

(b) The volume regulation percentages apply to acquisitions of the varietal type of raisins for the applicable crop year until the reserve raisins for that crop are disposed of under the marketing order.

Dated: February 12, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 8 CFR Part 274

#### 19 CFR Part 162

[USCBP-2006-0122]

RIN 1651-AA58

### Administrative Process for Seizures and Forfeitures Under the Immigration and Nationality Act and Other Authorities

**AGENCY:** Office of the Secretary, DHS.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule amends Department of Homeland Security regulations, to consolidate the procedures for administrative seizure and forfeiture process. The interim rule also permits earlier consideration of petitions for the remission of seized assets in cases that would otherwise be brought under the procedures in title 8 of the Code of Federal Regulations. The interim rule also makes technical and conforming changes to update the regulations.

**DATES:** This interim rule is effective February 19, 2008. Written comments must be submitted on or before April 21, 2008.

**ADDRESSES:** You may submit comments, identified by *docket number*, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2006-0122.
- Mail: Border Security Regulations Branch, Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

*Instructions:* All submissions received must include the agency name and document number for this rulemaking. All comments received will be posted

without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark, U.S. Customs and Border Protection, at (202) 572-8768.

#### FOR FURTHER INFORMATION CONTACT:

Jeremy Baskin, Office of Regulations and Rulings, U.S. Customs and Border Protection (202) 572-8700.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to the Department of Homeland Security (DHS) in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, and authority that support such recommended change.

#### Background

On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135 (HSA). Accordingly, as of March 1, 2003, the former Immigration and Nationalization Service (INS) of the Department of Justice and the former U.S. Customs Service of the Department of the Treasury were transferred to DHS and reorganized to become U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS).

After passage of the HSA, both CBP and ICE retained authority to perform asset seizures and forfeitures under the provisions of 8 CFR part 274 and 19 CFR parts 162 and 171. DHS, for the purpose of improved efficiency, has consolidated the processing of asset forfeitures into CBP's operations. The regulations in Titles 8 and 19, however, currently provide two different procedures. This interim rule

consolidates the procedures for administrative seizure and forfeiture process by altering the text of 8 CFR 274.1 to refer to 19 CFR parts 162 and 171. This rule also makes technical conforming changes to update references from INS and U.S. Customs Service to CBP and ICE where applicable.

#### Interim Rule Changes

Pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), petitions for remission of forfeitures were accepted by the former U.S. Customs Service, and now accepted by CBP, prior to initiation of any administrative or judicial forfeiture process. Under the regulations adopted under section 274(b) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1324(b) (INA)), the remission or mitigation of such forfeitures could occur only after completion of the forfeiture process. No statute, however, requires this restriction. Under this interim rule, the procedures previously used for immigration-related forfeitures will be eliminated and all asset forfeiture proceedings will be conducted under a consolidated procedure. This interim rule revises 8 CFR part 274 in its entirety to bring seizures and forfeitures effected under section 274(b) of the INA, as amended, and other forfeiture authorities, into conformity with procedures under 19 CFR parts 162 and 171. This change permits CBP to entertain petitions for remission and return of seized property prior to completing the forfeiture process, whether the seizure was effected under the customs laws or the immigration laws, and whether the seizure was made by CBP or ICE.

Accordingly, 8 CFR part 274 is amended to reference Title 19 administrative seizure and forfeiture processes. This is the only significant difference between the provisions and DHS through this interim rule adopts the procedure that provides greater flexibility and is more favorable to petitioners for remission.

#### Other Changes

The provisions of current 19 CFR 162.21 reference the former U.S. Customs Service and U.S. Customs Officers. The interim rule updates these references to reflect U.S. Customs and Border Protection and CBP Officers as applicable.

Currently, 19 CFR 162.22(d) references retention of vessels or vehicles pending penalty payment and specifically references section 460 of the Tariff Act of 1930, as amended (19

U.S.C. 1460). Section 460 of the Tariff Act of 1930 was repealed by Public Law 99–570, title III, section 3115(b), Oct. 27, 1986, 100 Stat. 3207–82. Accordingly, this interim rule removes 19 CFR 162.22(d) and redesignates paragraph (e) as paragraph (d).

