

§ 95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
V-58			
IS AMENDED TO DELITE			
PHILPSBURG, PA VORTAC	WILLIAMSPORT, PA VORTAC	28	PHILPSBURG
V-141			
IS AMENDED TO READ IN PART			
RYANNS, MA VORTAC	BOSTON, MA VORTAC	30	RYANNS

[FR Doc. 85-7613 Filed 3-29-85; 8:45 am]

BILLING CODE 4810-13-C

MEA

TO

FROM

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TO

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§ 95.6467 VOR FEDERAL AIRWAY 467—Continued

NAND, NY FIX LA GUERDA, NY VOR/
DME 2700

§ 95.6494 VOR FEDERAL AIRWAY 494

IS AMENDED TO READ IN PART

MENDOCINO, CA VORTAC *2700 - MEA 6000

§ 95.6200 VOR FEDERAL AIRWAY 200

IS AMENDED TO READ IN PART

BONNEVILLE, UT VORTAC *STAGS, UT FIX
*11000 - MCA STAGS, UT VORTAC
STAGS, UT FIX *FAIRFIELD, UT VORTAC
*10500 - MCA FAIRFIELD VORTAC, NW END
*12000 - MCA FAIRFIELD VORTAC, E END

§ 95.6253 VOR FEDERAL AIRWAY 253

IS AMENDED TO DELITE

*FAIRFIELD, UT VORTAC **STAGS, UT FIX
*10500 - MCA FAIRFIELD VORTAC, NW END
*11000 - MCA STAGS, UT VORTAC
BONNEVILLE, UT VORTAC *LUCON, UT VORTAC

12000

9500

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts, 904, 922, and 970

50 CFR Parts 216, 219, 246, 285, and 621

[Docket No. 41157-4157]

Seizure and Forfeiture Procedures

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NOAA issues this rule to consolidate its procedural regulations concerning property seized and forfeited under the various statutes it enforces including remission and mitigation of forfeiture and sale of perishable fish. The intent is to consolidate, expand and replace numerous procedural regulations. The rule also establishes uniform procedures for administrative forfeitures under the Endangered Species Act, Lacey Act, and Fur Seal Act, as well as procedures for collecting storage costs under the Lacey and Endangered Species Acts. The rule does not establish standards for determining whether property should be seized or forfeited. The rule is added as Subpart F to NOAA's interim final rules governing civil procedures.

DATES: This rule is effective April 1, 1985, as an interim rule. Comments must be submitted on or before May 31, 1985.

ADDRESSES: Interested persons may submit written comments to NOAA Office of General Counsel, Room 533, 3300 Whitehaven Street, NW., Washington, D.C. 200235.

FOR FURTHER INFORMATION CONTACT: Patricia Kraniotis, (202) 254-8350 [Address above].

SUPPLEMENTARY INFORMATION:**Discussion**

These regulations provide consolidated, uniform procedures for treating property that has been seized and is subject to forfeiture, or that has been forfeited under the various statutes NOAA enforces, including the Magnuson Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, the Atlantic Tunas Convention Act of 1975, the Lacey Act Amendments of 1981, the Endangered Species Act of 1973, and the Marine Mammal Protection Act of 1972. They do not replace regulations covering the disposal of abandoned and forfeited property at 50 CFR Part 219, Subpart C.

The present regulations governing NOAA's procedures for handling seized and forfeited property are scattered throughout 50 CFR. It is the intent of these regulations to provide a single set of uniform procedures for treating such property. In addition, recent legislative enactments have added to the procedures NOAA may use respecting seized property, such as the authority to sell perishable fish under the Northern Pacific Halibut Act and to recoup storage costs under the Lacey and Endangered Species Acts. These regulations implement the additional statutory procedures.

