Feature Story

DOJ Rule Grants ATF Authority to Seize and Sell Property Involved in Drug Offenses

The Department of Justice finalized a rule granting the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) authority to seize and “administratively forfeit” (to sell) property involved in controlled substance offenses for a yearlong trial period. “Many years of experience have demonstrated that forfeiting the assets of criminals is an essential tool in combating criminal activity and provides law enforcement with the capacity to dismantle criminal organizations that would continue to function after the conviction and incarceration of individual offenders.” Prior to the issuance of this rule, authority over forfeit property belonged to the Drug Enforcement Administration. DOJ argues that costs are reduced when forfeiture is executed administratively rather than judicially: “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.”

In the News

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U.S. SEC forces disclosure of oil, mining payments abroad, Reuters
SEC's Schapiro fails to win votes for money funds reform, Reuters
Wal-Mart, Target Avoid Mining Rule, Wall Street Journal
FTC Clears Facebook’s Instagram Purchase, WSJ Deal Journal

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FDA names Ind. farm tied to contaminated melons, Associated Press
USDA, McDonald’s suspend slaughterhouse buys, Associated Press
U.S. Dept. of Transportation says plan for 54.5 mpg averages by 2025 will be completed 'soon', Daily News
FCC suspends deregulation of special access telecom markets, NextGov
FTC charges Ab Circle Pro marketers with false fitness claims, Reuters
U.S. Treasury weighs money fund reforms, faces hurdles, Reuters
Reform looms anew for money market funds, Bloomberg
FDA still warns consumers to discard SW Ind. cantaloupes because of salmonella outbreak, Washington Post
FTC wins record $478 million judgment against infomercial marketers of 3 easy-money schemes, Washington Post
Straw That Broke SEC Vote, Wall Street Journal
Action on Money Funds Could Still Be in the Cards, Wall Street Journal
Money Funds Still Face Regulatory Threat After SEC Backs Off, CFO Journal
SEC's Schapiro Cancels Vote on Money-Fund Curbs, Wall Street Journal
Rulemaking

Consumer Product Safety Commission

CPSC Proposes “Catastrophic Failure” Rule for Infant Bassinets

The Consumer Product Safety Commission published a proposed rule that would enact new manufacturing requirements for infant bassinets that are accessories to play yards, which the CPSC also regulates. When the bassinet accessories are incorrectly assembled by consumers, the bassinet is more likely to tip, increasing the risk of accidental suffocation for the infant. In response to these misassembly concerns, which were raised by a commenter, CPSC is requiring bassinets to fail “catastrophically” if any structural element is missing. CPSC argues that, because some types of structural misassembly can be difficult for consumers to visibly identify, products that...
are misassembled should catastrophically fail so that consumers will be alerted to any structural problems. “The requirement is meant to ensure that the omission of a key structural element is so visually obvious that the consumer will not use the product and place the child in danger inadvertently. It should be noted that in order to pass this test, the item must fail catastrophically when each key structural element is omitted.” CPSC defines catastrophic failure as either 1) total collapse of the product or 2) tilt of more than 30° when an infant dummy is placed in the bassinet; alternatively, manufacturers can permanently attach key structures in the bassinet and forego the catastrophic failure test. Comments on the proposed rule are due November 13th.

Environmental Protection Agency
EPA Rule Denies Petition to Reconsider Rule Establishing Emission Standards for Heavy-Duty Vehicles
The Environmental Protection Agency published a final rule in response to Plant Oil Powered Diesel Fuel Systems, Inc. (“POP Diesel”), denying its petition to reconsider EPA’s final rules, published in September of last year, that established standards for greenhouse gas emissions from on-road heavy-duty vehicles. EPA’s rule, published jointly with the National Highway Traffic Safety Administration, established emission standards for CO₂, methane, nitrous oxide, and greenhouse gases for on-road heavy-duty vehicles such as combination tractors, heavy-duty pickup trucks and vans, and vocational vehicles.

