

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 273

[INS No. 1697-95]

RIN 1115-AD97

#### Screening Requirements of Carriers

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the Immigration and Naturalization Service ("the Service") regulations by establishing procedures carriers must undertake for the proper screening of passengers at the ports of embarkation to become eligible for a reduction, refund, or waiver of a fine imposed under section 273 of the Immigration and Nationality Act (the Act). This rule is necessary to enable the Service to reduce, refund, or waive fines for carriers that have taken appropriate measures to properly screen passengers being transported to the United States, while continuing to impose financial penalties against those carriers that fail to properly screen passengers.

**DATES:** Written comments must be submitted on or before August 9, 1996.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attention Public Comment Clerk. Please include INS number 1697-95 on your correspondence to ensure proper and timely handling. Also include any written comments you may have concerning the proposed Memorandum of Understanding (MOU) and fines levels that are included as an appendix to this proposed rule. Comments are available for public inspection at the above address by calling 202-514-3048, to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:**

Robert F. Hutnick, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 7216, Washington, DC 20536, telephone number (202) 616-7499.

#### SUPPLEMENTARY INFORMATION:

##### Background

The imposition of administrative fines has long been an important tool in enforcing the United States immigration laws and safeguarding its borders. Both section 273 of the Act and prior law reflect a similar Congressional purpose to compel carriers, under pain of penalties, to ensure enforcement of, and compliance with, certain provisions of the immigration laws. In enacting both section 273 of the Act of 1952 and section 16 of the Immigration Act of 1924 (the precursor to section 273(a) of the Act of 1952), Congress intended to make the carrier ensure compliance with the requirements of the law. The carriers have long sought relief from fines by having the Service consider extenuating circumstances related to the imposition of fines.

Prior to the enactment of section 209(a)(6) of the Immigration and Nationality Technical Corrections Act of 1994, Public Law 103-416, dated October 25, 1994, the Service, by statute, was not permitted to reduce, refund, or waive fines imposed under section 273 of the Act except pursuant to section 273(c) of the Act where the carrier could, to the satisfaction of the Attorney General, demonstrate that it did not know, and could not have ascertained by the exercise of reasonable diligence, that the individual transported was an alien and that a valid passport or visa was required.

This proposed rule provides procedures carriers must undertake for the proper screening of aliens at the port of embarkation to become eligible for reduction, refund, or waiver of a fine imposed under section 273 of the Act. Nevertheless, it is important to note that these are voluntary procedures for carriers. This proposed rule further prescribes conditions the Service will consider before reducing, refunding, or waiving a fine. Of primary importance will be the carrier's performance in screening passengers. The Service will determine a carrier's performance record by analyzing statistics on the number of improperly documented

passengers transported to the United States by each carrier compared to the number of alien passengers transported.

This proposed rule will enable the Service to reduce, refund, or waive a fine imposed under section 273 of the Act for a carrier that demonstrates successful screening procedures by achieving satisfactory performance in the transportation of properly documented aliens to the United States. This will enable the Service to reduce, refund, or waive fines for carriers that have taken appropriate measures to properly screen passengers while continuing to impose financial penalties on carriers that fail to properly screen passengers. It is important to note that the proposed rule does not impose any additional standards on the carriers. Carriers are free to observe current fines procedures.

The Service wishes to maintain flexibility in assessing the success of a carrier's screening procedures. The Service has devised an initial means of measurement, as set forth in the following paragraphs, but will re-examine this strategy if such re-examination is appropriate. The Service is committed to working with the carriers and will consult with them on any contemplated changes in the method of assessment. This methodology described, therefore, is not included in the regulatory language.

Under the proposed methodology, a carrier's performance level (PL) will be determined by taking the number of each carrier's nonimmigrant violations of section 273 of the Act for a fiscal year and dividing this by the number of documented nonimmigrants transported by the carrier and multiplying the result by 1000.

