



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

9.7.4

JANUARY 29, 2025

## EFFECTIVE DATE

(01-29-2025)

## PURPOSE

- (1) This transmits revised IRM 9.7.4, Pre-Seizure Planning.

## MATERIAL CHANGES

- (1) The date of subsection 9.7.4.10.5 has been corrected to reflect when the information was updated.

## EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 9.7.4 dated July 09, 2024.

## AUDIENCE

CI

Shea C. Jones  
Acting Deputy Chief, Criminal Investigation  
for  
Guy A. Ficco  
Chief, Criminal Investigation



9.7.4

PRE-SEIZURE PLANNING

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9.7.4.1  
(07-09-2024)  
**Program Scope and Objectives**

- (1) Purpose: This section sets forth practices to minimize or avoid the possibility that IRS, Criminal Investigation (CI) and the Department of the Treasury will encounter unnecessarily difficult or insurmountable problems in the seizure, management, and disposition of seized assets.
- (2) Audience: All CI employees.
- (3) Policy Owner: Director, Global Financial Crimes & Policy.
- (4) Program Owner: Director, Global Financial Crimes & Policy.
- (5) Primary Stakeholders: All CI employees.
- (6) Contact Information: To recommend changes or make suggestions to this IRM section, contact the Financial Crimes office by emailing CIHQIRM@ci.irs.gov.
- (7) Goal: To provide special agents assistance in pre-seizure planning when it comes to criminal investigations.

9.7.4.2  
(07-09-2024)  
**Background**

- (1) Pre-seizure planning consists of anticipating and making intelligent decisions about **what** property should be seized, **how**, **when** it should be seized, and most importantly, **whether** it should be seized.
- (2) Pre-seizure planning should occur, in both civil and criminal seizure and forfeiture actions, prior to the actual physical seizure of property, and prior to the filing of a civil judicial forfeiture complaint or an indictment with a forfeiture count or allegation.

9.7.4.3  
(07-09-2024)  
**Authority**

- (1) See IRM 9.1.4, Authority for the delegated authority relating to IRM 9.7.1, Roles, Responsibilities, and Authorities and IRM 9.7.1.3, Assets Forfeiture Authorities.

9.7.4.4  
(07-09-2024)  
**Roles and Responsibilities**

- (1) The Director, Global Financial Crimes & Policy is responsible for developing, maintaining, and overseeing this IRM and ensuring compliance with current policies and procedures.

9.7.4.5  
(07-09-2024)  
**Program Management and Review**

- (1) The Director, Global Financial Crimes & Policy will:
  - a. Review the IRM annually.
  - b. Update the IRM when content is no longer accurate and reliable to ensure employees correctly complete their work assignments and for consistent administration of the tax laws.
  - c. Incorporate all interim content into the next revision of the IRM section prior to the expiration date.

9.7.4.6  
(07-09-2024)  
**Program Controls**

- (1) The Director, Global Financial Crimes & Policy will review the instructions and guidelines relating to the investigation of tax returns and other IRS documents for procedural, operational, and editorial changes.

9.7.4.7

(07-09-2024)

**Acronym Table**

- (1) The table lists commonly used acronyms and their definitions:

<b>Acronym</b>	<b>Description</b>
AFC	Asset Forfeiture Coordinator
AF MPA	Asset Forfeiture Management Program Analyst
ARIS	Asset Recovery & Investigative Services
AUSA	Assistant United States Attorney
CAFRA	Civil Asset Forfeiture Reform Act
CI	Criminal Investigation
CIMIS	Criminal Investigation Management Information System
CIS	Computer Investigative Specialist
CT Counsel	Criminal Tax Counsel
DFO	Director/Field Operations
DOJ	Department of Justice
ECMIS	Electronic Crimes Management Information System
Fed R Crim	Federal Rules of Criminal Procedure
FRCrP6(e)	Federal Rules of Criminal Procedure Rule 6(e)
HUD	The Department of Housing and Urban Development
IRM	Internal Revenue Manual
MPA	Management Program Analyst
N.A.D.A.	National Automobile Dealers Association
NHPA	National Historic Preservation Act
SAC	Special Agent in Charge
SME	Subject Matter Expert
TEOAF	Treasury Executive Office of Asset Forfeiture
USAO	United States Attorney's Office
USC	United States Code

9.7.4.8

(07-09-2024)

**Related Resources**

- (1) 18 U.S. Code 3500 - Demands for production of statements and reports of witnesses.
- (2) 26 U.S. Code 6103 - Confidentiality and disclosure of returns and return information.

