

Implementation regulations for the management and disposal of seized terrestrial wildlife and wildlife products (consultation draft)

Article 1 – These implementation regulations are formulated for the purposes of strengthening management and disposal of seized terrestrial wildlife and wildlife products, protecting the legal rights and interests of citizens, legal entities and other organizations, and regulating enforcement activities relating to terrestrial wildlife, in accordance with the Law of the People’s Republic of China on Administrative Penalties, Regulations for the Implementation of the People’s Republic of China on the Protection of Terrestrial Wildlife, Implementation Regulations for the Separation of Penalty Decisions from the Collection of Penalty Payments and other relevant laws and regulations.

Article 2 – The seized terrestrial wildlife and wildlife products mentioned in these implementation regulations includes terrestrial wildlife and wildlife products seized by terrestrial wildlife protection departments under the people’s government at the county level and above, and any such items transferred following enforcement operations by other departments such as the administrative authority for industry and commerce, customs, public security bureau or traffic departments.

Article 3 – The management and disposal of seized terrestrial wildlife and wildlife products shall comply with the principles of central management, benefitting conservation, separation of penalty decisions from penalty collection, open transparency and scientific conservation.

Article 4 – Seized terrestrial wildlife and wildlife products are the property of the State; no unit or individual may take, misappropriate, exchange or embezzle, and may not dispose at a discounted price, auction off or destroy the items without permission.

Article 5 – The financial agencies within departments of terrestrial wildlife protection under the people’s government at county level or above are responsible for the safekeeping of seized terrestrial wildlife and wildlife products held by that department, and shall collaborate with enforcement agencies to jointly dispose of seized terrestrial wildlife and wildlife products.

Article 6 - Departments of terrestrial wildlife protection under the people’s government at county level or above shall establish secured warehouses or dedicated premises for seized items, assign dedicated personnel to manage seized items, and shall implement centralized custody of seized terrestrial wildlife and wildlife products.

Seized terrestrial wildlife that is alive shall be entrusted elsewhere for rearing and rescue, and a written agreement shall be signed, in accordance

with the Implementation Regulations for the Administration of Wildlife Rescue and Sheltering.

In cases where the quantity or size of seized wildlife or wildlife products is particularly large or other special circumstances in which existing warehouses and storage spaces cannot hold the seized items or the storage and security conditions are insufficient and so could lead to spoilage, damage or loss, they may be entrusted elsewhere for safekeeping with the permission of the head of the unit responsible for safeguarding seized items and with a signed agreement.

Article 7 – Staff responsible for management of seized items shall register received wildlife and wildlife products, shall create a log and shall regularly conduct checks and inventories on stored items, to prevent theft, damage or spoilage of stored items. In the case of live animals entrusted elsewhere for rearing and rescue, they shall regularly check on these and their conditions.

Article 8 – Enforcement agencies shall complete procedures to transfer seized terrestrial wildlife and wildlife products into storage with the financial agency of equivalent level within five working days of the seizure, together with a Written Decision on Administrative Penalties and an Inventory of Seized Items. Staff working in administration of seized items shall complete a timely inventory of terrestrial wildlife and wildlife products entering the store, and shall check that the items entering the store correspond to the Written Decision on Administrative Penalties and the Inventory of Seized Items documents. Once checks are completed and no errors are found, they shall fill in the Seized Items Entering Storage Form, which shall be corroborated and signed together with representatives from the enforcement agency, and then accepting the items into the store.

When the seized items are live animals, the Seized Items Entering Storage Form shall also list the species, sex, number and condition of the animals, and the facility or rescue centre entrusted with their care.

When seized items are transferred from other departments, the financial agency shall complete storage procedures in accordance with the first and second paragraphs of this article, using proof of transfer documents, and shall provide the transferring department with a proof of receipt that lists the terrestrial wildlife and wildlife products received.

Article 9 – Enforcement agencies shall fill in the Administrative Penalties Approval Form (attached to the Inventory of Seized Items) within six months of the date at which the administrative penalty decisions becomes valid, and shall provide their opinion and plan for disposal of the seized terrestrial wildlife and wildlife products. Following approval from the head of the agency in question, this shall be carried out based on the following circumstances, in accordance with the law.