The Service shall establish an Acceptable Performance Level (APL), based on statistical analysis of the performance of all carriers, as a means of evaluating whether the carrier has successfully screened all of its passengers in accordance with 8 CFR 273.3. The APL shall be determined by taking the total number of all carrier nonimmigrant violations of section 273 of the Act for a fiscal year and dividing this by the total number of documented nonimmigrants transported by all carriers for the same fiscal year and multiplying the result by 1000.

The Service shall establish a Second Acceptable Performance Level (APL2),

based on statistical analysis of the performance of all carriers at or better than the APL, as a means of further evaluating carrier success in screening its passengers in accordance with 8 CFR 273.3. Using carrier statistics for only those carriers which are at or better than the APL, the APL2 shall be determined by taking the total number of these carrier nonimmigrant violations of section 273 of the Act for a fiscal year and dividing by the total number of documented nonimmigrants transported by these carriers for the same fiscal year and multiplying the result by 1000.

Carriers which have achieved a satisfactory PL at or better than the APL, as determined by the Service, will be eligible for a 25 percent fine reduction in the amount of any fine covered by this provision if the carrier applies for a reduction, refund, or waiver of fines according to the procedures listed in 8 CFR 280.12 and 8 CFR 280.51. Carriers which have achieved a satisfactory PL at or better than the APL2, as determined by the Service, will be eligible for a 50 percent fine reduction in the amount of any fine covered by this provision if the carrier applies for a reduction, refund, or waiver of fines according to the procedures listed in 8 CFR 280.12 and 8 CFR 280.51. Additional factors the Service will consider in determining whether the Service will reduce, refund, or waive a fine under section 273 of the Act and the amount of such reduction, refund, or waiver are the carrier's history of fines violations, including fines, liquidated damages, and user fee payment records and the existence of any extenuating circumstances. In the future, the Service may consider other factors in evaluating carrier performance including participation in data sharing initiatives or evaluation of a carrier's performance by particular port(s) of embarkation and/or route(s) to determine carrier fines mitigation levels.

To maintain flexibility in determining the success of a carrier's screening procedures, the Service proposes to include in the regulation neither the methodology it will use in determining a carrier's PL, the APL, or the APL2 nor the fines reduction percentage levels. Both the methodology in determining the success of a carrier's screening procedures and the fines reduction percentages will be periodically revisited by the Service to maximize carrier cooperation and vigilance in their screening procedures. The Service shall compute all carrier PLs, the APL, and the APL2 periodically but shall retain the flexibility to use a past APL or APL2, if appropriate, in determining carrier fines reduction, refunds, or waivers for a specific period(s). The

Service will publish any significant, adverse changes regarding fines reduction in the Federal Register in accordance the Administrative Procedure Act (APA) prior to implementation. Maintaining a flexible approach allows the Service to work in partnership with the carriers toward the mutual goal of decreasing the number of improperly documented nonimmigrants transported to the United States.

Carriers may elect to sign a Memorandum of Understanding (MOU) with the Service for the broader application of the reduction, refund, or waiver of fines imposed under section 273 of the Act by agreeing to perform additional measures to intercept improperly documented aliens at ports of embarkation to the United States. Carriers performing these additional measures to the satisfaction of the Commissioner would be eligible for *automatic* fine reductions, refunds, or waivers as prescribed in the MOU. Carriers signatory to the MOU with the Service would be eligible for an automatic fine reduction of 25 or 50 percent depending on whether a carrier's PL is at or better than the APL or APL2 respectively, as determined by the Service. Carriers not signatory to an MOU would not be eligible for automatic fine reductions, refunds, or waivers. Nevertheless, this rule does not preclude any carrier, whether or not signatory to the MOU, from requesting fines reduction, refund, or waiver according to the procedures listed in 8 CFR 280.12 and 8 CFR 280.51. Additionally, if the carrier's PL is not at or better than the APL, the carrier may receive an automatic fine reduction of 25 percent, if it meets certain conditions, including: (1) It is signatory to and in compliance with the MOU; (2) it submits evidence that it has taken extensive measures to prevent the transport of improperly documented passengers to the United States. This evidence shall be submitted to the Assistant Commissioner for Inspections for consideration. Evidence may include, but is not limited to, the following: (a) Information regarding the carrier's document screening training program, including attendance of the carrier's personnel in any Service, Department of State, or other training programs, the number of employees trained, and a description of the training program; (b) information regarding the date and number of improperly documented aliens intercepted by the carrier at the port(s) of embarkation, including, but not limited to, the alien's name, date of birth, passport nationality, passport number, other travel document