## 9.7.4.9

(03-19-2003)

**Pre-Seizure Planning Responsibility**

- (1) The Assistant United States Attorney (AUSA) is responsible for ensuring that proper **and** timely pre-seizure planning occurs in civil judicial and criminal forfeiture actions. In administrative forfeiture actions, the Asset Forfeiture Coordinator (AFC) has this responsibility.
- (2) Although the AUSA may be ultimately responsible for pre-seizure planning in civil judicial and criminal forfeiture actions, the AFC is responsible for **initiating** the pre-seizure planning process set forth in this section and **ensuring** that they are followed in all seizure and forfeiture actions.
- (3) Most importantly, it is the investigating agent's responsibility to inform the AFC of any potential seizure or forfeiture action as early as possible, so the AFC can ensure that timely and proper pre-seizure planning occurs.
- (4) When an individual or the underlying conduct giving rise to the forfeiture is also the subject of a simultaneous criminal investigation or proceeding, the AUSA responsible for the civil forfeiture action should consult with the AUSA responsible for the criminal investigation or proceeding to ensure that their activities are coordinated and consistent.

## 9.7.4.10

(03-19-2003)

**Decision to Seize**

- (1) There are numerous factors involved in the decision to seize property and commence a forfeiture action.

## 9.7.4.10.1

(03-19-2003)

**Prospects for Success in Forfeiture Proceeding**

- (1) The primary determination to be made before seizing property for forfeiture is whether the United States is likely to prevail in the ensuing forfeiture action. To make this determination, Criminal Tax (CT) Counsel and the local forfeiture AUSA should be consulted to assure there is sufficient evidence to show probable cause for the seizure and proof of forfeitability by a preponderance of the evidence at trial. The determination of evidentiary sufficiency should also include a realistic assessment of the validity of potential defenses that could ultimately defeat the forfeiture.

## 9.7.4.10.2

(11-20-2013)

**Evaluation of Property**

- (1) When determining whether to seize property that is subject to forfeiture, the type of property involved and its value should be considered and analyzed. The analysis should be a realistic estimate of the condition and value of the property, the extent of the violator's interest, and the potential validity of third-party claims.
- (2) The seized property contractor should be consulted to discuss possible problems with the property's storage and preservation during the forfeiture proceeding. The ARIS Section and the Treasury Executive Office for Asset Forfeiture (TEOAF) should also be contacted when particularly difficult problems of business management, maintenance, and/or eventual disposition are presented.
- (3) If it is likely that third parties, such as lienholders or victims, will be entitled to relief from the forfeiture, or if the costs and difficulties of storage, preservation, and disposition will be unduly burdensome, it may be ill-advised or wasteful to seize the property and attempt to forfeit it. The same is true if the target property has a low monetary value or is in poor condition.

- 9.7.4.10.3  
(07-09-2024)  
Net Equity Requirements
- (1)

The TEOAF Directive Number 20, Net Equity Requirements for Seized Property, provides policy for the net equity requirements of seizures by Treasury law enforcement agencies. Minimum net equity is the difference between current market value/appraised value of the property less innocent third-party liens/mortgage(s) and estimated disposition expenses.
- (2)

Criminal Investigation has established higher net equity requirements than those contained in Directive Number 20. The minimum net equity requirements established by CI on individual assets are as follows:

Real Property and Vacant Land	\$30,000 or 20 percent of the appraised value, whichever is greater
Conveyances-	\$ 5,000
Vehicles	\$10,000
Vessels	\$15,000
Aircraft	\$30,000
<b>Note:</b> Failure to obtain the log books for the aircraft will reduce the air crafts value significantly.	
Currency/Monetary Instruments/Financial Accounts	
-	\$ 5,000
All Other Personal Property	\$ 2,000

- (3)

The minimum net equity requirements may be waived in individual investigations to serve an overriding law enforcement objective such as:

a.

Failure to seek forfeiture of some of the assets will cause the United States to take an inconsistent position in its theory of forfeiture; or

b.

The seized assets are an integral part of the criminal operation and the failure to seek forfeiture of the asset will allow the criminal operation to continue.
- (4)

The aggregate net equity is the total value of all the property seized from a common owner where the property is subject to forfeiture under the same statutory authority and on the same factual basis.

