

## CURRENCY OR MONETARY INSTRUMENT REPORT – 31 U.S.C. 5316, 5317, 5324

### I. Background

The United States Customs Service enforces compliance with the Currency or monetary Instrument Report (CMIR) requirement in the Bank Secrecy Act, codified at 31 U.S.C. 5316, 5317, 5324. These reports provide information that is used in a variety of criminal, tax, or regulatory investigations or proceedings that are critical to the detection of money laundering and other forms of transnational crime. 31 U.S.C. 5311.

### II. Pre-seizure and Seizure Procedures

- A. All monetary instruments involved in violation of the CMIR reporting requirement are subject to seizure and forfeiture, even if a portion is reported.
- B. The seizing officer or supervisor shall contact the Office of Investigations and provide any relevant information.
- C. If the Office of Investigations determines that no further investigation is warranted, the Supervisory Customs Inspector shall allow a violator to amend a CMIR report (Form 4790) if the amount initially reported before verification began differs by five (5) percent or less from the amount actually possessed by the violator.
- D. If the Office of Investigations determines that no further investigation is warranted, and the amount transported is \$25,000 or less:
  1. At the Service Port Director's discretion, in consultation with the Director FP&F/FP&F Officer, Branch Chiefs or Supervisor Customs Inspectors may be delegated authority to remit the forfeiture upon payment of a monetary amount on the site of the seizure in accordance with these guidelines if
    - a. no evidence establishes a nexus to illegal activity and
    - b. the violator establishes that the monetary instruments have a legitimate source and intended use.
  2. The violator must sign a release/hold harmless agreement to obtain on-site-mitigation.
- E. If the Office of Investigations determines that further investigation is warranted, any administrative decision concerning a petition for remission will be suspended pending the completion of the investigation or a joint

determination of the FP&F Officer and Office of Investigations that the investigation cannot be completed in a reasonable time (See, III(B) below).

### **III. Remission Upon Payment of Monetary Penalty**

#### **A. General Provisions**

1. The FP&F Officer shall refer a petition for remission or mitigation to the Office of Investigations, if such an investigation is not already completed or underway.
2. The claimant bears the burden of providing credible evidence of legitimate source and intended use of the funds.
3. In all cases (criminal and civil) referred to the U.S. Attorney for litigation, the FP&F Officer shall not act on a petition, or administratively forfeit the monetary instruments without first consulting the appropriate Associate or Assistant Chief Counsel. In such cases, the Associate or Assistant Chief Counsel will also consult with the Assistant U.S. Attorney handling the case.

#### **B. At the conclusion of any pending prosecution, open investigation, or upon the joint determination of the FP&F Officer and Office of investigations that the investigation cannot be concluded in a reasonable time, and following the timely submission of a petition, the FP&F or Headquarters Officer may:**

1. Deny relief and initiate administrative forfeiture proceedings on the seized funds if (1) the totality of evidence available to Customs establishes a nexus to illegal activity, or (2) the petitioner fails to establish that the monetary instruments have a legitimate source and intended use; or
2. Grant relief as set forth in the table below after reconsideration of all the evidence on record (and any additional submissions by the claimant), if the officer concludes that the petitioner establishes that the funds have a legitimate source and intended use.

#### **C. In any cases where either Customs denies the petitioner any relief or the petitioner fails to comply with the relief granted by Customs, the case either will be referred to the U.S. Attorney for judicial forfeiture or will be processed administratively by Customs for administrative forfeiture disposition.**

- D. Claims for forfeiture of monetary instruments under 31 U.S.C. §§ 5316 and 5317 are subject to the provisions of the Civil Asset Forfeiture reform Act of 2000, hereinafter referred to as “CAFRA”. As is the condition for all remissions, the claimant for remission of such forfeiture must pay costs of seizure and storage (absent extraordinary circumstances), as well as paying any remission amount, execute a hold harmless agreement, and comply with any terms and conditions that are deemed appropriate.

**CMIR REMISSION & MITIGATION TABLE**

Amount transported (with no nexus to illegal activity)	Standard Amount
\$15,000 or less	\$500
\$15,001 - \$25,000	\$1,000
\$25,001 - \$40,000	\$2,500
\$40,001 - \$70,000	\$5,000
\$70,001 - \$120,000	\$10,000
\$120,001 - \$200,000	\$20,000
\$200,000 - \$500,000	\$30,000
\$500,001 - \$1,000,000	\$50,000
More than \$1,000,000	Decided in accordance with Customs and Treasury Department delegations and policy.

**IV. Mitigating Factors**

1. Officers may reduce amount sought by up to ten (10) percent of the standard amount for each factor present, but by no more than thirty (30) percent of the standard amount.
  - a. Language barrier, physical ailment, or mental condition which would inhibit, rather than totally bar, the violator's understanding of the requirement;
  - b. Inexperience in international travel (inapplicable to mailing or shipping of monetary instruments);

- c. Cooperation with Customs officers after discovery of the violation beyond that which normally would be expected of any violator seeking to gain remission of forfeiture of the unreported funds
  2. Extraordinary mitigating factors that may warrant remission of all, or a significant portion, of the standard amount:
    - a. Conduct as a result of clearly established contributory Customs error;
    - b. After being cleared through Customs, the violator subsequently voluntarily returns to the inspection area and reports the transport of monetary instruments to Customs;
    - c. Other special humanitarian justification.

## **V. No Private Rights Created**

These guidelines are intended only to provide guidance for the internal operations of the U.S. Customs Service, and are not intended to create nor confer any rights, privileges, or benefits on any person or party. See, United States v. Caceres, 440 U.S. 741 (1979).

## **VI. Statute Of Limitations For Civil Forfeiture Actions**

Under the provisions of 19 U.S.C. 1621, the statute of limitations in seizure cases is 5 years from the date of discovery of the violation or 2 years from the date that the involvement of the property in the alleged offense was discovered, whichever is later. Any time during which the property subject to forfeiture is absent from the country is not counted in the statutory period of limitation. This amendment effectively expands the reach of civil forfeiture of property whose involvement in the criminal offense is discovered after the five-year limit.