information, reason boarding was refused, and port of embarkation; and, (c) any other evidence to demonstrate the carrier's efforts to properly screen passengers destined for the United States; and (3) it appears to the satisfaction of the Assistant Commissioner for Inspections that other Service data and information, including the carrier's PL, indicate the carrier has made a good faith effort to improve screening of its passengers. The proposed MOU is attached as an appendix to this proposed rule.

The levels for fines mitigation are loosely based on the Canadian fines mitigation system. Based on performance levels of the carriers, the Canadian system provides for an automatic fines reduction of 25 percent upon the carrier signing an MOU with the Canadian Government. Through attaining performance standards established in the Canadian MOU, carriers can earn further reductions of 50, 75, or 100 percent of their fines.

This rule further clarifies fines imposed under section 273(d) of the Act by stating that provisions of section 273(e) of the Act do not apply to any fine imposed under section 273(d) of the Act, nor under any provisions other than sections 273(a) and (b) of the Act.

#### Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have significant economic impact on a substantial number of small entities. This rule merely removes any ambiguity between the current regulations and section 273 of the Act.

#### Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and has been submitted to the Office of Management and Budget for review under E.O. 12866.

#### Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

#### List of Subjects in 8 CFR Part 273

Administrative practice and procedure, Aliens, Carriers, Penalties.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended by adding a new part 273 as follows:

### **PART 273—CARRIER RESPONSIBILITIES AT FOREIGN PORTS OF EMBARKATION; REDUCING, REFUNDING, OR WAIVING FINES UNDER SECTION 273 OF THE ACT**

Sec.

273.1 General.

273.2 Definition.

273.3 Screening procedures.

273.4 Demonstration by carrier that screening requirements were met.

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

273.6 Memorandum of Understanding.

Authority: 8 U.S.C. 1103, 1323; 8 CFR part 2.

#### **§ 273.1 General.**

In any fines case in which a fine is imposed under section 273 of the Act involving an alien brought to the United States after December 24, 1994, the carrier may seek a reduction, refund, or waiver of fine, as provided for by section 273(e) of the Act, in accordance with this part. The provisions of section 273(e) of the Act and of this part do not apply to any fine imposed under section 273(d) of the Act, nor under any provision other than sections 273(a) and (b) of the Act.

#### **§ 273.2 Definition.**

As used in this part, the term *Carrier* means an individual or organization engaged in transporting passengers or goods for hire to the United States.

#### **§ 273.3 Screening procedures.**

(a) *Applicability.* The terms and conditions contained in paragraph (b) of this section apply to those owners, operators, or agents of carriers which transport passengers to the United States.

(b) *Procedures at ports of embarkation.* At each port of embarkation carriers shall ensure that adequate steps are taken to prevent the boarding of improperly documented aliens destined to the United States by implementing the following procedures:

(1) Screening passengers by carrier personnel prior to boarding and examining their travel documents to ensure that:

(i) The passport or travel document presented is not expired and is valid for entry into the United States;

(ii) The passenger is the rightful holder; and

(iii) If the passenger requires a visa, that the visa is valid for the holder and any other accompanying passengers named in the passport.

(2) Refusing to board any passenger determined to be improperly documented. Failure to refuse boarding when advised to do so by a Service or Consular Officer may be considered by the Service as a factor in its evaluation of applications under § 273.5.

(3) Implementing additional safeguards such as, but not necessarily limited to, the following:

(i) For instances in which the carrier suspects fraud, assessing the adequacy of the documents presented by asking additional, pertinent questions or by taking other appropriate steps to corroborate the identity of passengers, such as requesting secondary identification.

