

Department of Homeland Security

§ 274.16

(b) Remission of forfeiture can only be granted after a seized conveyance has been declared forfeited.

(c) Grant of remission of forfeiture must be conditioned upon:

(1) Payment to the custodian of all costs and expenses of the seizure and forfeiture; or, in the case of a lienholder-petitioner, payment of all costs and expenses of the seizure and forfeiture or the amount by which the appraised value exceeds the net equity of the lienholder-petitioner in the conveyance, whichever is greater;

(2) Execution of an instrument by the petitioner holding the United States, its agents and employees, harmless from all claims which may result from the grant of remission of forfeiture;

(3) Execution of an agreement by the petitioner that no property interest in the conveyance will be transferred to any violator; and

(4) Any other terms or conditions as the regional commissioner determines to be appropriate, including a provision for liquidated damages to guarantee compliance with any of the provisions of the agreement or terms and conditions of the remission of forfeiture.

(d) The following provisions apply only to an owner-petitioner that is granted remission of forfeiture:

(1) Within 20 days after receipt of the determination, that owner-petitioner shall comply with the conditions of remission and take possession of the forfeited conveyance; and

(2) If that owner-petitioner does not comply with the provisions of paragraph (d)(1) of this section, the forfeited conveyance shall be placed in official use, sold, or otherwise disposed of by the custodian as provided in §274.3 of this part. The proceeds of a sale of the forfeited conveyance shall be applied first to all costs and expenses of the seizure, forfeiture, and sale and any remaining balance shall be paid to that owner-petitioner. If the forfeited conveyance is placed in official use or otherwise disposed of, that owner-petitioner shall be paid an amount equal to the appraised value of the conveyance minus all costs and expenses of the seizure, forfeiture, and disposal.

(e) The following provisions apply only to a lienholder-petitioner that is granted remission of forfeiture:

(1) That lienholder-petitioner shall receive payment of the net equity of that lienholder-petitioner, if the forfeited conveyance is placed in official use or otherwise disposed of according to law; or either possession of the forfeited conveyance, or a monetary amount not to exceed the net equity of that lienholder-petitioner from a sale of the forfeited conveyance;

(2) Within 20 days after receipt of the determination, that lienholder-petitioner shall comply with the conditions of remission and take possession of the forfeited conveyance; and

(3) If that lienholder-petitioner does not comply with the provisions of paragraph (e)(2) of this section, the forfeited conveyance shall be placed in official use, sold, or otherwise disposed of by the custodian as provided in §274.3 of this part. The proceeds of a sale shall be applied first to all costs and expenses of the seizure, forfeiture, and sale and any remaining balance not exceeding the net equity of that lienholder-petitioner shall be paid to that lienholder-petitioner. If the forfeited conveyance is placed in official use or otherwise disposed of, that lienholder-petitioner shall be paid the net equity of that lienholder-petitioner minus all costs and expenses of the seizure, forfeiture, and disposal.

§ 274.16 Mitigation.

(a) The regional commissioner may grant mitigation of forfeiture of a seized conveyance to a petitioner, including a violator. To be eligible for the relief of mitigation of forfeiture, a petitioner must establish that transfer of ownership of the forfeited conveyance to the petitioner promotes the interests of justice and does not diminish the deterrent effect of section 274(b) of the Act.

(b) A grant of mitigation of forfeiture shall be in the form of a monetary penalty imposed upon the petitioner in addition to any other amounts chargeable as a condition to the grant of the relief of remission of forfeiture. This penalty is considered as an item of cost payable by the petitioner.

(c) Mitigation of forfeiture can only be granted after a seized conveyance has been declared forfeited.

§ 274.17

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(d) A grant of mitigation of forfeiture must be conditioned upon:

(1) Execution of an instrument by the petitioner holding the United States, its agents and employees, harmless from all claims which may result from the grant of mitigation of forfeiture;

(2) Execution of an agreement that no property interest in the conveyance will be transferred to any violator, or any other violator if the petitioner is a violator; and

(3) Any other terms or conditions as the regional commissioner determines to be appropriate, including a provision for liquidated damages to guarantee compliance with any provisions of the agreement or terms and conditions of the mitigation of forfeiture.

(e) The following provisions apply only to an owner-petitioner that is granted mitigation of forfeiture:

(1) Within 20 days after receipt of the determination, that owner-petitioner shall comply with the conditions of mitigation and take possession of the forfeited conveyance; and

(2) If that owner-petitioner does not comply with the provisions of paragraph (e)(1) of this section, the forfeited conveyance shall be placed in official use, sold, or otherwise disposed of by the custodian under §274.3 of this part. The proceeds of a sale of the forfeited conveyance shall be applied first to all costs and expenses of the seizure, forfeiture, and sale and any remaining balance shall be paid to that owner-petitioner. If the forfeited conveyance is placed in official use or otherwise disposed of, that owner-petitioner shall be paid an amount equal to the appraised value of the conveyance minus all costs and expenses of the seizure, forfeiture, and disposal.

(f) The following provisions apply only to a lienholder-petitioner that is granted mitigation of forfeiture:

(1) That lienholder-petitioner shall receive payment of the net equity of that lienholder-petitioner, if the forfeited conveyance is retained for official use; or either possession of the forfeited conveyance, or a monetary amount not to exceed the net equity of that lienholder-petitioner from the sale of the forfeited conveyance;

(2) Within 20 days after receipt of the determination, that lienholder-peti-

tioner shall comply with the conditions of mitigation and take possession of the forfeited conveyance; and

(3) If the lienholder-petitioner does not comply with the provisions of paragraph (f)(2) of this section, the forfeited conveyance shall be placed in official use, sold, or otherwise disposed of by the custodian as provided in §274.3 of this part. The proceeds of a sale shall be applied first to all costs and expenses of the seizure, forfeiture, and sale and any remaining balance not exceeding the net equity of that lienholder-petitioner shall be paid to that lienholder-petitioner. If the forfeited conveyance is placed in official use or otherwise disposed of, that lienholder-petitioner shall be paid the net equity of that lienholder-petitioner minus all costs and expenses of the seizure, forfeiture, and disposal.

§ 274.17 Restoration of proceeds or appraised value.

(a) The regional commissioner shall not grant restoration of proceeds of sale or the appraised value of a conveyance placed in official use or otherwise disposed of according to law unless the petitioner establishes that the petitioner:

(1) Did not know of the seizure prior to the declaration of forfeiture;

(2) Was in such circumstances as prevented the petitioner from knowing thereof; and

(3) Would otherwise have been granted the relief of remission of forfeiture.

(b) A grant of restoration of proceeds of sale or the appraised value of a conveyance placed in official use or otherwise disposed of according to law must be conditioned upon:

(1) Execution of an instrument by the petitioner holding the United States, its agents and employees, harmless from all claims which may result from the grant of restoration of proceeds of sale or the appraised value of a conveyance placed in official use or otherwise disposed of according to law; and

(2) Any other terms or conditions as the regional commissioner determines to be appropriate.