- 9.7.4.10.4  
(03-19-2003)  
Law Enforcement Objectives
- (1)

The purpose of forfeiture is not to make a profit for the United States, but to provide a remedial device to impose liability on persons who knowingly or consensually acquiesce in the illegal use of their property, or in the acquisition of criminally derived property. Therefore, even if the property has little value, its forfeiture may serve legitimate and overriding law enforcement objectives by depriving the violator or persons in concert with the violator, of its use and availability.
- (2)

When the proposed seizure and forfeiture involves identifiable victims other than the government, and such identifiable victims have an interest in the seized property which will likely result in mitigation in favor of the victims, consideration should be given to not pursuing the forfeiture. Criminal Investigation should pursue forfeiture if it appears the assets may be sold, disposed of,



concealed or otherwise depleted before distribution to victims. Criminal Investigation should weigh public perception relative to forfeiture action where assets can only be protected by seizure by the government for eventual distribution to the victims, versus the cost of distributing said assets to victims through the forfeiture process. Factors weighing against pursuing the forfeiture include injunctions to prevent disposition or encumbrance of the property, or the likelihood that other circumstances, including existing lawsuits, liens, etc., will allow distribution of assets to the victims.

9.7.4.10.5  
(07-09-2024)  
**Department of Justice  
(DOJ) Authorization in  
Tax or Tax-Related  
Investigations**

- (1) It is the general practice of Criminal Investigation that Title 18 seizure/forfeiture authority will not be used in tax or tax-related investigations. However, there may be instances where Title 18 seizure/forfeiture provisions are appropriate in tax or tax-related investigations. Pre-seizure reviews and approvals are needed in these cases.
- (2) The use of such forfeitures in tax and tax-related investigations will likely require approval by the DOJ Tax Division pursuant to the provisions of Tax Division Directive 128. Forfeitures in tax or tax-related investigations must be reviewed by Area Counsel, have the concurrence of the Director, Field Operations, and be approved by the Chief, Criminal Investigation (CI). If approved, the Chief, CI will then refer the matter to the requesting SAC. The field office will prepare a transmittal memorandum and forward the request to Tax Division for authorization to pursue a judicial forfeiture action pursuant to Directive 128. The Director, Asset Recovery & Investigative Services (ARIS) will also seek the advice and recommendation of the Division Counsel/Associate Chief Counsel (Criminal Tax).
- (3) The use of Title 18 forfeiture provisions in tax or tax-related investigations must be limited to egregious circumstances where:
  - a. Significant assets have been identified.
  - b. There are no practical civil remedies for recovering the assets subject to forfeiture.
  - c. The refund is the product of a wholly fraudulent return, regardless of the taxpayer's complicity or receipt of any portion of the proceeds.

9.7.4.10.5.1  
(07-09-2024)  
**Requesting Approval for  
Title 18 Forfeitures in  
Tax or Tax-Related  
Investigation**

- (1) It is generally acknowledged that, in many instances, time is of the essence when considering a seizure action because some types of assets (particularly currency or cash on deposit) can easily be placed outside the reach of the government. In addition, in some instances a decision to utilize Title 18 forfeiture provisions is made subsequent to the seizure of an asset (e.g., search warrants). Given these circumstances, it is understood that it may sometimes be impractical or impossible to forward a request without the required approval. Therefore, in any event where it is anticipated that forfeiture will be pursued under Title 18, approval will be sought prior to forfeiture, and as early as practicable. The process for making this request is as follows:
  - a. A memorandum from the SAC; through the Director, Field Operations; to the Director, ARIS, will be prepared. The memorandum will contain the following information:
    - A summary of the investigation.
    - An explanation as to why there are no practical civil remedies for recovering the asset(s) subject to forfeiture and why the assets are at immediate risk.

- An explanation of how the refund is the product of a wholly false return.
  - Sufficient facts and information to determine the potential application of the Title 18 seizures/forfeiture provisions.
  - In those situations where a Title 18 seizure warrant has already been executed, an explanation of the circumstances that prevented the request for approval from being forwarded prior to the execution date.
- b. A Law and Fact Memorandum will be obtained from local Area Counsel and will be forwarded with the field office request.
  - c. Where judicial forfeiture is anticipated, a memorandum of support will be obtained from the appropriate United States Attorney's Office. This advice will be sought within the confines of IRC §6103.
  - d. The SAC will forward the above documents, together with a copy of the seizure warrant and affidavit (if a seizure has already been made) to the Director, Field Operations, for concurrence. The Director, Field Operations, will forward the request to the Director, ARIS. The Director, ARIS will seek the advice and recommendation of the Division Counsel/ Associate Chief Counsel (Criminal Tax) regarding the request.
  - e. The Director, ARIS, will prepare a memorandum to the Chief, CI, through the Director, Global Operations. If approved, the Chief, CI will refer the matter to the requesting SAC. If a judicial case, the field office will prepare a transmittal memorandum and forward the package to the DOJ Tax Division, to pursue a judicial forfeiture.
  - f. Upon approval by the Chief, CI, the administrative forfeiture action may commence.

