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31 CFR Ch. I (7–1–10 Edition)

and address of the appellant, the identification of the record denied, and the date of the original request and its denial.

Subpart C—Assessment of Civil Penalties for Misuse of Words, Letters, Symbols, or Emblems of the United States Mint

SOURCE: 72 FR 60776, Oct. 26, 2007, unless otherwise noted.

§ 92.11 Purpose.

(a) The procedures in this subpart implement the provisions of 31 U.S.C. 333(c), which authorize the Secretary of the Treasury to assess a civil penalty against any person who has misused the words, titles, abbreviations, initials, symbols, emblems, seals, or badges of the United States Mint in violation of 31 U.S.C. 333(a).

(b) The procedures in this subpart do not apply to the extent that the Secretary of the Treasury, the Director of the United States Mint, or their authorized designees have specifically granted to the person express permission, in writing, to manufacture, produce, sell, possess, or use the words, titles, abbreviations, initials, symbols, emblems, seals, or badges in a contract, agreement, license, letter, memorandum, or similar document.

(c) The procedures in this subpart are limited to actions initiated by the United States Mint to enforce the provisions of 31 U.S.C. 333. The procedures herein do not affect the provisions of 31 CFR Part 27. Therefore, this subpart shall not be construed as the exclusive means for the Secretary of the Treasury to enforce 31 U.S.C. 333 insofar as a covered misuse affects the United States Mint.

§ 92.12 Definitions.

(a) *Assessing official* means the Director of the United States Mint or his designee.

(b) *Examining official* means an employee of the United States Mint appointed by the Director of the United States Mint (or an employee of the Treasury Department appointed by the Director of the United States Mint with the concurrence of the head of

that employee's organization), to administer the procedures in this subpart in a particular case and to propose findings and recommendations in that case to the assessing official. The examining official must be:

(1) An employee of the Treasury Department in the grade of GS-15 or higher; and

(2) Capable of examining the matter without actual or apparent conflict of interest.

(c) *Broadcast or telecast* means widespread dissemination by electronic transmission or method, whether audio and/or visual.

(d) *Civil penalty* means a civil monetary penalty

(e) *Date of offense* means the later of:

(1) The date that the misuse occurred;

(2) The date that the misuse had the effect of conveying the false impression that the activity was associated with or approved, endorsed, sponsored or authorized by the United States Mint or its officers or employees; or

(3) If the violation is a continuing one, the date on which the misuse of the words, titles, abbreviations, initials, symbols, emblems, seals, or badges protected by 31 U.S.C. 333 or the procedures in this subpart last occurred.

(f) *Days* means calendar days, unless otherwise stated.

(g) *Person* means an individual, partnership, association, corporation, company, business, firm, manufacturer, or any other organization, entity, or institution.

(h) *Respondent* means a person named in an Initial Notice of Assessment.

(i) *Symbol* means any design or graphic used by the United States Mint or the Treasury Department to represent themselves or their products. A design or graphic may include

(1) A trademark, designation of origin, or mark of identification, or

(2) A stylized depiction comprising letters, words, or numbers.

§ 92.13 Assessment of civil penalties.

(a) *General rule.* The assessing official may impose a civil penalty on any person when the following two conditions are met:

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(1) That person uses in connection with, or as a part of, any advertisement, solicitation, business activity, or product, whether alone or with other words, letters, symbols, or emblems—

(i) The words “Department of the Treasury,” “United States Mint,” or “U.S. Mint”;

(ii) The titles “Secretary of the Treasury,” “Treasurer of the United States,” “Director of the United States Mint,” or “Director of the U.S. Mint”;

(iii) The abbreviations or initials of any entity or title referred to in paragraph (a)(1)(i) or (a)(1)(ii) of this section;

(iv) Any symbol, emblem, seal, or badge of an entity referred to in paragraph (a)(1)(i) of this section (including the design of any envelope, stationery, or identification card used by such an entity); or

(v) Any colorable imitation of any such words, titles, abbreviations, initials, symbols, emblems, seals, or badges; and

(2) That person’s use is in a manner that could reasonably be interpreted or construed as conveying the false impression that such advertisement, solicitation, business activity, or product is in any manner approved, endorsed, sponsored, authorized by, or associated with the United States Mint, or any officer, or employee thereof.

(b) *Disclaimers.* Any determination of whether a person has violated the provisions of paragraph (a) of this section shall be made without regard to any use of a disclaimer of affiliation with the United States Government or any particular agency or instrumentality thereof.

(c) *Civil penalty.* The assessing official may impose a civil penalty on any person who violates the provisions of paragraph (a) of this section. The amount of a civil penalty shall not exceed \$5,000 for each and every use of any material in violation of paragraph (a) of this section, except that such penalty shall not exceed \$25,000 for each and every use if such use is in a broadcast or telecast.

(d) *Time limitations.* (1) Civil penalties imposed under the procedures in this subpart must be assessed before the end of the three-year period beginning on the date of offense.

(2) The assessing official may commence a civil action to recover or enforce any civil penalty imposed in a Final Notice of Assessment issued pursuant to § 92.17 at any time before the end of the two-year period beginning on the date of the Final Notice of Assessment. If judicial review of the Final Notice of Assessment is sought, the two-year period begins to run from the date that a final and unappealable court order is issued.

(e) *Criminal Proceeding.* No civil penalty may be imposed under the procedures in this subpart with respect to any violation of paragraph (a) of this section after a criminal proceeding on the same violation has been commenced by indictment or information under 31 U.S.C. 333(d).

§ 92.14 Initiation of action.

(a) When an employee of the United States Mint learns of or discovers a potential violation of 31 U.S.C. 333 or this subpart, he or she will refer the matter, with all available evidence, to the assessing official.

(b) The assessing official will consider relevant factors when determining whether to initiate an action to impose a civil penalty under the procedures in this subpart. Those factors may include, but are not limited to, the following:

- (1) The scope of the misuse;
- (2) The purpose and/or nature of the misuse;
- (3) The extent of the harm caused by the misuse;
- (4) The circumstances of the misuse;
- (5) The commercial benefit intended to be derived from the misuse; and
- (6) The repeated nature of the misuse.

(c) If the assessing official decides to initiate an action to impose a civil penalty under the procedures in this subpart, he or she will, in writing:

- (1) Appoint an examining official; and
- (2) Delegate to the examining official the authority to prepare, sign, and serve an Initial Notice of Assessment on behalf of the assessing official.

§ 92.15 Initial notice of assessment.

The examining official shall review all immediately available evidence on