In its petition to the Agency, POP Diesel argued that EPA did not adequately consider the potential rebound effects of the rule, wherein consumers may be incentivized increase energy use because of increased efficiency. Consideration of the rebound effect would affect EPA’s regulatory analysis, showing fewer benefits from reduced emissions, and introducing the possibility that certain emissions could increase as a result of the rule. In a supplement to its original petition, POP Diesel maintained that “the rules would increase GHG emissions from heavy-duty vehicles due to aspects of the rebound effect not accounted for in EPA's analysis. Specifically, POP Diesel maintains that EPA underestimated the direct rebound effect and that a revised estimate of the direct rebound effect would result in an increase in greenhouse gas emissions.” However, because rebound effects were not mentioned during the public comment period, and therefore were not put on the public record, EPA has no legal obligation to reconsider the final rule based on this petition. “Because all of the objections or claims raised in POP Diesel's petition could have been presented to EPA during the rulemaking, EPA is denying the request for reconsideration. EPA also finds that the petitioner has not provided substantial support for the argument that the promulgated regulation should be revised and is denying the request for reconsideration for that reason as well.” Comments on denial of this petition are currently being accepted by NHTSA.

EPA Proposes Amendments to Turbine New Source Performance Standards
The Environmental Protection Agency published a proposed rule in response to a petition for reconsideration amending the new source performance standards (NSPS) for stationary gas turbines and stationary combustion turbines, which EPA finalized in 2006. The petition, filed in 2006 by the Utility Air Regulatory Group (UARG), requested that EPA reconsider subpart KKKK of its promulgated rule on standards of performance for stationary combustion turbines. EPA is proposing amendments to the final rule to “increase the environmental benefits of the existing requirements because the emission standards would apply at all times. The proposed amendments would also promote efficiency by recognizing the environmental benefit of combined heat and power and the beneficial use of low energy content gases.” Comments are due on October 29th.

Consumer Financial Protection Bureau
CFPB Proposed Rule Would Streamline Disclosure Forms for Consumer Mortgages
The Consumer Financial Protection Bureau published a 343-page proposed rule establishing new disclosure requirements and forms for most closed-end consumer credit transactions secured by real property (e.g., mortgages); this proposal would amend Regulation Z (Truth in Lending) and Regulation X (Real Estate Settlement Procedures Act), both of which pertain to disclosure for consumer credit transactions. In part because these disclosures are administered under two separate rules, “[t]he information on these forms is overlapping and the language is inconsistent. Not surprisingly, consumers often find the forms confusing. It is also not surprising that lenders and settlement agents find the forms burdensome to provide and explain.” This proposed rule includes new forms combining aspects from both Regulation Z and Regulation X to replace the old forms, and also includes detailed instructions for the use of the forms. In discussing the costs and benefits of the proposal, CFPB indicates that most costs will be one-time costs rather than ongoing costs, while the benefits of simplified forms should be felt by consumers well into the future. Comments on this proposed rule are due November 6th.
Ex-Im Receives Application to Fund Exports for Brazilian Aquarium Construction
The Export-Import Bank received an application for a final commitment granting a long-term loan or financial guarantee in excess of $100 million, which is intended to fund the export of design, engineering and construction services, and equipment to build an aquarium in Brazil. The Brazilian aquarium, once constructed, is intended to serve as a center for tourism and education. Comments are due on September 17th.

Ex-Im Bank Receives Application to Fund Export of Lockheed Martin Telecom Equipment to Vietnam
The Export-Import Bank received an application for a final commitment granting a long-term loan or financial guarantee in excess of $100 million to fund the export of telecommunications satellite and related equipment to Vietnam. Ex-Im’s notice in the Federal Register lists the Lockheed Martin Corporation as the principal supplier of exported equipment. Comments are due on September 17th.

Ex-Im Bank Receives Application to Fund Export of Boeing Aircraft to Ireland
The Export-Import Bank received an application for a final commitment granting a long-term loan or financial guarantee in excess of $100 million to fund the export of Boeing aircraft to Ireland to be sub-leased to foreign airlines for passenger air service in East Asia, South Asia, and Europe. Comments are due on September 24th.

Ex-Im Bank Receives Application to Fund Export of Boeing Aircraft to Dubai
The Export-Import Bank received an application for a final commitment granting a long-term loan or financial guarantee in excess of $100 million to fund the export of Boeing commercial aircraft to Dubai for use in passenger air service between the United Arab Emirates and other countries. Comments are due on September 24th.