

## **Inspector's Field Manual**

These sites were provided training in Business Process Reengineering, Performance Measurements, and Project Management. These fifteen locations account for more than 50% of the total traveling public.

The vehicle for implementation of the NPR recommendations was the Port Quality Improvement Committee (PQIC), a concept previously and successfully explored at the six Office of Management and Budget test locations established in 1993. The PQICs were instituted at each of the NPR POEs and are comprised of management and labor representatives from each of the FIS agencies as well as local stakeholders. Since their inception, together, USCS, INS, and APHIS have tested many recommendations for improvement or enhancement of the primary inspection process.

The PQIC concept will be expanded beginning in June 1997, starting with the original OMB sites and continuing on through the major land and air POEs throughout the United States. In the case of INS, the administration of the new PQICs will be the responsibility of the Regions but the testing of NPR recommendations to improve the primary process will continue.

In May 1996, the Unified Port Management initiative was tested at both Buffalo and Nogales POEs. The test was designed to test the viability of a single port manager with responsibility for all USCS and INS operations. In May 1997, the test was concluded and the PQIC concept was recommended as the proper vehicle for enhancing inter-agency communication and cooperation.

- (c) Primary Land Border Inspections. On February 5, 1999, INS established guidelines for an integrity policy for primary land border inspections. This policy provided four vehicles and pedestrian lane scheduling options. To further enhance the integrity of this policy, primary lane changes of INS staff with Customs staff is desirable. Schedules and frequencies should be negotiated with Customs counterparts locally. The integrity policy for primary land border inspections is discussed fully in Chapter 2.10. (Paragraph (c) added 6/23/99; IN99-22)

### **41.2 International Agreements and Border Liaison.**

- (a) General. Canadian and Mexican government officials at land border ports play an important role in the success of INS' mission. Cooperation and regular liaison between local INS port officials and their Canadian and Mexican counterparts are necessary in order to improve law enforcement and intelligence efforts, to solve mutual facilities issues and for a variety of other reasons. Many ports-of-entry have regular liaison meetings and conclude local agreements to provide information and assistance which is mutually beneficial. Typically, local cross-border agreements provide for assistance in removing third-country nationals and provide a means for identifying fraudulent documents purported to be issued by the other's immigration or passport authorities.

A Statement of Mutual Understanding (SMU) on Information Sharing between Canada and the United States was signed in June of 1999. This document directs Canadian and United

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States immigration and consular officials to enhance cooperation in areas of mutual concern relating to migration. The SMU is the commitment that United States and Canadian immigration and consular authorities will cooperate in preventing unlawful immigration to the fullest extent permitted by our respective laws. Refer to Appendix 41.2.

- (b) Document Collection. Canadian officials have agreed to collect departure documents (Forms I-94) for INS when they encounter nonimmigrants entering Canada who will not be returning to the U.S.

### 41.3 Liaison with International Air and Sea Carriers and Foreign Governments.

- (a) General. Liaison with transportation carriers exists at two levels: mandatory regulatory requirements which carriers must abide by in order to bring passengers into the United States and voluntary programs established jointly between FIS agencies and the transportation industry in order to achieve mutually beneficial goals. The former have remained largely unchanged for many years; the latter have evolved rapidly in recent years to cope with mutual problems and to capitalize on opportunities arising from new technology. Crowded facilities, unstable political systems around the world, increasing incidence of fraudulent travel documents, Government downsizing, and technological breakthroughs have posed challenges and opportunities for the public and private sectors of the industry. INS has aggressively sought opportunities to work cooperatively with leaders in the transportation industry.
- (b) Mandatory Requirements and Local Initiatives. International carriers are required to provide advance information on arriving vessels and aircraft so that Federal inspectional agencies can provide adequate inspection resources [See Section 239 of the INA and 8 CFR 239.]. This information should be regularly provided to local port directors sufficiently in advance to provide necessary staffing. Supervisory personnel should regularly hold liaison sessions with common carriers operating at their ports in order to ensure that available scheduling information is delivered as early as possible, to discuss long term traffic estimates, to identify problems which carriers may have involving FIS activities and to jointly discuss other issues which involve the efficient operation of the port. [See also, Transportation Agreements, Chapter 42 of this manual.]
- (c) National Initiatives. A number of special programs involving INS and individual transportation lines or umbrella organizations such as the International Air Transport Association (IATA) or the Air Transport Association of America (ATA) are operational or in the developmental stage. The Advance Passenger Information System (APIS), discussed in Chapter 26.3, the Carrier Consultant Program (CCP) discussed in Chapter 26.4, INSPASS, discussed in Chapter 26.7, and expansion of preclearance are all examples of cooperation between government and industry to improve conditions in federal inspectional facilities, for the benefit of the traveling public.

INS is a regular participant in the IATA Control Authority Working Group (CAWG), a group of senior government and industry representatives who meet to discuss and resolve issues of

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mutual interest including standards for international travel documents, inspectional facilities issues, travel traffic forecasting, legislation and regulations affecting travelers and transportation companies, trends in international terrorism and alien smuggling, etc.

- (d) EDISON Project. The EDISON system was developed by the Centrale Recherche Informatiedienst, the Dutch equivalent of the Federal Bureau of Investigation, a law-enforcement agency of the Government of the Netherlands. The EDISON system stores and retrieves high-quality images of travel-related documents to enhance border control activities.

Presently, there are six countries who are members of the EDISON Steering Committee: United States, Netherlands, Canada, United Kingdom, Australia, and Germany. The Committee develops and establishes the policies and procedures under which EDISON is used in these countries, as well as in other countries that request to purchase the technology for border control activities within their own territories.

The EDISON system is a common database of genuine travel documents, such as samples of a country's passport versions, that will help in the detection of fraudulent travel documents purportedly issued by legitimate document-issuing authorities within individual countries. As of March 1996, EDISON contains 930 documents (images and descriptive text) from 184 countries. The INS Forensic Document Laboratory, in McLean, Virginia, uses the EDISON technology. The EDISON system is in use at the international airports in New York, Miami, Los Angeles and Atlanta. Development and distribution of the system continue.

### **41.4 Liaison with Other Federal Agencies.**

Many agencies which are not FIS agencies have an interest in activities at ports-of-entry. Virtually all Intelligence agencies and law enforcement agencies at the federal, state, and local levels have a need to interact with managers at ports- of-entry. Frequently, there are requests to post local lookouts or to assist in other law enforcement functions. Similarly, INS is dependent on other agencies to assist in carrying out its mission. Providing this type of assistance whenever possible is a critical part of the inspector's job.

Possibly the most important and frequently relied upon liaison for INS inspectors is with overseas Department of State visa issuing posts. A complete list of DOS contacts, with their telephone and fax numbers is listed in Appendix 41-1.

### **41.5 Liaison with Port Authorities; Inspectional Facilities.**

It is important that local port directors maintain close contact with officials in charge of facilities. At land border locations, such facilities may be owned by the Federal Government and operated by the General Services Administration, they may be privately owned and operated, or they may be owned and operated by local, quasi-public organizations. At most airports, the facilities are owned and operated by local port authorities.

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There are established standards for inspectional facilities, including security requirements, inspection booths and other physical requirements. These standards have evolved over the years and periodically change for various reasons. All new facilities and modifications to older ones must be approved by regional and Headquarters Facilities Management officials. It is critical that such officials be contacted during the earliest stages of planning for any new or modified facility [See discussion in AM 2.1.204 and Chapter 4.10 of the Facilities Management System Guidebook].

### Chapter 42: Transportation Agreements (Added INS - TM2)

- 42.1 General Considerations
- 42.2 Transit Agreements
- 42.3 Visa Waiver Program Agreements
- 42.4 Guam Visa Waiver Agreements
- 42.5 Preinspection Agreements
- 42.6 Contiguous Territory Agreements
- 42.7 Landing Rights and Carrier Requirements
- 42.8 Progressive Clearance
- 42.9 Section 273(e) memorandum of Understanding (MOU) (Added IN99-34)

#### References:

**INA:** Sections 212(d)(4)(C), 217, 233, 234, 273.

**Other law:** Omnibus Territories Act, Pub. L. 99-396.

**Regulations:** 8 CFR 212.1, 214.2, 217, 233, 234, 273.

#### 42.1 General Considerations.

Transportation companies involved in the carriage of passengers into the U.S. may incur obligations to the government in two ways: general statutory obligations, such as those found in §§ 231, 251, 271, and other sections of the Act and specific contractual obligations voluntarily undertaken by specific carriers in consideration for particular privileges. This chapter contains a discussion of both types of obligations. Penalties for violations of those obligations are discussed in Chapter 43.

The Service will evaluate a carrier's fines, liquidated damages, and user fee payment record before entering into any agreements with the carriers. Future agreements with carriers may be conditioned upon payment of overdue fines, liquidated damages, or user fees. The Service will also terminate existing agreements with carriers whose payments are outstanding for more than 30 days, unless the fines, liquidated damages, or user fee payments are under appeal by the carrier. Section 233 of the INA provides authority for these actions. All agreements are affected by this policy.

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### 42.2 Transit Agreements.

- (a) TWOV Agreement. The Attorney General has the authority under section 233 of the Act to enter into agreements with transportation lines to guarantee the passage of aliens without visas who are in transit through the United States to a foreign country. Requirements for TWOV admissions are discussed in Chapter 15.6. A carrier desiring to enter into a transit agreement with the Service must be a commercial carrier regularly involved in the transportation of ticketed passengers. The prospective carrier may obtain a contract/information kit from the National Fines Office (NFO). The carrier must complete and sign Form I-426, Immediate and Continuous Transit Agreement, also known as the Transit Without Visa (TWOV) Agreement, providing two signed originals to the NFO along with the carrier's two-character airline designation code, complete mailing address and telephone number, and information as to the type and number of vessels or aircraft owned. Once the NFO has determined that the carrier is eligible for participation in this program and appears to be current in its payment of fines, liquidated damages, and user fees, the NFO Director will return a signed and dated copy of the I-426 to the carrier along with a notice of approval. In addition to maintaining a hard contract file for each signatory carrier, the NFO will maintain a local database an up-to-date list of all signatory carriers. On a monthly basis, the NFO will publish an updated list of signatory carriers on its electronic bulletin board. A list of signatory carriers is also contained in Appendix 42-1; however, carriers who have recently signed a TWOV agreement may not yet be listed. Contact the NFO during business hours if there is a question regarding a current contract. (Revised IN 99-34)
- (b) In-Transit Lounge Agreement. A separate agreement, called an In-Transit Lounge (ITL) Agreement, is available to carriers who desire to transport passengers not in possession of a valid non-immigrant visa and not exempt presentation of one, whose transit passengers require only one stop in the U.S., and who desire to use specific airport transit lounges rather than presenting these transit passengers for primary FIS processing. Carriers are to obtain a copy of the ITL Agreement from the specific Port-of-Entry. Carriers must sign the ITL Agreements and then submit them, in duplicate, to Headquarters, Inspections, for approval. A list of carriers signatory to ITL Agreements at specific ports-of-entry is contained in Appendix 42.3. The Headquarters, Office of Inspections, will maintain an up-to-the-date list of all approved ITL carriers at the specific Ports-of-Entry. A separate ITL Agreement must be signed by the carrier and submitted to Headquarters, Inspections, for each Port-of-Entry where ITL privileges are requested. Only carriers with a valid TWOV Agreement with the Service are permitted to apply for ITL Agreements. See also Chapter 22.10 entitled "Inspection of International-to-International (ITI) Transit Passengers." (Revised IN99-04)

### 42.3 Visa Waiver Program (VWP) Agreements

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The Attorney General has the authority under section 233 of the Act to enter into agreements with transportation lines permitting certain nationalities to be transported to the United States without visas. Requirements for admission under the Visa Waiver Program (VWP) are outlined in Chapter 15.7, section 217 of the Act and 8 CFR 217. A carrier desiring to enter into a VWP agreement with the Service must be a commercial carrier regularly involved in the transportation of ticketed passengers. The prospective carrier may obtain a contract/information kit from the National Fines Office (NFO). The carrier must complete and sign Form I-775, Visa Waiver Program Agreement, providing two signed originals to the NFO along with the carrier's two-character airline designation code, complete mailing address and telephone number, and information as to the type and number of vessels or aircraft owned. Once the NFO has determined that the carrier is eligible for participation in this program and appears to be current in its payment of fines, liquidated damages, and user fees, the NFO Director will return a signed and dated copy of the I-775 to the carrier along with a notice of approval. In addition to maintaining a hard contract file for each signatory carrier, the NFO will maintain a local database an up-to-date list of all signatory carriers. On a monthly basis, the NFO will publish an updated list of signatory carriers on its electronic bulletin board. A list of signatory carriers is also contained in Appendix 42-2; however, carriers who have recently signed a VWP agreement may not yet be listed. Contact the NFO during business hours if there is a question regarding a current contract.

### **42.4 Guam Visa Waiver Program (GVWP) Agreements**

The Attorney General has the authority under section 233 of the Act to enter into agreements with transportation lines permitting certain aliens without visas to be transported to Guam. Requirements for admission under the Guam Visa Waiver Program (GVWP) are outlined in Chapter 15.8, section 212(l) of the Act and 8 CFR 212.1(e). A carrier desiring to enter into a GVWP agreement with the Service must be a commercial carrier regularly involved in the transportation of ticketed passengers. The prospective carrier may obtain a contract/information kit from the National Fines Office (NFO). The carrier must complete and sign Form I-760, Guam Visa Waiver Program Agreement, providing two signed originals to the NFO along with the carrier's two-character airline designation code, complete mailing address and telephone number, and information as to the type and number of vessels or aircraft owned. Once the NFO has determined that the carrier is eligible for participation in this program and appears to be current in its payment of fines, liquidated damages, and user fees, the NFO Director will return a signed and dated copy of the I-760 to the carrier along with a notice of approval. In addition to maintaining a hard contract file for each signatory carrier, the NFO will maintain a local database an up-to-date list of all signatory carriers. On a monthly basis, the NFO will publish an updated list of signatory carriers on its electronic bulletin board. A list of signatory carriers is also contained in Appendix 42-4; however, carriers who

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have recently signed a GVWP agreement may not yet be listed. Contact the NFO during business hours if there is a question regarding a current contract.