One of the main additions to NOAA's procedures respecting seized property is the adoption of administrative forfeiture procedures under the Lacey, Endangered Species, and Fur Seal Acts. NOAA has not previously published regulations governing administrative forfeitures under these statutes. Sections 904.503, 904.504, and 904.505 concern administrative forfeitures. Section 904.503 establishes procedures for appraising seized property. This is necessary, among other things, to determine whether property is valued at \$100,000 or less and thus subject to administrative forfeiture, or whether such property must be forfeited judicially. The appraisement standards implement 19 U.S.C. 1606. Sections 904.504 and 904.505 establish procedures for notifying claimants of the forfeiture proceedings and for posting claims and bonds. These procedures are governed by applicable Customs law [see 19 U.S.C. 1606-1609 (as most recently amended by Pub. L. 98-473)]. NOAA expects that use of administrative forfeiture procedures (rather than filing *in rem* action in federal district court in all cases) will save time and expense both for the agency and the public, particularly with regard to small-valued, routine seizures. It should be noted that administrative forfeiture procedures do not apply to conveyances (vessels or vehicles) subject to forfeiture in connection with criminal proceedings under the Lacey and Endangered Species Acts.

The summary sale procedures in § 904.505 are patterned after similar regulations issued under the Magnuson Fishery Conservation and Management Act. They consolidate current regulations under several statutes. The provisions apply only to sale of fish. Such procedures are necessary because when NOAA agents seize fish in connection with a violation, because it is highly perishable, the value of the fish may diminish rapidly unless it is immediately sold and processed. The proceeds of such sales substitute for the

fish in subsequent legal proceedings. Of course, not all seized fish is sold. For instance, spoiled or contaminated products would not be sold; nor, as a matter of policy, would fish (such as undersized fish) for which there is no legal market generally be sold. Authority to sell seized fish derives from several statutes either directly as in the Northern Pacific Halibut Act, Atlantic Tuna Conventions Act, and Magnuson Fishery Conservation and Management Act (where such authority was further clarified in 1982 by Pub. L. 97-453); or by reference to Customs Law as in the Lacey Act.

Section 904.506 addresses remission and mitigation of forfeitures. It applies to property that either has been forfeited or that is seized and subject to forfeiture. This section, which is patterned after existing regulations, allows NOAA discretion to exercise clemency with respect to forfeitures in appropriate cases, for instance where the owner of otherwise legal property acted in good faith, and the violation that gave rise to seizure was technical, minor and unintentional.

The section sets forth the Customs law standards (19 U.S.C. 1618) for exercising the remission and mitigation authority, including the circumstances in which forfeitures will not be remitted or mitigated. As a general rule petitions for remission or mitigation will not be considered once the property has been decreed forfeited, unless a claimant can show that he or she was unaware of the seizure and pending forfeiture proceedings. (In that case the claimant must submit the petition within three months of the declaration or decree of forfeiture.) This is necessary in order to give the agency a cut-off point after which it can make appropriate disposition of the forfeited property. Section 904.507 contains similar provisions with respect to proceeds from the sale of seized and forfeited property. This section also sets forth procedures for NOAA to deduct its storage and maintenance costs from proceeds of sale of forfeited property prior to depositing such proceeds. These authorities derive from references in the various NOAA statutes to Customs law. Section 904.508 sets forth the procedures for recovering storage and maintenance costs from violators for property seized in connection with violations of the Endangered Species Act and Lacey Act. Under both statutes violators are liable for such costs.

Request for Comments

These rules are effective immediately as interim rules. Although no notice or

comment period is required for rules of agency procedure or practice, we are requesting comments on the rules and will review them in light of the comments.

Classification

NOAA has determined that these rules are not major rules as defined by Executive Order 12291, "Federal Regulations." The Regulatory Flexibility Act does not apply because no notice of proposed rulemaking is required. These rules are categorically excluded from preparation of an Environmental Analysis under the National Environmental Policy Act of 1969 by NOAA Directive 02-10. They do not contain information collection requests that are subject to the Paperwork Reduction Act.

List of Subjects

15 CFR Parts 904, 922 and 970

Administrative practice and procedure, Seizures, Forfeitures.

50 CFR Parts 218, 219, 246, 285, and 621

Dated: March 19, 1985.

Administrative practice and procedure, Seizures, Forfeitures.

Mirco P. Snidero,

Director, Office of Administrative Management, National Oceanic and Atmospheric Administration.

1. The following new Subpart F is added to 15 CFR Part 904:

PART 904—CIVIL PROCEDURES

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Subpart—Seizure and Forfeiture Procedures

Sec.