1. Live terrestrial wildlife shall be returned to an appropriate wild location, to be carried out in accordance with the relevant laws and regulations related to release of terrestrial wildlife into the wild. Where appropriate conditions are unavailable or the animal is sick or injured, treatment and arrangements for care shall take precedence; once the animal has recovered, a decision as to whether to release it back into the wild shall be made depending on circumstances. In cases in which release is definitely inappropriate/impossible, an appropriate handling method shall be chosen, ensuring good care conditions, with priority given to captive breeding and display for public education.

2. Where the state stipulates special regulations prohibiting sale, purchase or utilization of the terrestrial wildlife product, the items shall be secured and sealed away.

3. Where the state does not stipulate special regulations and the terrestrial wildlife or wildlife product has a certain value in utilization, it may be utilized in a reasonable way in accordance with the law, through means such as donation for the public good or an open auction.

4. Where the seized items are putrefying or decomposing, difficult to store, past date of use, or are fake or counterfeit, they may be disposed of in a supervised destruction. Items that are not destroyed can only be used in conservation education or exhibition, and must be clearly labelled as out-of-date, fake or counterfeit.

5. Where a terrestrial wildlife item definitely has no utilization value, it may be disposed of in a supervised destruction.

Article 10. Seized terrestrial wildlife and wildlife products shall be dealt with according to the following processes.

1. For wildlife under special state protection, the department of terrestrial wildlife protection under the people's government at county level and above shall provide its opinion and a plan for disposal of the items, and shall report this to the relevant department of terrestrial wildlife protection at the provincial level or other authorized agencies for approval. Where the State Council has special stipulations for the agency responsible for approving captive breeding and commercial utilization of wildlife and wildlife products, these shall be reported to the State Forestry Administration for approval.

2. For terrestrial wildlife that is not under special state protection and the products thereof, disposal shall be carried out in accordance with the regulations of the department of terrestrial wildlife protection under the people's government of the province, special administrative area or municipality.

Article 11. For terrestrial wildlife and wildlife products for which permission for disposal has been obtained, enforcement agencies shall complete procedures to take the items out of storage under the relevant financial agency, with the

Administrative Penalties Approval Form and Inventory of Seized Items. Staff responsible shall inventory the terrestrial wildlife and wildlife products being taken out of the store, shall check that the items being taken out of the store correspond to the Administrative Penalties Approval Form and Inventory of Seized Items documents, and once checks are completed and no errors found, shall fill in the Seized Items Leaving Storage Form. Once this has been confirmed and signed by the staff responsible, a copy shall be retained and filed.

Article 12. Where it is judged that, following professional evaluation, appraisal or assessment, the seized terrestrial wildlife or wildlife products does need to be disposed of at a price, and where one of the following conditions are met, the seized items may be auctioned in accordance with the law.

1. The terrestrial wildlife or product is included on the 'List of Captive-bred Terrestrial Wildlife Under Special State Protection'.

2. The terrestrial wildlife or product was objectively in existence before March 1, 1989.

3. The terrestrial wildlife or product has relatively high utilization value and the means of utilization conforms with laws and regulations.

4. Other circumstances stipulated by laws or regulations.

Article 13. Auctions of seized terrestrial wildlife and wildlife items shall be organized and conducted jointly by enforcement agencies and financial agencies, and administrative permits shall be applied for and obtained before the auction, in accordance with the law. The manner of the auction and auction company shall be proposed by the enforcement and financial agencies, and shall be approved by the head of the unit responsible for administration of seized items.

For seized terrestrial wildlife and wildlife products intended for auction, the financial agency shall commission an evaluation agency with appropriate qualifications to conduct valuation.

For terrestrial wildlife and wildlife products for which auction has been completed, a special marking shall be obtained and used based on the administrative permit decision document, in accordance with the law.

Article 14. The financial agency shall exclusively manage movement of funds relating to disposal of seized terrestrial wildlife and wildlife products. The proceeds from auction of seized items shall be turned over to the state treasury in accordance with the financial agency's relevant regulations. No agency or individual may keep or embezzle the funds in any way.

