

DEPARTMENT OF THE TREASURY  
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NO. 11

DATE: January 22, 2013

SUBJECT: Processing Cost Bonds

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 11 establishes Treasury policy on the processing of cost bonds. The Civil Asset Forfeiture Reform Act of 2000 (CAFRA) substantially eliminated the need for the posting of a cost bond for all civil forfeitures except those specifically exempted by 18 U.S.C. § 983(i). In practice, with respect to the Treasury forfeiture program, cost bonds likely will only be collected by CBP for forfeitures under the Tariff Act of 1930 or any provision in Title 19.

2. **SCOPE.** The policy and procedures included in this directive are limited to specific situations where cost bonds are received by the Customs and Border Protection (CBP) for Title 19 forfeitures conducted by the Immigration and Customs Enforcement (ICE) or CBP.

3. **POLICY.** If a cost bond is filed, CBP shall deposit the funds to the Treasury Suspense Account pending forfeiture. Upon conclusion of the forfeiture matter, CBP shall provide the National Finance Center (NFC) with cost bond disposition instructions pursuant to the court order or settlement agreement, in accordance with the procedures established in this Directive. Treasury will not honor claims for costs being charged against the cost bond that are not included in a court order. This includes costs incurred by the U.S. Marshals Service to the extent they were recoverable from the cost bond.

In instances where CBP (on its own, or on behalf of ICE) commences an administrative forfeiture action under Title 19, but the U.S. Attorney subsequently files a civil judicial forfeiture action under a non-Title 19 statute (e.g., 21 U.S.C. § 881, which is not CAFRA-exempt) the U.S. Attorney should comply with all CAFRA deadlines, including the 90-day filing deadline under section 983(a)(3), and CBP should return the cost bond.

4. **RESPONSIBILITIES.** CBP is responsible for depositing and disposing of cost bonds in accordance with the procedures established in this Directive. If a cost bond is filed, CBP shall deposit the funds to the Treasury Suspense Account. Upon court order or settlement agreement, CBP shall provide cost bond disposition instructions to the NFC.

5. **GUIDANCE.**

A. **Cost Bond Filed and Property Judicially Forfeited**

(1) If any of the property for which the cost bond was filed is judicially forfeited, the following shall occur:

(a) Judgment for allowed costs should be included in the judgment of forfeiture or sought by separate motion and order;

(b) Costs allowed should be recovered from the amount of the cost bond;

(c) Amount remaining, if any, after the deduction of allowed costs, should be returned to the claimant; and

(d) Monies due to seizing agencies, for costs incurred against the bond, shall be deposited into the General Fund of the Treasury.

(2) In the settlement of judicial forfeiture cases, the U.S. Attorney has the authority to waive the costs incurred in the case and return the bond.

(3) If none of the property for which the cost bond was filed is forfeited, the cost bond, or the entire amount deposited as the cost bond, should be returned to the claimant when the property is returned.

(4) In accordance with section 5.A.(3) above, CBP shall make every reasonable effort to locate the person/entity posting the cost bond. In the event that the person/entity cannot be located, the following actions should be taken:

(a) In accordance with agency policy, CBP shall initiate due process requirements to abandon the monies and vest title of the monies to the government; and

(b) Following the abandonment procedures, CBP shall notify TEOAF that the monies have been abandoned and direct the NFC to deposit the monies into the General Fund of the Treasury.

#### **B. Administrative Forfeiture by Settlement Agreement after the Cost Bond Is Filed**

When a cost bond has been filed and the claim is withdrawn pursuant to a settlement agreement, the cost bond shall be disposed as follows:

(1) If allowable costs have not been incurred, the settlement agreement should provide for return of the cost bond, or the entire amount deposited as the cost bond, to the claimant.

(2) If allowable costs have been incurred:

(a) The settlement agreement should provide for return of the amount of the cost bond remaining, if any, after deductions of an agreed upon sum specified as allowable costs; and

(b) The agreed allowable costs should be recovered from the cost bond, and the bond amount remaining, if any, after the deduction of agreed costs, should be returned to the claimant pursuant to the settlement agreement.

