must obtain an approved PAR before destroying permanent structures on forfeited real property.

- j. **Sales Contract:** Except as discussed in "Disposal of overage real property," all sales of real property will be by Marshal's quitclaim deed or special warranty deed.

- (1) **Contract Provisions:** The USMO should review the entire sales contract to ensure that all provisions are acceptable to the United States.

Factor	Result
Sale not completed by the purchaser	The security deposit is forfeited.
Sale contingent on the purchaser obtaining financing	A date must be stipulated by which the financing must be obtained. After that date, the USMO has the right to terminate the contract.
Access and alterations to the property	The purchaser can only access the property for routine inspections and may not alter the property in any way prior to closing. Exceptions must be approved in a PAR decision package.
Payment of points	Usually, the buyer must pay any points. When those points represent a buydown of the interest on the mortgage that the buyer is taking out to purchase the property because these points are paid as compensation for the use of borrowed money and are a substitute for a higher stated annual interest rate. If the USMO was to pay such points, it would amount to a discount in the sale price that the Government would receive on the sale of the

	property. This is not only disadvantageous to the Government but is also unfair to other potential purchasers of the property whose bid, when the cost of the points is considered, would actually have been higher. However, the USMO may pay points to the U.S. Department of Veteran Affairs (VA) and the U.S. Federal Housing Administration (FHA) when VA and FHA policies preclude the buyer paying. Also the USMO may pay points when necessary to complete the sale if, when the estimated cost of the points is deducted from the sales price of the property, the purchaser's position as the high offeror would remain unchanged and the Government will still realize (b) (7)(E) of the appraised value of the property.
Title insurance	The expense is to be borne by the buyer.
Recording the deed with the registrar of deeds	The buyer is responsible.

(2) All USMS sales are by cash or certified check. The USMS will not consider or provide interim financing.

k. **Types of Deeds:** The attorney general has the authority to warrant clear title to real property. This authority has been delegated to the USMS,⁸⁰ and generally the USMO will determine the appropriate deed that will be used to convey the real property. If the USAO disagrees with the form of deed selected by the USMO, the matter will be referred to the AFMLS⁸¹ through the AFO.

(1) **Marshal's Quitclaim Deed:** Generally, a Marshal's quitclaim deed makes no warranty representations. It only conveys whatever right, title, and interest the United States has in the property as of the date of execution.

(2) **Special Warranty Deed:**⁸² This type of deed assures the grantee/buyer that the United States, as the current seller, neither did anything to encumber the property nor conveyed any right, title, or interest in the property while it was the owner.

In effect, the special warranty deed warrants the forfeiture process:

- (a) A special warranty deed may be used when the USMO, in consultation with the AUSA, concludes that such a deed is necessary and appropriate given the facts of a particular case⁸³ (e.g., when the individual from whom the property has been forfeited is a fugitive).
 - (b) A PAR decision package must be submitted for approval by the AFO before a special warranty deed with indemnifications may be used.
- (3) **General Warranty Deed:** This type of deed assures a grantee/buyer that title to the property is free and clear of any and all liens and insures the grantee/buyer from any future claims against the property:
- (a) The USMS usually does not issue general warranty deeds.
 - (b) A PAR decision package must be submitted for approval by the AFO before a general warranty deed may be issued.

- I. **Sale of Contaminated or Potentially Contaminated Real Property:** Contaminated real property includes property built prior to 1978 (or an earlier date, if applicable in a particular state)⁸⁴ that may contain lead-based paint.

Requirement	Resolution
Impact of state law on sale of contaminated real property	USMO reviews relevant statutes.
Notification of contamination	An analysis must be provided to potential purchasers describing the type and extent of contamination.
Environmental assessment	The USMO is responsible for arranging and paying for the environmental assessment.
Arrangements for the removal of hazardous substances from clandestine laboratory sites	The investigative agency (usually the U.S. Drug Enforcement Administration) may assume responsibility.
Buyer's commitment to future cleanup	The USMO obtains the buyer's commitment to clean up the property, which is stipulated in the contract for sale. The deed must contain a provision warranting that the USMS does not have cleanup

	responsibilities.
Buyer's refusal to commit to cleanup and there is little chance of securing an alternative purchaser	For pre-1978 properties, the sale cannot proceed. Otherwise, the USMO should submit a PAR decision package seeking AFO approval for a waiver of this requirement.
Liability claims or lawsuits resulting from transferring or selling contaminated real property	They shall be referred to the USAO for action and the AFO shall be notified. The Judgment Fund is the proper source for satisfying these claims; the Assets Forfeiture Fund is NOT available to satisfy successful claims.