This rule also updates certain delegations of authority to reflect the current organizational structures. Title 19 CFR 162.92(d)(1) currently empowers the Customs Assistant Commissioner, Investigations, or his designee, to extend the period for sending notices for any seizure under the Civil Asset Forfeiture Reform Act of 2000, Public Law 106–185, 114 Stat. 202, (CAFRA). Currently, the Assistant Commissioner, Investigations, is the official designated by CBP to grant time extensions for sending notices of seizure as authorized by 18 U.S.C. 983(a)(1)(B). 67 FR 9188 (Feb. 28, 2002). Inasmuch as a reorganization plan under the HSA moved the investigative functions previously performed by Customs agents to ICE, DHS is changing the regulation to reflect this change in authority. In addition, an official within CBP must retain the authority for certain seizures effected by CBP officers or Border Patrol agents. Accordingly, this interim rule amends 19 CFR 162.92(d)(1) to designate the Assistant Secretary of ICE, or his or her designee, and the Commissioner of CBP, or his or her designee, as the officials authorized to grant such an extension.

#### Administrative Procedure Act

This rule is procedural in nature and does not alter the substantive rights of the affected parties. Therefore, this rule is exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553(b)(A)). In addition, the delayed effective date requirement of 5 U.S.C. 553(d) does not apply to this rule. DHS, however, is interested in public comments on this rule and will consider all timely comments in the preparation of a final rule.

The interim rule may benefit entities whose property is seized under 8 CFR part 274. Under the interim regulations, entities whose property is seized under 8 CFR part 274 may take advantage of pre-forfeiture administrative processing and request return of their property prior to the conclusion of forfeiture processing. Prior to this interim rule, owners of property seized under 8 CFR part 274 were required to wait for their petitions to be acted upon until after forfeiture processing was complete. There will be no increased costs to either private companies or individuals as a result of this interim rule. The

interim rule may also yield cost savings for the government if seized items can leave government storage areas more quickly under the earlier petitioning provision.

#### Regulatory Requirements

##### *Executive Order 12866*

This interim rule is not a significant regulatory action under Executive Order 12866.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 603(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions) when the agency is required “to publish a general notice of proposed rulemaking for any proposed rule.” Because this rule is being issued as an interim rule, on the grounds set forth above, a regulatory flexibility analysis is not required under the RFA.

##### *Paperwork Reduction Act*

DHS has determined that the collection of information required by this interim rule falls under the “administrative exception” to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). The “administrative exception,” applies because any such collection is made during the conduct of administrative action taken by an agency against specific individuals or entities. 5 CFR 1320.4(a)(2).

#### List of Subjects

##### *8 CFR Part 274*

Administrative practice and procedure, Seizures and forfeitures, Conveyances.

##### *19 CFR Part 162*

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Seizures and forfeitures.

#### Amendments to Title 8 of the Code of Federal Regulations

■ For the reasons stated above, 8 CFR part 274 is amended as set forth below.

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

■ 1. The authority citation for part 274 is revised to read as follows:

**Authority:** 8 U.S.C. 1103, 1324(b); 18 U.S.C. 983, 19 U.S.C. 66, 1600, 1618, 1619, 1624; 22 U.S.C. 401; 31 U.S.C. 5321; 49 U.S.C. 80304.

■ 2. Section 274.1 is revised to read as follows:

##### § 274.1 Seizure and forfeiture authority.

Any officer of Customs and Border Protection or Immigration and Customs Enforcement may seize and forfeit any property that has been or is being used in the commission of a violation of any statutory authority involving the unlawful introduction of aliens, contraband or proceeds of such introduction, pursuant to, but not limited to, section 274(a) of the Act (8 U.S.C. 1324(a)). All seizures and forfeitures in such cases will be administered in accordance with 19 CFR parts 162 and 171.

■ 3. Section 274.2 is revised to read as follows:

##### § 274.2 Delegation of authority.

All powers provided to Fines, Penalties and Forfeitures Officers in 19 CFR parts 162 and 171 are provided to the Chief, Office of Border Patrol or his designees, for purposes of administering seizures and forfeitures made by Border Patrol Officers.

■ 4. Sections 274.3 through 274.20 are removed.

#### Amendments to Title 19 of the Code of Federal Regulations

■ For the reasons set forth above, 19 CFR part 162 is amended as set forth below.

