

FORFEITURE REMISSION GUIDELINES FOR EXPORT CONTROL VIOLATIONS

U.S. Customs and Border Protection (CBP) enforces export control laws, many of which are the laws of other agencies. Among those other agencies are the Directorate of Defense Trade Controls (DDTC) of the Department of State, the Bureau of Industry and Security (BIS) and the Census Bureau of the Department of Commerce, the Office of Foreign Assets Control (OFAC) of the Department of the Treasury, and the Drug Enforcement Agency (DEA). The guidelines below apply to the seizure of merchandise that is being or has been exported in violation of the laws and implementing regulations of CBP or the other agencies pursuant to Title 19, United States Code (U.S.C.) § 1595a(d) and 22 U.S.C. § 401. The guidelines below also apply to the seizure pursuant to 19 U.S.C. § 1595a(c)(2)(B) of imported merchandise when the importation is based on a temporary export licensing violation, a temporary import licensing violation, or permanent import without licensing violation (*i.e.*, permanent import without a required ATF Form 6).

When CBP seizes merchandise, parties who have an interest in seized merchandise can submit an administrative petition to CBP to request remission of the forfeiture and return of the merchandise. Although CBP is not required to grant relief in any specific case, CBP may reference these guidelines when deciding whether to grant relief in a specific case and, if CBP deems that relief is appropriate, to determine the mitigation, remission, or cancellation amount. CBP reviews the specific facts and circumstances of each case individually and may deviate from these guidelines if CBP determines that such deviation is appropriate. Pursuant to 19 U.S.C. §§ 1618, 1623, as well as other applicable regulatory authorities, duly authorized CBP officials are entitled to grant relief under such terms and conditions as they deem appropriate, sufficient, reasonable and/or just.

If CBP deems that relief is appropriate, the agency may remit the forfeiture and return the merchandise to the petitioner if certain conditions are met. CBP determines the specific conditions for relief, including any forfeiture remission amount, on a case-by-case basis. CBP may reference the guidelines below when determining whether to grant relief from the forfeiture of seized merchandise and the specific conditions to require, including a forfeiture remission amount.

Note that, in previous versions of these guidelines, CBP distinguished between two categories of violations, “technical violations” and “substantive violations.” In the guidelines below, CBP is no longer using those terms because they were often confusing and misleading to CBP personnel and the public, and because they are not used by licensing agencies. For example, a violation that may appear “technical” in nature may actually be a significant and egregious violation for which a higher remission amount may be appropriate. Under these guidelines, CBP is adopting the same remission amount ranges for all violations, with guidance that the remission amount for violations that are “License Violations” and violations that are egregious in nature should generally be at the higher end of the range. The remission amount for violations that are “Non-license Violations” should generally be at the lower and middle of the ranges, depending on the specific nature of the violation.

FORFEITURE REMISSION GUIDELINES FOR EXPORT CONTROL VIOLATIONS – 19 U.S.C. 1595a(d) and 22 U.S.C. 401¹

I. Overview

- A. U.S. Customs and Border Protection (CBP) enforces U.S. export control laws, including the laws of other agencies. CBP may seize goods that are being exported, or have been exported, in violation of U.S. export control laws. CBP may reference these guidelines in cases where merchandise has been seized for violation of the U.S. export control laws, including the laws of the following agencies: the Directorate of Defense Trade Controls (DDTC) of the Department of State, the Bureau of Industry and Security (BIS) and the Census Bureau of the Department of Commerce, the Office of Foreign Assets Control (OFAC) of the Department of the Treasury, and the Drug Enforcement Agency (DEA) of the Department of Justice. These guidelines apply to seizures of permanent exports.
- B. CBP may also seize goods that are being imported into the United States where the importation has a nexus to an exportation. For example, CBP may seize merchandise that is temporarily imported (*i.e.*, upon importation or subsequent exportation) or temporarily exported (*i.e.*, upon export or subsequent re-importation) when the shipment does not have the required license, permit or other authorization of one of the agencies listed above. CBP may also seize goods for failure to obtain a required Form 6 from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) of the Department of Justice for permanent importation of licensable goods. While not strictly a violation of the U.S. export control laws, importation without a required ATF Form 6 is closely related to export controls inasmuch as they are often based on violation of some of the same authorities as, for example, the Department of State's export control authorities and both agencies generally control the shipment of the same commodities. These guidelines also apply to seizures of temporary exports, temporary imports, and permanent imports (without a required ATF Form 6).
- C. Although CBP is not required to grant relief in any specific case, CBP may reference these guidelines when deciding whether to grant relief in a specific case and, if CBP deems that relief is appropriate, to determine the mitigation, remission, or cancellation amount. CBP reviews the specific facts and circumstances of each case individually and may deviate from these guidelines if CBP determines that such deviation is appropriate. Pursuant to 19 U.S.C. §§ 1618, 1623, as well as other applicable regulatory authorities, duly authorized CBP officials are entitled to grant relief under such terms and conditions as they deem appropriate, sufficient, reasonable and/or just.