- 904.500 Purpose and scope.
- 904.501 Notice of seizure.
- 904.502 Bonded release.
- 904.503 Appraisalment.
- 904.504 Administrative forfeiture proceedings.
- 904.505 Summary sale.
- 904.506 Remission and mitigation of forfeiture.
- 904.507 Petition for restoration of proceeds.
- 904.508 Recovery of certain storage costs.

Authority: Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971i; Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601-3608; Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.*; Endangered Species Act of 1973, 16 U.S.C. 1531-1543; Fur Seal Act of 1966, 16 U.S.C. 1151 *et seq.* (as amended by Pub. L. 98-129); Lacey Act Amendments of 1981, 16 U.S.C. 3371-3378; Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882; Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407; Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-1434; Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k; North Pacific

Fisheries Act of 1954, 16 U.S.C. 1021-1032; Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f; Sponge Act, 16 U.S.C. 781 *et seq.*; Tuna Conventions Act of 1950, 16 U.S.C. 951-961.

Subpart F—Seizure and Forfeiture Procedures

§ 904.500 Purpose and Scope.

(a) This Subpart establishes procedures relating to seized property (except property seized and held solely as evidence) that is subject to forfeiture under the various statutes administered by the National Oceanic and Atmospheric Administration (NOAA). (b) Except as provided in this Subpart, these regulations apply to all seized property subject to forfeiture under the following statutes:

- (1) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971i;
- (2) Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601-3608;
- (3) Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.*;
- (4) Endangered Species Act of 1973, 16 U.S.C. 1531-1543;
- (5) Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*;
- (6) Lacey Act Amendments of 1981, 16 U.S.C. 3371-3378;
- (7) Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882;
- (8) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407;
- (9) Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-1434;
- (10) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k;
- (11) North Pacific Fisheries Act of 1954, 16 U.S.C. 1021-1032;
- (12) Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f;
- (13) Sponge Act, 16 U.S.C. 781 *et seq.*;
- (14) Tuna Conventions Act of 1950, 16 U.S.C. 951-961;

This Subpart is in addition to, and not in contradiction of, any special rules regarding seizure, holding or disposition of items seized under these statutes.

§ 904.501 Notice of seizure.

Except where the owner, consignee, or other party that the facts of record indicate has an interest in the seized property is personally notified, or where seizure is made pursuant to a search warrant, the Administrator, or his or her designee, will, as soon as practicable following the seizure or other receipt of seized property, mail notice of the seizure by registered or certified mail, return receipt requested, to the owner or consignee, if known or easily ascertainable, or other party that the facts of record indicate has an interest in the seized property. The notice will

describe the seized property and state the time, place and reason for the seizure. The notice will inform each interested party of his or her right to apply for remission or mitigation of the forfeiture (including any agreement that may be required under § 904.506(b)(2)(C) of this Subpart). The notice may be combined with a notice of the sale of perishable fish issued under § 904.505 of this Subpart.

§ 904.502 Bonded release.

The Administrator may, in his or her sole discretion, release any seized property upon deposit with the Administrator of the full value of the property or such lesser amount as the Administrator deems sufficient to protect the interests served by the applicable statute. The deposit will be held in a NOAA suspense account, or deposited with the appropriate court, pending the outcome of forfeiture proceedings. In addition, the Administrator may, in his or her sole discretion, accept a bond or other security in place of fish, wildlife, or other property seized. The bond will contain such conditions as the Administrator deems appropriate. The provisions of § 904.506(f) of this Subpart apply to the Administrator's determination whether to release the property. The deposit or bond will for all purposes be considered to represent the property seized and subject to forfeiture.

§ 904.503 Appraisalment.

The Administrator will appraise seized property to determine its domestic value. Domestic value means the price at which such or similar property is offered for sale at the time and place of appraisalment in the ordinary course of trade. If there is no market for the seized property at the place of appraisalment, the value in the principal market nearest the place of appraisalment will be used. If the seized property may not lawfully be sold in the United States, its domestic value will be determined by other reasonable means.

§ 904.504 Administrative forfeiture proceedings.

(a) *When Authorized.* Whenever any property seized under the Endangered Species Act of 1973, the Lacey Act Amendments of 1981, or the Fur Seal Act of 1966, is determined under § 904.503 of this Subpart to have a value of \$100,000 or less, the Administrator may obtain its forfeiture under this section. This section does not apply to conveyances seized in connection with criminal proceedings.

