(Billing Code: 4410-19-P)

DEPARTMENT OF JUSTICE

28 CFR Part 0

[AG Order No. 3495-2015]

Authorization to Seize Property Involved in Drug Offenses for Administrative Forfeiture (2012R-9P)

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending its regulations to delegate to the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) authority to seize and administratively forfeit property involved in controlled substance offenses.

DATES: This rule is effective [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Denise Brown, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue, NE, Washington, DC 20226, telephone: (202) 648-7070.

SUPPLEMENTARY INFORMATION:

Background

After the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) became part of the Department of Justice (DOJ) in January 2003, pursuant to the Homeland Security Act of 2002 (Public Law 107-296), the Attorney General delegated to ATF the authority to investigate, seize, and forfeit property involved in a violation or attempted violation within its investigative jurisdiction. *See* 28 CFR 0.130(b)(1). ATF investigations focusing on

violent crime frequently involve complex criminal organizations with multiple criminal enterprises and uncover drug-related offenses in addition to offenses within ATF's primary jurisdiction, such as violations of the Gun Control Act, 18 U.S.C. Chapter 44, the National Firearms Act, 26 U.S.C. Chapter 53, or the Contraband Cigarette Trafficking Act, 18 U.S.C. Chapter 114. In such investigations, ATF historically did not have authority under 21 U.S.C. Chapter 13 to seize for administrative forfeiture property involved in controlled substance offenses. Instead, ATF generally referred such property to the Drug Enforcement Administration (DEA), which is primarily responsible for investigating violations of drug laws contained in title 21 of the United States Code. DEA would then initiate, process, and conclude all necessary administrative forfeiture actions for the controlled substance-related property. In other situations, ATF had to request that the local U.S. Attorney's office pursue a judicial forfeiture of such drug-related property.

The Department believes that forfeiting the assets of criminals is an essential tool in combating criminal activity that provides law enforcement with the ability to dismantle criminal organizations, deprive wrongdoers of the proceeds of their crimes, and deter crime. The Department further believes that administrative forfeiture permits the expedient and effective use of this valuable law enforcement tool.

An uncontested administrative forfeiture can be perfected in 60-90 days for minimal cost, including the personal notice to interested parties and the notice by publication required by statute. Conversely, the costs associated with judicial forfeiture can amount to hundreds or thousands of dollars and the judicial process generally can take anywhere from 6 months to years. In the meantime, the government incurs additional costs if the property requires storage or maintenance until a final order of forfeiture can be obtained.

One of the primary missions of ATF is to combat firearm-related violent crime. The nexus between drug trafficking and firearm violence is well established. Upon review of the current role and mission of ATF within DOJ, the Attorney General decided to authorize a temporary delegation of title 21 seizure and forfeiture authority to determine whether such authority can enhance the effectiveness of ATF in the investigation of violent crimes involving firearms. On August 21, 2012, the Attorney General signed a final rule delegating seizure and forfeiture authority under 21 U.S.C. 881 to the ATF for a trial period of one year, effective February 25, 2013. 77 FR 51698 (Aug. 27, 2012). By subsequent action, the Attorney General extended the same authority to ATF for an additional one-year period to give ATF more time to refine its process, fully hire and train all necessary staff, and further demonstrate the effectiveness of the delegation in the investigation of violent crimes involving firearms. 79 FR 12060 (Mar. 4, 2014).

ATF has refined its title 21 asset forfeiture process, and strengthened the overall asset forfeiture program, by changing organizational structure, adding experienced personnel and resources to review and more efficiently process all of ATF's administrative forfeitures, and providing additional asset forfeiture training to all agency personnel involved in the forfeiture process, together with a renewed focus on the proper execution of all phases of ATF's asset forfeiture mission to ensure that all interested parties are afforded due process under the law, that all seized assets are accounted for and properly maintained, and that all forfeited property is disposed of according to law in a timely and cost-efficient manner.

This authority has given ATF the ability to process drug-related property seized in criminal investigations in which firearms and explosives also are seized. From February

25, 2013, to September 30, 2014, ATF used its authority under title 21 to seize more than 1,700 assets with a total value in excess of $19,300,000.

The delegation of authority has afforded cost savings to the United States government by streamlining the forfeiture process to prevent unnecessary burden on the judicial system and the public and by permitting the government to process forfeitures within a single agency. The grant of title 21 seizure and forfeiture authority will permit ATF to continue its use of asset forfeiture as a valuable tool in support of its law enforcement mission and enable the Department to further increase the speed and efficiency of uncontested forfeiture actions.

Final Rule

This rule amends the regulations in 28 CFR part 0 to delegate to the Director of ATF the authority to seize, forfeit, and remit or mitigate the forfeiture of property in accordance with 21 U.S.C. 881.

Forfeiting the assets of criminals is an essential tool in combating criminal activity and provides law enforcement with the capacity to dismantle criminal organizations, deprive wrongdoers of the proceeds of their illegal activities, and deter crime. Therefore, the Attorney General has decided to delegate to the Director of ATF without a time limit administrative seizure and forfeiture authority under title 21 to permit expedient and effective use of this valuable law enforcement tool in the investigation of violent crime involving firearms.

How this Document Complies with the Federal Administrative Requirements for Rulemaking

Administrative Procedure Act (APA)

Notice and comment rulemaking is not required for this final rule. Under the APA, "rules of agency organization, procedure or practice," 5 U.S.C. 553(b)(A), that do not "affect[] individual rights and obligations," *Morton v. Ruiz*, 415 U.S. 199, 232 (1974), are exempt from the general notice and comment requirements of section 553 of title 5 of the United States Code. *See JEM Broad. Co. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994) (section 553(b)(A) applies to "agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency") (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980) (internal quotation marks omitted)). The revisions to the regulations in 28 CFR Part 0 are purely a matter of agency organization, procedure, and practice that will not affect individual rights and obligations. This rule does not expand the government's ability as a matter of law to effectuate forfeitures; it simply authorizes the Director of ATF to effectuate such forfeitures. Internal delegations of authority such as in this final rule are "rules of agency organization, procedure, or practice" under the APA. In addition, this rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date because, as an internal delegation of authority, it relates to a matter of agency management or personnel. See 5 U.S.C. 553(a)(2).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis is not required for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866 and Executive Order 13563

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation, and with Executive Order 13563, "Improving Regulation and Regulatory Review." This rule is limited to agency organization, management, or personnel matters as described by Executive Order 12866, section 3(d)(3) and, therefore, is not a "regulation" or "rule" as defined by that Executive Order.

This rule will not have an annual effect on the economy of $100 million or more, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities. Accordingly, this rule is not a "significant regulatory action" as defined in Executive Order 12866.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, "Civil Justice Reform."

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, "Federalism," the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a rule for purposes of the reporting requirement of 5 U.S.C. 801.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

Authority and Issuance

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509, 510, and for the reasons set forth in the preamble, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0--ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for 28 CFR Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

§ 0.130 [Amended]

2. In § 0.130, amend paragraph (b)(2) by removing the second sentence.

February 20, 2015.
Date

Eric H. Holder, Jr.
Attorney General

[FR Doc. 2015-03839 Filed 02/24/2015 at 8:45 am; Publication Date: 02/25/2015]