### **42.5 Preinspection or Preclearance Agreements**

Transportation lines seeking to have passengers preinspected or precleared abroad at any of the Service's preinspection or preclearance stations must enter into an agreement with the Service on Form I-425, Agreement for Preinspection Between Transportation Line and the United States. Each agreement is valid only for a specified preinspection or preclearance station. As part of the agreement, the carrier agrees to bear the costs of maintaining the inspection station abroad and agrees to board only those passengers who have been examined and found admissible to the United States. A carrier desiring to enter into a Preinspection/Preclearance agreement with the Service must be a commercial carrier regularly involved in the transportation of ticketed passengers. The prospective carrier may obtain a contract/information kit from the National Fines Office (NFO). The carrier must complete and sign Form I-425, providing two signed originals to the NFO along with the carrier's two-character airline designation code, complete mailing address and telephone number, information as to the type and number of vessels or aircraft owned, and a detailed schedule of service to the United States. Once the NFO has determined that the carrier is eligible for participation in this program and appears to be current in its payment of fines, liquidated damages, and user fees, the NFO Director will return a signed and dated copy of the I-425 to the carrier along with a general notice of approval stipulating that the preinspection of individual flights and times is subject to the approval of the Service port director at the preinspection or preclearance station specified on the I-425. In addition to maintaining a hard contract file for each signatory carrier, the NFO will maintain a local database and an up-to-date list of all signatory carriers for each preinspection site. On a monthly basis, the NFO will publish an updated list of signatory carriers on its electronic bulletin board. A list of signatory carriers is also contained in Appendix 42-5; however, carriers who have recently signed a Preinspection or Preclearance agreement may not yet be listed. Contact the NFO during business hours if there is a question regarding a current contract.

### **42.6 Foreign Territory or Adjacent Islands Agreements**

Section 233(a) of the Act requires all transportation lines to enter into a contract with the Service for the inspection and admission of aliens coming to the United States from foreign territory or from adjacent islands. Form I-420 Agreement requires transportation lines to comply with the Immigration and Nationality Act and regulations, maintain suitable landing stations at the Port-of-Entry, and bear aliens' detention expenses and Service overtime expenses, when applicable. Supplementary agreements relating to accidents, mechanical difficulties, severe weather or other emergencies are on Form I- 420A. These agreements are submitted for approval to the appropriate regional director. The Service does not

I-LINK

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maintain a list of carriers with I-420 contracts. The I-420 agreement can be obtained from and must be submitted, in duplicate, to the National Fines Office (NFO) for approval. (Revised IN99-04)

### **42.7 Landing Rights and Carrier Requirements.**

With certain exceptions specified in §§ 231 and 251 of the Act, international carriers must provide arrival and departure manifests, present passengers and crew when and where directed by the Service, and provide advance information concerning arrival, in order to permit orderly and timely inspection. Penalties for infractions of these requirements are explained in Chapter 43.

If a carrier repeatedly fails to present correct and legible manifests (Forms I-94), and a carrier representative is not immediately available to make corrections without unduly delaying the inspection process, consider fine proceedings. Before commencing fine proceedings, document efforts to obtain carrier compliance, using Form I-83, if appropriate, or a letter or memorandum. Notify the carrier, using Form I-80 of specific deficiencies prior to institution of actual fine proceedings. Specific manifest requirements and procedures for processing such manifests are discussed in Chapters 22 and 23.

Do not institute fine proceedings for failure to include data in the admission block of a departure I-94 which is submitted as a "dummy" replacement form when the original I-94 is not presented to the carrier by the departing nonimmigrant passenger.

### **42.8 Progressive Clearance.**

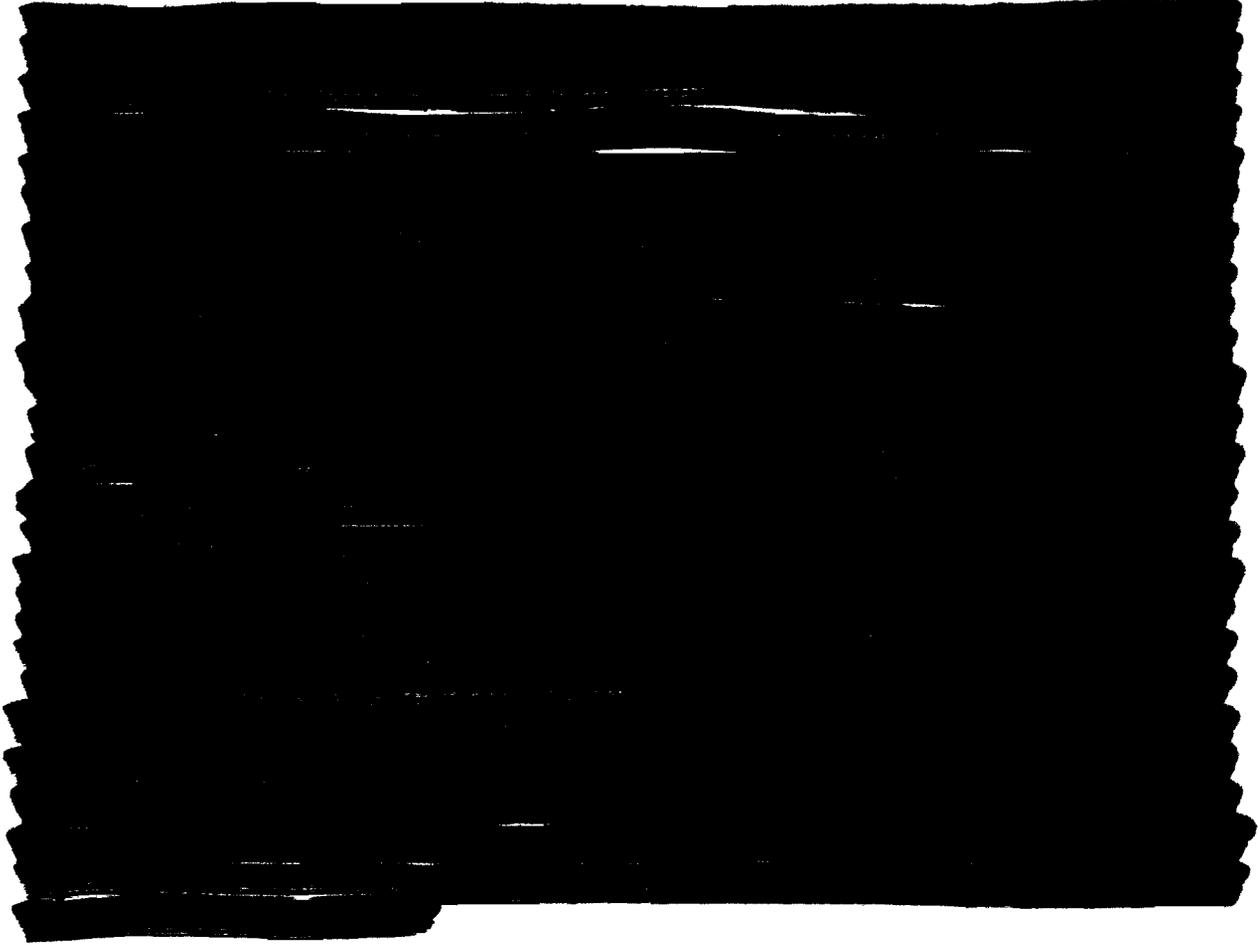
Carriers requesting progressive clearance, partial clearance of an arriving flight at the first port-of-entry with the remaining passengers cleared at an onward port, should be directed to contact the regional director with jurisdiction over the first port of arrival. If the onward port is in another region, that regional director is responsible for coordination with the onward office prior to approval. The regional director will evaluate a carrier's fines, liquidated damages, and user fee payment record before entering into any agreement with the carrier. Upon approval of any progressive inspection request which involves multiple flights, the regional director shall forward a copy of the approval agreement to Headquarters, Inspections.

### **42.9 Section 273(e) Memorandum of Understanding (MOU) (Added IN 99-34)**

A carrier that brings an alien to the United States without a valid passport or visa is subject to a \$3,000 fine. Prior to December 25, 1994, this amount could be remitted or imposed in full but not mitigated to a lesser amount. Section 273(e) of the Act allows for the reduction of these fines provided that the carrier screens passengers in accordance with standards prescribed by the Attorney General and/or where

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case-specific circumstances exist which are determined to justify reduction. A carrier may be eligible for up-front reductions of 25% or 50% by entering into a Memorandum of Understanding (MOU), thereby agreeing to train its employees



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### Chapter 43: Fines and Liquidated Damages (Added INS-TM2)

- 43.1 General
- 43.2 Administrative Fine Violations
- 43.3 Processing Administrative Fines at Ports-of-Entry
- 43.4 Passengers Arriving from Contiguous Territory
- 43.5 Processing Administrative Fines at the National Fines Office
- 43.6 Processing Liquidated Damages at Ports-of-Entry
- 43.7 Processing of Liquidated Damages by National Fines Office
- 43.8 Civil Document Fraud Penalties

#### References:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

- Carrier fails to submit Form I-94 Departure Record [Section 231(b)]; and I-LINK

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- Carrier fails to submit properly completed Form I-94 Departure Record in a timely manner [Section 231(b)].
- (3) Section 251. A fine is imposed under Section 251 when a carrier fails to provide a complete, true, and correct list of alien crewmen, Form I-418, upon arrival or departure, or when a carrier fails to report cases of desertion or illegal landing of alien crewmen as required. A fine may also be imposed under Section 251 if an alien crewman performs certain types of longshore work not included in normal operations and service on board the vessel under Section 258.

### Typical Violations of Section 251:

- Carrier fails to provide timely a complete arrival manifest for alien crew;
  - Carrier fails to provide timely an accurate departure manifest for alien crew; and
  - Carrier fails to report illegally landed crewman when discovered.
- (4) Section 254. A fine is imposed under Section 254 when a carrier fails to properly control alien crewmen.

### Typical Violations of Section 254:

- Carrier fails to detain alien crewman on board vessel prior to inspection;
  - Carrier fails to detain alien crewman on board vessel after inspection, when ordered to do so; and
  - Carrier fails to deport (remove) an alien crewman as required.
- (5) Section 256. A fine is imposed under Section 256 when a carrier pays off or discharges a nonimmigrant alien crewman without first obtaining the consent of the Attorney General.

### (b) Other Violations.

- (1) Section 234. Section 234 relates to the control of aircraft. A fine is imposed under this section when a nonscheduled carrier fails to provide advance notice to the government of intent to land in the United States or if an aircraft arrives at an undesignated port of entry.
- (2) Section 243. A fine is imposed under Section 243 when a carrier fails or refuses to detain, deliver, or deport an alien as required, or fails to pay the removal expenses

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of an alien who was brought to the United States by the carrier. Circumstances under which Section 243 fines can be imposed are outlined in Section 241. Section 243 applies to alien passengers and stowaways but not alien crewmen.

- (3) Section 255. A fine may be imposed under Section 255 when a carrier brings to the United States an alien employed on a passenger vessel who is afflicted with certain disabilities (feeble-mindedness, insanity, epilepsy, tuberculosis, leprosy, or any dangerous contagious disease).
- (4) Section 271. A fine is imposed under Section 271 for failure to prevent the unauthorized landing of an alien in the United States at any time or place other than as designated by the Service.

#### Typical Violations of Section 271:

- International passengers are disembarked into a domestic terminal, bypassing immigration inspection (The inspector should recommend a fine for all passengers on the flight, unless the carrier proves that a passenger is a United States citizen); and
  - Alien passengers arrive from foreign and land at a place other than as authorized by the United States government.
- (5) Section 272. A fine may be imposed under Section 272 when a carrier brings to the United States an alien subject to exclusion on a health-related ground [excludable under 212(a)(1)].

### **43.3 Processing Administrative Fines at Ports-of-Entry.**

#### (a) Completing Form I-849 & Documenting a Case.

- (1) General. All administrative fine recommendations submitted to the NFO are to include a properly completed Form I-849, Report to the National Fines Office of Possible Violation of the INA (7/21/2000), which summarizes the circumstances of the incident. Form I-849 includes completion and documentation instructions and a summary table of fineable sections of the INA. As a Privacy Act concern, a completed Form I-849 should not make specific references to political asylum or credible fear issues. The completed form should include the signatures of both the recommending officer and a designated concurring officer. Whenever possible, a copy of Form I-849 should be provided to the carrier representative, and the carrier receipt area of the form should be appropriately endorsed to indicate the date and method of receipt. (Revised IN00-42)

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- (2) Local Tracking Numbers. The primary purpose of the local tracking number is to enable a port to retrieve and refer to a particular case whenever necessary. A local tracking number must be assigned to each administrative fine recommendation before submission to the NFO. The local tracking number is to be recorded in the space provided on the front of Form I-849. The recommended format for a local tracking number is as follows:

The letter 'X' + 3-letter port code + terminal name code (if applicable) + the 2-digit fiscal year indicator + the sequential number for this violation for the specified fiscal year. As an example, the first local tracking number assigned to a case by Los Angeles for a violation detected at the Tom Bradley Terminal (TB) in Fiscal Year 2001 would be:

XLOSTB010001.

If a terminal name code does not exist, a port may use "IA" (international arrivals terminal) or "AP" (airport) or "SP" (seaport).