(b) *Procedure.*—(1) *Notice of Proposed Forfeiture.* The Administrator will publish a notice of proposed forfeiture once a week for at least three successive weeks in a newspaper of general circulation in the judicial district in which the property was seized. However, if the value of the seized property does not exceed \$1,000, the notice may be published by posting for at least three successive weeks in a conspicuous place accessible to the public at the National Marine Fisheries Service Enforcement Office, United States District Court, or the United States Customs House nearest the place of seizure, with the date of posting indicated on the notice. In addition, a reasonable effort will be made to serve the notice personally, or by registered or certified mail, return receipt requested, on each person whose whereabouts and interests in the property are known or easily ascertainable.

(2) *Contents.* The notice of proposed forfeiture will:

(A) Describe the seized property, including any applicable registration or serial numbers;

(B) State the time, place and reason for the seizure; and

(C) Describe the rights of an interested person to file a claim to the property (including the right to file a motion to stay administrative forfeiture proceedings and to petition to remit or mitigate the forfeiture).

(3) *Filing a Claim and Bond.*—(A) *Claim.* Except as provided in paragraph (b)(4) of this section, any person claiming the seized property may file a claim with the Administrator, at the address indicated in the notice, within 20 days of the date the notice was first published or posted. The claim shall state the claimant's interest in the property.

(B) *Bond.* Except as provided in paragraphs (b)(3)(E) or (b)(4) of this section, a bond for costs in the penal sum of \$5,000 or 10 percent of the appraised value of the property, whichever is lower, but not less than \$250, with sureties satisfactory to the Administrator, shall be filed with the claim for seized property. The bond may be posted by certified check or on Customs form 4615 (or a similar form provided by NOAA). There shall be endorsed on the bond a list or schedule in substantially the following form, signed by the claimant in the presence of witnesses, and attested by the witnesses:

List or schedule containing a particular description of seized article, claim for which is covered by the within bond; to wit:

The foregoing list is correct.

Claimant.

Attest

(C) *Claimant Not Entitled to Possession.* Filing a claim and posting a bond does not entitle the claimant to possession of the property. However, it does stop administrative forfeiture proceedings.

(D) *Referral to Attorney General.* If the claim and bond are timely filed in accordance with this section, the Administrator will refer the matter to the Attorney General to institute forfeiture proceedings in the appropriate United States District Court.

(E) *Waiver of Bond.* Upon satisfactory proof of financial inability to post the bond, the Administrator may waive the bond requirement for any person claiming an interest in the seized property.

(4) *Motion for Stay.* Instead of, or in addition to, filing a claim and bond under paragraph (b)(3) of this section, any person claiming the seized property may file with the Administrator within 20 days after the date of first publication or posting of the notice of proposed forfeiture, a motion to stay administrative forfeiture proceedings. The motion shall contain: (i) The claimant's verified statement showing the claimant's absolute title to the seized property, free of all liens or other third party interests; and (ii) the claimant's offer to pay in advance all reasonable costs anticipated for storage and maintenance of the property. The Administrator, in his or her discretion, may grant the stay and impose any conditions deemed reasonable, including but not limited to length of the stay, factors that would automatically terminate the stay, and any requirement for a bond to secure payment of storage or maintenance costs. If the Administrator denies or terminates the stay, the claimant, if he or she has not already done so, has 20 days from receipt of the denial or termination order to file a claim and bond in accordance with paragraph (b)(3) of this section. Failure to file the claim and bond within that 20 days will result in summary forfeiture under paragraph (b)(5) of this section.

(5) *Summary Forfeiture.* If a claim and bond are not filed within 20 days of notice in accordance with this section, the Administrator will declare the property forfeited. The declaration of forfeiture will be in writing and will be served on each person whose whereabouts and prior interest in the

seized property are known or easily ascertainable. The forfeited property will be subject to disposition as authorized by law and regulations of the Administrator.

(6) *Judicial Forfeiture.* If the appraised value of the property is more than \$100,000, or a timely and satisfactory claim and bond for property appraised at \$100,000 or less are submitted to the Administrator, the matter will be referred to the Attorney General to institute *in rem* proceedings in the appropriate United States District Court.