(ii) Conducting a second check of passenger documents, when necessary at high-risk ports of embarkation, at the time of boarding to verify that all passengers are properly documented consistent with paragraph (b)(1) of this section. This includes a recheck of documents at the final foreign port of embarkation for all passengers including those originally boarded at a prior stop or who are being transported to the United States under the Transit Without Visa (TWOV) or In-Transit Lounge (ITL) Programs.

(iii) Providing an adequate level of security during the boarding process so that passengers are unable to circumvent any carrier document checks.

#### **§ 273.4 Demonstration by carrier that screening requirements were met.**

(a) To be eligible to apply for reduction, refund, or waiver of a fine, the carrier shall provide evidence that it screened all passengers on the conveyance for the instant flight or voyage in accordance with the procedures listed in § 273.3

(b) The Service may, at any time, conduct an inspection of a carrier's document screening procedures at ports of embarkation to determine compliance with the procedures listed in § 273.3. If the carrier's port of embarkation operation is found not to be in compliance, the carrier will be notified by the Service that its fines will not be eligible for refund, reduction, or waiver of fines under section 273(e) of the Act unless the carrier can establish that lack of compliance was beyond the carrier's control.

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

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

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

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

(1) The effectiveness of the carrier's screening procedures;

(2) The carrier's history of fines violations, including fines, liquidated damages, and user fee payment records; and

(3) The existence of any extenuating circumstances.

#### **§ 273.6 Memorandum of Understanding.**

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

(b) Carriers signatory to an MOU will be required to apply for reduction, refund, or waiver of fines in accordance with the procedures outlined in 8 CFR 280.12 and 8 CFR 280.51, but will follow procedures as set forth in the MOU.

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

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

Dated: May 29, 1996.

Doris Meissner,  
*Commissioner, Immigration and Naturalization Service.*

Note: The appendixes A and B will not appear in the Code of Federal Regulations.

#### **Appendix A—United States Immigration and Naturalization Service Section 273(E) Memorandum of Understanding**

This voluntary Memorandum of Understanding (MOU) is made between \_\_\_\_\_ (hereafter referred to as the "Carrier") and the United States Immigration and Naturalization Service (hereafter referred to as the "INS").

The purpose of this MOU is to identify the undertakings of each party to improve the performance of the Carrier with respect to its

duty under section 273 of the Immigration and Nationality Act (the Act) to prevent the transport of improperly documented aliens to the United States. Based on the Carrier's Performance Level (PL) in comparison to the Acceptable Performance Level (APL) or Second APL (APL2) set by the INS, and based upon compliance with the other stipulations outlined in the MOU, the INS may refund, reduce or waive a part of the Carrier's section 273 of the Act administrative penalties.

The MOU cannot, by law, exempt the Carrier from liability for civil penalties. Although taking the steps set forth below will not relieve the Carrier of liability from penalties, the extent to which the Carrier has complied with this MOU will be considered as a factor in cases where the INS may reduce, refund, or waive a fine.

It is understood and agreed by the parties that this MOU is not intended to be legally enforceable by either party. No claims, liabilities, or rights shall arise from or with respect to this MOU except as provided for in the Act or the Code of Federal Regulations. Nothing in this MOU relieves the Carrier of any responsibilities with respect to United States laws, the Act, or the Code of Federal Regulations.

This document, once jointly endorsed, will serve as a working agreement to be utilized for all fines cases relating to section 273 of the Act, and reflects the mutual understanding of the Carrier and the INS. This MOU shall take effect immediately upon its approval by the Assistant Commissioner for Inspections and shall be a valid working document for three years from such date.

The Carrier's compliance with the MOU shall be evaluated periodically. The Carrier shall be notified in writing of its PL and the overall APL for each rating period. Accordingly, the Carrier agrees to begin prompt and complete implementation of all of the terms listed in this MOU. The INS may terminate this MOU for the Carrier's failure to abide by its terms. Either party may terminate this MOU, for any reasons, with 30 days written notice. Any subsequent fines will be imposed for the full penalty amount.