¹ These guidelines also apply to the seizure of imported merchandise only when the underlying violation is related to exportation, as noted and explained in these guidelines.

II. Seizure Authorities

- A. While CBP has authority to assess penalties for some export violations (e.g., penalties pursuant to the Census Bureau's Foreign Trade Regulations), CBP also exercises its enforcement authority through the seizure of merchandise that is being or has been exported in violation of laws or implementing regulations relating to the export of goods. CBP seizes these export goods pursuant to the authority of Title 19, United States Code (U.S.C.) § 1595a(d) and 22 U.S.C. § 401.
- B. CBP also seizes imported merchandise where the importation has a nexus to an exportation. Specifically, CBP may seize merchandise that is temporarily imported (i.e., upon importation or subsequent exportation) or temporarily exported (i.e., upon export or subsequent re-importation) when the shipment does not have the required license, permit or other authorization of an agency of the United States Government at the time of export or import. CBP may seize these temporary imports and temporary exports pursuant to the authority of 19 U.S.C. § 1595a(c)(2)(B). CBP may also seize permanent imports that do not have a required ATF Form 6 pursuant to the authority of 19 U.S.C. § 1595a(c)(2)(B).
- C. For seizures of goods pursuant to 19 U.S.C. 1595a(c) where the seizure is based only on import-related violations with no nexus to an exportation (i.e., not a temporary import, a temporary export of licensable goods, or a permanent import without a required ATF Form 6), CBP may reference the "Introductions Contrary to Law" guidelines which are generally applicable to 19 U.S.C. § 1595a(c) seizures.

III. Underlying Violations

- A. **Underlying Violations Generally.** Merchandise may be seized for a large number of underlying violations, many of which are violations of other government agencies' laws and regulations. Some underlying violations occur when there is an export or attempted export of goods without the required authorization (e.g., attempted export without a required license). On the other hand, some underlying violations occur when a valid and sufficient license is obtained, but there is some other violation (e.g., failing to cite the appropriate license or license exemption/exception). Seizures that are based on an export or attempted export of goods (or temporary import) without the required authorization (i.e., "**License Violations**") should generally be remitted upon payment of a remission amount at the higher end of the ranges that are provided in the "Remission Terms" section below. Remission of seizures that are based on violations where a valid and sufficient license was obtained, but some other violation (i.e., "**Non-license Violations**") occurred, may be appropriate upon payment of an amount at the lower and middle of the ranges, depending on the specific nature of the violation. In any event, egregious violations (whether considered License Violations or Non-license Violations) and the presence of extraordinary mitigating or aggravating

factors, including those specified in these guidelines and those not specified herein, may justify deviation from the specific dispositions set forth below. As stated above, CBP is not required to grant relief in any specific case.

B. License Violations. A License Violation occurs when there is a violation of the export control laws (or related import control laws) where the shipment does not have the required authorization (e.g., attempted export without a required license or attempted temporary importation without a required license). Goods that are seized for a License Violation should generally be remitted upon payment of a remission amount at the higher end of the ranges provided in the “Remission Terms” section below. The following are examples of License Violations. This is *not* an exhaustive list.

1. Department of State Violations

- Failure to obtain a required DSP-5 permanent export license, DSP-61 temporary import license, or DSP-73 temporary export license - 22 C.F.R. 123.1
- Failure to obtain a DSP-5 export license for unclassified technical data – 22 C.F.R. 125.2
- Quantity of export merchandise is in excess of that covered by the license (violation with respect to the excess merchandise only, but authorized merchandise may be seized for facilitation if the facts so support) – 22 C.F.R. 123.1
- Failure to timely file Electronic Export Information (EEI) for licensable merchandise – 22 C.F.R. 123.22
- Failure to cite an applicable DSP-61 license exemption on entry documentation (at the time of temporary import) or on the EEI filing (at the time of export) – 22 C.F.R. 123.4(d)

2. Bureau of Industry and Security (BIS) Violations

- Failure to obtain a required license – 15 C.F.R. Parts 730-774
- Failure to cite applicable license or license exception on the EEI filing – 15 C.F.R. 740.1(d) and 15 C.F.R. Part 758

3. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

- Failure to obtain a required ATF Form 6 license for permanent importation of licensable goods

4. Drug Enforcement Agency (DEA)

- Failure to timely submit a Form 486 prior to the export of precursors and essential chemicals – 21 C.F.R. 1313.21
- Failure to submit written notification to DEA of the intent to transfer or transship “listed chemicals” (see 21 C.F.R. 1310.02) that exceed the threshold reporting requirements – 21 C.F.R. 1313.31

5. Office of Foreign Assets Control (OFAC)

- Export of goods to an embargoed country without a license
- Export of goods or other dealings with a party on the Specially Designated Nationals (SDN) list

C. **Non-license Violations.** A Non-license Violation occurs when there is a violation of the export control laws where the shipment has the required authorization (e.g., required license) or where a license is not required, but there is another violation. Goods that are seized for a Non-license Violation should generally be remitted upon payment of a remission amount at the lower end of the ranges provided in the “Remission Terms” section below. The following is an example of a Non-license Violation.