- (3) Photographs of Alien Passengers. When recommending a fine in a case where an alien passenger arrives in the United States with no travel documents whatsoever, a passport-style photograph must be taken of the alien and attached to the photo box on the front of Form I-849.
- (4) Officer's Summary of Case Circumstances. The officer's summary on the reverse of Form I-849 should include all specific facts of the violation and explain how the violation and responsible carrier were determined. If the Officer's Summary block does not provide enough space, the officer should indicate in the block that a separate memorandum is attached. In summarizing the circumstances of a perceived violation, it is very important that all relevant information be provided. In cases where there is no physical evidence for the file showing that an alien arrived on the flight or vessel indicated, the completing officer must articulate how the named flight or vessel was determined. The completing officer should not make specific references to "political asylum" or "credible fear" on the form, even when a particular case involves such claims.
- (5) Supporting Documentation. It is important that each Form I-849 be accompanied by any and all available documentation to support the circumstances of the violation. Supporting documentation may include, but is not limited to: sworn statements by aliens and other parties involved in the incident; complete copies of documents used for travel (passports, visas, transportation letters, resident cards, employment authorization cards, identity documents, etc.); Forms I-94, Forms I-95, arrival and departure manifests; Customs declarations; memoranda describing case circumstances; photographs of alien passengers; used airline tickets; copies of flight

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logs; baggage claim checks; and Service forms related directly or indirectly to the incident. The recommending officer should anticipate all possible defense arguments that the carrier might later present to the NFO and ensure that all aspects of the incident in question have been documented as thoroughly as possible. A case that does not contain sufficient information or documentation may ultimately result in cancellation if the NFO is unable to adequately counter a carrier's defense arguments by referencing evidence contained in the case file.

### (A) General Documentation for Passport/Visa Violations:

- Photocopies of passport pages showing expiration date(s); photocopies of passport extension pages (even if extension pages are blank).
- Photocopies of all U.S. visas, including expired or "used" single- entry visas. Photocopies of any relevant admission stamps.
- A statement from the inspecting officer as to why there was not a visa or why the visa was invalid.
- A statement from the alien explaining the reason for traveling on travel documents presented and what transpired at the time of check- in and boarding.

### (B) Specific Documentation for Incidents Involving Passengers Ineligible for VWP:

- A statement by the inspecting officer explaining whether the alien is:
  - not in possession of a valid, unexpired passport issued by a participating country;
  - ineligible for the VWP because of nationality;
  - arriving on a nonsignatory carrier; or
  - statutorily ineligible for the VWP because of purpose or length of trip.
- The inspector is to include any remarks made by carrier personnel to the alien at the port of embarkation during check-in.
- A statement by the alien regarding his or her purpose of travel and intended length of stay in the United States.
- A photocopy of the alien's airline ticket showing port of embarkation, port of arrival, and port of departure.
- The inspector is to review United Kingdom passports for designations of right of

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abode in the United Kingdom and include copies of all relevant passport pages. In instances where a passport has a reference(s) to additional page(s), a copy of that page must be provided.

### (C) Specific Documentation for Incidents Involving Document Destroyers or Fraudulent Documents:

- A photograph of the alien. In taking this photograph, the inspector is to use the same angle as used in the fraudulent document to enable comparison of the two photos.
- The inspector is to specifically establish whether the alien:
  - was observed or intercepted disembarking the aircraft;
  - was detected in the terminal intermingled with passengers from the same flight;
  - had baggage tags or was carrying items such as napkins from a particular airline; or
  - states arrival on a specific flight.
- Photocopies of supporting evidence. Examples are:
  - copies of identity documents;
  - any items the alien may possess that link the alien to the carrier (such as baggage tags with the name used for travel); or
  - any item bearing the carrier's logo.
- If the alien was intercepted at the gate, a statement to that effect by the officer(s) involved is to be included.
- If the alien claims to have traveled under his or her true name, the alien is to be questioned further concerning the details of how he or she boarded the aircraft. The alien may claim to have traveled under his or her true name but the true name does not appear on the carrier's arrival manifest. The inspector should pursue further questioning if it is suspected that the travel was under an assumed name.
- A statement from the officer describing what features show that a document is obviously altered or counterfeit. The officer should not describe the security checkpoints but only those features that should be obvious to non-INS personnel. Also, a color photograph or color photocopy is recommended.

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- Do not make specific references to political asylum or credible fear on Form I-849.

#### **(D) Specific Documentation for Incidents Involving Passengers Ineligible to TWOV:**

- A statement by the inspecting officer explaining whether the passenger is:
  - statutorily ineligible to TWOV due to his/her nationality;
  - statutorily restricted to TWOV unless on a continuous direct-through flight;
  - arriving on a nonsignatory carrier; or
  - attempting entry at a port not designated for the TWOV program.
- A copy of Form I-259, if served.
- A copy of the alien's passport, I-94T, airline tickets, and any other information relevant to his itinerary and intended admission as a TWOV passenger.

#### **(E) Specific Documentation for Incidents Involving Absconded TWOV Passengers:**

- A statement by the inspecting officer stating how the Service was made aware that the TWOV passenger absconded.
- The unused Form I-94T Departure Record. If unavailable, the inspector is to state why the form is unavailable.
- The Form I-94T Arrival Record, if available.

#### **(F) Specific Documentation for Violations Involving Immigrants and Resident Aliens:**

- Computer printout of relevant INS records checks.
- If available, photocopies of the documents which alien claims were presented to the carrier to board the aircraft.
- Photocopies of passport pages showing expired ADIT stamps; photocopies of any forms issued by the Service.
- A statement from the immigrant or resident alien parent of baby born outside the United States indicating why the baby does not meet the criteria of 8 CFR 211.1(a)(1) or 8 CFR 211.1(a)(2).
- A statement from lawful permanent resident (LPR) who claims to have lost an I-551

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or I-151. The inspecting officer should verify the location where the card was lost and whether it was lost before or after obtaining boarding pass.

- Statement from LPR who is not traveling with Alien Resident Card that solicits the following information. What was presented to the carrier? Did the carrier check documentation, at check in and prior to boarding? Why is the LPR not in possession of card?

#### **(G) Specific Documentation for Incidents Involving Stowaways:**

- A statement by the inspecting officer regarding:
  - how it was determined that the alien arrived on the vessel in question;
  - when the Form I-259 was issued;
  - when and under what circumstances the alien departed the vessel; and
  - the whereabouts of the stowaway when the vessel departed foreign.
- A sworn statement from the stowaway will strengthen cases in which a Form I-259 was not issued.

#### **(H) Specific Documentation for Incidents Involving Vessels and Crewmen:**

- Copies of Forms I-418, I-409, and I-410.
- Copy of Form I-259 establishing carrier liability under Section 254 for:
  - detained crewman who absconds after inspection; or
  - an alien crewman not removed.

(6) Questions Concerning Form I-849. Questions regarding any particular field on Form I-849 can be answered by calling the NFO.

(Revised IN00-20)

(7) Requests for Additional Information. Upon review of a fine recommendation at the NFO, it may be determined that additional evidence, information, or clarification is required. In such instances, the NFO may issue a memorandum to the port requesting additional information or documentation. If the requested material is available, it should be forwarded to the NFO within thirty (30) days of the date of the memorandum.

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If the requested information or documentation is not available, the responding officer should provide a brief statement and/or explanation in the space provided on the NFO's memorandum and return the memorandum to the NFO within thirty (30) days of the date of the memorandum.

- (8) Submission of Fine Recommendations to NFO. A recommendation for an administrative fine must include a completed Form I-849, reviewed and signed by a supervisor, and all supporting documentation related to the incident. The recommendation package should be submitted in duplicate, via regular mail, to the Director of the NFO as soon as possible following an alleged violation. The address of the NFO is:

National Fines Office  
1525 Wilson Boulevard, Suite 425  
Arlington, VA 22209.

Multiple recommendations may be included in a single mailing; however, each separate incident should include (in duplicate) a separate Form I-849 with supporting documentation relevant to that case.

- (b) Special Requirements for Documenting Section 231 Fines.

### **43.4 Passengers Arriving from Contiguous Territory.**

Regardless of documentary deficiencies, carriers are not liable for fines under Section 273 of the INA in instances where flights enter the United States directly from Canada or Mexico. However, contiguous territory is not a factor with violations occurring under sections of the INA other than Section 273. (Revised IN00-42)

### **43.5 Processing Administrative Fines at the National Fines Office.**

- (a) Initial Processing.

- (1) File Creation, Coding, and Electronic Entry. Upon receipt at the NFO, a file is to be created for each fine recommendation. Where appropriate, a series of codes signifying the type of violation, passport and visa status, disposition of alien, etc., are to be assigned to the case in the course of an initial review. Case codes and data taken directly from the Form I-849 are to be entered into the NFO System [NFOS]. NFOS will assign a unique fine number to the case. (Revised IN00-42)
- (2) Fines Officer Review. Once a fine number has been assigned, each new case is to be reviewed by a fines officer for legal and documentary sufficiency. The reviewing officer must make one of three possible determinations:

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- that fine proceedings should be initiated;
  - that fine proceedings should not be initiated; or
  - that additional information and/or documentation is needed before fine proceedings can be initiated.
- (A) Sufficient Circumstance/Evidence for Fine. If the reviewing fines officer determines that the case, as submitted, is sufficient to initiate fine proceedings, the reviewing officer must sign the appropriate area of Form I- 849, recommending that a Form I-79, Notice of Intent to Fine, be issued to the appropriate carrier. This recommendation is to be forwarded to the Director of the NFO for concurrence.
- (B) Insufficient Circumstance for Fine. If the reviewing fines officer determines that fine proceedings are not warranted, the officer must note the reason(s) for his or her recommendation and forward the case to the Director of the NFO for concurrence. If the Director determines that fine proceedings are in fact warranted, the Director will order that a Notice of Intent to Fine be issued to the appropriate carrier; otherwise, the Director will approve the fines officer's recommendation for termination, the case shall be terminated in the NFO System, and no notice shall be sent to the carrier.
- (C) Request for Additional Information. If the reviewing fines officer determines that additional information or evidence is needed in order to strengthen the Service's case against the carrier, the reviewing officer is to issue a memorandum to the port requesting additional information or documentation. This memorandum must reference the local tracking number assigned to the case by the originating port and provide the port with thirty (30) days to respond. The NFO will refrain from issuing a Notice of Intent to Fine until the 30 days have elapsed or a response to the memorandum is received at the NFO. If no response is received within the 30-day period, the reviewing officer and the Director of the NFO shall decide either to initiate fine proceedings on the basis of the evidence which is available, or to terminate the proceedings.
- (b) Notice of Intent to Fine (Form I-79). When it is determined that fine proceedings should be initiated against a carrier, a Notice of Intent to Fine, Form I-79, is to be issued to the responsible carrier via certified mail. This notice informs the carrier of the Service's intention to impose a fine under a specified section of law and for a specified monetary amount. The carrier is provided with thirty (30) days to submit a written defense to the NFO stating the reasons why the proposed fine should not be imposed, or if imposed, why the fine should be mitigated or remitted. A copy of the Notice of Intent to Fine is to be filed with the appropriate case, pending further action.
- (c) "Decision to Impose Administrative Fine" Notice. If, after thirty (30) days, a carrier does not respond to a Notice of Intent to Fine, the NFO will issue to the carrier a "Decision to Impose Administrative Fine" notice. This notice allows the carrier an additional thirty (30) days to file a written defense to the proposed fine. The carrier is advised that failure to provide a

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written defense within this 30-day period will result in formal imposition of the fine and that all periods for filing a written defense will have expired. A copy of the Decision to Impose Administrative Fine is placed in the case file, pending further action.

- (d) Form G-261 (Bill) and "Final Decision" Notice. If a carrier fails to respond to both the Notice of Intent to Fine and the Decision to Impose Administrative Fine, the Director of the NFO shall order that the fine be formally imposed. A bill, Form G-261, shall be created and sent to the responsible carrier along with a "Final Decision" notice explaining that the fine is imposed in full and all periods provided for the filing of a written defense have expired. The Final Decision notice shall further instruct the carrier that payment should be made within thirty (30) days to the Administrative Center Finance Office specified on the accompanying G-261.
- (e) Receipt of Written Carrier Defense. A timely written defense submitted by a carrier (or on a carrier's behalf) to a Notice of Intent to Fine or a Decision to Impose Administrative Fine is to be placed in the appropriate case file, pending review and a decision by a fines officer. The NFO shall not issue a bill, Form G-261, to a carrier so long as a defense is pending.
- (f) Attorney Representation. Correspondence received at the NFO which references a specific carrier or a specific violation must be submitted by the responsible carrier unless accompanied by a properly completed Form G-28, Notice of Entry of Appearance as Attorney or Representative. The NFO shall not discuss cases nor accept defense materials with any entity other than the responsible carrier unless a Form G-28 has been filed.
- (g) Oral Interviews. If desired (and within the time frame allotted for filing a defense), a carrier representative may request an oral interview to defend a case with a fines officer. Oral interviews may be conducted telephonically or in person; if in person, the carrier representative must travel to the NFO. An oral interview is requested in conjunction with a written defense. Authority for conducting a personal interview is contained in 8 CFR 280.12. Procedures for conducting a personal appearance are contained in 8 CFR 280.13. [See Appendix 43-3 which contains the public notice concerning the oral interview requests.]

The NFO procedures for a request for a personal interview include the following:

- The request must be made in conjunction with the written defense and submitted within 30 days of service of the Notice of Intent to Fine, Form I-79. The immigration officer assigned to conduct the personal interview shall contact the representative of the carrier to set a date and time for the personal interview at the NFO, or a telephonic interview in lieu of a personal interview.
- If additional evidence is to be presented by the representative during a personal interview, the evidence must be submitted at the time of the personal interview. If a telephonic interview is to be conducted and additional will be presented, the representative must submit the documentation at least 24 hours before the start of the telephonic interview for consideration and inclusion in the file.