§ 904.505 Summary sale.

(a) In view of the perishable nature of fish, any person authorized to enforce a statute administered by NOAA may, as authorized by law, sell or cause to be sold, and any person may purchase, for not less than its domestic fair market value, fish seized under such statute.

(b) Any person purchasing fish subject to this section shall deliver the proceeds of the sale to a person authorized to enforce a statute administered by NOAA immediately upon request of such authorized person. Anyone who does not so deliver the proceeds may be subject to penalties under the applicable statute or statutes.

(c) The Administrator will give notice of the sale by registered or certified mail, return receipt requested, to the owner or consignee, if known or easily ascertainable, or to any other party that the facts of record indicate has an interest in the seized fish, unless the owner or consignee or other interested party has otherwise been personally notified. Notice will be sent either prior to the sale, or as soon thereafter as practicable.

(d) The proceeds of the sale, after deducting any reasonable costs of the sale, will be subject to any administrative or judicial proceedings in the same manner as the seized fish would have been, including an action *in rem* for the forfeiture of the proceeds. Pending disposition of such proceedings, the proceeds will, as appropriate, either be deposited in a NOAA suspense account or submitted to the appropriate court. The proceeds will not be subject to release under §§ 904.502 or 904.506(f) of this Subpart.

(e) Seizure and sale of fish is without prejudice to any other remedy or sanction authorized by law.

§ 904.506 Remission and mitigation of forfeiture.

(a) *Application of This Section.* (1) This section establishes procedures for filing with the Administrator a petition for relief from forfeitures incurred, or

alleged to have been incurred, under any statute administered by NOAA that authorizes the remission or mitigation of forfeitures.

(2) For purposes of this section, the "remission or mitigation of a forfeiture" or "relief from forfeiture" means action by the Administrator, following coordination as necessary with other federal agencies and the courts, to release from the custody of the United States all or part of property seized and subject to forfeiture, upon compliance with any terms and conditions set by the Administrator, such as payment of a stated amount in settlement of the forfeiture aspects of a violation. Although the Administrator may properly consider a petition for relief from forfeiture along with other consequences of a violation, the remission or mitigation of a forfeiture is not dispositive of any criminal charge filed, civil penalty assessed, or permit sanction proposed, unless the Administrator expressly so states. Remission or mitigation of a forfeiture is in the nature of executive clemency and is granted in the sole discretion of the Administrator only when consistent with the purposes of the particular statute involved and this section.

(3) The Administrator will not consider a petition for remission or mitigation while a forfeiture proceeding is pending in federal court. Once such a case is referred to the Attorney General for institution of judicial proceedings, and until the proceedings are completed, any petition received by the Administrator will be forwarded to the Attorney General for consideration.

(b) Petition for Relief from Forfeiture.

(1) Any person having an interest in property seized and subject to forfeiture may file a petition for relief from forfeiture. Unless otherwise directed in a notice concerning the seized property, the petition shall be addressed to the Administrator and filed with the Regional Director, National Marine Fishery Service, nearest to the place where the property is held:

Seattle, Washington 98115
Terminal Island, California 90731
Juneau, Alaska 99802
Gloucester, Massachusetts 01930
St. Petersburg, Florida 33702

The Administrator will consider a petition filed after a declaration or decree of forfeiture only if the petitioner demonstrates that he or she did not previously know of the seizure and was in such circumstances as prevented him or her from knowing of it, except that the Administrator will not consider a petition filed more than three months from the date of such declaration or

decree. (See §904.507 of this Subpart regarding the right of certain claimants to petition for restoration of proceeds from the sale of forfeited property.)

(2) The petition need not be in any particular form, but shall set forth the following:

(A) A description of the property seized;

(B) The date and place of the seizure;

(C) The petitioner's interest in the property, support as appropriate by bills of sale, contracts, mortgages, or other satisfactory evidence;

(D) The facts and circumstances relied upon by the petitioner to justify the remission or mitigation;

(E) Any request for release under paragraph (f) of this section pending final decision on the petition, together with any offer of payment to protect the United States' interest that petitioner makes in return for the release, and the facts and circumstances relied upon by petitioner in the request;

(F) The signature of the petitioner, his or her attorney, or other authorized agent; and

(G) An express agreement to defer administrative or judicial forfeiture proceedings until completion of all other related judicial or administrative proceedings (including any associated civil penalty or permit sanction proceedings). A false statement in a petition will subject petitioner to prosecution under 18 U.S.C. 1001.

