

Department of Homeland Security

§ 274.5

transportation, entry, reentry, or importation of aliens.

(r) The term *reputation* means repute for related crimes with a law enforcement agency or among law enforcement officers or in the community generally, including any pertinent neighborhood or other area.

(s) The term *seizure* means the act of taking a conveyance into the custody of the Service for the express purpose of considering forfeiture pursuant to section 274(b) of the Act and this part.

(t) The term *state* means any state or any like political division of any geographical territory defined in section 101(a)(38) of the Act as being part of the United States or any state or any like political division of any geographical territory of any other nation or territory, unless otherwise limited in this part.

(u) The term *sufficient actual beneficial interest* means the interest in a conveyance of a beneficial owner.

(v) The term *violation* means a person whose use of or actions with regard to a conveyance in violation of the law subjected the conveyance to seizure pursuant to section 274(b) of the Act and this part.

§ 274.2 Officers authorized to seize conveyances.

For the purpose of carrying out the provisions of section 274(b) of the Act and this part, any immigration officer is authorized and designated by the Commissioner to seize a conveyance.

§ 274.3 Custody and duties of custodian.

Any conveyance seized pursuant to section 274(b) of the Act and this part shall be stored in a location designated by the custodian. The custodian is to receive and maintain in storage all conveyances seized and all conveyances forfeited pursuant to section 274(b) of the Act and this part. After the custodian is notified that all proceedings, administrative or judicial, have been completed and that all petitions for relief from forfeiture have been finally adjudicated, a conveyance is available for disposition according to law. The custodian is authorized to dispose of any conveyances pursuant to section 274(b) of the Act and any other applica-

ble statutes or regulations relative to disposal; and to perform other duties, not inconsistent with the provisions of the Act, regarding seized and forfeited conveyances and the proceeds of sales thereof, as are imposed on the U.S. Customs Service with respect to seizures under the Customs statutes, including the maintenance of appropriate records concerning the seizure and disposition of conveyances.

§ 274.4 Conveyances subject to seizure; termination of interest.

(a) Any conveyance which an immigration officer has probable cause to believe has been or is being used in the commission of a violation of section 274(a) of the Act is subject to seizure.

(b) Any property interest in a conveyance is automatically terminated as of the date of the seizure, if the conveyance is later declared forfeited. Any provision of any state law which recognizes a continuing property interest or right to reinstatement of a property interest in a conveyance has no effect after the date of the seizure of the conveyance, if the conveyance is later declared forfeited.

(c) The custodian is authorized to execute a document of title to convey ownership of a conveyance declared forfeited pursuant to section 274(b) of the Act and this part.

§ 274.5 Return to owner of seized conveyance not subject to forfeiture; opportunity for personal interview.

(a) The Service shall attempt with due diligence to ascertain the ownership of any conveyance seized pursuant to section 274(b) of the Act and this part, in order to determine whether the conveyance is subject to forfeiture.

(b) The following conveyances are not subject to forfeiture:

(1) A conveyance used by any person as a common carrier, unless it appears that the owner or other person in charge was a consenting party or privy to the illegal use of the conveyance; and

(2) A conveyance established by the owner to have been unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state of

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the United States as defined in section 101(a)(38) of the Act.

(c) The owner of a seized conveyance shall be informed of the right to request a personal interview with an immigration officer and to present evidence to establish:

(1) That the conveyance was not subject to seizure; or

(2) That the conveyance is not subject to forfeiture; or

(3) That the conveyance was used in an act to which the owner was not privy, or did not consent, and the owner took all reasonable steps to prevent the illegal use of the conveyance.

If it is determined that the owner has established that paragraphs (c)(1) or (c)(2) of this section apply to the seized conveyance, that seized conveyance shall be returned to the owner as provided in paragraph (e) of this section; and if it is determined that the owner has established that paragraph (c)(3) of this section applies to the seized conveyance, that seized conveyance may be returned to the owner as provided in paragraph (d) of this section.

(d) At any time after seizure the regional commissioner may determine that it is in the best interests of justice not to pursue forfeiture of a seized conveyance which is otherwise subject to forfeiture. If such a determination is made, that seized conveyance shall be returned to the owner as provided in paragraph (e) of this section.

(e) The owner of a seized conveyance to be returned pursuant to paragraphs (c) or (d) of this section will be notified of the conditions of obtaining possession and that possession of the seized conveyance must be taken within 20 days of receipt of notice of the availability of the seized conveyance for return. If the owner has not complied with the conditions of obtaining possession and taken possession of the seized conveyance within that 20 day period, that seized conveyance shall be considered voluntarily abandoned to the United States, and the custodian shall dispose of that seized conveyance as provided in § 274.3 of this part. The conditions of obtaining possession of a seized conveyance available for return pursuant to paragraphs (c) and (d) of this section are as follows:

(1) If paragraph (c)(1) of this section applies to the seized conveyance, there shall be no conditions for obtaining possession;

(2) If paragraphs (c)(2), (c)(3), or (d) of this section apply to the seized conveyance, the owner shall pay all costs and expenses of seizure and shall execute an instrument holding the United States, its agents and employees, harmless from all claims which may result from the seizure and return of the seized conveyance.

(f) If a seized conveyance being returned to the owner pursuant to this section is the subject of judicial forfeiture proceedings, the regional commissioner shall notify the United States Attorney that a determination has been made that the seized conveyance is to be returned to the owner and request that the judicial forfeiture proceedings be terminated.

§ 274.6 Proof of property interest.

The burden of proof is on a claimant to establish that the asserted property interest in a seized conveyance existed on the date of seizure of that conveyance by submission of sufficient satisfactory original documentation or certified copies of the original documentation. If the claimant fails to present documentation showing compliance with required state formalities it will be presumed that a property interest in a seized conveyance did not exist on the date of seizure of that conveyance.

§ 274.7 Appraisal.

The regional commissioner shall determine the appraised value of a seized conveyance by consulting accepted reference guides to conveyance values or experts in conveyance values. If there is no market for a conveyance at the place of seizure, the value of the conveyance in the principal market nearest the place of seizure shall be considered.

§ 274.8 Notice to owner and lienholder of seizure.

Whenever a conveyance is seized, a notice must be given to the owner and any known lienholder notifying them of the seizure of the conveyance and its consideration for forfeiture. The notice must be accompanied by copies of this