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- Once a date and time for the personal or telephonic interview have been established, the representative is obliged to appear in person for the personal interview or telephonically contact the NFO for the telephonic interview on the scheduled date and time. If the representative cannot appear for the personal interview or cannot call for the telephonic interview on the scheduled date and time, the representative must call the NFO at least 24 hours in advance to reschedule the interview. The immigration officer will reschedule one additional date on which the personal or telephonic interview is to be held. The rescheduled interview date will be set within thirty (30) days of the original interview date and must be conducted and completed within that time frame. If the representative fails to appear or telephonically contact the NFO on the date and time that has been rescheduled by the immigration officer, the representative will have forfeited his or her opportunity to discuss or present information regarding those determined cases. The immigration officer will make a decision on the case based upon the existing record.
  - The immigration officer assigned to conduct the personal interview may limit the discussion of a particular case to a reasonable time period at his or her discretion. The immigration officer may also limit the total time period allotted in a day for the scheduled personal or telephonic interview.
  - In the discretion of the immigration officer assigned to conduct the personal interview, the representative may also discuss another case assigned for personal interview to the same officer, provided that the written defense and any additional evidence relevant to that other case has been filed. The representative may not discuss any case for which no request for a personal interview has been made, nor any case assigned to another immigration officer.
  - The immigration officer will prepare a report of the personal or telephonic interview, summarizing the evidence and containing his or her findings and recommendation, and present it to the Director of the NFO.
- (h) Decisions to Carrier Defenses. All aspects of a timely defense (oral or written) and any accompanying documentation shall be considered by a fines officer. The fines officer shall determine whether the proposed fine should be imposed in full, terminated, or mitigated (in cases where mitigation is permitted).

If the reviewing fines officer determines that imposition of the fine (in full or in part) is warranted, the reviewing officer shall compose a formal order stating the facts of the case, the arguments presented by the carrier representative, the reason(s) why the fine should be imposed, and the monetary amount recommended for the imposition. This recommendation shall be endorsed by the reviewing officer and forwarded to the Director of the NFO for approval or denial. If the Director concurs with the fines officer's recommendation, the Director shall endorse the formal order and order that the fine be imposed. The formal order shall be sent along with a bill, Form G-261, along with instructions to the carrier regarding the filing of an appeal to the Board of Immigration Appeals [BIA].

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If the reviewing fines officer determines that imposition of the fine is not warranted, the reviewing officer shall note the reason(s) for his or her recommendation and forward the case to the Director of the NFO for approval or denial. If the Director concurs with the officer's recommendation for termination, the Director shall approve the fines officer's recommendation, the case will be canceled in the NFO System, and a notice shall be sent to the carrier stating that the fine has been terminated. The reviewing fines officer's recommendation, Director's concurrence, and a photocopy of the termination notice shall be placed in the appropriate case file.

- (i) Appeals to Board of Immigration Appeals (BIA). Within eighteen (18) days of issuance of a formal order by mail, a carrier may appeal the NFO's decision to the Board of Immigration Appeals [BIA], by submitting Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals, along with the required filing fee, to the NFO. The NFO shall deposit the filing fee into the Federal Reserve and forward the original file along with the appeal application to the Office of Appellate Review.
  
- (j) Motions to Reopen / Motions to Reconsider. Within 90 days of the formal imposition of a fine, a carrier may file a motion to reopen with the NFO. Within 30 days of the formal imposition of a fine, a carrier may file a motion to reconsider with the NFO. Both types of motions require a non-refundable filing fee. The Director of the NFO shall consider a Motion to Reopen provided that additional evidence and/or information is presented which was not available prior to the fine's imposition.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision [See 8 CFR 103.5].

A carrier may appeal the Director's decision to the BIA [See 8 CFR 3.1(b)].

### **43.6 Processing Liquidated Damages at Ports-of-Entry.**

Under Section 233 of the INA, liquidated damages is the sum a carrier agrees to pay for a breach of the Immediate and Continuous Transit Agreement (Form I-426) when it appears that a transit-without-visa (TWOV) passenger failed to depart the United States or did not depart the United States by the scheduled departure date. Liquidated damages under Section 233 are always assessed against the carrier responsible for the passenger's arrival in the United States.

In instances where it is known at the port-of-entry that a TWOV passenger has absconded, the incident is to be reported to the NFO in the same manner as an administrative fine [See Chapter 15.6 and Chapter 43.3(a)(5)(E)]. In most instances, however, the process by which liquidated damages are initiated originates with the Service contractor and requires no special action on the part of the inspector. The inspector's primary role in the liquidated damages process is to ensure that all Forms I-94T are properly completed and forwarded to

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the Service contractor.

Inspectors are reminded that a TWOV applicant must meet the requirements under 8 CFR 212.1 and 8 CFR 214.2 for admission as a TWOV passenger. If an alien passenger does not meet the requirements of either of these sections, an administrative fine for a violation of Section 273 of the INA is to be recommended to the NFO [See Chapter 43.3.]

### 43.7 Processing of Liquidated Damages by National Fines Office.

- (a) Notice of Intent to Assess Liquidated Damages. Failure on the part of a carrier to submit a Departure Record, Form I-94T, showing departure within eight (8) hours of a TWOV's arrival (or the next available flight), results in no electronic "match-up" (of arrival versus departure information) in the Service contractor's database. When this occurs, the Service contractor issues a Notice of Intent to Assess Liquidated Damages to the carrier responsible for the alien passenger's arrival in the United States. This notice informs the arrival carrier that liquidated damages in the amount of \$500 will be assessed unless the carrier is able to provide evidence to the NFO showing that the passenger in question departed the United States in a timely manner. The carrier is given thirty (30) days to provide this evidence.

A copy of the Notice of Intent to Assess Liquidated Damages is simultaneously forwarded by the Service contractor to the NFO, where a case file is created.

- (b) Decision to Impose Liquidated Damage Assessment. If a carrier served with a Notice of Intent to Assess Liquidated Damages fails to respond to the notice within the 30-day period provided, the NFO shall issue a Decision to Impose Liquidated Damage Assessment informing the responsible carrier that an additional 30-day period is provided to submit evidence of the passenger's timely departure from the United States. This notice informs the responsible carrier that if the requested evidence is not received within this second 30-day period, the liquidated damages case will be imposed in full and there will be no further periods provided for the submission of departure evidence. A copy of the Decision to Impose Liquidated Damage Assessment shall be placed in the case file.
- (c) Imposition of Uncontested Cases. If a carrier served with a Notice of Intent to Assess Liquidated Damages and a Decision to Impose Liquidated Damage Assessment fails to respond to either notice within the total provided time frame, the liquidated damages case shall be assigned a fine number and imposed in full in the NFO System. The NFO shall then issue to the responsible carrier a Final Decision notice and a bill, Form G-261. The Final Decision notice in this instance shall inform the responsible carrier that the liquidated damages case is imposed in full due to the fact that the carrier failed to respond to the two previous notices. A copy of the Final Decision notice and bill shall be forwarded to the appropriate Administrative Finance Center, and a copy the Final Decision notice and bill shall be placed in the case file.
- (d) Adjudication of Contested Cases. If a carrier served with a Notice of Intent to Assess Liquidated Damages (or both a Notice of Intent to Assess Liquidated Damages **and** a

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Decision to Impose Liquidated Damage Assessment) submits a defense to the NFO within the time frame(s) provided, the NFO shall consider the evidence submitted and determine whether the case should be terminated or imposed.

- (1) Insufficient Proof of Departure (Imposition). If the information provided by the carrier in defense of a proposed liquidated damages assessment is reviewed by the NFO and determined to be insufficient evidence of a passenger's timely departure from the United States, the liquidated damages case shall be assigned a fine number in the NFO System and imposed in full. The NFO shall then issue to the responsible carrier a Final Decision notice and a bill, Form G-261. The Final Decision notice in this instance shall inform the responsible carrier that the liquidated damages case is imposed in full due to the fact that the evidence submitted by the carrier was insufficient to warrant termination of the case. A copy of the Final Decision notice and bill shall be forwarded to the appropriate Administrative Finance Center, and a copy the Final Decision notice and bill shall be placed in the case file.
- (2) Sufficient Proof of Departure (Termination). If the information provided by a carrier in defense of a proposed liquidated damages assessment is reviewed by the NFO and determined to be sufficient evidence of the passenger's timely departure from the United States, the case shall be terminated in the NFO System. The NFO shall issue a notice of termination to the carrier and place a copy of the termination notice in the case file.
- (e) Creation of Administrative Fines Under Section 231(b). If sufficient evidence of timely departure for a passenger is provided by an arrival carrier in reference to a liquidated damages case and the liquidated damages case is therefore terminated by the NFO, the NFO shall then initiate an administrative fine against the departure carrier for failure to provide to the Service a properly completed Departure Record, Form I-94T. [See Chapter 43.5.]

### 43.8 Civil Document Fraud Penalties.

On October 2, 1996, a federal district court in Seattle, Washington issued an injunction against the Service in *Walters v. Reno*, the lawsuit challenging the Service's implementation of the section 274C civil document fraud program. The injunction was effective immediately and the Service is required to comply with the injunction.

Until further notice the Service is barred from:

- issuing 274C Notices of Intent to Fine;
- issuing 274C Final Orders;
- deporting any person who is the subject of a section 274C final order if that person waived or failed to request a hearing, even if the deportation is based on other grounds;

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- initiating removal proceedings based on such a final order; and

attempting to rely on such a final order to oppose or deny any application for benefit.

It should be noted that this bar does not limit the Service's ability to rely on the facts of the underlying fraud in opposing or denying the application or benefit. Any questions regarding section 274C may be directed to the National Fines Office.

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### Chapter 44. Conveyance Seizures (Added INS - TM2)

- 44.1 Background
- 44.2 Violations
- 44.3 Probable Cause
- 44.4 Seizure Justification
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- 44.6 Conveyance Appraisal
- 44.7 Custody and Storage
- 44.8 Notification
- 44.9 Personal Interview
- 44.10 Returns Prior to Forfeiture
- 44.11 Procedure for Return
- 44.12 Judicial Forfeiture
- 44.13 Administrative Forfeiture
- 44.14 Disposal
- 44.15 Disposal by the United States Marshals Service

#### References:

**INA:** Section 274(b)

**Regulations:** 8 CFR 274.

Other: INS Conveyance Seizure Manual (AFO) M-397; M-397A, DOJ Policy; M-69, The Law of Arrest, Search & Seizure; 28 CFR 9

#### 44.1 Background.

On November 2, 1978, Congress provided the Immigration and Naturalization Service with the authority to seize and forfeit conveyances used for the smuggling of aliens into or within the United States. The intent of the law is to permit the seizure of a vehicle, vessel, or aircraft in a situation where the owner is a consenting party or privy to the illegal act of smuggling aliens. Immigration and Naturalization Service officers seize and forfeit more conveyances than any other law enforcement agency.

- (a) Authority to Seize Conveyances. Pursuant to 8 CFR 274.2, any Immigration Officer is authorized to seize conveyances, provided the Officer has been delegated the authority by the Commissioner. Service officers vested with seizure authority include, but are not limited to:

Border Patrol Agents  
Deportation Officers

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Immigration Examiners  
Immigration Inspectors  
Special Agents

- (b) Conveyances Which Can Be Seized. Any conveyance, including any vessel, vehicle or aircraft, which has been or is being used in the commission of a violation of Section 274(a) of the INA is subject to seizure. A conveyance is simply a mobile object, such as a vehicle, which can be used to transport a person from one location to another. A trailer is a vehicle if it is being towed or is readily capable of being towed [8 CFR 274.1]. Seizure is not mandatory. A conveyance need not be seized if a law enforcement purpose will not be served. The decision to seize is discretionary. Seizures should only be made where the primary emphasis is to deter smuggling or transporting illegal aliens.

### 44.2 Violations.

A violation of Section 274 of the INA is required before a conveyance can be seized and forfeited. Section 274(a) of the Act describes five separate criminal offenses including bringing to, bringing into, transporting within, harboring and encouraging entry of illegal aliens, and any attempts to commit these violations:

Section 274(a)(1)(A) prohibits bringing a person known to be an alien to the United States at a place other than a designated Port of Entry or place designated by the Commissioner.

Section 274(a)(1)(B) prohibits transportation within the United States of an alien either knowingly or in reckless disregard of the fact that the alien has illegally come to, entered, or remains in the United States, where such transportation furthers the alien's illegally coming to, entering, or remaining in the United States.

Section 274(a)(1)(C) bars concealing, harboring or shielding of an alien either knowingly or in reckless disregard of the fact that the alien has illegally come to, entered, or remains in the United States.

Section 274(a)(1)(D) proscribes encouraging or inducing an alien to come to, enter, or reside in the United States either knowingly or in reckless disregard of the fact that such coming to, entry, or residence is or will be unlawful.

Section 274(a)(2) makes it illegal to bring an alien to the United States either knowingly or in reckless disregard of the fact that the alien has not received prior official authorization to come to, enter, or reside in the United States.

### 44.3 Probable Cause.

- (a) General. A conveyance subject to seizure pursuant to Section 274 of the INA may be seized without warrant if there is probable cause to believe that the conveyance has been or is being used in violation of the aforementioned section and circumstances exist where a

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warrant is not constitutionally required. For example, where the conveyance is mobile and likely unavailable for later execution of a warrant. Generally, no warrant is required to seize a conveyance for a violation occurring at a port-of-entry.

Probable cause has been defined as the knowledge or trustworthy information of facts and circumstances which would lead a reasonably prudent person to believe that an offense has been committed or is being committed. Probable cause is more than mere suspicion. In the conveyance context, probable cause may be based on a number of factors.