(c) *Investigation.* The Administrator will investigate the facts and circumstances shown by the petition and seizure, and may in this respect appoint an investigator to examine the facts and prepare a report of investigation.

(d) *Decision on Petition.* (1) After investigation under paragraph (c) of this section, the Administrator will decide the matter and notify the petitioner. The Administrator may remit or mitigate the forfeiture, on such terms and conditions as under the applicable statute and the circumstances are deemed reasonable and just, upon a finding:

(A) That the forfeiture was incurred without willful negligence and without any intention on the part of petitioner to violate the applicable statute; or

(B) That other circumstances exist that justify remission or mitigation of the forfeiture.

(2) Unless the Administrator determines no valid purpose would be served, the Administrator will condition a decision to remit or mitigate a forfeiture upon the petitioner's submitting an agreement, in a form satisfactory to the Administrator, to hold the United States and its officers or agents harmless from any and all claims

based on loss of or damage to the seized property or that might result from grant of remission or mitigation. If the petitioner is not the beneficial owner of the property, or if there are others with a proprietary interest in the property, the Administrator may require the petitioner to submit such an agreement executed by the beneficial owner or other interested party. The Administrator may also require that the property be promptly exported from the United States.

(e) *Compliance with the Decision.* A decision by the Administrator to remit or mitigate the forfeiture upon stated conditions, as upon payment of a specified amount, will be effective for 60 days after the date of the decision. If the petitioner does not comply with the conditions within that period in the manner prescribed by the decision, or make arrangements satisfactory to the Administrator for late compliance, the remission or mitigation will be void, and judicial or administrative forfeiture proceedings will be instituted or resumed.

(f) *Release of Seized Property Pending Decision.* (1) Upon request in the petition for relief from forfeiture, the Administrator may in his or her discretion order the release, pending final decision on the petition, of all or part of the seized property upon payment by the petitioner of the full value of the property to be released or such lesser amount as the Administrator deems sufficient to protect the interests served by the applicable statute. The following, however, will not be released:

(A) Property in which the Administrator is not satisfied that the petitioner has a substantial interest;

(B) Property whose entry into the commerce of the United States is prohibited;

(C) Live animals, except in the interest of the animals' welfare;

(D) Proceeds from the sale of seized property sold under § 904.505 of this Subpart (see § 904.507 of this Subpart regarding petitions for restoration of proceeds from the sale of property declared forfeited); or

(E) Where it appears to the Administrator that it would not be in the best interest of the United States or serve the purposes of the applicable statute to release the property.

(2) If the Administrator grants the request, the amount paid by petitioner will be deposited in a NOAA suspense account. The amount so deposited will for all purposes be considered to represent the property seized and subject to forfeiture, and payment of the amount by petitioner constitutes a

waiver by the petitioner of any claim arising from the seizure and custody of the property. The Administrator will maintain the money so deposited pending his further order, order of a court, or disposition by applicable administrative proceedings.

§ 904.507 Petition for restoration of proceeds.

(a) The general provisions of § 904.506 of this Subpart on petitions for remission or mitigation of forfeitures apply to petitions for restoration of proceeds from the sale of forfeited property, except as modified by this section.

(b) In addition, to any evidence required under § 904.506 of this Subpart, the petition for restoration of proceeds shall be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him or her from knowing of it.

(c) If forfeited property that is the subject of a claim for restoration of proceeds has been appropriated for official use, retention by the government will be regarded as sale for the purposes of this section.

(d) No petition for restoration of proceeds will be considered unless it is submitted within three months of the declaration or decree of forfeiture.

(e) If no petition is timely filed, or if the petition is denied, prior to depositing the proceeds the Administrator may use the proceeds of sale to reimburse the government for any costs that by law may be recovered or to pay any reward that by law may be paid from such sums.

§ 904.508 Recovery of certain storage costs.