#### PART 162—INSPECTION, SEARCH, AND SEIZURE

■ 1. The general authority citation for part 162 and specific authority citation for § 162.22 is revised, and the specific authority citations for §§ 162.21 and 162.91 through 162.96 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624, 6 U.S.C. 101, 8 U.S.C. 1324(b).

\* \* \* \* \*

Section 162.21 also issued under 19 U.S.C. 482, 1581, 1582, 1602;

Section 162.22 also issued under 18 U.S.C. 546; 19 U.S.C. 1459, 1594, 1595a, 1701, 1703–1708;

\* \* \* \* \*

Sections 162.91 through 162.96 also issued under 18 U.S.C. 983.

##### § 162.21 [Amended]

■ 2. Section 162.21(a) is amended by removing the phrase “the Customs Service” and replacing it with the

phrase “Customs and Border Protection or Immigration and Customs Enforcement”.

#### § 162.22 [Amended]

■ 3. In section 162.22:

■ a. The last sentence of paragraph (a) is amended by removing the period at the end of the last sentence and adding the phrase “and section 274(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324(b)(1)).”

■ b. Paragraph (d) is removed and current paragraph (e) is redesignated as paragraph (d).

#### § 162.91 [Amended]

■ 4. The first sentence of section 162.91 is amended by removing the term “Customs” and replacing it with the term “Customs and Border Protection or Immigration and Customs Enforcement”.

#### § 162.92 [Amended]

■ 5. In section 162.92:

■ a. The heading of paragraph (d) is amended by removing the phrase “by Customs”.

■ b. Paragraph (d)(1) is amended by removing the phrase “Assistant Commissioner, Investigations, or his designee” and replacing it with the term “Assistant Secretary, Immigration and Customs Enforcement or the Commissioner of Customs and Border Protection for cases within their respective agencies, or their successors or designees”.

Date: January 28, 2008.

**Michael Chertoff,**

Secretary.

[FR Doc. E8-2965 Filed 2-15-08; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Comptroller of the Currency

#### 12 CFR Part 8

[Docket No. OCC-2008-0001]

RIN 1557-AD06

#### Assessment of Fees

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Interim final rule with request for comment.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its assessment regulation to add two new asset-size categories to the table in 12 CFR 8.2(a) used to calculate each national bank’s semiannual assessment. The addition of these categories is

warranted to take account of significant structural changes in the national banking system since 1992, when the table was last revised, and will enable the OCC to realign our assessments to better reflect industry structure and OCC’s corresponding expenses of operations. The OCC is issuing this rule as an interim rule with a request for comment so that such a realignment can occur promptly.

**DATES:** *Effective Date:* This rule is effective on February 19, 2008.

*Comment Date:* Comments must be received by March 20, 2008.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the title “Assessment of Fees” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—“Regulations.gov”:* Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Docket Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC-2008-0001” to submit or view public comments and to view supporting and related materials for this interim final rule. The “How to Use This Site” link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *E-mail:*

[regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).

- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1-5, Washington, DC 20219.

- *Fax:* (202) 874-4448.

- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1-5, Washington, DC 20219.

*Instructions:* You must include “OCC” as the agency name and “Docket Number OCC-2008-0001” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record

and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this interim final rule by any of the following methods:

- *Viewing Comments Electronically:* Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Document Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC-2008-0001” to view public comments for this rulemaking action.

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC’s Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

#### FOR FURTHER INFORMATION CONTACT:

Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874-5090; Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090; or Colette Baylson, Accounting Operations Manager, Financial Management, (202) 874-4403, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

#### SUPPLEMENTARY INFORMATION:

##### Background

The National Bank Act authorizes the OCC to fund the expenses of its operations through assessments on national banks.<sup>1</sup> Under this authority, the OCC collects semiannual assessments from national banks in accordance with part 8 of our regulations and with the OCC’s Notice of the Comptroller of the Currency Fees (Notice of Fees).<sup>2</sup>

Part 8 currently establishes ten categories, or brackets, each of which

<sup>1</sup> 12 U.S.C. 482.

<sup>2</sup> Under part 8, the OCC also collects assessments from Federal branches and Federal agencies. The changes provided for in this interim rule will also apply to assessments of Federal branches and Federal agencies.