



NOTICE TO THE WILDLIFE IMPORT/EXPORT COMMUNITY



Date: September 23, 2014

Subject: Revision of Notice of Seizure and Proposed Forfeiture Letter

Background: As part of the enforcement responsibilities of the U.S. Fish and Wildlife Service (Service) under various wildlife laws, Congress has given the Service the authority to seize property and to use non-judicial civil procedures to forfeit the seized property to the United States. The Service is not unique in its seizure and administrative forfeiture authority. In general, all property subject to forfeiture under Federal law may be forfeited administratively by the enforcing Federal agency with the exception of real property, certain high-value personal property, and property forfeitable under a statute that does not incorporate the Customs law of 19 U.S.C. §1602 *et seq.*

After seizure of the property that the Government intends to pursue in a civil forfeiture action, the Service issues a letter termed "Notice of Seizure and Proposed Forfeiture" (NOSPF). The NOSPF gives interest holders notice of the seizure and proposed administrative forfeiture of the seized property, notice of the availability of administrative and judicial processes for contesting the proposed forfeiture, and notice of applicable deadlines for utilizing these processes. The format of the NOSPF that has been used by the Service over the last several years advises interest holders that submission of a petition for remission of forfeiture by an interest holder constitutes a voluntary agreement that all forfeiture time periods will be suspended pending the outcome of the petition for remission. The NOSPF further states that in the event that a petition for remission is denied, the petitioner will be given the balance of time (if any) remaining to file a claim if the petitioner so chooses. This opportunity to effectively toll the period for filing a claim was provided by the Service as a matter of administrative discretion and not as a result of statutory mandate. The Civil Asset Forfeiture Reform Act of 2000 (CAFRA) and Interior regulations provide for alternative and not sequential remedies for administrative forfeiture: once notified, an interest party may choose to allow the forfeiture to proceed administratively or may compel the Government to initiate a judicial forfeiture action by filing a claim for the property. 18 U.S. C. §983(a)(2)(B) and 50 C.F.R. 12.23 and 12.24.

Action: Effective October 7, 2014, the Service is revising the format of the NOSPF that, as a matter of practice, the Service uses to provide notice of non-judicial civil forfeiture proceedings, notice of the availability of administrative and judicial processes for contesting the proposed forfeiture, and notice of applicable deadlines for utilizing these processes. The Service's Office of Law Enforcement is taking this action to address court decisions interpreting the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), 18 U.S.C. §§ 981 *et seq.* Therefore, the revision of the NOSPF is not intended to be a binding rule, and consequently is not being published for public notice and comment.

As is the case with the revised NOSPF, this Notice does not constitute a rulemaking and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or equity by any persons.

In the case, *Conservation Force v. Salazar*, 646 F.3d 1240 (9th Cir), the Ninth Circuit Court of Appeals found that a petition for remission is distinct from the judicial remedy initiated through a claim and concluded that CAFRA and Interior regulations “provide alternative, not sequential, administrative and legal remedies for an administrative forfeiture.” 646 F.3d at 1242 (quoting *Malladi Drugs & Pharms., Ltd. v. Tandy*, 552 F.3d 885, 890, 384 U.S. App. D.C. 232 (D.C. Cir. 2009)). The Ninth Circuit further concluded that if an interested party files a petition for remission under Interior regulations, that person waives the opportunity for judicial forfeiture proceedings. *Id.*

The chart setting out available legal options in the NOSPF currently in use states that a claimant may file a petition for remission or a seized asset claim form. However the third paragraph of the following text indicates that (i) “The Petition for Remission may not be reviewed within the time period for an administrative forfeiture action, therefore any Petition for Remission submitted by you also constitutes a voluntary agreement on your part that all forfeiture time periods will be suspended pending the outcome of the Petition for Remission” and (ii) “If the Regional Solicitor denies the Petition for Remission, administrative forfeiture proceedings will recommence as if the petition had not been filed and Regional Solicitor will inform you of the balance of time, if any, remaining to file a claim.” Contrary to courts’ interpretations of Congressional intent under CAFRA, this language has resulted in claimants using both processes. Therefore, effective October 7, the third paragraph following the chart of available legal options will be replaced with the following:

If you choose to file a Petition for Remission, the petition need not be in any specific form, but it should include all the facts you believe warrant relief from forfeiture. All petitions should be submitted in triplicate and be addressed to this office. If you are a holder of a lien or security interest, your petition must be accompanied by a release from the registered owner and/or the person or company from whom the property was seized. There is no cost for filing a Petition for Remission and you do not have to be represented by counsel, although you may choose to consult an attorney.

Be aware that beginning on October 7, claimants who receive the NOSPF letter will be informed that the remedies of administrative petitions and judicial claims must be elected alternatively and not sequentially. Claimants must choose whether to file a petition for remission or file a claim.

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