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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 162

Docket No. USCBP-2011-0022

RIN 1651 – AA94

Internet Publication of Administrative Seizure and Forfeiture Notices

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend the U.S. Customs and Border Protection (CBP) regulations to allow for publication of notices of seizure and intent to forfeit on an official Government forfeiture website. CBP anticipates that the changes proposed in this rule would reduce administrative costs and improve the effectiveness of CBP's notice procedures as Internet publication would reach a broader range of the public and provide access to more parties who may have an interest in the seized property.

DATE: Written comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit comments, identified by Docket Number USCBP-2011-0022, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2011-0022.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, N.W. (Mint Annex), Washington, D.C. 20229-1179.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the "Supplementary Information" section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, N.W., 5th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Dennis McKenzie, Director, Fines, Penalties and Forfeitures Division, Office of Field Operations, U.S. Customs and Border Protection, (202) 344-1808.

SUPPLEMENTARY INFORMATION:

Background

General

U.S. Customs and Border Protection (CBP) has authority to seize property violating certain laws enforced or administered by CBP or U.S. Immigration and Customs Enforcement (ICE). Such seized property may be forfeited and disposed of in a manner specified by applicable provisions of law. Generally, these forfeiture statutes

authorize the government to take possession of and legally acquire title to the seized property. Under the CBP forfeiture procedure, a party may assert a claim to the seized property through judicial or administrative proceedings.

Applicable Law and Regulations

Section 607 of the Tariff Act of 1930, as amended, authorizes CBP to implement administrative forfeiture procedures under prescribed circumstances. 19 U.S.C. 1607. The statute requires CBP to publish notice of seizure and intent to forfeit for at least three successive weeks, in such manner as the Secretary of the Treasury directs.¹ CBP is also required to issue written notice of the seizure and forfeiture to each party who appears to have an interest in the seized property. The written notice must contain information on the applicable procedures.

CBP regulations set forth the current procedure that CBP must follow when it seizes and gives notice of intent to forfeit property under administrative forfeiture proceedings, as required under 19 U.S.C. 1607. 19 CFR 162.45. These procedures apply when CBP seizes: (1) a prohibited importation; (2) a transporting conveyance if used to import, export, transport or store a controlled substance or listed chemical; (3) any monetary instrument within the meaning of 31 U.S.C 5312(a)(3); or (4) any conveyance, merchandise, or baggage, the value of which does not exceed \$500,000 (19 CFR 162.45(a)).

CBP regulations provide two different methods to notify the public of seized property based on the appraised value of the property. First, for seized property appraised at more than \$5,000, CBP must publish administrative seizure and forfeiture

¹ The Secretary of the Treasury has delegated this authority to the Secretary of Homeland Security pursuant to Treasury Department Order 100-16.

notices for at least three successive weeks in a newspaper circulated at the customs port and in the judicial district where CBP seized the property. 19 CFR 162.45(b)(1). CBP also notifies all known parties-in-interest in advance of the pending newspaper publication and the expected dates of publication of the notice. For seized property appraised at \$5,000 or less, CBP accomplishes publication by posting a notice in a conspicuous place accessible to the public at the customhouse nearest the place of seizure. 19 CFR 162.45(b)(2). The notice shows the date of posting and remains posted for at least three successive weeks.

Proposed Amendments

This notice of proposed rulemaking (NPRM) proposes to revise the manner by which CBP provides notice of intent to forfeit seized property appraised at more than \$5,000 and seized property appraised at \$5,000 or less. First, this rule proposes that CBP (including the U.S. Border Patrol where appropriate) would utilize the Department of Justice (DOJ) forfeiture website, located at www.forfeiture.gov, to post seizure and forfeiture notices for property appraised in excess of \$5,000 in value for 30 consecutive days. This DOJ website currently contains a comprehensive list of pending notices of civil and criminal forfeiture actions in various district courts and Federal Government agencies. Under this NPRM, CBP would no longer need to publish administrative seizure and forfeiture notices for three successive weeks in a newspaper circulated at the customs port and in the judicial district where CBP seized the property. CBP would notify all known parties-in-interest of the website posting and the expected date of publication.

This NPRM also proposes that CBP will publish seizure and forfeiture notices for seized property appraised at \$5,000 or less on the DOJ forfeiture website for 30 consecutive days. This additional notice would not replace the current procedure of CBP posting notice at the customhouse nearest the place of seizure. However, this rule proposes to specify that in situations where U.S. Border Patrol agents make the seizure, the posting will be at the appropriate U.S. Border Patrol sector office.

CBP believes that the use of Internet publication for CBP seizure and forfeiture notices would provide notice to a broader range of the public without the geographical limitations that exist under the current procedure's reliance solely on local print publications or customhouse postings. In addition, the Internet posting would be available for a longer period of time (30 days), compared to the minimum statutory requirement of three weeks.