If any fish, wildlife, or evidentiary item is seized and forfeited under the Endangered Species Act, 16 U.S.C. 1531-1543, any person whose act or omission was the basis for the seizure may be charged a reasonable fee for expenses to the United States connected with the transfer, board, handling or storage of such property. If any fish or wildlife is seized in connection with a violation of the Lacey Act Amendments of 1981, 16 U.S.C. 3371-3378, any person convicted thereof, or assessed a civil penalty therefor, may be assessed a reasonable fee for expenses of the United States connected with the storage, care and maintenance of such property. Within a reasonable time after forfeiture, the Administrator will send to such person by registered or certified mail, return receipt requested, a bill for such fee. The bill will contain an itemized statement

of the applicable costs, and instructions on the time and manner of payment. Payment shall be made in accordance with the bill. If the recipient of the bill objects to the reasonableness of the costs assessed he or she may, within 30 days of receipt, file written objections with the Administrator at the address stated in the bill. The Administrator will promptly review the written objections and within 30 days mail his or her final decision to the party who filed them. The Administrator's decision will constitute final agency action on the matter.

PART 922—NATIONAL MARINE SANCTUARIES PROGRAM

2. The introductory paragraph of § 922.40 is revised to read as follows:

§ 922.40 Applicable procedures.

NOAA will apply to all enforcement matters under the Act the consolidated civil procedure regulations, set forth at 46 FR 61643 (1981) (to be codified at 15 CFR 904.100 through 904.273), and the seizure, forfeiture, and disposal procedure regulations set forth at 46 FR 31648 (1981) (to be codified at 50 CFR Part 219), and the seizure and forfeiture procedures set forth at 50 FR 12781 (to be codified at 15 CFR Part 904, Subpart F).

PART 970—DEEP SEABED MINING REGULATIONS FOR EXPLORATION LICENSES

3. Section 970.1104 is revised to read as follows:

§ 970.1104 Remission of forfeitures.

Subpart F of 15 CFR Part 904 governs procedures regarding seized property that is subject to forfeiture or has been forfeited under the Act, including the remission or mitigation of forfeitures.

TITLE 50—WILDLIFE AND FISHERIES

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

4. Section 216.7 is amended by revising paragraph (b) and removing paragraph (c) as follows:

§ 216.7 Holding and bonding.

(b) Any arrangement for the handling and care of seized property shall be in writing and shall state the compensation to be paid. Subpart F of 15 CFR Part 904

contains additional procedures that govern seized property that is subject to forfeiture or has been forfeited under the Act.

(c) [Removed]

PART 219—SEIZURE, FORFEITURE, AND DISPOSAL PROCEDURES

5. Subpart B, consisting of §§ 219.11 through 219.15, is removed and the subpart is reserved, as follows:

Subpart B—[Reserved]

§§ 219.11 through 219.15 [Removed]

PART 246—[RESERVED]

§§ 246.1 through 246.17 [Removed]

6. Part 246, consisting of §§ 246.1 through 246.17 is removed and the Part is reserved.

PART 285—ATLANTIC TUNA FISHERIES

7. Section 285.5 is amended by revising paragraph (b) and removing paragraph (c), as follows:

§ 285.5 [Amended]

(b) Subpart F of 15 CFR Part 904 governs procedures regarding seized property that is subject to forfeiture or has been forfeited under the Act, including sale by the government of seized tuna.

(c) [Removed]

PART 621—CIVIL PROCEDURES

8. Section 621.1 is amended by removing paragraphs (d) and (e) as follows:

§ 621.1 [Amended]

(d) [Removed]

(e) [Removed]

9. Section 621.2 is amended by removing paragraph (d) as follows:

§ 621.2 [Amended]

(d) [Removed]

10. Subpart E, consisting of §§ 621.61 through 621.66, is removed and the subpart is reserved, as follows:

Subpart E—[Reserved]

§§ 621.61 through 621.66 [Removed]

[FR Doc. 85-7404 Filed 3-29-85; 8:45 am]

BILLING CODE 3510-12-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission's Appliance Labeling Rule requires that the table in § 305.9, which sets forth the representative average unit energy costs for four residential energy sources; be revised periodically on the basis of updated information provided by the Department of Energy ("DOE").