#### **C. Charges against a Cost Bond**

The costs most often charged by court order against the cost bond are set forth in 28 U.S.C. § 1920 and 1921. These costs are:

(1) Fees of the clerk;

(2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;

(3) Fees and disbursements for witnesses and any printing related to the case;

- (4) Docket fees under 28 U.S.C. § 1923;
- (5) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under 28 U.S.C. § 1828; and
- (6) Fees of the U.S. Marshal as set forth in 28 U.S.C. § 1921, including:
  - (a) Service of the complaint, the warrant of arrest in rem, or any other writ, order, or process in the case;
  - (b) Service of witnesses;
  - (c) Preparation of public notices; and
  - (d) Keeping of attached property, including actual expenses incurred, such as storage, moving, boat hire, or other special transportation, watchmen's or keepers' fees, insurance, and an hourly rate, including overtime, required for special services, such as guarding, inventorying, and moving.

## **6. PROCEDURES.**

### **(1) Customs and Border Protection (CBP)**

#### **(a) Receipt of Monies for Cost Bonds**

(i) CBP will process cost bonds in accordance with established agency procedures. Checks presented in place of the bond should be made payable to the agency.

(ii) The CBP Fines, Penalties, and Forfeitures Officer (FPFO) shall deposit the cost bond monies into the Treasury Suspense Account, Agency Class Code: 735, which shall remain there until the FPFO receives disposition instructions from the Assistant U.S. Attorney.

#### **(b) Receipt of Court Order**

At the conclusion of judicial proceedings, a copy of the court order along with a completed TEOAF Form 3, Cost Bond Disposition Instructions, must be submitted to NFC according to the instructions on the form. The purpose of this form is to inform the NFC to initiate disposition of the cost bond held in the Treasury Suspense Account pursuant to the court order.

*For TEOAF Form 3, Cost Bond Disposition Instructions, see Disposition Instructions Guidelines in Exhibit B of the Guidelines for Treasury Forfeiture Fund Agencies on Refunds Pursuant to Court Orders, Petitions for Remission, or Restoration Requests (also referred to as the "Blue Book").*

### **(2) National Finance Center (NFC)**

#### **(a) Establishment of Data Records**

The NFC shall maintain data records of all cost bond monies deposited into the Treasury Suspense Account.

#### **(b) Receipt of Court Order**

Upon receipt of the court order, the NFC shall distribute the monies held in the Treasury Suspend Account in a timely manner as follows:

(i) If the court order does not address the cost bond, the full amount of the bond shall be refunded to the claimant. If the court order does not address allowable costs against the bond, the NFC will not process any bills claimed to be valid costs against the bond.

(ii) If the court order addresses allowable costs to the Justice Department or the seizing agency, the NFC will transfer the monies held in the Treasury Suspend Account or execute the bond and place the monies into the Refund and Drawback account and distribute the funds accordingly.

(iii) Funds due the seizing agency shall be deposited into the General Fund of the Treasury. Funds from cost bonds will not be deposited into the TFF, except to the extent of that portion of the bond that is forfeited, if any, in the court order.

7. **AUTHORITY.** 18 U.S.C. § 983; 31 U.S.C. § 9703; Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."

8. **OTHER RELEVANT REFERENCES.**

A. Rule 54(d) of the Federal Rules of Civil Procedure provides generally for costs to be awarded by the court to the prevailing party, including the United States.

B. Pursuant to 28 U.S.C. § 1920, "A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

C. Pursuant to 28 U.S.C. § 1918 (a), "Costs shall be included in any judgment, order, or decree rendered against any person for the violation of an Act of Congress in which a civil fine or forfeiture of property is provided for."

D. Tariff Act of 1930, to include 19 U.S.C. § 1608.

9. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to TEOAF's Revenue Team at (202) 622-9600.

10. **CANCELLATION.** TEOAF Directive No. 11, "Processing Cost Bonds," April 4, 1994 (revised 3/14/1997), is hereby superseded.

11. **EFFECTIVE DATE.** January 22, 2013.

/S/  
Eric Hampl  
Director  
TEOAF