This NPRM proposes that CBP may publish, at its sole discretion and as circumstances warrant, additional notice in a print medium for at least three successive weeks. For example, CBP may publish a notice of seizure and forfeiture in a newspaper in general circulation at the port and the judicial district nearest the seizure, or with wider or national circulation, when recommended by the pertinent U.S. Attorney's office or court of jurisdiction. Additionally, CBP may decide to publish notice of seizure and forfeiture in a non-English language or other community newspaper to ensure reaching a particular community that may have a particular interest in or connection to the seizure. Similarly, CBP may elect to publish notice of seizure and forfeiture in a trade or industry publication that serves a particular commercial community to ensure reaching a party when it is difficult to identify a vessel or other conveyance owner.

Economic Analysis

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget. However, CBP has prepared the following analysis to help inform stakeholders of the potential impacts of this proposed rule.

This proposed rule would provide a less costly alternative for publishing notices of seizure and forfeiture for seized property appraised at more than \$5,000 in value. The current regulation requires CBP to publish such notices in a local newspaper for at least three successive weeks. Historically, there have been some instances where the cost of advertising exceeds the value of the seized property, and these occurrences have increased as the cost of newspaper advertising has increased.

Under this proposed rule, CBP would publish the great majority of seizure and forfeiture notices for property valued at more than \$5,000 (estimated at 90 percent) for 30 consecutive days solely by posting on an existing government website. In some cases, either at CBP’s sole discretion based on the particular circumstances involved or where a court or a U.S. Attorney instructs or recommends, CBP would publish notice via both

print (newspaper or other publication) and Internet methods. CBP will use an existing DOJ website that lists government forfeiture actions by various agencies. In 2010, CBP spent over \$1 million advertising more than 6,000 lines of property. Under this rule, CBP would advertise the vast majority of items using the DOJ website, which would be virtually cost-free. CBP would advertise only a small number of items both on the Internet and in a traditional newspaper or other publication. Because these items will be the highest profile items, CBP will likely advertise these items in large circulations or national newspapers. Such advertising will make up a disproportionate amount of the costs. We estimate that it will cost \$300,000 to continue to advertise these items in print. Therefore, we estimate that advertising on the Internet instead of in print for most items will save the government approximately \$700,000 per year.

This NPRM also proposes that CBP will publish seizure and forfeiture notices for seized property appraised at \$5,000 or less on the DOJ forfeiture website for 30 consecutive days. This proposed change would simply add low-cost Internet publication to the current requirement that CBP post notice at the customs house (or U.S. Border Patrol sector office, as proposed in this rule) for seized property appraised at \$5,000 or less. This change would be virtually costless to the government and would expand the reach of the seizure and forfeiture notice to the benefit of unknown parties-in-interest and the public.

Regulatory Flexibility Act

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 603), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined

as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This rule would move most notices of seizure and forfeiture valued at more than \$5,000 from local print media to a national website. It would also allow CBP to post notices of seizures and forfeitures valued at \$5,000 or less on the web in addition to posting at the customhouse nearest the place of seizure or the appropriate sector office of the U.S. Border Patrol. This rule would not impose any requirements on the general public or small businesses. As provided under the current procedure, CBP would continue to contact any small business that is a known party-in-interest. Because this rule imposes no direct costs on small entities, we believe that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, DHS certifies this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This notice of proposed rulemaking will not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It will not result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Native American Tribal governments, or the private sector.

Executive Order 13132

In accordance with the principles and criteria contained in Executive Order 13132 (Federalism), this notice of proposed rulemaking will have no substantial effect on the

States, the current Federal-State relationship, or on the current distribution of power and responsibilities among local officials.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(b)(1).

List of Subjects in 19 CFR Part 162

Administrative practice and procedure, Law enforcement, Seizures and forfeitures.

Proposed Amendment to CBP Regulations

For the reasons set forth above, Part 162 of title 19 of the Code of Federal Regulations (19 CFR part 162), is proposed to be amended as set forth below:

PART 162 – INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation for part 162 and the specific authority citation for § 162.45 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624; 6 U.S.C. 101; 8 U.S.C. 1324(b).

* * * * *

Section 162.45 also issued under 19 U.S.C. 1607, 1608;

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2. In § 162.45, paragraphs (b)(1) and (2) are revised to read as follows:

§ 162.45 Summary forfeiture; Property other than Schedule I and Schedule II controlled substances; Notice of seizure and sale.

* * * * *

(b) Publication. (1) If the appraised value of any property in one seizure from one person, other than Schedule I and Schedule II controlled substances (as defined in 21 U.S.C. 802(6) and 812), exceeds \$5,000, the notice will be published by its posting on an official Government forfeiture website for at least 30 consecutive days. In CBP's sole discretion, and as circumstances warrant, additional publication for at least three successive weeks in a print medium may be provided. All known parties-in-interest will be notified of the pending location and date of publication.

(2) In all other cases, except for Schedule I and Schedule II controlled substances (see § 162.45a), the notice will be published by its posting on an official Government forfeiture website for at least 30 consecutive days and by its posting for at least three successive weeks in a conspicuous place that is accessible to the public at the customhouse located nearest the place of seizure or the appropriate sector office of the U.S. Border Patrol. All known parties-in-interest will be notified of the pending location and date of publication. The posting at the customhouse or sector office will contain the date of posting. Articles of small value of the same class or kind included in two or more seizures will be advertised as one unit.

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Dated: February 2, 2012

Janet Napolitano,
Secretary.

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