

accordance with the procedures listed in §273.3.

(b) The Service may, at any time, conduct an inspection of a carrier's document screening procedures at ports of embarkation to determine compliance with the procedures listed in §273.3, to the extent permitted by the local competent authority responsible for port access or security. If necessary, the carrier shall use its good offices to obtain this permission from the local authority. If the carrier's port of embarkation operation is found not to be in compliance, the carrier will be notified by the Service that it will not be eligible for refund, reduction, or waiver of fines under section 273(e) of the Act unless the carrier can establish that lack of compliance was beyond the carrier's control.

**§273.5 General criteria used for reduction, refund, or waiver of fines.**

(a) Upon application by the carrier, the Service shall determine whether circumstances exist which would justify a reduction, refund, or waiver of fines pursuant to section 273(e) of the Act.

(b) Applications for reduction, refund, or waiver of fine under section 273(e) of the Act shall be made in accordance with the procedures outlined in 8 CFR 280.12 and 8 CFR 280.51.

(c) In determining the amount of the fine reduction, refund, or waiver, the Service shall consider:

- (1) The effectiveness of the carrier's screening procedures;
- (2) The carrier's history of fines violations, including fines, liquidated damages, and user fee payment records; and,
- (3) The existence of any extenuating circumstances.

**§273.6 Memorandum of Understanding.**

(a) Carriers may apply to enter into a Memorandum of Understanding (MOU) with the Service for an automatic reduction, refund, or waiver of fines imposed under section 273 of the Act.

(b) Carriers signatory to an MOU will not be required to apply for reduction, refund, or waiver of fines in accordance with the procedures outlined in 8 CFR

280.12 and 8 CFR 280.51, but will follow procedures as set forth in the MOU.

(c) Carriers signatory to an MOU will have fines reduced, refunded, or waived according to performance standards enumerated in the MOU or as determined by the Service.

(d) Carriers signatory to an MOU are not precluded from seeking additional reduction, refund, or waiver of fines in accordance with the procedures outlined in 8 CFR 280.12 and 8 CFR 280.51.

**PART 274—SEIZURE AND FORFEITURE OF CONVEYANCES**

Sec.

- 274.1 Definitions.
- 274.2 Officers authorized to seize conveyances.
- 274.3 Custody and duties of custodian.
- 274.4 Conveyances subject to seizure; termination of interest.
- 274.5 Return to owner of seized conveyance not subject to forfeiture; opportunity for personal interview.
- 274.6 Proof of property interest.
- 274.7 Appraisal.
- 274.8 Notice to owner and lienholder of seizure.
- 274.9 Advertisement.
- 274.10 Judicial forfeiture proceedings upon claim and bond.
- 274.11 Administrative forfeiture.
- 274.12 Judicial forfeiture.
- 274.13 Petitions for relief from forfeiture; filing.
- 274.14 Time for filing petitions.
- 274.15 Remission.
- 274.16 Mitigation.
- 274.17 Restoration of proceeds or appraised value.
- 274.18 Provisions applicable to particular situations.
- 274.19 Determinations on petitions; reconsideration.
- 274.20 Compromise of judicial forfeiture proceedings.

AUTHORITY: 8 U.S.C. 1103, 1324(b).

SOURCE: 53 FR 43187, Oct. 26, 1988, unless otherwise noted.

**§274.1 Definitions.**

The following definitions apply to the following terms in this part:

- (a) The term *appraised value* means the estimated price at the time and place of seizure, if such or similar property were freely offered for sale.
- (b) The term *beneficial owner* means a person who has dominion and control

over a conveyance, as well as a property interest therein.

(c) The term *claimant* means any person who asserts a property interest in a seized or forfeited conveyance through a personal interview or by filing a claim and a bond or a petition for relief from forfeiture.

(d) The term *common carrier* means an express carrier, a freight forwarder, a motor common carrier, a rail carrier, a sleeping car carrier, and a water common carrier, as each of those terms is defined in 49 U.S.C. 10102; and an air carrier and a foreign air carrier, as each of those terms is defined in 49 U.S.C. 1301.