9.7.4.11  
(03-19-2003)

#### **Alternatives to Seizure**

- (1) The primary goal of the Treasury Asset Forfeiture Program is to deprive criminals of property used or acquired through illegal activities. Depriving an individual of an asset derived from or used in a crime can be achieved by means other than forfeiture. Alternatives include:
  - a. In investigations involving real estate with negative or minimal net proceeds, allow the mortgage holder to foreclose on the mortgage, targeting the equity, if any, for seizure from the escrow account.
  - b. In certain high crime areas, low value real estate (e.g., "crack houses") may be removed by working with the local authorities to have the building condemned based on health and sanitation code violations, or as a public nuisance.
  - c. In instances where local taxes are owed, work with the local taxing authorities to have the property seized for back taxes.
  - d. Allow the posting of cash or other property in lieu of seizure of the asset.
  - e. In instances where the property is being marketed for sale, allow the sale to continue and seize the net proceeds.

9.7.4.12  
(03-19-2003)

#### **Sources of Information for Seizure**

- (1) In the course of a criminal investigation, special agents work with restricted and sensitive information from various sources. When planning for a civil seizure and forfeiture action, special agents must be certain to adhere to the secrecy provisions surrounding the grand jury process and restrictions concerning the disclosure of tax return and return information.

9.7.4.12.1  
(07-09-2024)

**Grand Jury Information**

- (1) The Civil Asset Forfeiture Reform Act of 2000 (CAFRA) amended 18 USC 3322, Disclosure of Certain Matters Occurring before Grand Jury, to allow a person who is privy to grand jury information received in the course of duty as an attorney for the government, or disclosed under the Federal Rules of Criminal Procedure (FRCrP) Rule 6(e), to disclose that information to an "attorney for the government" for use in connection with any civil forfeiture provision of federal law.
- (2) To disclose grand jury information to agency counsel, criminal AUSAs ordinarily must rely upon an exception to the FRCrP6(e), non-disclosure rule, which permits disclosure of grand jury material to any government personnel, including appropriate seizing agency asset forfeiture attorney(s), "to assist an attorney for the government in performing that attorney's duty to enforce federal criminal law." In conjunction with making such a disclosure, the AUSA must add the appropriate seizing agency asset forfeiture attorney(s), ARIS HQ staff, CT HQ, field attorneys, and support staff to the Rule 6(e) list.
- (3) The AFC must provide a list of CI personnel who will have access to grand jury information for the purpose of assisting in the forfeiture action. This would include ARIS personnel.
- (4) The AFC must obtain from CT Counsel a list of CT personnel who will have access to grand jury information for the purpose of assisting in the forfeiture action. This would also include CT HQ personnel. It is the responsibility of CT Counsel to compile the list for CI to provide to the AUSA.

9.7.4.12.2  
(03-19-2003)

**Tax Return and Return Information**

- (1) An ex parte order is the only method that allows a special agent to utilize tax return and return information in an affidavit for a seizure warrant or in a complaint for civil forfeiture (in non-tax investigations) and in subsequent litigation.

9.7.4.12.3  
(03-19-2003)

**Ex Parte Order**

- (1) Pursuant to 26 USC 6103(i)(1), for non-tax criminal investigations or 26 USC 6103(i)(4), for non-tax civil investigations, a Federal district court judge or magistrate may grant an ex parte order for the disclosure of tax return and return information:
  - a. If the court finds that such tax return or return information has probative value in establishing the commission of a crime or the guilt or liability of a party, or
  - b. To the extent required by order of the court pursuant to 18 USC 3500 or FRCrP Rule 16.
- (2) If an ex parte order has been granted solely pursuant to 26 USC 6103(i)(1), a second ex parte order pursuant to 26 USC §6103(i)(4)(A) must be obtained prior to use in a related civil forfeiture (in non-tax criminal investigations).
- (3) If tax return and return information has been accessed through the authorization of a tax grand jury investigation, an ex parte order pursuant to 26 USC 6103(i)(4)(A) must be obtained to utilize tax return and return information in a related civil forfeiture action (in non-tax criminal investigations).
- (4) In a non-tax criminal investigation, an ex parte order obtained pursuant to 26 USC 6103(i)(1) and (i)(4) is the preferable method to access and utilize tax return and return information in a related civil forfeiture.

