

## §92.16

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the matter; determine a proposed civil penalty based on the factors listed under §92.16(d)(2)(iii); and prepare and serve an Initial Notice of Assessment by United States mail or other means upon the person believed to be in violation of §92.13 and otherwise subject to a civil penalty. The notice shall provide the name and telephone number of the examining official, who can provide information concerning the notice and the procedures in this subpart. The notice shall include the following:

(a) A specific reference to the provisions of §92.13 violated;

(b) A concise statement of the facts that support the conclusion that such a violation occurred;

(c) The amount of the civil penalty proposed and the maximum amount of the potential civil penalty that the assessing official could impose;

(d) A notice informing the person alleged to be in violation of §92.13 that he or she:

(1) May, within 30 days of the date of the notice, pay the proposed civil penalty, thereby waiving the right to make a written response under §92.16 and to seek judicial review under §92.18:

(i) By electronic funds transfer (EFT) in accordance with instructions provided by the examining official in the Initial Notice of Assessment; or

(ii) By means other than EFT only with the written approval of the assessing official;

(2) May make a written response in accordance with §92.16 within 30 days of the date of the notice addressing, as appropriate:

(i) Why a civil penalty should not be imposed; and

(ii) Why a civil penalty should be in a lesser amount than proposed.

(3) May be represented by an attorney or other representative, provided that a designation of representative signed by the person alleged to be in violation is received by the examining official; and

(4) May request, within 20 days of the date of the notice, a copy of or opportunity to review any documents and/or other evidence that the United States Mint compiled and relied on in determining to issue the notice (the assessing official reserves the right to assert

privileges available under law and may decline to disclose certain documents and/or other evidence protected by such privileges; however, any documents or other evidence withheld from disclosure shall be expunged from the record and shall not be considered by the examining and assessing officials in arriving at their respective recommendations and decisions); and

(e) An advisement of the following:

(1) If no written response is received within the time allowed in §92.16(b), a Final Notice of Assessment may be issued without a presentation by the person;

(2) If a written response has been made and the examining official deems it necessary, the examining official may request, orally or in writing, additional information from the respondent;

(3) A Final Notice of Assessment may be issued in accordance with §92.17 requiring that the proposed civil penalty be paid;

(4) A Final Notice of Assessment is subject to judicial review in accordance with 5 U.S.C. 701 *et seq.*; and

(5) All submissions sent in response to the Initial Notice of Assessment must be transmitted to the address specified in the notice and include the name, address, and telephone number of the respondent.

### §92.16 Written response.

(a) *Form and contents.* (1) The written response submitted by a person pursuant to §92.15(d)(2) must provide the following:

(i) A reference to and specific identification of the Initial Notice of Assessment involved;

(ii) The full name of the person against whom the Initial Notice of Assessment has been made;

(iii) If the respondent is not a natural person, the name and title of the officer authorized to act on behalf of the respondent; and

(iv) If a representative of the person named in the Initial Notice of Assessment is filing the written response, a copy of the duly executed designation as representative.

(2) The written response must admit or deny each violation of §92.13 set

forth in the Initial Notice of Assessment. Any violation not specifically denied will be presumed to be admitted. Where a violation is denied, the respondent shall specifically set forth the legal or factual basis upon which the allegation is denied. If the basis of the written response is that the respondent is not the person responsible for the alleged violation, the written response must set forth sufficient information to allow the examining and assessing officials to determine the truth of such an assertion. The written response should include any and all documents and other information that the respondent believes should be a part of the administrative record on the matter.

(b) *Time.* (1) Except as provided in paragraph (b)(2) of this section, any written response made under this section must be submitted not later than 30 days after the date of the Initial Notice of Assessment.

(2) If a request for documents or other evidence is made pursuant to § 92.15(d)(4), the written response must be submitted not later than 20 days after the date of the United States Mint's response to the request.

(3)(i) In computing the number of days allowed for filing a written response under this paragraph, the first day counted is the day after the date of the Initial Notice of Assessment is issued. If the last date on which the response is required to be filed by this paragraph is a Saturday, Sunday or Federal holiday, the response will be due on the next business day after that date.

(ii) If a response is transmitted by United States mail, it will be deemed timely filed if postmarked on or before the due date.

(4) The examining official may extend the period for making a written response under paragraphs (b)(1) and (b)(2) of this section for up to ten days for good cause shown. Requests for extensions beyond ten days must be approved by the assessing official and must be based on good cause shown. Generally, failure to obtain representation in a timely manner will not be considered good cause.

(c) *Filing.* The response may be sent by personal delivery, United States

mail or commercial delivery. A written response transmitted by means other than United States mail will be considered filed on the date received at the address specified in the Initial Notice of Assessment.