1. Census Bureau’s Foreign Trade Regulations (FTR) Violations. Note that FTR violations that CBP enforces are generally not considered License Violations for purposes of these guidelines only. CBP generally assesses penalties for these violations pursuant to 15 CFR Part 30. However, CBP has the authority to seize shipments for these violations and may do so when CBP deems seizure appropriate.

IV. Early Release Procedures

- A. When goods are seized for violation of the export control laws (or related import control laws), every effort should be made to expeditiously release the goods, pursuant to a written request from the exporter, importer, or agent. Early release may be requested upon receipt of a Notice of Seizure by the importer or exporter, or agent thereof. If CBP grants early release, the early release decision may be considered the final decision in the case if the petitioner does not request further relief.

V. Remission/Mitigation Considerations

- A. Seizure history. The prior seizure history of the exporter, importer of record, or license holder (for licensable goods) may be considered in the mitigation decision. CBP generally only considers violations that occurred within 3 years prior to the date of the violation under consideration.
- B. Same nature violation. CBP generally only considers violations of the same type, involving the same agency’s laws and regulations, as prior violations. For example, if the violation in the instant case is a State Department License Violation, such as the failure to obtain a State Department license, only previous State Department License Violations that occurred within a 3-year period are generally considered prior violations.

- C. Corporate divisions are generally considered as separate entities for violation history. If a corporate division incurs a violation, only like-nature priors by that particular corporate division, within a 3-year period of time, are generally considered as prior violations.
- D. MITIGATING FACTORS (Not an exhaustive list):
1. Inexperienced exporter or importer.
 2. Prior good record of importer or exporter.
 3. Importer or exporter makes a voluntary disclosure of a violation to CBP and/or the other concerned agency - In certain cases a disclosure may serve to remit the forfeiture in full, *i.e.*, without payment of a forfeiture remission amount.
 4. Importer or exporter adheres to all CBP and other agency's laws and regulations but a violation occurs due to the actions of another party.
 - a. For example, an exporter provides the port of export as the intended port of export, but the carrier re-directs the freight to another port of export.
 - b. For a second example, goods are moved in-transit through the U.S. without knowledge or consent of foreign exporter or ultimate consignee in a third country.
 5. Exceptional cooperation with CBP (or other agency officials).
 6. Clear documentary evidence of remedial measures undertaken to prevent future violations.
 7. The party has provided substantial assistance in the investigation of another person.
 8. The party demonstrates that it has an active systematic export compliance program.
- E. AGGRAVATING FACTORS (Not an exhaustive list):
1. Related criminal conviction.
 2. Circumstances suggest the intentional nature of the violation.
 3. A pattern of violations on the violator's part, which evidences its disregard for its obligations under U.S. laws and regulations.

4. Several violations in the same export transaction (e.g., failure to obtain a license and incorrect EEI filing).
5. High number of violations in preceding 3-year period.
6. The party exhibits a pattern of disregard for its responsibilities under U.S. laws and regulations.
7. The party exports as a regular part of its business, but lacked an active systematic export compliance effort.

VI. Remission Terms

- A. **Remission Terms Generally.** Pursuant to 19 U.S.C. § 1618, CBP may remit the forfeiture and release property that has been seized for violation of the export control laws (and related import control laws) upon such terms and conditions that CBP deems reasonable and just. Relief should generally be granted, and the goods remitted, *only* if the following conditions are met:
- Payment of all costs of seizure (storage and appraisal)
 - Submission of an executed Hold Harmless Agreement
 - If required, the merchandise must be brought into compliance or exported under CBP supervision
 - If the goods are released for export, all export requirements (including any license and EEI filing requirements) must be met prior to export
 - Payment of a forfeiture remission amount
- B. **Remission Amounts.** The ranges below should serve as guidance when determining the forfeiture remission amount. Egregious violations and the presence of extraordinary aggravating factors, including those not specified in these guidelines, may justify deviation, including remission amounts higher than the amounts provided below. The remission amount for License Violations should generally be at the higher end of the range. The remission amount for Non-license Violations should generally be at the lower end or middle of the range, depending on the specific nature of the violation.
1. **First Offense**
No aggravating factors – remission upon payment of:
10 – 30% of the export value of the seized goods, but no less than \$500 (or the export value of the goods if less than \$500)
 2. **Second Offense**
No aggravating factors – remission upon payment of:
30 –50% of the export value of the seized goods, but no less than \$1,000 (or the export value of the goods if less than \$1,000)

3. Third or Subsequent Offense
Remission upon payment of 50 - 80% of the export value of the seized goods, but no less than \$1,500 (or the export value of the goods if less than \$1,500)
4. First Offense
Aggravating factors – remission upon payment of:
30 – 50% of the export value of the goods, but no less than \$1,000 (or the export value of the goods if less than \$1,000)
5. Second Offense (and subsequent offenses)
Aggravating factors – remission upon payment of:
50 – 80% of the export value of the seized goods, but no less than \$2,500 (or the export value of the goods if less than \$2,500)