(b) Sworn Statements from the Violators or Witnesses. Statements should be obtained from violators, informants, witnesses and Service officers and these statements may be used to support the probable cause for the violation. Sworn statements are preferable because they have greater evidentiary value than unsworn statements or narrative reports. In taking a statement, the seizing officer should attempt to obtain the following information:

- The identities and immigration status of the violators with details regarding any false claims presented;
- The relationship between the individuals participating in the violation;
- The stated destination and purpose of any attempted entry and the actual destination and purpose;
- The basis for the alien's inadmissibility or unlawful presence in the United States;
- Any history of problems at entry, warnings of seizure provisions, refusals or referrals to secondary inspection at ports-of-entry;
- Information concerning smuggling arrangements and payments; and,
- Knowledge of inadmissibility.

When the registered owner is not present at the time of the violation, the seizing officer should determine the operator's relationship to the registered owner, as well as the operator's right to use and control the conveyance. This information is useful in determining the beneficial owner of the seized conveyance. The individual who has actual use of the conveyance will be considered to be beneficial owner. In most cases, the registered owner and the beneficial owner will be one and the same individual. However, in some cases, the actual user of the vehicle will not be the registered owner. When this occurs, the actual user of the vehicle may be considered a beneficial owner.

(c) Physical Evidence. A seized conveyance may contain physical evidence to support the probable cause for the violation. Physical evidence may include:

- Photocopies of documents used to assert immunity;

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- Evidence of documented false claims to citizenship or immigration status;
- Evidence of illegal status;
- Round trip airline tickets purchased in or originating in the United States;
- Maps or directions to unguarded ports-of-entry;
- Lists of information to be memorized to support a false claim; and/or,
- Other physical evidence (coins, papers, phone numbers, photographs, etc.).

Physical evidence should be secured as evidence and photographs taken for inclusion in the conveyance seizure file.

- (d) Investigative Reports. Probable cause to seize a conveyance may be developed during the course of any Service investigation, such as an employer sanctions investigation. It must be stressed that all information surrounding the probable cause and seizure must be reported in an investigative report.

Investigative reports may be in any of the following formats:

- Memorandum of Investigation, G-166C;
- Report of Investigation, I-44;
- Memorandum;
- Prosecution Report; or,
- Case Summary.

- (e) Information from Other Law Enforcement Agencies. Information provided by other agencies may be used to establish probable cause. The information must have been obtained as a result of a lawful investigation by an officer having the authority to conduct the investigation.

- (f) Record Checks. Record checks may be used to establish probable cause for the violation. Official records of the Service or the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law, may be used to establish that the alien was illegal. [Section 274(b)(5)(B) of the INA]. In addition, record checks from the various computer systems showing license information or conveyance registration may prove to be valuable circumstantial evidence of unlawful

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residence in the United States. Record checks from foreign or domestic law enforcement agencies may be used to prove criminal record which renders the alien inadmissible.

### 44.4 Seizure Justification.

The officer's report should articulate facts to support each element of the particular criminal offense which forms the basis for the seizure. Each of the five separate criminal offenses of Section 274(a) of the Act requires knowledge of either alienage or illegal status on the part of someone other than the transported alien (conspiracy). The mere presence of an illegal alien in a conveyance does not by itself provide the necessary probable cause for a seizure. A commonly raised question is whether a conveyance can be forfeited under Section 274(a) of the Act when it has been driven by an illegal alien who is the sole occupant of the conveyance. It is generally recognized that an alien could not be prosecuted for smuggling or transporting himself into the United States. Therefore, unless it can be established that the conveyance is directly involved in a larger smuggling or transporting scheme, the conveyance would not be subject to forfeiture. Consultations and authorizations prior to seizure may be required depending upon established district procedures.

A key concept of seizure and forfeiture law is that the forfeiture of a conveyance is a civil action rather than a criminal prosecution. The action is against the conveyance and not against the persons who own or use the conveyance. It is not necessary to prosecute the owner criminally to sustain a forfeiture. If the owner is criminally prosecuted a forfeiture of the conveyance may occur, even if the prosecution results in a conviction, dismissal or even acquittal.

### 44.5 Procedure.

The following procedural steps must be taken after the decision to seize a conveyance has been made.

- (a) Determination of Property Interests. The Service shall attempt with due diligence to identify all ownership interests in the seized conveyance. [8 CFR 274.5(a)]. Department of Motor Vehicle (DMV) records should be checked to identify the registered owner. This record check should be completed within twenty-four (24) hours of the seizure. Record checks for lienholders must also be expeditiously completed.
- (b) Check for Stolen Conveyances. The Seizing Officer must check records to determine whether the conveyance has been reported as stolen. This check should be completed within twenty-four (24) hours of the seizure. A conveyance which is unlawfully in the possession of a person other than the owner at the time of the violation is statutorily exempt from forfeiture. [Section 274(b)(1)(B)].
- (c) Inventory. The following procedures should be followed by Service employees at the time of the seizure or as soon as possible thereafter. An inventory of the seized conveyance should be conducted by one Service Officer and witnessed by another officer. As much

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personal property as possible must be removed from the conveyance and returned to the owner at the time of the seizure. Generally, a list of all the property returned should be made in order to document this action. If possible, the owner should sign a receipt for the returned property. The owner's property may be given to the operator if there is no indication that the conveyance is stolen. Whatever the owner (or operator) takes at the time of seizure will not be subject to abandonment proceedings.

The owner (or the owner's agent) should be given a reasonable opportunity to make arrangements for the removal of any remaining property. Generally, the owner should be afforded seventy-two (72) hours to remove any remaining personal property. At the time of the inventory, the owner may elect to voluntarily abandon to the Government all interest in some or all of the personal property. A list of all personal property which the owner decides to voluntarily abandon should be made and the owner should sign this inventory list thereby granting consent to the voluntary abandonment of the listed personal property.

After the expiration of the seventy-two (72) hour period, most of the personal property should have been returned to the owner or voluntarily abandoned. If any personal property remains in Service custody, it should be listed on a separate inventory form and abandonment proceedings should be initiated. The owner must be given written notice that the remaining personal property is subject to abandonment proceedings (Refer to M- 397, Chapter 11). If the owner or operator does not receive the Personal Property Notice in person, the owner of the personal property must be sent the notice in the mail. The notice should be sent to the owner's address of record. This notice must inform the owner that all personal property not claimed within seven (7) days of receipt of the notice will be considered voluntarily abandoned to the United States.

All closed containers must be opened and their contents inventoried as part of the inventory, unless their content can be accurately ascertained by examination of the container.

At the time of the inventory, Service employees must be on the alert for evidence which would identify the person who regularly uses the conveyance. For example, insurance cards, gasoline credit card receipts and repair invoices may serve to identify the true user of the seized conveyance. Any items of special value must be individually identified and described. Expert appraisals of their value should be obtained, if necessary, by telephone. Every reasonable effort shall be made to return perishable products to the owner or his/her agent.

Attach the warning sticker, Form I-638 to the conveyance. Any damage or rust observed in or on the conveyance should be listed on a damage report. Any obvious repairs should also be listed on a damage report. Note whether basic equipment is missing and, if possible, attach photographs to the report. List all special equipment in the conveyance including CB radios, stereo cassettes, extra speakers, and handicap accessible features. The damage report form should be included in the seizure file.

(d) Documentation. The following documentation should be completed as soon as possible after the seizure. Information on the seizure should be entered into appropriate computer databases. A stolen conveyance check should be completed and a copy should be

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included in the seizure file. The seizure form should be completed. The case number should be included on the form. Either the Record of Seized Vehicle, Vessel, or Aircraft, Form I-620 or the Consolidated Asset Tracking System (CATS) Seizure Form will be used. All reports which set forth the probable cause for the violation should be completed. Investigative reports may be in memorandum form. Any relating reports including prosecution forms, exclusion forms, Officer memos and sworn statements should be included in the seizure file. The inventory forms, the damage report and the Personal Property Notice should be completed and included in the seizure file. A registration check should be completed and included in the seizure file. A copy of the notification letter must be maintained in the seizure file.

### **44.6 Conveyance Appraisal.**

- (a) General. 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 [8 CFR 274.1(a), 28 CFR 9.2(a)]. The value of a seized conveyance must be supported by reference guides or the estimates of experts. The approved reference is the National Automobile Dealers Association (NADA) guide for the geographic area in which the conveyance is seized. The wholesale value (average trade-in value) is to be used. Additions or deductions will be made to the value for optional equipment, high/low mileage and condition. If the value of the conveyance is not included in the NADA guide, consult other reference guides or a local dealership and obtain a telephonic appraisal. Usually, the value of the conveyance is not relevant in the determination as to whether a conveyance is to be seized.

Generally, value declarations from the owner or operator, or comments concerning newly rebuilt engines or new tires should be disregarded. HQAFO should be contacted for assistance in obtaining reference guide values for unusual conveyances. That office maintains subscriptions to many reference guides.

- (b) Appurtenances. A conveyance includes all tools, appurtenances and accessories provided by the manufacturer. Consequently, not all tools, appurtenances and accessories of the conveyance are forfeitable. An appurtenance is something that is annexed to another thing which, generally, makes the thing more valuable. Whether an appurtenance is forfeitable depends on a number of factors relating to whether the item is permanently attached to the conveyance. Generally, if the item was installed after manufacture and was affixed with the intent to remain permanently with the conveyance, the object will be subject to forfeiture. Factors used to determine whether an object is permanently affixed are located in the Law Outline (M-397A).

### **44.7 Custody and Storage.**

The USMS must be notified of the seizure as soon as possible after the seizure. Arrangements should then be made for the prompt transfer of custody to the USMS. The local USMS may have specific requirements for paperwork to support the custody transfer. The USMS may require some or all of the following:

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- Seizure Form (I-620 or CATS)
- Damage Report
- Seized Property and Evidence Control (USMS-102)
- Conveyance Registration; and
- Photographs of the Conveyance

The conveyance should be transferred to the USMS as soon as possible after the seizure. There may be exceptions for conveyance which present special problems. In certain instances, the USMS will designate the Service as the substitute custodian in which case the same duties and obligations imposed on the USMS as custodian will be transferred to the Service.

Conveyances that remain in Service custody while awaiting transfer to the USMS should be kept secure. Precautions should be taken to prevent the theft of stored conveyances, vandalism or theft of property from the conveyances. Conveyances should also be protected against owners returning to unlawfully retrieve their conveyances. Seized conveyances should not be operated by Service employees.

The USMS guidelines require the seizing agency to remove all property not subject to seizure from the conveyance prior to the transfer of custody. Personal belongings must be removed before releasing the conveyance to the USMS.

### **44.8 Notification.**

(a) Notice Requirements. Individuals or entities having a property interest in the conveyance must receive timely notice of their rights and remedies. Official notification to any person with an ownership interest in the seized conveyance should begin as soon as possible following seizure. In most cases, this should be done on the day of the seizure (Refer to M-397, Chapter 14).

DOJ Policy states that notification letters shall be sent to all interested parties (including owners and lienholders) known at the time of seizure not later than sixty (60) days from the date of seizure. Refer to M-397A, DOJ Policy, Sixty-Day Notice Period in All Administrative Forfeiture Cases.

The notification letter should be provided to the owner at the time of seizure if that person is present. By regulation, 8 CFR 274.8, this notification letter must describe:

- The procedure to obtain a personal interview pursuant to 8 CFR 274.5;

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- The procedure to request judicial review of the seizure by filing a claim and posting a cost bond pursuant to 8 CFR 274.10; and
- The procedure for filing a petition for relief from forfeiture pursuant to 8 CFR 274.13-17.

In order to prepare the notification letter, the following information must be obtained:

- The appraised value of the conveyance;
- The case number from the automated system, and
- The name of the newspaper in which the Advertisement of Seized Conveyance will be published.

All notification letters to owners must be accompanied by copies of:

- 8 CFR Part 274, Seizure and Forfeiture of Conveyances;
- 8 CFR 103.7(c), Waiver of Fees;
- 28 CFR Part 9, Remission or Mitigation of Civil and Criminal Forfeitures;
- Section 274 of the INA, Bringing In and Harboring Certain Aliens, and
- The advertisement of seized conveyance.

- (b) Related Notification Information. The amount of the cost bond is calculated based on ten percent (10%) of the appraised value, with a minimum amount of \$250 and a maximum amount of \$5,000. The advertisement must be published once a week for three (3) successive weeks in a newspaper of general circulation in the federal judicial district in which the seizure occurred. The advertising order and the notification letter should be prepared to ensure that owners are afforded a twenty (20) day period from receipt of notification in which to file a claim and cost bond.

If the notification letter is given to the owner at the time of seizure, the seizure file must so indicate. The owner should sign for the receipt of the letter, but if the owner is unwilling to sign, the seizure file should reflect the refusal. If the owner is not present, serve the notification letter on the operator. When someone else claims ownership of the conveyance, serve him/her with the notification letter.

If there is reason to believe that any other individual is a beneficial owner, as defined in 28 CFR 9.2(c) and 8 CFR 274.1(b), a notification letter should be provided to that person. If the conveyance is registered in the name of a company, notification should be sent to the company's address. Leasing companies (even companies are treated as lienholders and must be sent to the notification letter for lienholders.

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If the owner is not present at the time of the seizure, or if a subsequent record check indicates another owner, or if there appears to be anyone else with an ownership interest, send these interested parties the notification letter by certified mail, return receipt requested.

Notification letters must be sent to any party with a property interest in the conveyance even if he/she has been arrested and incarcerated. In that instance, notification should be sent to the owner at the place of confinement as well as the last known address.

Particular care must be taken to ensure that notification is sent to the proper address. If the notice letter is returned as undeliverable or unclaimed, the returned letter should be kept in the seizure file to serve as proof of attempted service.

(c) Lienholders. There is a specific notification letter for lienholders (Refer to M-397, Chapter 14). Lienholders must also be sent copies of the regulations, the statute and the proposed advertisement. In addition, lienholders must be sent the Financial Statement (Refer to M-397, Chapter 14, Document 4) to complete and return with their petition.