9.7.4.13  
(03-19-2003)

**Special Policies and  
Considerations**

- (1) The seizure of certain types of personal property requires special consideration in the pre-seizure planning process. One consideration is that a search warrant may be required in addition to a seizure warrant when the seizure of property for forfeiture involves an intrusion into an area where there is a legitimate expectation of privacy and there are no exigent circumstances mandating immediate action to preserve the property.

9.7.4.13.1  
(11-20-2013)

**Cash**

- (1) The security, budgetary, and accounting problems associated with the seizure and retention of large amounts of cash creates great concern within CI, the Department of the Treasury, and Congress, and raises both financial management and internal control issues.
- (2) Criminal Investigation policy mandates that domestic and foreign currency seized for forfeiture, except where it is to be used as evidence or held as a "collectible asset", must be expeditiously counted, processed, and deposited to the Treasury Suspense Account within 5 days of seizure. The use of safe deposit boxes or other secure methods of storing seized currency temporarily is acceptable when necessary.
- (3) The TEOAF Directive Number 4, Seized Cash Management Policy, establishes policy on the management of seized cash, including levels of approval to hold seized currency for evidentiary purposes.

9.7.4.13.2  
(07-09-2024)

**Financial Instruments**

- (1) Because the value of financial instruments can be lost or diminished if proper procedures are not followed, TEOAF issued Directive Number 2, Seizures of Financial Instruments. The following financial instruments seized for forfeiture are to be handled in accordance with the procedures in Directive Number 2:
  - a. Postal money orders,
  - b. Personal checks,
  - c. Cashier's checks,
  - d. Certificates of deposit,
  - e. Traveler's checks,
  - f. Stocks, bonds, and brokerage accounts,
  - g. US savings bonds,
  - h. Airline tickets.

9.7.4.13.3  
(11-20-2013)

**Conveyances**

- (1) If feasible, title and lien searches should be considered prior to the seizure of certain conveyances for forfeiture. State motor vehicle agencies, the Federal Aviation Administration, and the US Coast Guard keep records of ownership and certain security interests which can be indispensable in deciding whether to pursue forfeiture.
- (2) The seized property contractor should be consulted about the marketability of certain conveyances to be seized and the possible need for a prompt interlocutory sale of the property to prevent deterioration or damage and to avoid excessive storage and maintenance costs.
- (3) The TEOAF Directive Number 33, Seizure of Motor Vehicles, Payment of Liens and Official Use Requirements, directs seizing agencies and the seized property contractor to use the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide as the standard source for assigning "appraised" or "fair market" values of seized vehicles.

9.7.4.13.4  
(03-19-2003)  
**Perishable Goods**

- (1) Seizing perishable goods poses the immediate problem of needing to maintain the condition of the asset at time of seizure. It is extremely important to involve the seized property contractor in pre-seizure discussions since the value of the asset can deteriorate rapidly if appropriate measures are not taken.

9.7.4.13.5  
(07-09-2024)  
**Digital Assets**

- (1) When a special agent recognizes the potential for seizing digital assets, the agent should identify as much information as possible that is known about the asset including type, amount, and digital wallet/public key address. The agent should then contact their Asset Forfeiture Coordinator (AFC) and/or Asset Forfeiture Management Program Analyst (AF MPA) and relay this information to them.
- (2) Unless authorization was obtained through a search warrant or consent by the owner, a seizure warrant should be obtained for the seizure of digital asset. In the case that the digital asset is held in a locally stored wallet in the United States, a seizure warrant should be obtained for that digital asset possessed and controlled by the owner and serve the warrant on the owner or the owner's counsel. In the case of the digital asset held in an account or wallet hosted by a U.S.-based service provider, such as an institutional exchange, a seizure warrant should be obtained and served on the service provider, similar to executing a seizure warrant on a bank account.