## Appendix B—Memorandum of Understanding

### 1. Introduction

1.1 The Assistant Commissioner for Inspections shall exercise oversight regarding the Carrier's compliance with this MOU.

1.2 The Carrier agrees to begin implementation of the provisions set forth below immediately upon receipt of the MOU signed by the Assistant Commissioner for Inspections.

1.3 The Carrier agrees to permit the INS to monitor its compliance with the terms of this MOU. The Carrier shall permit the INS to conduct an inspection of the Carrier's document screening procedures at ports of embarkation before arrival in the United States, to determine compliance with the procedures listed in this MOU.

1.4 The Carrier agrees to designate a coordinator to be the contact point for all issues arising from the implementation of this MOU. The Carrier shall provide the INS with the coordinator's name, title, address, telephone and facsimile number.

1.5 The Carrier shall require that all of its employees, including its representatives, follow the stipulations of this MOU, and comply with all requirements of the Act. The Carrier also agrees to cooperate with the INS by facilitating an open exchange of information.

### 2. Prompt Payment

2.1 The INS agrees to authorize a reduction in fine penalties based on compliance with this MOU only if the Carrier has paid all administrative fines, liquidated damages and user fees. This includes interest and penalties that have been imposed by either a formal order or final decision, except cases on appeal.

2.2 The Carrier agrees to promptly pay all administrative fines, liquidated damages and user fees. This includes interest and penalties that are imposed by a formal order or a final decision during the time this MOU is in effect, except cases on appeal. Prompt payment for the purposes of this MOU refers to payments made within 30 days from the date of billing.

2.3 The INS shall periodically review the Carrier's record of prompt payment for administrative fines, liquidated damages, and user fees including interest and penalties. Failure to make prompt payment will result in the loss of benefits of the MOU for the subsequent period.

2.4 The Carrier agrees to select a person from its organization as a contact point with the INS Office of Finance for the resolution of payment issues. The Carrier shall provide the INS with the contact person's name, title, address, telephone and facsimile number.

### 3. Carrier Agreement

3.1 The Carrier shall refuse to carry any improperly documented passenger.

3.2 The Carrier agrees to verify that trained personnel examine and screen passengers' travel documents to verify that the passport, visa (if one is required) or other travel documents presented are valid and unexpired, and that the passenger, and any accompanying passenger named in the passport, is the rightful holder of the document.

3.3 The Carrier agrees to conduct additional document checks when deemed appropriate, to verify that all passengers, including transit passengers, are in possession of their own, and proper, travel documents as they board the aircraft, and to identify any fraudulent documents.

3.4 The Carrier agrees to permit INS and State Department Consular officials to screen passengers' travel documents before or after the Carrier has screened those passengers for boarding, when permitted by competent local authorities.

3.5 In cases involving suspected fraud the Carrier shall assess the adequacy of the documents presented by questioning individuals or by taking other appropriate steps to corroborate the identity of the passengers, such as requesting secondary identification.

3.6 The Carrier shall refuse to knowingly transport any individual who has been determined by an INS official not to be in possession of proper documentation to enter

or pass through the United States.

Transporting any improperly documented passenger so identified may result in a civil penalty. At locations where there is no INS presence, carriers may request State Department Consular officials to examine and advise on authenticity of passenger documentation. State Department Consular officials will act in an advisory capacity only.

3.7 Where the Carrier has refused to board a passenger based on a suspicion of fraud or other lack of proper documentation, the Carrier agrees to make every effort to notify other carriers at that port of embarkation.

3.8 The Carrier shall maintain an adequate level of security designed to prevent passengers from circumventing any Carrier document checks. The Carrier shall also maintain an adequate level of security designed to prevent stowaways from boarding the Carrier's aircraft or vessel.