(e) The term *consenting party or privy to the illegal act* means that the person knew of the illegal activity. A person shall be presumed to have knowledge of an illegal activity if the facts and circumstances are such that a person would reasonably be expected to know of the illegal activity.

(f) The term *conveyance* means a vessel, vehicle, or aircraft as used in section 274(b) of the Act. A trailer shall be considered a vehicle if it is being towed or readily capable of being towed. An immobilized house trailer which has been placed on permanent foundations, which is not readily mobile, is not a vehicle.

(g) The term *custodian* means the regional commissioner or the U.S. Marshals Service.

(h) The date of an action in conjunction with the term *filed* means the following:

(1) Date of receipt in the office specified in this part for filing, if filing is by personal delivery;

(2) Date of postmark, if filing is by mail to the office specified in this part for filing;

(3) Date five days prior to date of receipt in the office specified in this part for filing, if filing is by mail to the office specified in this part for filing and date of postmark is missing or illegible; or

(4) Date of receipt in the office specified in this part for filing, if filing is by mail to any other office.

(i) The term *lien* means an interest created by a conditional sales contract, mortgage, title retention contract, debt reduced to a judicial judgment

upon which there has been an execution or an attachment against a conveyance, or other security interest in a conveyance. A lienholder is the holder of such an interest.

(j) The term *net equity* means the amount of monetary interest of a lienholder in a conveyance. Net equity is to be computed by determining the amount of unpaid principal and unpaid interest as of the date of seizure, and by adding to that amount the unpaid interest calculated from the date of seizure through the last full month prior to the date of the determination granting relief from forfeiture. The rate of interest to be used in this computation will be the annual percentage rate specified in the security agreement which is the basis of the interest of the lienholder. In this computation there shall be no allowances for unearned extended warranty, insurance, or service contract charges incurred after the date of seizure, nor allowances for dealer reserves, attorneys fees, or other similar charges.

(k) The term *owner* means a person who has the right to possess and use a conveyance to the exclusion of other persons. A person who has complied with the state formalities for a title or a registration for a conveyance is not the owner if such person does not have sufficient actual beneficial interest in the conveyance. In the consideration of a petition for relief from forfeiture the mere existence of a community property interest without proof of financial contribution to the purchase of a conveyance will not be deemed a property interest. Ownership is the interest that an owner has in a conveyance.

(l) The term *person* means an individual, partnership, corporation, joint business enterprise, or other entity capable of owning a conveyance.

(m) The term *petitioner* means a person filing a petition for relief from forfeiture of a seized conveyance.

(n) The term *property interest* means ownership, lien, or other legally cognizable interest in or legal entitlement to possession of a conveyance existing on the date of seizure of the conveyance. A person who has complied with the state formalities of a title or a registration for a conveyance may not

have sufficient actual beneficial interest or other legally cognizable interest in a conveyance. In the consideration of a petition for relief from forfeiture the mere existence of a community property interest without proof of financial contribution to the purchase of a conveyance will not be deemed a property interest.

(o) The term *record* means an arrest for a related crime followed by a conviction, except that a single arrest and conviction and the expiration of any sentence imposed as a result of the conviction, all of which occurred more than ten years prior to the date a claimant acquired a property interest in the seized or forfeited conveyance, is not considered a record; *provided* that two convictions of related crimes shall always be considered a record regardless of when the convictions occurred; *and provided* that the regional commissioner may consider as constituting a record an arrest for a related crime or series of arrests for related crimes in which the charge or charges were subsequently dismissed for reasons other than acquittal or lack of evidence.

(p) The term *regional commissioner* means the Regional Commissioner of the Service for the region in which a conveyance is seized, or the designee of that Regional Commissioner.

(q) The term *related crime* means any crime similar in nature to or related to the illegal bringing in, harboring, 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 applicable 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