(d) *Review and Recommendation.* The examining official will fully consider the facts and arguments submitted by the respondent in the written response, any other documents filed by the respondent pursuant to this subpart, and the evidence in the United States Mint's record on the matter. If the respondent waives the right to submit a written response in accordance with § 92.15(d)(1), or declines to submit a written response by the end of the 30-day response period, the examining official will fully consider the evidence in the United States Mint's record on the matter.

(1) In fully considering the matter, the examining official will not consider any evidence introduced into the record by the United States Mint after the date of the Initial Notice of Assessment unless and until the respondent has been notified that such additional evidence will be considered, and has had an opportunity to request, review and comment on such evidence.

(2) The examining official will prepare a concise report, addressed to the assessing official, which will contain the following:

(i) The entire administrative record on the matter, including all information provided in or with a written response timely filed by the respondent and any additional information provided pursuant to § 92.15(e)(2), as well as all evidence upon which the Initial Notice of Assessment was based, and any additional evidence as provided for in § 92.16(d)(1).

(ii) A finding, based on the preponderance of the evidence, as to each alleged violation specified in the Initial Notice of Assessment;

(iii) For each violation that the examining official determines to have occurred, a recommendation as to the appropriate amount of a civil penalty to be imposed which, upon additional consideration of the evidence, may be the same as, more than, or less than the amount initially proposed by the examining official pursuant to § 92.15. In

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making this recommendation, the examining official will consider all relevant factors including, but not limited to, the following:

- (A) The scope of the misuse;
  - (B) The purpose and/or nature of the misuse;
  - (C) The extent of the harm caused by the misuse;
  - (D) The circumstances of the misuse;
  - (E) The commercial benefit intended to be derived from the misuse; and
  - (F) The repeated nature of the misuse.
- (iv) If the examining official determines that a violation has occurred, a proposed Final Notice of Assessment that incorporates his or her findings and recommendations.
- (v) Any additional information or considerations that the assessing officer should consider in a decision whether to issue a Final Notice of Assessment under §92.17.

**§92.17 Final action.**

(a) In making a final determination whether to impose a penalty, the assessing official shall take into consideration the entire report prepared by the examining official. Although the assessing official should accord appropriate weight to the findings and recommendations of the examining official, the assessing official is not bound by them. The assessing official may approve, disapprove, modify, or substitute any or all of the examining official's findings and recommendations if, in his or her judgment, the evidence in the record supports such a decision. The assessing official will determine whether:

- (1) The facts warrant a conclusion that no violation has occurred; or
  - (2)(i) The facts warrant a conclusion that one or more violations have occurred; and
  - (ii) The facts and violations found justify the conclusion that a civil penalty should be imposed.
- (b) If the assessing official determines that no violation has occurred, the official shall promptly send a letter indicating that determination to the person served with an Initial Notice of Assessment and to any designated representative of such person.

(c) If the assessing official determines that a violation has occurred:

- (1) The assessing official shall issue a Final Notice of Assessment to the person served with an Initial Notice of Assessment and to any designated representative of such person.
- (2) The assessing official may, in his or her discretion:
  - (i) Impose a civil penalty;
  - (ii) Not impose a civil penalty; or
  - (iii) Impose a civil penalty and suspend the payment of all or some of the civil penalty, conditioned on the violator's future compliance with 31 U.S.C. 333.
- (3) If a civil penalty is imposed under §92.17(c)(2)(i) or (iii), the assessing official shall determine the appropriate amount of the penalty in accordance with 31 U.S.C. 333(c)(2). In determining the amount of a civil penalty, the assessing official will consider relevant factors including, but not limited to, the following:
  - (i) The scope of the misuse;
  - (ii) The purpose and/or nature of the misuse;
  - (iii) The extent of the harm caused by the misuse;
  - (iv) The circumstances of the misuse;
  - (v) The commercial benefit intended to be derived from the misuse; and
  - (vi) The repeated nature of the misuse.
- (4) The Final Notice of Assessment shall:
  - (i) Include the following:
    - (A) A specific reference to each provision of §92.13 found to have been violated;
    - (B) A concise statement of the facts supporting a conclusion that each violation has occurred;
    - (C) An analysis of how the facts and each violation justifies the conclusion that a civil penalty should be imposed; and
    - (D) The amount of each civil penalty imposed and a statement as to how the amount of each penalty was determined; and
  - (ii) Inform the person of the following:
    - (A) Payment of a civil penalty imposed by the Final Notice of Assessment must be made within 30 days of the date of the notice;