3.9 The Carrier agrees to participate in INS training programs and utilize INS Information Guides and other information provided by the INS to assist the Carrier in determining documentary requirements and detecting fraud.

3.10 The Carrier agrees to make the INS Information Guides and other information provided by the INS readily available for use by Carrier personnel, at every port of embarkation.

3.11 The Carrier agrees to make appropriate use of technological aids in screening documents including ultra violet lights, magnification devices, or other equipment identified by the INS to screen documents.

3.12 The Carrier agrees to expeditiously respond to written requests from the appropriate INS official(s) for information pertaining to the identify, itinerary and seating arrangements of individual passengers. The Carrier also agrees to provide manifests and other information, when permitted by local law, required to identify passengers, information and evidence regarding the identity and method of concealment of a stowaway, and information regarding any organized alien smuggling activity.

3.13 Upon arrival at a Port-of-Entry (POE) and prior to inspection, the Carrier agrees to notify INS personnel at the POE of any unusual circumstances, incidents, or problems at the port of embarkation involving the transportation of improperly documented aliens to the United States.

### 4. INS Agreement

4.1 The INS agrees to develop an Information Guide to be used by Carrier personnel at all ports of embarkation before the United States. The Information Guide will function as a resource to assist Carrier personnel in determining proper documentary requirements and detecting fraud.

4.2 The INS agrees to develop a formal, continuing training program to assist carriers in their screening of passengers. Carriers may provide input to the INS concerning specific training needs that they have identified. Initial and annual refresher training will be conducted by the INS or Carrier representatives trained by the INS.

4.3 To the extent possible, INS and State Department Consular officials will consult, support, and assist the Carrier's efforts to screen passengers prior to boarding.

4.4 The INS shall determine each Carrier's Performance Level (PL) based on statistical analysis of the Carrier's performance, as a means of evaluating whether the Carrier has successfully screened all of its passengers in accordance with 8 CFR 273.3 and this MOU. The PL is determined by taking the number of each Carrier's violations of section 273 of the Act for a fiscal year<sup>1</sup> and dividing this by the number of documented nonimmigrants (i.e., those nonimmigrants that submit an Arrival/Departure Record, Form I-94, I-94T, or I-94W) transported by the Carrier and multiplying the result by 1000.

4.5 The INS shall establish an Acceptable Performance Level (APL), based on statistical analysis of the performance of all carriers, as a means of evaluating whether the Carrier has successfully screened all of its passengers in accordance with 8 CFR 273.3 and this MOU. The APL shall be determined by taking the total number of all carrier violations of section 273 of the Act for a fiscal year<sup>1</sup> and dividing this by the total number of documented nonimmigrants (i.e., those nonimmigrants that submit an Arrival/Departure Record, Form I-94, I-94T, or I-94W) transported by all carriers for a fiscal year and multiplying the result by 1000.

4.6 The INS shall establish a Second Acceptable Performance Level (APL2), based on statistical analysis of the performance of all carriers at or better than the APL, as a means of further evaluating carrier success in screening its passengers in accordance with 8 CFR 273.3 and this MOU. Using carrier statistics for only those carriers which are at or better than the APL, the APL2 shall be determined by taking the total number of these carrier violations of section 273 of the Act for a fiscal year<sup>1</sup> and dividing by the total number of documented nonimmigrants (i.e., those nonimmigrants that submit an Arrival/Departure Record, Form I-94, I-94T, or I-94W) transported by these carriers and multiplying the result by 1000.

4.7 The PL, APL, and APL2 may be recalculated periodically as deemed necessary, based on Carrier performance during the previous period(s).

4.8 Carriers whose PL is at or better than the APL are eligible to receive an automatic 25 percent reduction, if signatory to and in compliance with this MOU, on fines imposed under section 273 of the Act for periods determined by the INS.

4.9 Carriers whose PL is at or better than the APL2 are eligible to receive an automatic 50 percent reduction, if signatory to and in compliance with this MOU, on fines imposed under section 273 of the Act for periods determined by the INS.