This notice revises the table to incorporate the latest figures for average unit energy costs as published in the Federal Register on February 4, 1985, by DOE.

DATES: The revised Table 1 is effective April 1, 1985. The mandatory dates for using these revised DOE cost figures are detailed below.

FOR FURTHER INFORMATION CONTACT: James Mills, 202-376-8934 or Lucerne D. Winfrey, 202-376-8934, attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final Appliance Labeling Rule (44 FR 66466) in response to a directive in section 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. 6201 (1975). The rule requires the disclosure of energy efficiency or cost information on labels and in retail sales catalogs for seven categories of appliances, and mandates that these energy costs or energy efficiency ratings be based on standardized test procedures developed by DOE. The rule also requires a general disclosure, on certain point-of-sale promotional materials, of the availability of energy cost or energy efficiency information, and requires that any claims concerning energy consumption made in writing or in broadcast advertisements be based on results of the standardized test procedures. The cost and efficiency information obtained by following the test procedures is derived by using representative average unit energy costs, which, as required by section 323(b)(2) of EPCA, DOE must develop and provide to manufacturers. These figures are incorporated into § 305.9 of the Commission's rule.

Table 1 in § 305.9 of the rule sets forth the representative average unit energy costs to be used for all requirements of the rule. Section 305.9(b), states that the Table is intended to be revised periodically on the basis of updated information provided by DOE. Table 1 was first revised by publication of new DOE figures on January 13, 1981, in the Federal Register (46 FR 2974).

On February 4, 1985, DOE published (50 FR 4889) the most recent figures for representative average unit energy costs. Consequently, Table 1 must again be updated in order to reflect these latest cost figures. Accordingly, Table 1 is revised to read as set forth below.

Mandatory Use of Revised Cost Figures

The dates when use of these figures becomes mandatory in calculating cost disclosures for use in reporting, labeling and advertising products covered by the Commission's rule and/or EPCA are as follows:

For 1985 Submissions of Data Under § 305.8 of the Commission's Rule

The new cost figures must be used in all 1985 submissions except clothes washers. Because it appears that the 1985 costs will not be in effect on the mandatory submission date for these products, clothes washer submissions for 1985 could be based on the 1984 cost figures.

For Labeling and Advertising of Products Under the Commission's Rule

Only those products for which new ranges have been published based on 1985 submissions using these 1985 DOE cost figures should be labeled with estimated annual cost figures calculated using these 1985 DOE representative

average unit costs for energy. If such new ranges are published, the effective date for labeling new products will be ninety days after publication of the ranges in the Federal Register. Advertising for these products must also be based on the new costs and ranges beginning ninety days after publication of the new ranges in the Federal Register.

Advertising of Products Covered by EPCA but not by the Commission's Rule

Manufacturers of products covered by 323(c) of EPCA, but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, humidifiers and dehumidifiers, central air conditioners, and home heating equipment, not including furnaces) must use the 1985 representative average unit costs for energy in all representations effective July 1, 1985.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: Sec. 324 of the Energy Policy and Conservation Act, (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619) (1978), 42 U.S.C. 6294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

PART 305—[AMENDED]

Section 305.9(a) is amended by revising Table 1 to read as follows:

§ 305.9 Representative average unit energy costs.

(a) * * *

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FOUR RESIDENTIAL ENERGY SOURCES (1985)

Type of energy	In common terms	As required by DOE test procedure	Dollars per million Btu's ¹
Electricity	7.75¢/kWh ²	\$0.0775/kWh	\$22.71
Natural gas	61.7¢/therm ³ or \$6.27/MCF ⁴	0.0000617/Btu	6.17
No. 2 heating oil	\$1.11/gallon ⁵	0.0000800/Btu	8.00
Propane	72.0¢/gallon ⁶	0.0000791/Btu	7.91

¹ Btu stands for British thermal unit.² kWh stands for kilowatt hour.³ 1 kWh = 3,413 Btu's.⁴ 1 therm = 100,000 Btu's.⁵ MCF stands for 1,000 cubic feet.⁶ For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,016 Btu's.⁷ For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,700 Btu's.⁸ For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,000 Btu's.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-7482 Filed 3-29-85; 8:45 am]

BILLING CODE 6750-01-M