



U.S. Department of Justice

Criminal Division

Money Laundering and Asset Recovery Section

Washington, D.C. 20530

POLICY DIRECTIVE 17-1

TO: Heads of Department of Justice Components
United States Attorneys
Participants in the Department of Justice Asset Forfeiture Program

FROM: Deborah Connor, Acting Chief *Deborah Connor by NKD*
Money Laundering and Asset Recovery Section
Criminal Division

SUBJECT: Policy Guidance on the Attorney General's Order on Federal Adoption and Forfeiture of Property Seized by State and Local Law Enforcement Agencies

On July 19, 2017, the Attorney General issued an Order allowing Department of Justice components and agencies to forfeit assets seized by state or local law enforcement (referred to in the order as "federal adoptions"). Under the Attorney General's Order, federal adoption of all types of assets seized lawfully by state or local law enforcement under their respective state laws is authorized whenever the conduct giving rise to the seizure violates federal law. The net equity and value thresholds found in the Department of Justice *Asset Forfeiture Policy Manual* will continue to apply.¹ Agencies and components should prioritize the adoption of assets that will advance the Attorney General's Violent Crime Reduction Strategy.

The Department, through legal counsel for federal investigative agencies as well as through the U.S. Attorneys' Offices, will continue to ensure that adoptions are conducted in compliance with law and Department policies. Specifically, the following safeguards, among others, shall be maintained and implemented to ensure that there is sufficient evidence of criminal activity and that the evidence is well documented:

- To ensure that adoptions involve property lawfully seized, legal counsel at the federal agency adopting the seized property must continue to review all seizures

¹ See *Asset Forfeiture Policy Manual* (2016), Chap. 1, Sec. I.D.1, establishing minimum net equity thresholds of at least \$5,000 for vehicles, and a minimum amount of \$5,000 for cash seizures, or at least \$1,000 if the person from whom the cash was seized either was, or is, being criminally prosecuted by state or federal authorities for criminal activities related to the property. U.S. Attorneys' Offices, in consultation with local federal law enforcement agencies, may continue to establish higher thresholds for judicial forfeiture cases in order to best address the crime threat in individual judicial districts.

for compliance with law, especially seizures made pursuant to an exception to the Fourth Amendment's warrant requirement.

- To assist federal legal counsel in this review process, the form used by state and local agencies seeking federal adoption of seized assets, *Request for Adoption of State and Local Seizure* ("adoption form"), will require that the state or local agency provide additional information about the probable cause determination justifying the seizure. This additional information in the adoption form will better document probable cause in the first instance, and provide federal legal counsel with the relevant information relating to probable cause for review. State and local agencies will also be required to certify on the form that they have obtained a turnover order, if necessary.
- Adoptions of cash in amounts equal to or less than \$10,000 may require additional safeguards. Those adoptions will be permissible where the seizure was conducted: (1) pursuant to a state warrant, (2) incident to arrest for an offense relevant to the forfeiture, (3) at the same time as a seizure of contraband relevant to the forfeiture, or (4) where the owner or person from whom the property is seized makes admissions regarding the criminally derived nature of the property. If a federal agency seeks to adopt cash equal to or less than \$10,000 and none of these safeguards is present, then the agency may proceed with the adoption only if the U.S. Attorney's Office first concurs.
- Department officials should proceed with particular caution when deciding whether to waive the Department's net equity thresholds for real property, *see Policy Manual: Asset Forfeiture Policy* (2016), Chap. 13, Sec. I.B, and in considering the forfeiture of personal residences where title or ownership lies with persons not implicated in illegal conduct. *See id.* at Chap. 2, Sec. VIII.C.

In order to give individual property owners an opportunity to challenge the seizure as soon as practicable, the Department will expedite federal agencies' decisions regarding adoptions and their provision of notice to interested parties. State and local law enforcement agencies must request federal adoption within 15 calendar days following the date of seizure. The adopting federal agency must send notice to interested parties within 45 days of the date of seizure. These time limitations may be extended for good cause by the supervisory forfeiture counsel (or higher-level official) of the adopting agency, provided that such extensions are documented in writing and include a description of the circumstances justifying the extension. Any such extensions remain subject to statutory time limits pursuant to 18 U.S.C. § 983(a)(1)(A)(iv).

To facilitate implementation of these safeguards and help ensure that federal adoptions advance federal law enforcement objectives,² the Department is enhancing its asset forfeiture

² This change in Department policy does not affect the ability of state and local agencies to pursue the forfeiture of assets pursuant to their respective state laws. Moreover, when a state or local agency has seized property as part of an ongoing state criminal investigation and the criminal defendants are being prosecuted in state court, any forfeiture action should generally be pursued in state court assuming that state law authorizes the forfeiture. *See Asset Forfeiture Policy Manual* (2016), Chap. 14, Sec. I.

training. Beginning in 2018, law enforcement agencies participating in the Department of Justice Asset Forfeiture Program must provide annual training on state and federal laws related to asset forfeiture to their law enforcement officers. Specialized course material for state and local law enforcement will be available later this year.

This policy is effective immediately and applies prospectively to all new requests for adoption by state and local law enforcement. The Order and this policy guidance supersede all inconsistent adoption policy and procedures in any Department of Justice publication, including the U.S. Attorney's Manual § 9-116.000 *et seq.*; the *Attorney General's Guidelines to Seized and Forfeited Property* (2005); the *Asset Forfeiture Policy Manual* (2016), Chapter 14; and the *Guide to Equitable Sharing for State and Local Law Enforcement Agencies* (2009), Sections III.B and III.B.2. In particular, the Order supersedes Attorney General Order Nos. 3485-2015 and 3488-2015, "Prohibition on Certain Federal Adoptions of Seizures by State and Local Law Enforcement Agencies" (Jan. 12 and 16, 2015). This policy directive supersedes Policy Directive 15-1, "Policy Limiting the Federal Adoptions of Seizures by State and Local Law Enforcement Agencies" (Jan. 16, 2015); and Policy Directive 15-2, "Additional Guidance on the Policy Limiting the Federal Adoption of Seizures by State and Local Law Enforcement Agencies" (Feb. 10, 2015). Accordingly, the *Determination of Sufficient Federal Involvement for an Asset Seized by State or Local Law Enforcement* form is no longer required.

The adoption form will be updated to reflect these policy changes. The Department also will make conforming updates to the Consolidated Asset Tracking System (CATS). Until the CATS update is complete, agencies must manually track this information so that it is available for subsequent submission and review.

Consistent with current policy, state and local agencies are required to complete the adoption form only when seeking federal adoptions. Seizures made as part of joint federal-state investigations or pursuant to federal seizure warrants are not considered adoptions. Agency participants must review the circumstances of a seizure by state and local law enforcement to determine whether it is a federal adoption.

If you have questions regarding this policy directive or the application of the Attorney General's Order, please contact the Money Laundering and Asset Recovery Section at (202) 514-1263.