(1) Notice of Potential Lead-based Paint Contamination:

Information must be included in the sales contract and the deed for such real property. Purchasers of such property must be notified:

- (a) That the property was built prior to 1978 (unless an earlier date is applicable).
- (b) That the property may contain lead-based paint.
- (c) Of the hazards, symptoms, and treatment of lead-based paint poisoning.
- (d) Of precautions to avoid lead-based paint poisoning.

(2) If an inspection finds lead-based paint contamination, the purchaser will be notified that the USMO has no responsibility for abatement. The responsibility for cleanup must be passed to the buyer in writing both in the sales contract and in the deed to the property.⁸⁵

m. Elements of Real Property Closing

(1) **Escrow Agent's Role:** Regardless of the disposal method, a state-licensed escrow agent (or equivalent) must complete the closing and is responsible for the following:

- (a) Ensures that the Marshal's expenses are reimbursed first except for validated liens and unless the order of forfeiture provides otherwise.

- (b) Disburses payments to satisfy the liens, commissions, and other deductions authorized by the order of forfeiture.
 - (c) Ensures that the net proceeds of the sale of real property are made payable to the U.S. Marshals Service.
- (2) **USAO's Role:** If a third-party interest is not recognized in the order of forfeiture, this interest must be validated in writing after forfeiture by the USAO before it can be paid from the sale proceeds.
- (3) **Conveyance:** The property is conveyed (the title is transferred) to the new owner by the deed signed by the Marshal or his/her designee.⁸⁶
- (4) **Documents:** The USMO will retain in the forfeiture file copies of sale contracts, listing agreements, HUD-1 forms, deeds, and any other pertinent documents relating to the sale of the real property.

Following closing, the USMO will notify the local tax authority of the sale of the property and will forward a copy of the deed.⁸⁷



United States Marshals Service POLICY DIRECTIVES

ASSET FORFEITURE

ASSET FORFEITURE

13.4 Complex Assets

- A. Proponent:** Asset Forfeiture Division (AFD). Telephone: 202-307-9221, Fax: 202-307-5020.
- B. Purpose:** To provide guidance on custody, management, and disposal of complex assets, such as businesses, business instruments, and complex financial instruments.
- C. Authority:** The Director, United States Marshals Service (USMS), has delegated this authority to the Assistant Director, AFD, through USMS Policy Directive 13.1, [General Management, Re-delegation of Authority to the Assistant Director](#). Refer to [28 C.F.R. § 0.113](#) and [28 U.S.C. § 524\(c\)](#) (Asset Forfeiture Fund).
- D. Policy:**
1. Complex assets will be coordinated, managed, and disposed of by AFD's Complex Assets Unit (CAU), unless these responsibilities have been specifically delegated by CAU back to a respective district office or an AFD component, such as the Real Property Team. Refer to the definitions section below and the [Complex Assets eManual](#) for further clarification of what constitutes a complex asset.
 2. The district office will alert CAU by telephone or e-mail as soon as practicable upon notification that a complex asset is targeted for forfeiture. The district office must contact CAU prior to responding to requests for pre-seizure analysis and before executing any court orders relating to such assets.
 3. CAU, or the district office when assigned this responsibility by CAU, will coordinate with the appropriate United States Attorney's Office (USAO) and the USMS Office of General Counsel (OGC) regarding the necessity to obtain court orders to protect complex assets, including restraining orders, protective orders, and orders appointing monitors, trustees, or directing management and disposal of the asset by the USMS.
 4. Due to the complexities inherent to seizing and maintaining an ongoing business and the potential for substantial losses and other possible liabilities, Department of Justice policy requires the USAO to obtain a business review from CAU before undertaking a forfeiture action as described in the [Asset Forfeiture Policy Manual](#). CAU must be consulted as part of pre-seizure planning prior to submitting restraining, seizure, property management, or financial management orders to the court. CAU will further consult with the Asset Forfeiture and Money Laundering Section and OGC on all significant matters before proceeding with the forfeiture action.
 5. When a business entity is targeted for forfeiture, regardless of whether it is currently operating or not, the district office will assist CAU in the pre-seizure phase by gathering

relevant information about the business and completing CAU's "Business Information Questionnaire."

