

U.S. Customs and Border Protection Wants Discretion To Eliminate Newspaper Notice

February 16, 2012

By Scott Alexander Meiner

U.S. Customs and Border Protection is seeking authority to eliminate requirements that it post notice of seizures in local and port newspapers. Current regulations require “administrative seizure and forfeiture 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.”

Additionally, CBP is required to attempt to notify all known parties-in-interest in advance of publication. However, attempting to notify known parties doesn’t require that the parties actually be notified. *Dusenbery v US* – 534 U.S. 161 (2002) It requires taking steps “reasonably calculated” to achieve notification.

Under CBP’s proposal, public notice would be satisfied by posting forfeiture updates on the Department of Justice’s forfeiture web site, www.forfeiture.gov, in lieu of newspapers.

The proposal ignores, or is purposely oblivious to, the purpose of the public notification requirement. Public notice increases the chances that interested parties-who might not otherwise be looking-will learn that property is about to be permanently acquired by the state. This is rather important. Parties-in-interest are frequently barred from contesting forfeitures for failing to register claims in a timely fashion.

CBP argues that a change “would expand the reach of the seizure and forfeiture notice to the benefit of unknown parties-in-interest and the public.”

Adding notice of all forfeitures to a searchable database seems like a good idea. Eliminating a requirement that the agency try to proactively warn the public isn’t.

Perhaps the CBP thinks that property owners should have to check their web site, each day, to see if the government has filed a claim on any of their property.

Public comment is being accepted until April 9, 2012. Notice of CBP's intent. Instructions on speaking your mind below:

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 NW. (Mint Annex), Washington, DC 20229-1179.