<sup>1</sup> The total number of carrier violations of section 273 of the Act for a fiscal year is determined by taking the total number of violations minus violations for the transportation of improperly documented lawful permanent residents and rejected cases. Rejected cases include those cases where the INS has determined that either: (1) No fine occurred; or, (2) sufficient evidence was not submitted to support the imposition of a fine.

4.10 If the Carrier's PL is not at or better than the APL, the Carrier may receive an automatic 25 percent reduction in fines, if it meets certain conditions, including being signatory to and in compliance with the MOU and the carrier submits evidence that it has taken extensive measures to prevent the transport of improperly documented passengers to the United States. This evidence shall be submitted to the Assistant Commissioner for Inspections for consideration. Evidence may include, but is not limited to, the following: (1) Information regarding the Carrier's training program, including participation of the Carrier's personnel in any INS, DOS, or other training programs and the number of employees trained; (2) information regarding the date and number of improperly documented aliens intercepted by the Carrier at the port(s) of embarkation, including, but not limited to, the aliens' name, date of birth, passport nationality, passport number or other travel document information, and reason boarding was refused; and (3) other evidence, including screening procedure enhancements, technological or otherwise, to demonstrate the Carrier's good faith efforts to properly screen passengers destined to the United States.

4.11 The Carrier may defend against imposition or seek further reduction of an administrative fine if the case is timely defended pursuant to 8 CFR part 280, in response to the Form I-79, Notice of Intent to Fine. The Carrier must establish that extenuating circumstances existed at the time of the violation in order to receive any further reduction in fine penalties.

4.12 Nothing in this MOU precludes a carrier from seeking reduction under 8 CFR 273.4.

\_\_\_\_\_  
(Representative's Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Carrier Name)

Dated: \_\_\_\_\_

Assistant Commissioner, Office of  
Inspections, United States Immigration and  
Naturalization Service

Dated: \_\_\_\_\_

[FR Doc. 96-14470 Filed 6-7-96; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 161

RIN 1076-AC81

#### Navajo Partitioned Land Grazing Regulations

**AGENCY:** Bureau of Indian Affairs, Department of the Interior.

**ACTION:** Proposed Rule; reopening of comment period and additional request for comments.

**SUMMARY:** The comment period on the Department's proposed rule to 25 C.F.R. to govern the grazing of livestock on the Navajo Partitioned Land (NPL) of the Navajo-Hopi Former Joint Use Area (FJUA) of the 1882 Executive Order reservation is reopened to provide additional opportunity for public comment. Comments on this issue will be considered along with comments on the proposed rule published in the Federal Register on November 1, 1995.

**DATES:** Comments on these proposed rules must be submitted September 9, 1996.

**ADDRESSES:** Send comments to Bureau of Indian Affairs, Division of Water and Land Resources, Mail Stop: 4559-MIB, 1849 C Street, NW., Washington, DC 20240, or telephone number (202) 208-4004.

**FOR FURTHER INFORMATION CONTACT:** Robert Curley, (602) 871-5151, Ext. 5105, at the Navajo Area Office in Window Rock, Arizona.

**SUPPLEMENTARY INFORMATION:** The proposed rule was originally published in the Federal Register November 1, 1995 (60 FR 55507). The original comment period ended on January 2, 1996. Since the opening of the comment period considerable input has been received from the Navajo and Hopi Tribes. Due to the remoteness of the location and the inclement weather a large number of Tribal members have not been able to include their written comments. The reopening of this comment period for a period of 90 days will allow for maximum input from the public.

Dated: April 8, 1996.

Ada E. Deer,

*Assistant Secretary—Indian Affairs.*

[FR Doc. 96-14549 Filed 6-7-96; 8:45 am]

BILLING CODE 4310-02-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

#### 42 CFR Part 72

RIN 0905-AE70

#### Additional Requirements for Facilities Transferring or Receiving Select Infectious Agents

**AGENCY:** Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services (HHS).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule is being promulgated in accordance with Section