6. CAU must review and approve disbursement of all funds for the management and disposition of complex assets, even if the disbursement has been authorized via a court order. This responsibility may be delegated to a respective district office at the discretion of CAU. However, before refusing to disburse funds as required by a court order, CAU, or its delegated district office, must seek guidance from OGC and approval, and legal action as required, from the USAO.

E. Procedures: For guidance on the pre-seizure, custody, management, and disposal of Complex Assets refer to the [Complex Assets eManual](#).

F. Definitions:

1. **Complex Assets:** Assets that require specialized business knowledge for their restraint, management, seizure and/or disposal. They are divided into two broad categories, which are further described in the Complex Assets eManual:

- a. **Businesses and Business Interests, and**
- b. **Complex Financial Instruments.**

G. Cancellation: Supersedes USMS Policy Directive 13.4, *Businesses, Commercial Real Property, and Financial Instruments*.

H. Authorization and Date of Approval:

By Order of:

 / S /

Stacia A. Hylton
Director
U.S. Marshals Service

Effective Date:

 5/24/2012



ASSET FORFEITURE

13.7 PERSONS PROHIBITED FROM PURCHASING FORFEITED PROPERTY

- A. Proponent:** Asset Forfeiture Division (AFD). Telephone: 202-307-9221, Fax: 202-307-5020.
- B. Purpose:** To ensure that there is no actual or apparent use of inside information and/or conflict of interest(s), and for the ethical reasons stated in paragraph D of this policy. This policy prohibits certain persons from purchasing property that has been forfeited through the Department of Justice's Asset Forfeiture Program (AFP).
- C. Authority:** The Assistant Director, AFD has delegated authority via USMS Policy Directive 13.1, [Re-Delegation of Authority to the Assistant Director](#), and is pursuant to the funding as outlined in [28 U.S.C. § 524\(c\)](#).
- D. Policy:** Chapter 5, Section V, of the [Asset Forfeiture Policy Manual](#) states that the purpose for the prohibition on sale of forfeited property to Department of Justice (DOJ) employees is to protect the integrity of the AFP. Prohibiting certain specified persons from purchasing AFP forfeited property protects the integrity and reputation of the United States Marshals Service (USMS) and DOJ, and eliminates the appearance of impropriety and/or partiality in these transactions.

The activities of AFP are also supported by contractors, agents, and employees of other federal, state, and local agencies who may pose a potential for a conflict of interest if they were to purchase forfeited property. Under [5 C.F.R. § 3801.104](#), DOJ employees are prohibited from, directly or indirectly, purchasing or using any property if the property has been forfeited to the United States Government and the forfeited property is offered for sale by DOJ and/or its agents.

In addition, DOJ employees are prohibited from using such property that has been purchased, directly or indirectly, by a spouse or minor child.

1. When property forfeited under AFP is offered for sale by the USMS, the potential purchaser and successful bidder must acknowledge and certify that policies and/or legal statutes applicable to the sale and purchase are not being violated.