9.7.4.13.5.1  
(07-09-2024)  
**Computer Investigative Specialist Assistance with Digital Assets**

- (1) When it is anticipated that a seizure or voluntary surrender of digital asset is forthcoming, it is imperative that either the case agent, AFC, or AF MPA request assistance from a Computer Investigative Specialist (CIS) prior to the seizure. If a CIS has not already been assigned to the investigation, a Form 10908, Request for CI Assistance, should be submitted. When requesting CIS assistance, the agent should specify "digital asset seizure" assistance or directly notify the assigned CIS if a Form 10908 has already been approved for the active investigation.
- (2) SSA-CIS or CIS will then contact the Digital Asset Seizure Specialist Group and include a PDF copy of Form 10908 (if not submitted electronically in Electronic Crimes Management Information System (ECMIS)) and pertinent case details including the ECMIS/CIMIS Case Number.
- (3) A Digital Asset Seizure Subject Matter Expert (SME) will contact the requesting CIS and will assist with creating the necessary types of digital asset wallets required to seize the currency. The SME will assist the assigned CIS with all aspects of the actual seizure/transfer process.
- (4) Each seizure/case requires the creation of separate digital asset wallets. A hardware wallet can be used to hold multiple digital asset wallets, but a separate hardware wallet should be used for each case.
- (5) Following the seizure, the government wallets will be inventoried by the Digital Asset SME and compared with expected transfer amounts. The inventory will be emailed to the CIS, Case Agent, AFC, and assigned ARIS Representative after all transfers have been completed. The seizing CIS/SME must complete a Memorandum documenting the transfer and include: digital asset type, amount prior to transfer, public address(es) of the subject(s) wallet(s), and the public address(es) of the government wallet(s) used to conduct the seizure.

9.7.4.13.5.2  
(07-09-2024)

**Special Policies and Considerations**

- (1) Digital Assets are classified as general property and as such, the net equity requirements for general property also apply to digital assets.
- (2) As there are thousands of types of digital assets, prior to seizing digital assets, agents should consult with their AFC and AF MPA to determine if targeted digital asset can be stored and liquidated. If a digital asset type has been seized but cannot be stored or liquidated, then the government may not be able to process the asset.

9.7.4.14  
(03-19-2003)

**Real Property and Ongoing Business Considerations**

- (1) When real property or an ongoing business is the contemplated subject of forfeiture, it is particularly important to investigate ownership interests in the property. Additionally, possible problems with its custody, marketability, and eventual disposition can cause further concerns. Other considerations may involve deciding whether and how to continue commercial operation of a business enterprise.

9.7.4.14.1  
(11-20-2013)

**Real Property Pre-Seizure Services Available from the Seized Property Contractor**

- (1) The seized property contractor provides pre-seizure and post-seizure assistance and property management services for both residential and commercial properties. These services are detailed in the seized property contractor's Statement of Work, which completely describes the seized property contractor's work requirements.
- (2) At a minimum during pre-seizure planning, the AFC will prepare a Disposition Order. The order instructs the seized property contractor to obtain a title report (to determine the legal owner of the property and identify all recorded mortgages, liens, easements, etc.) and prepare a limited or "drive-by" appraisal of real property and/or a business and, in the case of an ongoing business, a business operation analysis and business operations plan. The seized property contractor can also be instructed to provide a net equity and cost benefit analysis to assist in pre-seizure planning.
- (3) The seized property contractor is required to immediately notify the AFC upon finding any lead-based paint or other environmental issues during pre-seizure analysis and provide their management recommendations. These issues are especially critical in evaluating whether or not to proceed with the forfeiture of certain real property and/or ongoing businesses. Environmental issues and lead-based paint are covered in subsections below.

9.7.4.14.2  
(11-20-2013)

**Contaminated or Potentially Contaminated Real Property**

- (1) It is the policy of both the Department of the Treasury and the DOJ that contaminated real property, or potentially contaminated with hazardous substances may, in the exercise of discretion, be seized and forfeited upon a determination by the United States Attorney in the district where the property is located. The determination is made in consultation with the seizing agency and the seized property contractor. The United States Attorney may delegate this authority to an AUSA, with a provision for review by a supervisor.
- (2) The Department of the Treasury policy is contained in TEOAF Directive Number 7, Seizure and Forfeiture of Real Property That is Potentially Contaminated, or is Contaminated, with Hazardous Substances.
- (3) This policy is applicable regardless of the type or source of the hazardous substance(s).