Leasing companies are also sent the lienholder notification letter. Leasing companies are those businesses engaged in long-term contracts with lessees and the lessee has the actual use of the conveyance.

(d) Attorneys. Attorneys should file a Notice of Entry of Appearance as Attorney or Representative on Form G-28. Once the Notice of Entry of Appearance has been filed, the attorney must be sent copies of all notification letters, copies of previous correspondence from the client(s) and decision letters. The attorney is entitled to a copy of any sworn statement executed by his/her client. No other investigative material should be released. Attorneys may attend personal interviews with the clients but not in lieu of the clients.

(e) Publication of Notice of Seized Conveyance. Publication of notice of seizure and intent to forfeit a conveyance is mandated when the appraised value of the seized conveyance is \$500,000 or less. The seizure of a conveyance whose appraised value is greater than \$500,000 need not be advertised by the Service.

Notice of the seizure and the potential forfeiture of the conveyance is provided to the general public by publication in the legal classified section of a newspaper.

Please note that the Advertisement of Seized Conveyance must accompany the notification letters to the owners and the lienholders. The requirements for this advertisement are set forth in 8 CFR 274.9. The advertisement must include:

- A description of the conveyance including vehicle identification number;
- The time and place of seizure;
- That the conveyance is subject to forfeiture;

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- That there are two exceptions from forfeiture, set forth at 8 CFR 274.5(b);
- That the Service is considering forfeiture and that the seized conveyance may be sold or disposed of otherwise if declared forfeited; and
- That any prospective petitioners for relief from forfeiture should submit petitions pursuant to 8 CFR 274.13 - 17 within thirty (30) days of the date of the first advertisement.

Although the regulations do not require that the Advertisement of Seized Conveyance inform the reader of the availability of judicial review, the policy of the Service is to include information on the filing of a claim and posting of a cost bond pursuant to 8 CFR 274.10.

### 44.9 Personal Interview.

The owner of a seized conveyance may request a personal interview in order to determine whether the Service will continue with the forfeiture proceedings. Any person or entity who appears to have an ownership interest in the conveyance should be provided notice of the opportunity for an interview. Beneficial owners and registered owners may request an interview. Note that lienholders (including companies who lease conveyances to customers in accordance with a long-term lease and the lessee has the actual use of the conveyance) are not generally afforded interviews. The Service may schedule personal interviews for more than one person or entity having an interest in the conveyance. The owner is advised of the opportunity for an interview in the notification letter. The interview should be held as promptly as possible after the date of seizure.

The interview should be conducted by an immigration officer. This officer should not necessarily be the seizing agent. The owner may request a personal interview with an immigration officer other than the officer who initially seized the conveyance pursuant to 8 CFR 274.5. Owners are entitled to representation by an attorney at the time of the interview. Attorneys may not attend the interview in lieu of the owner, but may accompany their clients. The owner may bring an interpreter to the interview.

If the person requesting an interview claims to be the owner of the conveyance even though he/she is not the registered owner, an interview should be scheduled. The claimant should produce proof of ownership interest in the conveyance at the interview.

The purpose of the interview is to provide the owner an opportunity to present evidence and arguments to support his/her position that the conveyance is not subject to seizure or forfeiture. The burden of proof is on the owner, not on the Service. There is no requirement that the interviewing officer justify the seizure, present evidence to establish the violation, or articulate the probable cause basis upon which the conveyance was seized. The owner is not required to answer questions posed by the interviewing officer.

The evidence and arguments presented by the owner may be oral or written. At the discretion of the interviewing officer, the interview itself may be held in person or via telephone. If an

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owner requesting a personal interview is inadmissible to the United States or the owner is incarcerated, reasonable accommodations should be made to conduct the interview.

The interviewing officer should write a brief summary of the interview to be included in the seizure file. A narrative of what was said and what, if any, evidence was presented should be included in this report.

The interview also provides an opportunity to further investigate the persons or entities with a property interest in the conveyance. Questions should be asked to determine beneficial ownership interest and the identity of secured lienholders. Names and addresses should be obtained. Photocopies of documents presented as proof of ownership, such as sales receipts, canceled checks, and lien payment books, should be made at that time.

The following questions will assist the interviewing officer in the determination of beneficial ownership:

- Who are the regular users of the conveyance?
- Do you need to obtain permission to use the conveyance?
- How many people have a set of keys?
- Who pays for the insurance?
- In whose name is the insurance listed?
- Are there any other names listed on the insurance plan?
- Who pays for the routine maintenance on the conveyance?
- Where is the conveyance primarily garaged?

If a decision is made not to return the conveyance to the owner based upon the interview, the owner should be advised either orally or in writing of the decision. If the decision is oral, the seizure file should be noted to reflect that decision.

In the event that a determination is made to return a conveyance pursuant to 8 CFR 274.5 and the case is subject to judicial forfeiture proceedings, these steps should be taken:

- 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 if they have been commenced.

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### 44.10 Returns Prior to Forfeiture.

(a) General. Circumstances may arise which will warrant returns of seized conveyances prior to forfeiture, such as:

- No conveyance used as a common carrier in the transaction of business as a common carrier may be forfeited unless the owner or person in charge of the conveyance was a consenting party or privy to the illegal act.
- A conveyance may not be forfeited where the acts giving rise to the seizure were committed by a person unlawfully in possession of the conveyance in violation of the criminal laws of the United States or any state.

The burden of proof is on the owner, not the Service, to establish lack of knowledge of the unlawful use of the conveyance or in establishing that the conveyance is not subject to either seizure or forfeiture pursuant to 8 CFR 274.5(b) or (c). (Refer to M-397, Chapter 6).

(b) 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, [8 CFR 274.5(c)(3)]. The so-called innocent owner return, is the most frequently invoked and most frequently misinterpreted category of return. In order to qualify, the owner must establish not just lack of knowledge and lack of consent, but also that he/she took all reasonable steps to prevent the illegal use of the conveyance.

An owner who was not aware of the violation, but who took no affirmative steps to prevent the illegal use of the conveyance, is not eligible for an innocent owner return. For example, the following individuals would not qualify for an innocent owner return:

- The owner was convicted of a crime related to the smuggling attempt and was involved in the illegal use of the conveyance.
- The owner was not convicted of a crime related to the smuggling attempt but was present and involved in the illegal use of the conveyance.
- The owner was not involved in the illegal use of the conveyance but was aware of it.
- The owner was ignorant of the illegal use, but was negligent in lending his/her conveyance.
- The owner was not negligent but failed to do all he/she reasonably could to avoid having the conveyance put to an unlawful use.

The assertion of lack of knowledge of the operators intent does not establish that the owner took all reasonable steps to prevent the illegal use of the conveyance. Lack of knowledge of the intending use of the conveyance, lack of criminal intent, or lack of awareness of the alien s inadmissibility are all mitigating factors to the forfeiture action but are not sufficient

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arguments for an innocent owner return.

- (c) Conveyances Returned in the Best Interests of Justice. The Service may decide that it is in the best interests of justice not to pursue forfeiture and return a seized conveyance. This category of return is generally reserved for unique circumstances. It should be noted that this type of return may be made at any point in the proceedings. Evidence presented at the interview may lead to a determination of eligibility for return pursuant to 8 CFR 274.5(d).

### 44.11 Procedure for Return.

If a decision has been made to return a conveyance pursuant to 8 CFR 274.5, the owner must be informed of the conditions for return. The conveyance will be returned to the owner contingent upon execution of a Hold Harmless Agreement and payment of all costs and expenses of the seizure. (Refer to M-397, Chapter 14). Further, the owner must also be informed that he/she must take possession of the conveyance within twenty (20) days of receipt of written notice of availability for return and the consequences for failure to comply. The exception to this rule is where a determination is made that the conveyance was not subject to seizure, then pursuant to 8 CFR 274.5(e)(1), it is returned without any conditions.

If the owner fails to comply with the conditions of return and gain possession of the conveyance within twenty (20) days of receipt of written notice of availability for return, then the conveyance shall be considered voluntarily abandoned to the United States. In this case, the disposal of the conveyance would be conducted in accordance with procedures for the disposal of voluntarily abandoned property. [Refer to M-397, Chapter 11].

### 44.12 Judicial Forfeiture.

- (a) Although only a small percentage of conveyance seizure cases are litigated in U.S. District Courts, the seizing agent must be prepared for that possibility in every case. In addition to preparing a complete investigative file, the seizing agent will be expected to:
- Assist in the preparation of the civil forfeiture complaint;
  - Ensure that any requests for additional investigation are promptly addressed;
  - Locate witnesses for discovery and trial testimony; and
  - Be prepared for rigorous cross-examination with respect to documents and reports contained in the case file.
- (b) Jurisdiction. There are two methods by which jurisdiction over a seizure case may be transferred to a United States Attorney's Office (USAO) for judicial forfeiture proceedings. (Refer to M-397, Chapter 7).
- If the appraised value of the conveyance is greater than \$500,000, the seizure case must

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be transmitted to the USAO in the federal judicial district having jurisdiction over the forfeiture action.

- If the appraised value of the seized conveyance does not exceed \$500,000 and the owner has filed a proper claim and cost bond (or has obtained a waiver of the cost bond requirement) within the established time frame, the case is subject to judicial forfeiture proceedings.

The procedures for requests and processing claims for judicial review may be found in Chapter 7 of M-397.

- (c) Offer to Compromise. Not all cases in which judicial forfeiture proceedings are requested will be transmitted to the USAO. Pursuant to Executive Order 12778 of October 23, 1991, the Determining Official should attempt to resolve a seizure case administratively whenever an evaluation of the merits of the case indicates an administrative settlement would be appropriate. (Refer to M-397A, DOJ Policy, Executive Order 12778, Civil Justice Reform, October 23, 1991). In addition, DOJ policy states that settlements should be pursued as a way to conserve resources where the ends of justice will be served. (Refer to M-397A, DOJ Policy, Policy Regarding Forfeiture by Settlement, October 31, 1991).

There are situations in which administrative relief from forfeiture may be appropriate when a claim and cost bond have been filed. (Refer to M-397, Chapter 7).

### 44.13 Administrative Forfeiture.

- (a) General. A conveyance having an appraised value not exceeding \$500,000 is administratively forfeited when no claim and cost bond (as well as no request for a waiver of the cost bond requirement) have been received within twenty (20) days of the first publication of the advertisement.

Once the conveyance has been administratively forfeited, a Declaration of Forfeiture, Form I-634, must be executed. (Refer to M-397, Chapter 14). This form is the title document which transfers the ownership interest in the conveyance to the United States [8 CFR 274.4(c)]. Any property interest in a conveyance is automatically terminated as of the date of the seizure, if the conveyance is later declared forfeited [8 CFR 274.4(b)].

In all cases in which a petition for relief from forfeiture has been filed, a Declaration of Forfeiture must be executed prior to the determination made on the petition [8 CFR 274.15(b) and 274.16(c)].

- (b) Definitions. The Attorney General, or his/her designee, has the authority to remit or mitigate a forfeiture. The procedure is initiated by a petition for remission or mitigation of forfeiture.

Remission ameliorates the effects of the forfeiture for those individuals who lacked involvement

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in, and knowledge of, the conduct that resulted in the forfeiture and who took reasonable steps to ensure that the conveyance would not be used contrary to law.

Mitigation takes the form of a money penalty imposed upon the petitioner in addition to any other sums that would be chargeable as a condition of remission .

- (c) Types of Petitioners. There are three (3) types of petitioners described as follows [**Note:** that DOJ regulations also provide for general creditor petitions (28 CFR 9.6(a)]:

Owner. A person who has a right to possess and use a conveyance to the exclusion of other persons;

Beneficial owner. A person with actual use of, as well as an interest in, the conveyance subject to forfeiture;

Lienholder. A creditor whose claim or debt is secured by a specific right to obtain satisfaction against the particular conveyance subject to forfeiture.

- (d) Types of Petitions. There are three (3) types of petitions available to request relief from forfeiture:

Petitions for remission of forfeiture. These petitions are seeking relief from forfeiture in the form of a non-penalty return of the conveyance. They are commonly filed by lienholders and are filed prior to the disposition of the conveyance;

Petitions for mitigation of forfeiture. These petitions are seeking relief in the form of a return of the conveyance after payment of a penalty. They are commonly filed by owners and are filed prior to the disposition of the conveyance.

Petitions for restoration of proceeds of sale if the forfeited conveyance has been sold; or petitions for the restoration of the appraised value of forfeited conveyance where the conveyance has been placed into official use or otherwise disposed. These petitions are filed after the disposition of the conveyance. For a discussion of restoration of proceeds, generally applicable to lienholders, refer to M-397, Chapter 9.

- (e) Processing Petitions. Petitions for remission or mitigation should be received within thirty (30) days of the date of first publication of advertisement. (8 CFR 274.14(a)). For the definition for filing, refer to 8 CFR 274.1(h). The Service must accept petitions up to the time of the disposal of the conveyance. A petition for remission or mitigation of forfeiture which arrives after the disposal may not be considered. Refer to M-397, Chapter 8, Pages 3 - 11, for granting of relief of forfeiture cases, denial and reconsideration requests of denial.

- (f) Release of Conveyance. Once a decision has been reached to grant relief from forfeiture, the conveyance should be released as soon as possible after compliance with the terms of

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the release.

If the conveyance is in Service custody, a Report of Property Shipped (G-504) should be executed to provide written documentation of the transfer of the conveyance. The conveyance should only be released to the owner. If the owner wishes to name another person as an agent to act on his/her behalf, the owner must provide written authorization.

If the conveyance is in the USMS custody, the petitioner should be provided with the name of the contact person at the USMS to arrange for the release. The USMS will also have a document for the transfer of the conveyance (Seized Property and Evidence Control, USMS-102). Any arrangements to authorize someone other than the owner to pick up the conveyance must be made with the USMS directly.