2. The following persons are prohibited from purchasing property forfeited in AFP, directly or indirectly (through another person or agent), offered for sale and, therefore, are barred from placing bids to buy such property.

a. **DOJ Employees and Contractors:**

- 1) DOJ employees and their immediate family members as defined in F.2 of this policy directive.
- 2) Vendors under contract with the USMS in AFP, including appointed monitors and trustees, their sub-contractors and employees who provide contract/management services for personal and real properties and complex assets, and their immediate family members

b. **Defendants in Criminal Cases:** Titles [18 U.S.C. § 1963\(f\)](#) and [21 U.S.C § 853\(h\)](#) of the [Comprehensive Crime Control Act of 1984](#) prohibit the United States Government from reverting to a defendant or any person acting in concert with or on behalf of such defendant, property that was involved in the same defendant's conviction on charges, or violations of [18 U.S.C. § 1962 or 21 U.S.C. § 841 et seq.](#)

c. **Civil Forfeiture Action:** As a matter of policy, the USMS extends the purchase restrictions of a criminal case to any person whose conduct gave rise to a civil forfeiture of the property or to anyone acting in concert with or on behalf of, such a person. This general prohibition may be lifted in civil forfeiture actions on a case by case basis due to extenuating circumstances, as determined by AFD and the relevant United States Attorney's Office (USAO), with the concurrence of the Ethics Officer, Office of General Counsel (OGC).

d. **Other Third Parties:**

- 1) Other governmental and non-governmental agents who are involved in the AFP are included in this prohibition and;
- 2) Any person, who in the reasonable judgment of the USMS, in consultation with the USAO and/or Asset Forfeiture and Money Laundering Section, may act on behalf of, or serve as an agent of a prohibited purchaser.

- e. Special circumstances may rebut the presumption that someone is or is not a prohibited purchaser in any given case. For a case-specific determination of whether a particular person is a prohibited purchaser, USMS employees should notify AFD of the potential conflict and contact the Ethics Team, OGC, at the request of the potential purchaser.
3. AFD, in consultation with OGC, where applicable, maintains the decision-making authority in determining if a person/party is or is not considered a prohibited purchaser as outlined above.

E. Procedures:

1. Procedures for disposal of forfeited property via sale are located in the [Asset Forfeiture \(AF\) eManuals](#) available on the AFD website and are incorporated into this policy by reference.

F. Definitions:

1. **Other governmental and non-governmental agents who are involved in the AFP:** Contractors, their employees, and agents; employees of any federal agency who, directly or indirectly, perform duties associated with the seizure and forfeiture of property by DOJ; and employees of any state or local governmental agency who, directly or indirectly, perform duties associated with the seizure and forfeiture of property by DOJ which participates in the DOJ Equitable Sharing Program.
2. **Immediate Family Members:** Any person residing in the same household as the employee, whether or not related by blood or marriage; spouses; parents; parents-in-law; grandparents; siblings; aunts and uncles; first cousins; and all their spouses.

G. Cancellation Clause: This is a new policy directive and remains in effect until superseded or cancelled.

H. Authorization and Date of Approval:

By Order of:

Effective Date:

 /S/
Stacia A. Hylton
Director
U.S. Marshals Service

4/23/2012



United States Marshals Service POLICY DIRECTIVES

ASSET FORFEITURE

13.8 Annual Physical Inventory

- A. Proponent:** Asset Forfeiture Division (AFD), Telephone: 202-0307-9221, Fax: 202-307-5020.
- B. Purpose:** To establish the requirements for conducting an annual physical inventory of seized and forfeited property in the custody of the United States Marshals Service (USMS).
- C. Authority:** The Assistant Director (AD), AFD, delegates authority that is set forth in Policy Directive 13.1, *General Management*. Funding is provided under [28 U.S.C. § 524\(c\)](#).
- D. Policy:**
1. **Governance and Oversight:**

An inventory must be conducted in accordance with this directive, and in conjunction with any Department of Justice (DOJ) guidance to include the appropriate updating of the automated systems Consolidated Asset Tracking System (CATS), the applicable USMS financial management system, and reconciliation with the case file folder. The proper notification to external agencies (i.e., other asset forfeiture program participating agencies) of missing or inaccurate data contained in CATS is required.
 2. **Frequency:**

A complete physical inventory must be conducted on an annual basis of all seized and forfeited assets in the custody of the USMS. The Annual Physical Inventory will (at minimum):

 - a. Verify that CATS records accurately reflect all assets in the custody of the USMS;
 - b. Verify the condition of assets and identify any missing or unaccounted for assets;
 - c. Validate the value of assets in custody in accordance with respective Electronic Manuals (eManuals); and
 - d. Update CATS records, applicable USMS financial management systems, and the case file folders as necessary.
- E. Procedures:** Procedures for the Annual Physical Inventory of seized and forfeited property in USMS custody are in accordance with the applicable [AFD eManuals](#) and pursuant to a yearly AFD procedural memorandum that will provide specific instructions for that year's Annual Physical Inventory. The AFD procedural memorandum will be issued 60 days prior to commencement of the Annual Physical Inventory.