- (4) This policy is based on the ability of the United States to invoke an “innocent owner” defense from liability for hazardous substance contamination found on real property, if such contamination resulted from a prior owner’s activities.
- (5) However, if the real property becomes contaminated with a hazardous substance after the United States becomes the owner, then the “innocent owner” defense is inapplicable to that contamination. This situation normally will arise when the United States operates a business or activity on the property that results in the storage, release or disposal of hazardous substance (e.g., gasoline station, metal plating shops, dry cleaners, printers, etc.).
- (6) This policy envisions United States Attorneys exercising discretion in the seizure and forfeiture of real property that is contaminated or potentially contaminated with hazardous substances. Normally, such properties should not be forfeited unless there is at least \$30,000 in net equity. Furthermore, such properties should not be forfeited when there is reason to believe that property is substantially contaminated with hazardous substances and that such contamination would render the property unmarketable. Clean-up costs can be considerable particularly when the water table is involved. In making this determination an environmental assessment may be ordered, which will be paid by the Treasury Forfeiture Fund.

9.7.4.14.3  
(11-20-2013)  
**Lead-Based Paint in  
Residential Real  
Property**

- (1) The Department of Housing and Urban Development (HUD) first promulgated regulations in 1978 regarding the use and disposal of residential property that may have lead-based paints. The regulations require Federal agencies to:
  - a. Inspect for lead-based paint.
  - b. Eliminate the hazards of any lead-based paint present.
  - c. Notify prospective purchasers of the hazard.
- (2) The TEOAF issued Directive Number 30, Interim Guidelines re: Lead-Based Paint in Residential Property Built Prior to 1978, to set policy with regard to the following:
  - a. Unoccupied pre-1978 constructed residential properties targeted for seizure.
  - b. Seized unoccupied residential properties-leasing the property.
  - c. Seized and occupied pre-1978 residential property.
  - d. Disposition of seized occupied residential property.
  - e. Continued case processing to seizure/forfeiture.
- (3) If the decision is made to progress to seizure/forfeiture of a residential real property found to be contaminated with lead-based paints, or it is assumed that a residential real property is contaminated with lead-based paints based solely on the fact that the property was constructed prior to 1978, the AFC must obtain written concurrence from TEOAF. The written request will be made by memorandum from the SAC to the Director, TEOAF, through the Director, Operations Policy and Support. Directive Number 30 sets forth what information that should be included in the written request.
- (4) The seized property contractor has been instructed not to take real property subject to Directive Number 30 into custody without the required written concurrence of the Director, TEOAF.

9.7.4.14.4  
(11-20-2013)

**National Register of  
Historic Places**

- (1) In 1966, Congress passed the National Historic Preservation Act (NHPA) to preserve irreplaceable parts of the American heritage to allow future generations of Americans to benefit from the cultural, educational, and aesthetic qualities of these historic places.
- (2) The NHPA not only applies to Federal buildings and land managed by Federal agencies, but it also applies to all other historic properties, which may be seized, and subject to forfeiture. The TEOAF issued Directive Number 25, Department Policy Regarding the Seizure and Forfeiture of Real Property that is included in or eligible for the National Register of Historic Places, to set policy for Treasury law enforcement agencies seizing and forfeiting these properties to ensure that these properties are managed in such a way that prevents the loss of their historic integrity and protects national interests.

9.7.4.14.5  
(07-09-2024)

**Seizure of Occupied  
Real Estate**

- (1) The TEOAF Directive Number 3, Occupied Real Property Subject to Civil or Criminal Forfeiture, and Post Forfeiture Occupancy, sets forth policy regarding the seizure of occupied real property. Except as provided in 18 USC 985, real property that is the subject of a civil forfeiture action cannot be seized before entry of an order of forfeiture. Real property that is subject to criminal forfeiture generally cannot be seized prior to entry of a preliminary order of forfeiture.
- (2) Directive Number 3, Attachment A Occupancy Agreements, was developed by TEOAF to reclassify leases subject to state landlord/tenant laws and establish that the agreement is a license. This will enhance the United States' position in evicting occupants when necessary.
- (3) Directive Number 3 applies to occupied real property after the entry of an order of forfeiture.