Article 15. Where the item does not have an obvious utilization value and other methods of disposal are inappropriate, but the terrestrial wildlife or

wildlife products could be recycled and reused, the items may be purchased by a waste materials recycling company.

The waste materials recycling company may be chosen by the financial agency based on merit. When the company has completed the purchase process, effective measures must be in place to prevent re-entry into the market.

Article 16. For wildlife and wildlife products that have a utilization value but cannot be auctioned and destruction is inappropriate, they may be donated in accordance with the law, for use in public interest activities such as captive breeding, public exhibition, scientific research, public education and preservation of cultural relics.

In cases of donation of terrestrial wildlife and wildlife products, the enforcement agency shall provide a written report to the head of the agency for approval, detailing species, quantity, price, method of donation and receiving party. The donation shall be carried out once an administrative permit has been applied for and obtained in accordance with the law.

The receiving party shall be a lawfully established non-profit educational facility, a public exhibition facility, preservation of cultural relics entity, scientific research institution, social welfare institution or captive breeding facility.

The enforcement agency shall sign a donation agreement in the name of the unit to which it belongs, together with the receiving party, and shall clarify the use of the product in the agreement according to its type and features. The receiving party shall, after receiving the donation, shall provide the donating party with a legal, valid proof of receipt, and shall use the donated items in accordance with the terms and conditions contained in the donation agreement.

Article 17. When live animals cannot be auctioned or the auction or donation is unsuccessful, they shall be dealt with in an appropriate manner according to the Implementation Regulations for Management of Wildlife Sheltering and Rescue.

Article 18. Destruction of seized wildlife products shall be organized and carried out in a regular and centralized manner by enforcement agencies and financial agencies based on practical considerations. They shall produce records of destruction, and shall give clear indications as to the time, location and manner of destruction, and the name, species and quantity of the seized terrestrial wildlife products being destroyed and those carrying out the destruction; and shall take photographs and video for records.

When seized wildlife products are destroyed, the disciplinary inspection and supervision bureau and judicial agencies of equivalent rank shall send

staff to supervise the event, who shall also sign the record of destruction to bear witness to the event.

Article 19. Supervised destruction of seized terrestrial wildlife products shall, depending on the different specifics of the seized wildlife in question, be conducted through crushing, burning and immersion, cutting up, or organic dissolution, in order to change the products' original usage or integrity.

Article 20. When a decision relating to an administrative penalty is revoked or amended, and the seized terrestrial wildlife or wildlife product is to be returned, this should proceed according to the relevant procedures for removal from storage. If the seized terrestrial wildlife or wildlife product has been destroyed or lost, compensation shall be provided in accordance with the law. If the seized terrestrial wildlife or wildlife product has been auctioned or disposed of at a price, the proceeds from the auction or disposal shall be returned. If the proceeds from the auction or disposal have already been turned over to the state treasury, this shall be dealt with in accordance with relevant national regulations.

Article 21. Income and expenditure relating to administration and disposal of seized terrestrial wildlife and wildlife products shall be separated. Any expenditure accrued in the process of administration or disposal of seized terrestrial wildlife or wildlife products may be addressed by departments of commerce and finance.

Article 22. When the disposal of seized terrestrial wildlife and wildlife products is complete, the enforcement agency shall return all transaction records, contracts, certificates and records relating to the seized terrestrial wildlife or wildlife products to archives of records of administrative penalties.

Article 23. If any of the following circumstances are detected among financial agencies, enforcement agencies or their staff, they shall be ordered to correct and return any misappropriation, exchange, private keeping or embezzlement of seized items; relevant agencies shall pursue the person responsible and their manager for administrative responsibility, having considered the severity of the matter. If the circumstances constitute a crime, they shall be pursued for criminal responsibility in accordance with the law.

1. Any seized terrestrial wildlife or wildlife item is damaged, spoiled or lost due to poor management.

2. Misappropriation, exchange, private keeping or embezzlement of seized terrestrial wildlife or wildlife products.

3. Unauthorized handling/treatment of terrestrial wildlife or wildlife products.

Article 24. These implementation regulations shall come into force on XX 2017.