F. Responsibilities: Each United States Marshal (USM) is accountable for all seized and forfeited assets in his/her district's inventory, including assets held in substitute custodial locations. For Annual Physical Inventory purposes, AFD is responsible for the physical inventory of all assets being physically stored at a national contractor's facility or nationwide central storage location under AFD's control (i.e., jewelry assets, aircraft, weapons, etc.) AFD will provide physical inventory results to the district offices so they can be reconciled and incorporated into district office inventory records.

1. District Responsibilities:

a. Each district will adhere to the following annual inventory actions:

- 1) Designate a primary and secondary government employee as a point of contact (POC) for all inventory matters and assign DOJ contract service employees to assist with inventory as appropriate. (Consult the 60-day AFD procedural memorandum for specific personnel assignment requirements).
- 2) Identify the need to procure private inventory vendor services and coordinate any such procurement with AFD.
- 3) Verify that CATS records and case files folders accurately reflect the location, value and condition of assets in the custody of the district, including assets held in substitute custodial locations. Reconcile district inventory records with inventories conducted by AFD for district assets being held at a national contractor's facility or nationwide central storage locations.
- 4) Identify any missing or unaccountable for assets, including but not limited to assets which are not accounted for on CATS inventory reports.
- 5) Update appropriate information to ensure that discrepancies identified during the inventory are corrected.
- 6) Coordinate with the Investigative Agencies (IAs) and the United States Attorney's Office (USAO) to resolve all identified discrepancies.
- 7) Properly and timely notify the AFD of any discrepancies that cannot be resolved at the local level or assets that have incurred damage or significant depreciation.
- 8) Provide written confirmation signed by the USM or his/her designee that physical inventory was taken of all seized and forfeited assets in the custody of the district, including district assets located at national contractor's facility or nationwide central storage location by the deadline noted in the 60-day AFD procedural memorandum.

2. USMS AFD Responsibilities:

a. The AFD will adhere to the following annual inventory actions:

- 1) Notify each district (60 days) prior to the yearly annual inventory via a memorandum that includes specific procedures on how to conduct the respective year's annual inventory.
- 2) Conduct a physical inventory of all district assets being stored at a national contractor's facility or nationwide central storage location and provide inventory results to the district offices for reconciliation with district custodial records.
- 3) Facilitate any inventory discrepancies between IAs, USAO, the Asset Forfeiture Money Laundering Section (AFMLS) and Asset Forfeiture Management Staff (AFMS) that cannot be resolved at a local level.
- 4) Provide technical assistance as needed.
- 5) Assist in the procurement of services necessary to assist in the annual inventory process.
- 6) Monitor and support districts, as needed, to ensure timely completion of annual inventory.

G. Definitions:

1. **Consolidated Asset Tracking System (CATS):** A consolidated asset forfeiture database for both administrative and judicial cases used to track information in all asset forfeiture program functions, including but not limited to asset seizures, custody and disposals, notice, forfeiture, claims, petitions, equitable sharing, and official use.
2. **Investigative Agency (IA):** DOJ law enforcement agency which investigates crimes that result in the seizure and forfeiture of assets under the DOJ Asset Forfeiture Program. These include the Bureau of Alcohol, Tobacco, Firearms, & Explosives (ATF), United States Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI) and other federal agencies that participate in the DOJ Asset Forfeiture Program.
3. **Physical Inventory:** The process of ensuring CATS records accurately reflect all assets in the custody of the USMS by verifying the location, condition, and value of each asset, to include the reconciliation of any discrepancies between CATS records and the actual assets on hand.