9.7.4.14.6  
(07-09-2024)

**Headquarters Approval  
to Seize Real Property  
and Businesses**

- (1) Concurrence by Headquarters CI, is required before real property and businesses are seized and taken into custody. Headquarters concurrence is not required prior to the filing of a complaint or lis pendens, a post and walk, or the indictment of real property or businesses. However, concurrence of Headquarters CI, must be obtained prior to the physical seizure of real property and businesses through a final judgment/order of forfeiture (civil) or preliminary order of forfeiture (criminal).
- (2) Headquarters concurrence should be obtained by memorandum, prepared by the AFC, from the SAC to the Director, ARIS, as early as possible in order to assist field offices in ensuring that the contemplated enforcement action complies with the strategic goals of the agency and TEOAF. The memorandum should concisely state the economic as well as law enforcement value of the seizure. The memorandum should also address any sensitive issues, possible adverse publicity, and risks associated with the seizure.
- (3) The field office must perform a thorough pre-seizure analysis of each real property and business to be seized. The AFC should task the seized property contractor with assisting in a pre-seizure analysis that includes the following:
  - a. Real property and/or business appraisal.
  - b. A preliminary title report.
  - c. A net equity or cost/benefit analysis.
  - d. An evaluation of the property for existence of lead-based paint, potential environmental hazards, and possible historical significance, and



- e. If the seizure involves an on-going business, a business operations analysis and business operations plan.

- (4) The results of the pre-seizure analysis with reference to the steps listed above and the date they were performed by the seized property contractor should be included in the memorandum requesting HQ concurrence to seize real property or ongoing businesses. The Real Property/Business Pre-Seizure Checklist and Net Equity Worksheet forms located on the ARIS SharePoint, should be completed and attached to the memorandum. An approval signature line should be included at the end of the memorandum.

9.7.4.15  
(07-09-2024)  
**Seizure of Livestock and Registered Animals**

- (1) The decision to seize livestock is very serious and requires extraordinary analysis from both an operational and economic perspective. Consultation with the Director, ARIS, TEOAF, and the seized property contractor is essential.
- (2) Policy and procedures for pre-seizure planning, seizure and management, and disposition of livestock and registered animals are covered in TEOAF Directive Number 15, Seizure of Livestock and Registered Animals, to provide uniformity in application by Treasury law enforcement agencies.

9.7.4.16  
(07-09-2024)  
**Documentation of Pre-Seizure Planning**

- (1) The pre-seizure planning process will be documented in the seizure/forfeiture file.

9.7.4.16.1  
(03-19-2003)  
**Evaluation of Property and Net Equity**

- (1) Personal Property and Real Property/Business Pre-Seizure Checklists and Net Equity Worksheet forms are located on the ARIS SharePoint site and should be prepared prior to the seizure of property. Any pre-seizure analyses requested from the seized property contractor will be documented in the seizure/forfeiture file. An explanation for any downward departure from an individual asset net equity requirement will be documented in the seizure/forfeiture file.

9.7.4.16.2  
(07-09-2024)  
**Required Approval Signatures Prior to Seizure**

- (1) Section 1203(b)(1) of the IRS Restructuring and Reform Act of 1998, P.L. 105-206, establishes a number of actions which, if committed by IRS employees in the course of their official duties, will require termination of employment. Section 1203(b)(1) prohibits "willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets." While the legislative history of the Restructuring and Reform Act suggests that this provision was primarily meant to apply to collection activities, it is considered to apply to CI seizures for evidentiary and forfeiture purposes.
- (2) Section 1203(b)(1) was determined by Division Counsel/Associate Chief Counsel (Criminal Tax), to apply to CI seizures of a taxpayer's home, personal belongings, or business assets, both for 26 USC 7301 and 7302 seizures, as well as seizures under 18 USC 981 and 982.
- (3) Prior to the seizure of any property, both for 26 USC 7301 and 7302 seizures, and seizures under 18 USC 981 and 982, Form 13739 IRS CI Operation Authorization and Form 13739-A IRS CI Operational Plan must be prepared and the required approval signatures obtained. These forms are located on SharePoint/Unified Checklist/Enforcement Action Checklists.

- (4) Post Enforcement Operation Summary Form may also be required in an enforcement operation involving the seizure of property depending on the nature of the action and the local field office policy. This document is also located on SharePoint/Unified Checklist/Enforcement Action Checklists.

9.7.4.17  
(07-09-2024)

**SPECIAL AGENT  
LIABILITY IN SEIZURE  
CASES**

- (1) Special agents should always obtain a judicial determination before seizing property in order to insulate themselves from liability.
- (2) If a claimant prevails in a forfeiture action but it appears that there was reasonable cause for the seizure, the court will enter a certificate of reasonable cause relieving the special agent of liability in connection with the seizure or forfeiture action.