### 44.14 Disposal.

(a) Once the administrative processing of a case has been completed, the conveyance is ready for disposal action. Disposal action should be initiated only upon completion of each of the following steps:

- All petitions must have been adjudicated;
- Any claim and cost bond must have been withdrawn;
- The advertisement must have been completed;
- The thirty (30) day period following the first date of publication of the advertisement must have passed; and
- A Declaration of Forfeiture (1-634) must have been issued.

In addition, conveyances which have been declared forfeited to the United States by a court order are available for disposal action.

(b)

(1) Official Use. Pursuant to 8 CFR 274(b)(4)(A) of the INA, a seized conveyance may be retained by the Service for official use after the Declaration of Forfeiture (1-634) has been issued. Any conveyance forfeited under an administrative proceeding or under a court order may be considered for official use.

The Attorney General's Guidelines on Seized and Forfeited Property (Refer to M-397, Appendix T) [See AM 4.1.203] set forth the procedures for requesting and approving forfeited conveyances for official use. Official use means utilization of a forfeited conveyance by a law enforcement agency in the direct performance of law enforcement activities. The intended use of the conveyance must be specifically detailed in the request for fleet

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placement.

- (2) Approval Process. The field office must forward a written request for a seized conveyance for official use specifying the type of conveyance needed (sedan, four wheel drive truck, or small boat). The request must detail the intended use for the conveyance and must identify by fleet number the fleet conveyance being replaced. If a fleet conveyance is not being replaced, justification must be given for an addition to the existing fleet. Further, a request must detail how the conveyance will be used in the direct performance of law enforcement activities. The USMS should be informed that the conveyance is under consideration for official use.

Requests for official use will be forwarded to the ROAFO for review and subsequent forwarding to HQAFO and HO Fleet Management. The seizing office will not necessarily be given first priority. In fact, the opposite may be true so as to avoid any inference of impropriety relative to the seizure action.

The conveyance is considered placed into official use as of the date a favorable decision memorandum is issued by HQ Fleet Management.

### **44.15 Disposal by the United States Marshals Service.**

- (a) General. If the conveyance is not to be considered for official use, the USMS must be informed that the conveyance is available for disposal action. At that time, the USMS must be provided with a copy of the Declaration of Forfeiture, Form I-634, and a copy of the seizure form. Local USMS offices may require additional information.

Directions to proceed with disposal may be accomplished by transmittal of the Report of Property Shipped, G-504. These forms should be accompanied by a memorandum setting forth specific instructions as needed. The instructions to the USMS should:

- State that the Service is not interested in the conveyance for official use;
- State where the conveyance is located;
- State whether a local law enforcement agency has submitted an Application for Transfer of Federally Forfeited Property (DAG-71) requesting Equitable Sharing;
- State whether there is a need to distribute the proceeds of any sale to a lienholder or owner;
- If there are proceeds to be distributed, inform the USMS of the Service's costs (including any penalty) and the recognized net equity of a lienholder;
- State the name and address of the person to whom any proceeds will be distributed; and
- State whether or not the conveyance has been altered so as to facilitate the smuggling of

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aliens or contraband.

The USMS generally disposes of the conveyance in the following order:

- Placement of the conveyance into official use for the seizing agency. Before proceeding to any other disposal action, the USMS should request a delimitation of official use from the Service;
  - Transfer of the conveyance to a local law enforcement agency pursuant to an approved Equitable Sharing request;
  - Placement of the conveyance into official use by the USMS;
  - Transfer of the conveyance to the federal agency which has requested the conveyance;
  - Sale at public auction; or
  - Depending on the appraised value of the conveyance, sale to a salvage yard, sale by sealed bid or order for destruction.
- (b) Prohibition Against Purchase at Auction. Department of Justice employees are generally prohibited from purchasing property that has been forfeited to the United States and is being sold by the DOJ or its agents. [28 CFR 45.735-18]. This policy is intended to ensure that there is no actual or apparent use of inside information by employees wishing to purchase such property. The purpose of this policy is to protect the integrity of the asset forfeiture program. (Refer to M-397A, DOJ Policy, Forfeiture Policies, July 3, 1990).
- (c) Personal Possessions/License Plates. Prior to the final disposition action, any remaining personal possessions in the conveyance must be removed and disposed of in accordance with abandonment proceedings. (Refer to M-397, Chapter 11). In addition, the conveyance registration plates must be removed from the conveyance. The appropriate DMV should be notified that the conveyance was forfeited pursuant to Section 274(b) of the INA and sold at auction. Any original registration documents should be returned to the DMV.
- (d) Withdrawal from Disposal. If the Determining Official receives a petition for relief from forfeiture after the conveyance has been forwarded to the USMS for disposal, but before final disposition action has occurred, the petition must be accepted as timely filed. The Service should notify the USMS (by telephone and in writing) that all disposal proceedings must be halted until further notice.

While this is inconvenient to all involved, especially when the petition is received the day before a scheduled auction, the regulations do not permit the Service to reject the petition prior to final disposal action [8 CFR 274.14 and Chapter 8, Page 3 of M-397].

If after the adjudication of the petition, the conveyance is once again available for disposal, the

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USMS must be informed in writing that they may proceed with the disposal action.

- (e) Distribution of Proceeds to Petitioner. The USMS must be advised of the procedures set forth in 8 CFR 274.15 and 274.16 relative to the distribution of proceeds to a petitioner who has not complied with the terms of a grant of relief from forfeiture. The USMS should be provided a courtesy copy of the letter granting relief from forfeiture. If a petitioner fails to comply with the terms of the grant of relief, the conveyance may be put into official use, sold or disposed of otherwise.

If the conveyance is put into official use, the appraised value of the conveyance minus the costs of the seizure (including the penalty as an item of cost), forfeiture and disposal of the conveyance must be remitted to the petitioner.

If the conveyance is sold at public auction, the proceeds of the sale must be applied first to the costs of seizure (including the penalty as an item of cost), forfeiture and sale, and the balance, if any, is remitted to the petitioner.

In the case of a lienholder who has not complied with the terms of remission, the same procedure would apply except that the lienholder may not obtain an amount greater than their recognized net equity in the conveyance.

The USMS is responsible for issuing the check to cover any proceeds owing to the petitioners. If there are no proceeds available, a letter should be sent to the petitioner informing them of that fact.

- (f) Case Closure. The USMS will generally forward closing documents to the Service office when the conveyance is released to the claimant, placed into official use, or sold at auction. The Seized Property and Evidence Control (USMS-102) is generally used for this purpose [Refer to M-397, Appendix F]. Requests should be made on a regular basis to the local USMS office for closing documents.

For judicial cases, local Service offices should ensure that case closure information is updated on a quarterly basis, at a minimum. If the local USMS office has no information on the judicial case information requested, this fact should be noted in the case file and entered into the automated system.

- (g) Equitable Sharing. A state or local law enforcement agency may request the transfer of a forfeited conveyance which was seized pursuant to a joint investigation by the Service and a state or local law enforcement agency. (Refer to M-397A, Service Policy, Revised Forms DAG-71 and DAG-72, March 18, 1992). The state or local law enforcement agency should complete the Application for Transfer of Federally Forfeited Property (DAG-71) in accordance with the instructions contained on the form. (Refer to M-397, Appendix W). The state or local law enforcement agency should request a Substitute Custodial Agreement through the USMS. This will permit the state or local law enforcement agency to store the conveyance at no cost to the Government until the transfer is approved.

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If a Substitute Custodial Agreement is not obtained, then the state or local law enforcement agency may request the USMS to waive their costs.

In addition, the state or local law enforcement agency is held accountable for paying twenty percent (20%) of the net proceeds for the federal share of the seized conveyance. Again, the state or local law enforcement agency may request a waiver of the federal equitable share.

If there is a lien on the requested seized conveyance, the state or local law enforcement agency must state in its request that the lien will be satisfied prior to accepting transfer of the conveyance. There are no waivers for the payment of liens. State or local law enforcement agencies should also submit a request to the Service for a waiver of its administrative costs.

The following steps must be completed to process an Equitable Sharing request:

- Complete the Decision Form for Federally Forfeited Property (DAG-72) in accordance with the instructions contained on the form (M-397, Appendix S);
- Submit a copy of the state or local investigative report (in addition to the Service investigative report);
- Submit a Declaration of Forfeiture or Judicial Court Order of Forfeiture, and a Report of Expenses and Proceeds from Disposition of Seized Vehicles (G-746-C); and
- Submit all of the required memorandums, forms and waivers to the ROAFO with a copy to the USMS.

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## **Chapter 45: Bonds**

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### **45.1 Posting, Cancellation and Breaching of Maintenance of Status Bonds.**

(a) Authority. Section 214(a)(1) of the Act provides for the admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as may be prescribed including, when necessary, the posting of a bond to insure that such alien will depart from the United States in a timely manner without otherwise violating his or her status. This section authorizes the Service to require a maintenance of status and departure bond with regard to either an application for admission to the United States or an application for change of nonimmigrant status. (While the statute is silent about the posting of a bond in connection with an application for extension of stay, Service regulations at 8 CFR 214.1(a)(3) authorize the posting of a bond for this purpose, in addition to applications for admission and applications for change of status.) [See also 8 CFR 221.]

(b) Policy. It is important to remember that the posting of a bond cannot serve to make an alien who is inadmissible to the United States admissible; nor can it make an alien who is ineligible



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PORTPASS programs is deposited into the Land Border Fee Account.

Although not collected directly by port-of-entry personnel, fees for arriving air passengers and certain fines are deposited into the Immigration User Fee Account. The proceeds of bonds which are breached are deposited into the Breached Bond Account.

### **46.2 Cash Collection at Ports-of-Entry. (Revised IN00-01)**

Cash management procedures, although largely unchanged, are increasing in importance as the volume of receipts continues to rise. Almost every port-of-entry now receives fees for applications or services of various descriptions. Cash management procedures described in AM 4.1.304 must be adhered to by all Service employees and supervisors responsible for collecting and depositing fees. On September 11, 1995, the Executive Associate Commissioner for Management issued a memorandum, *Land Border Port of Entry Fee Collection Procedures*, containing fee collection and cash management procedures. These procedures are contained in Appendix 46-1. Larger ports may have dedicated personnel handling receipts; smaller locations may have receipting handled by all employees engaged in inspectional activities.

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### Chapter 47: Statistical Reporting for Ports-of-Entry (Added INS - TM2)

- 47.1 General
- 47.2 Required Reports
- 47.3 Workforce Analysis Model (WAM)
- 47.4 Port Office Management System (POMS)
- 47.5 Performance Analysis System (PAS)
- 47.6 Records of Inadmissible Passenger System (RIPS)

#### 47.1 General.

Approximately 4,000 individuals participate in the facilitation and enforcement oriented activities embodied in the Inspections mission. The work you do is important! And so is the accurate and timely reporting of data pertaining to that work.

Workload statistics are important and are used for many purposes. For instance, when Congress considers new legislation, the Service is often asked to provide information to respond to questions concerning various aspects of the work we perform. Interest in land border operations, both within and outside the Service, has increased greatly. The country's continued attention on the war on drugs and the completion of the Free Trade Agreements have brought much attention to the land borders. The Service's lack of appropriated resources for land border operations has received more visibility in Congress. The need to collect meaningful, detailed workload data on land border operations (i.e. prosecutions and criminal aliens) complements the Service's efforts to secure additional personnel for the land border. Numerous decisions, such as those relating to strategic planning, involve knowledge of staffing levels. Budget decisions also hinge on workforce information.

You can refer to the following sources for statistics on the Inspection Program as well as all other Service Programs.

- (1) INS Fact Book (M-338) - Summary of Recent Immigration Data. Published periodically throughout the year. The fact book is a convenient pocket or purse size reference containing key statistics on INS programs. In addition, the fact book contains INS region and district boundary maps, the INS organization chart, employment and budget summaries by program, INS headquarters, region, district, border patrol office locations and contact list, INS detention facilities, asylum offices, a glossary, and a chronology of selected immigration and naturalization legislation.
- (2) Statistical Yearbook of the Immigration and Naturalization Service (M-367). The yearbook is an annual compilation of workload data on all INS programs. The yearbook provides

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immigration data for the year along with related historical information. The major areas covered include: immigrants admitted for permanent residence; refugees approved and admitted; nonimmigrant arrivals; aliens naturalized; aliens apprehended and expelled; and aliens inspected at ports-of-entry.

- (3) NIIS (Nonimmigrant Information System). NIIS contains arrival, departure, and ancillary information pertaining to certain nonimmigrant aliens entering the United States. It contains data on the individual's status, identifies individuals who may have overstayed, and provides statistical information to INS managers. NIIS also provides for queries based on biographical, classification, and citizenship data. Primarily, information for NIIS is collected from Forms I-94, Arrival/Departure Records. NIIS also interfaces with the Central Index System (CIS), Student and Schools System (STSC), Computer-Linked Adjudications Information Management System (CLAIMS), Naturalization Automated Casework System (NACS), Interagency Border Inspection System (IBIS), National Automated Immigration Lookout System II (NAILS), and the Federal Bureau of Investigation (FBI).

Further information on the INS Fact Book and Yearbook can be obtained by calling Headquarters Statistics at 202-376-3066.

### 47.2 Required Reports.

- (a) General. Regular and ad-hoc reports required by Inspections are listed below. Local managers should keep a calendar to insure these reports are submitted as scheduled. The following table contains a list of regular required Inspections Program reports. All other reports, such as the former CINSP series of reports, have been cancelled.