H. Cancellation Clause: This is a new policy directive and remains in effect until superseded.

I. Authorization and Date of Approval:

By Order of:

Effective Date:

 /S/
Stacia A. Hylton
Director
U.S. Marshals Service

9/30/11



United States Marshals Service POLICY DIRECTIVES

ASSET FORFEITURE

13.10 Use of the Assets Forfeiture Fund (5042) and the Seized Asset Deposit Fund (6874)

- A. Proponent:** Asset Forfeiture Division (AFD). Telephone: 202-307-9221, Fax: 202-307-5020.
- B. Purpose:** To ensure the proper use of the Assets Forfeiture Fund (AFF) (5042) and the Seized Asset Deposit Fund (SADF) (6874) Accounts while managing the Asset Forfeiture Program.
- C. Authority:** [28 U.S.C. § 524\(c\)](#). The Assistant Director, AFD, has been delegated authority pursuant to Policy Directive 13.1, *General Management*.
- D. Policy:**
1. Created by the Comprehensive Crime Control Act of 1984, the AFF (5042) Account is used as the repository of proceeds from forfeiture. The Fund receives revenues from forfeited cash, monetary assets, the sale of forfeited property, rental income, cost bonds, and amounts from other law enforcement agencies which represent the Federal equitable share from the forfeiture of property.
 2. The Attorney General, through the [Department of Justice \(DOJ\) Asset Forfeiture Program](#), has authorized the USMS to use the AFF (5042) to pay any necessary expenses associated with asset management and forfeiture operations such as: property seizure, detention, management, forfeiture and disposal. In addition, when directed by the applicable DOJ authority (i.e., Chief, Asset Forfeiture and Money Laundering Section (AFMLS) or the DOJ Investigative Agency (IA) Forfeiture Counsel), the USMS will pay the following from the AFF (5042):
 - a. Funds transferred to the Clerk of Court for a Federal District Court, per the [Asset Forfeiture Policy Manual](#), satisfies court-ordered restitution or the restoration of forfeited assets (e.g., compensation to victims).
 - b. Funds returned to individuals in response to a petition for remission or mitigation per [28 C.F.R. § 9](#).
 3. In addition to paying expenses from the AFF (5042), certain limited expenses may also be paid from the SADF (6874). Payment of expenses that may be made from the SADF (6874) include:
 - a. Payment of validated liens: Rental income deposited to the SADF (6874) which is subsequently used to make payments against validated liens.
 - b. Case related expenses: Income generated by an asset subject to forfeiture which is subsequently used to offset expenses associated with the asset.

E. Procedures: Payments from the AFF (5042) and SADF (6874) will be made in accordance with Policy Directive 5.0, *Financial Management*, the applicable AFD property e-manual, and the AFD finance e-manual.

F. Definitions:

1. **Asset Forfeiture and Money Laundering Section (AFMLS):** the Section of the DOJ which provides centralized management for the Department's Asset Forfeiture Program.
2. **Assets Forfeiture Fund (5042):** Created by the Comprehensive Crime Control Act of 1984, this account is used for the repository of proceeds from forfeiture. It receives revenues from forfeited cash, monetary assets, sale of forfeited property, rental income, cost bonds, and amounts received from other law enforcement agencies which represents the Federal equitable share from the forfeiture of property. The AFF is used to cover operating costs of the Asset Forfeiture Program including all asset management expenses.
3. **Investigative agency (IA):** The DOJ law enforcement agency responsible for investigating the forfeiture action (ATF, DEA, FBI) or other Federal seizing agencies responsible for the forfeiture action that participate in the DOJ Asset Forfeiture Program.
4. **Restoration:** The transfer of forfeited funds or proceeds to the Clerk of a District Court to be used to satisfy orders for restitution to victims of crime.
5. **Seized Asset Deposit Fund (6874):** Holding account administered by the USMS for seized cash pending resolution of forfeiture case. This account holds seized cash, proceeds from interlocutory sales, forfeited cash, cost bonds and rental income that have not yet been forfeited and transferred to the AFF. Monies in the SADF are not property of the Government.

G. Cancellation: This is a new policy directive.

H. Authorization and Date of Approval:

By Order of:

Effective Date:

 /S/

 10/19/2010

John F. Clark
Director
U.S. Marshals Service