Report Symbol	Report Name	Frequency
I-577	Daily Airport Passenger Inspection Log	daily
G-105A	Prosecutions report	monthly (PAS)
G-623	Drug seizure report	monthly (PAS)
G-22/G-23	Inspections activity report	monthly (PAS)
---	TWOV/In-Transit Report to HQINS	as necessary
---	Unusual incidents/planned operations	as necessary

- (b) I-577. The daily passenger inspection log is maintained at each airport. A similar log, the I-577A is maintained at preclearance stations. A new log sheet is used daily and maintained chronologically at the port-of-entry for one year [See details for completing the log in Chapter 22.6].
- (c) G-22.1 and G-22.1F. The G-22/G-23 report system is the basic monthly activity report which collects statistical data for every agency program activity. General reporting requirements are described in AM 3.1.101. The report is collected by each employee and

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rolled into work-site and district composites, which are in-turn rolled into regional and national totals. The reports are entered locally into the Servicewide Performance Analysis System (PAS), which compiles the national statistics each month for every Service program area. The PAS system captures key workload data, as determined by Headquarters program managers. The reports are a basis for field office performance evaluations, resource allocations and a wide range of other analyses critical to the agency's mission. All reports monthly are due into the PAS system by the tenth working day of each month.

It is critical that data collection and entry into PAS be complete, timely and accurate. Detailed instructions for completing the G-22.1 are included in Statistical Handbook, G-23 AM Procedures. The G-22.1F is the individual officer's activity report used to collect data for the G-22.1.

The G-22.1 has eight sections: primary inspections operation report, secondary inspections operation report, conveyance summary report, inspections enforcement activity report, inspections processing activity report, inspections position status report, inspections activity analysis report, and inspections activity report - hours.

The primary inspections operation report features automatic calculation of citizen and alien counts and percentages, and specific categories for the Guam Visa Waiver and Visa Waiver Programs, and the Immigration and Naturalization Service Passenger Accelerated Service System (INSPASS) Program.

The secondary inspections operation report features information on the disposition of those referred to secondary (e.g. paroled, referred, to the Immigration Judge etc.).

The conveyance summary report features specific categories for buses, trains, Dedicated Commuter Lane (DCL) vehicles, pedestrians, commercial flights - Accelerated Citizen Examination (ACE) and Advance Passenger Information System (APIS), private flights, in-transit lounge passengers, and passenger and cargo vessels.

The inspections enforcement activity report features activity relating to fraudulent documentation, narcotics and alien smuggling, false claims to other citizenship, entries into the lookout system, mitigated money realized from conveyance seizures, I-213s (Records of Deportable Alien), I-221s (Orders to Show Cause, Notices of Hearing), G-392 intelligence reports completed, prosecutions, assaults on immigration officers, fines, U.S. Customs Service secondary referrals, and criminal aliens.

The inspections processing activity report features workload data related to processing visas, waivers, asylum applicants, and certain permits and applications related to Inspections responsibilities.

The inspections position status report features workforce data.

The inspections activity analysis report features computed ratios and factors. Workload categories such as primary inspections are compare with the number of personnel on duty

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to yield ratios and factors that can be used to analyze certain aspects of the Inspections Program. This section makes use of data already reported, so there is no field office entry required. The information portrayed could identify workload increase/decrease trends as well as hint at developments at certain locations deserving further study and monitoring.

The inspections activity report - hours section features lines for reporting hours expended on intelligence, fraudulent documents, lookout system, narcotics smuggling, alien smuggling, inspections processing activity, administrative duties and reports, carrier liaison, details, AUO, departure control, and statutory and non- statutory overtime.

- (d) G-105A and G-623. These reports, on prosecutions and drug seizures, respectively, are contained in PAS and described in the Statistical Handbook G-23 AM Procedures.
- (e) TWOV/In-Transit Report to HQINS. Ports-of-entry are required to send, via facsimile, a report to HQINS within five days of a TWOV/In-Transit applicant's failure to depart (except those failing to depart timely). This information is necessary to identify areas of concern in the TWOV and In-Transit programs at various ports-of-entry. The required information and format for the report is included in Appendix 47-1. In-Transit applicants refer to those passengers not presented for inspection, who use the sterile in-transit lounges to continue their direct travel out of the United States. Reports are also required for in-transit deportees who are enroute to a third country, destined to the country of their nationality, but fail to depart.

The report is sent to HQINS, TWOV liaison officer at (202) 514-8345. Send only a copy of the report to HQINS; do not send supporting documentation, which is maintained at the port-of-entry for one year after the incident. Report any changes to the abscondee's status (exclusion, apprehension, parole, etc.) using the same report. If there are trends or unusual aspects involved in an incident, those should be reported in the "comments" section of the report.

- (f) Unusual incidents/Planned Operations. See Chapter 2.7 and Appendix 2-1.

### 47.3 Workforce Analysis Model (WAM).

The WAM data entry program is a menu-driven database application. WAM prompts users for data describing the user's facility and day-to-day operations. The data entry program collects and organizes information from air, land and sea POEs, and combination air/sea and land/sea operations. Data is entered in the WAM data entry program through worksheets using input obtained from historical records of workforce demands occurring at each POE during specific analysis periods. Data already input into POMS through the Trak programs can be imported into the WAM data entry module. To account for seasonal variances, data is collected for low-, medium-, and high-demand weeks. Data for an entire month is collected for sea ports-of-entry.

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The primary purpose of the WAM is to simulate the operations of individual POEs in order to analyze manpower utilization at Air, Land, and Sea POES. WAM provides for: evaluation of scheduled staff versus workload, estimated inspector overtime usage (based on actual rates), analysis of facility utilization based on current or predicted resources, evaluation of inspection methodology (operating procedures) and evaluation of new or revised airport terminal/inspection facilities. Data submission required on an annual basis for modeling to develop accurate estimates of Immigration Inspector staffing requirements based on current and projected workload, and current POE operating procedures. This information is used for annual budget requests for staffing. A WAM projected data set must be submitted for new POEs, POEs being remodeled or updated with changes to number of booths/lanes, POEs anticipating an increase in volume of traffic or passengers or requesting and increase in staffing. The WAM model run must be submitted to Field Operations to be included with the request for personnel.

Data submitted and verified on an annual basis includes but is not limited to current mailing and physical address, phone and fax numbers, staff authorized, schedules, facility configuration including number of booths/lanes, secondary positions, walk times from gates to FIS, queuing area, current local processing times in primary and secondary. This information must be reviewed and approved by the port director or acting port director prior to being submitted. Headquarters personnel and the contractor for the WAM project review the data received to validate and on a regular basis validate data submitted during visits to POEs. (IN99-25)

### **47.4 Port Office Management System (POMS).**

The Port-of-Entry (POE) Office Management System (POMS) is an integrated computer program designed to manage and track resources at INS POEs. It is comprised of a set of administrative modules. Each module is created with a series of database files. Each POMS module contains a subset of data entry screens or worksheets.

POMS Flight Trak, Land Trak, and Sea Track functionality allows inspectors to track the primary and secondary workload factors. In primary inspections, it allows inspectors to enter the total number of people and conveyances inspected at their respective land, air, or seaports. In secondary inspections processing, it allows inspectors to register totals of people processed under various dispositions and other secondary activities. For example, a port will count the total number of person referred from primary inspections to secondary inspections. Additionally, a port will count the number of persons, for example, who are processed under secondary inspection categories such as Paroled, Credible Fear, or Deferred Inspections to name a few.

POMS includes a management tool for tracking and reporting for the G22. The G22

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provides statistical data on POE activities. POMS furnishes menu-driven screens for the input of POE activity data on a daily or monthly basis. Individual inspectors also input the number of hours they spend on each activity into POMS. Data that has been input into Flight Trak, Land Trak, and Sea Trak can also be imported into the G22 module. This data is used by POMS to generate the G22.1 Resource Activity Summary Report, which is required monthly at each POE.

POMS includes a staff scheduling and overtime tracking system. The Scheduling and Leave module allows authorized POE officials to create a POE schedule automatically for bi-weekly or monthly periods, overtime schedules for Sundays, and swap employees' schedules. Included in the scheduling management process is the ability to draw information on overtime, Alternate Work Schedules (AWS), schedule rotations, holidays, etc. Using POMS scheduling, employees can transfer from POEs or work at terminals or subports, and still be tracked as to the shift and hours assigned to a shift.

The Overtime and Budget menu allows the user to select among three options: Overtime, Wheel Management, and Administration. Overtime and Budget is an important tool that aids the user in maintaining the required annual overtime cap of \$30,000. This tool tracks each overtime bill (G-202) entered for each overtime assignment against the overtime wheel, the overtime cap and the overtime budget for the POE.

The WAM data entry program is a menu-driven database application comprised of many database files. WAM prompts users at the various POEs for data describing the user's facility and day-to-day operations. The data entry program collects and organizes information from air, land and sea POEs, and combination air/sea and land/sea operations. Data are entered in the WAM data entry program through worksheets using input obtained from historical records of workforce demands occurring at each POE during specific analysis periods. Data already input into POMS through the Trak programs can be imported into the WAM data entry module, so there is no duplicate data input within POMS. To account for seasonal variances, data is collected for low-, medium-, and high-demand weeks. Data for an entire month is collected for sea ports-of-entry. This data is submitted to HQ once a year where it is fed into the workforce analysis models, a separate series of simulation programs, to determine POE staffing requirements. (IN99-25)

### **47.5 Performance Analysis System (PAS).**

The G-22.1 utilizes computerization to assist in data compilation and calculation with over 50 line and column entries automatically completed by the Performance Analysis System (PAS).

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The Performance Analysis System is an on-line data entry and retrieval system of workload information on the Service's various programs, including Enforcement, Examinations, and Management. The Performance Analysis System automatically manipulates data in seconds, that in the past would take hours of manual effort.

You can access workload information on your office and any other office, district, region, or for the entire Service through PAS. A PAS on-line tutorial is available to assist you in gaining access to this information.

### **47.6 Records of Inadmissible Passenger System (RIPS).**

The RIPS database is maintained by HQ Inspections. **[reserved]**

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### Chapter 48: Overtime Policy and Audits (Added INS - TM2)

- 48.1 Overtime Policy
- 48.2 Overtime Audits

#### References:

**INA:** Sections 283, 286.

**Regulations:** None

**Other:** Overtime Auditing Manual; AM 1.3.104.

#### 48.1 Overtime Policy.

The Immigration and Naturalization Service policy is that overtime should be expended for the efficient inspection of persons presenting themselves for inspection and the accomplishment of the Service mission. This policy provides direction for the control of 1931 and 1945 Act overtime. A complete explanation of overtime is found in AM 1.3.104 titled, "Immigration Inspection Extra Compensations" and AM 1.3.106 titled, "General Overtime."

- For scheduling purposes, Saturday is part of the basic work week. Therefore, regular scheduling should encompass Monday through Saturday, including holidays.
- Scheduling should reflect the timing of the inspectional workload, particularly at air and seaports. Each port-of-entry shall review traffic arrival trends to ensure that scheduling is commensurate. It is the Service's goal to inspect the majority of the arriving traffic by inspectors on regular duty time with minimal use of overtime.
- The inspector to passenger ratios used for overtime assignments shall be the same as those used during the regularly scheduled work week. See Appendix 48-1, Part III, Policy, Paragraph 3..
- All overtime earnings are subject to the statutory overtime cap. It is the responsibility of each Officer and their first line supervisor to ensure that all overtime earnings are reported in a timely manner to the Overtime Control Officer. Administratively Uncontrollable Overtime (AUO), Law Enforcement Availability (LEA), Fair Labor Standards Act (FLSA), 1931 Act overtime, and 1945 Act overtime shall be included in all overtime computations.
- Employees who are eligible to work Inspectional overtime and do not wish to do so shall be identified. However these identified employees shall remain available for overtime assignments if a staffing emergency occurs.
- Overtime assignments should be equally distributed and tracked on a monetary basis.

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- No one above the grade of GS-14 shall participate in inspectional overtime. Port Director's at the GS-13 and 14 level shall only work 1931 Act overtime on an irregular basis and on random shifts. Time spent in 1931 Act activity shall only be spent in first line supervision of immigration inspectors engaged in inspecting applicants for entry into the United States.
- Each supervisory immigration inspector and all Service manager's will have a critical element in their Performance Work Plan which requires the responsible and efficient administration of overtime.
- Time spent traveling to or from an overtime assignment, regardless of the distance or time involved, is not to be compensated as hours worked. The statutory minimum payment of two hours of 45 Act overtime, and the two hour rollback provision for 31 Act overtime, whenever an employee is called out to work on an overtime basis, will compensate the employee for travel to the temporary duty site.
- A Form G-202 "Inspection Overtime Order, Report and Certification," shall be completed for each overtime assignment completed. Supervisors should review the G-202's daily and the district and regional Inspections Program managers should review them biweekly.
- Each district should use 30% or less of its overtime on discretionary overtime. Discretionary overtime, also known as non-statutory overtime, is weekday overtime excluding holidays. Discretionary overtime includes weekday 1931 Act and 1945 Act overtime. Non-discretionary or statutory overtime is the 1931 Act overtime worked on Sunday and holidays. Weekday overtime is considered discretionary because each manager has the ability to control its use.
- Officers-in-charge and supervisory immigration inspectors shall maintain strict control of overtime assignments and expenditures. Such officers shall conduct a continuing in depth review of all work schedules, staffing patterns, primary inspection activity reports, duty assignment sheets, secondary inspections logs, and schedules of arriving vessels and aircraft. Information obtained from such a review shall be used to ascertain where and when changes in scheduling and overtime assignments will result in more efficient and economical operations. These review efforts shall be regularly monitored at the district and regional levels.
- District and regional offices shall review biweekly all duty assignment sheets (G- 259a). Such a review shall ensure that Sunday and holiday assignments, for both primary and secondary, are held to a minimum. Such assignments shall be commensurate with actual workloads, established inspector to passenger ratios, and normal as well as seasonal traffic patterns. Primary and secondary staffing on all overtime assignments, including Sundays and holidays, shall not exceed weekday staffing, including supervisors, without valid justification and advance approval. Sunday and holiday staffing that exceeds weekday staffing for comparable passenger loads must be specifically authorized by the Regional Director.