

pleadings filed at the regional office level, will be available at the Repository. Also available at the Repository will be an electronic "docket sheet" listing all documents issued by the MSPB to the parties, as well as all pleadings filed by the parties, including those pleadings that are not available for viewing and downloading in electronic form. Access to appeal documents at the Repository will be limited to the parties and representatives of the appeals in which they were filed.

(j) *Service of electronic pleadings and MSPB documents.*

(1) When MSPB documents are issued, e-mail messages will be sent to e-filers that notify them of the issuance and that contain links to the Repository where the documents can be viewed and downloaded. Paper copies of these documents will not ordinarily be served on e-filers. Pleadings submitted via e-Appeal Online will be available to parties and representatives at the e-Appeal Online Repository, and the MSPB will send e-mail messages to other e-filers notifying them of each pleading, with a link to the Repository. When using e-Appeal Online to file a pleading, e-filers will be notified of all documents that must be served by non-electronic means, and they must certify that they will serve all such documents no later than the first business day after the electronic submission.

(2) Delivery of e-mail can encounter a number of failure points. If the MSPB is advised of non-delivery, it will attempt to redeliver and, if that is unsuccessful, will deliver by postal mail or other means. E-filers are responsible for ensuring that e-mail from @mspb.gov is not blocked by filters.

(3) E-filers are responsible for monitoring case activity at the Repository at e-Appeal Online to ensure that they have received all case-related documents.

(k) *Documents requiring a signature.* Electronic documents filed by a party who has registered as an e-filer pursuant to this section shall be deemed to be signed for purposes of any regulation in part 1201, 1203, 1208, or 1209 of this chapter that requires a signature.

(l) *Affidavits and Declarations made under penalty of perjury.* Registered e-filers may submit electronic pleadings in the form of declarations made under penalty of perjury under 28 U.S.C. 1746, as described in Appendix IV to this part. If the declarant is someone other than the e-filer, a physically signed affidavit or declaration should be uploaded as a non-electronic document under paragraph (h) of this section.

(m) *Date electronic documents are filed and served.*

(1) As provided in § 1201.4(l) of this Part, the date of filing for pleadings filed via e-Appeal Online is the date of electronic submission. All pleadings filed via e-Appeal Online are time stamped with Eastern Time, but the timeliness of a pleading is assessed based on the time zone where the pleading is being filed. For example, a pleading filed at 11 p.m. Pacific Time on August 20 will be stamped by e-Appeal Online as being filed at 2 a.m. Eastern Time on August 21. However, if the pleading was required to be filed with the Western Regional Office on August 20, it would be considered timely, as it was submitted prior to midnight Pacific Time on August 20.

(2) MSPB documents served electronically on registered e-filers are deemed received on the date of electronic submission.

(n) *Authority of a judge or the Clerk to regulate e-filing.*

(1) In the event that the MSPB or any party encounters difficulties filing, serving, or receiving electronic documents, the judge or the Clerk of the Board may order one or more parties to cease filing pleadings by e-filing, cease serving documents in electronic form, or take both these actions. In such instances, filing and service shall be undertaken in accordance with § 1201.26. The authority to order the cessation of the use of electronic filing may be for a particular submission, for a particular time frame, or for the duration of the pendency of a case.

(2) A judge or the Clerk of the Board may require that any document filed electronically be submitted in non-electronic form and bear the written signature of the submitter. A party receiving such an order from a judge or the Clerk of the Board shall, within 5 calendar days, serve on the judge or Clerk of the Board by postal mail, by fax, or by commercial or personal delivery a signed, non-electronic copy of the document.

(o) *MSPB reserves the right to revert to traditional methods of service.* The MSPB may serve documents via traditional means—postal mail, fax, personal or commercial delivery—at its discretion. Parties and their representatives are responsible for ensuring that the MSPB always has their current postal mailing addresses, even when they have registered as e-filers.

■ 4. Revise § 1201.134(g) to read as follows:

**§ 1201.134 Deciding official; filing stay request; serving documents on parties.**

\* \* \* \* \*

(g) *Electronic filing.* All pleadings may be filed and served in electronic form at the MSPB e-Appeal site (<https://e-appeal.mspb.gov/>), provided the requirements of § 1201.14 are satisfied.

■ 5. Revise § 1201.137(f) to read as follows:

**§ 1201.137 Covered actions; filing complaint; serving documents on parties.**

\* \* \* \* \*

(f) *Electronic filing.* All pleadings may be filed and served in electronic form at the MSPB e-Appeal site (<https://e-appeal.mspb.gov/>), provided the requirements of § 1201.14 are satisfied.

■ 6. Revise § 1201.143(f) to read as follows:

**§ 1201.143 Right to hearing; filing complaint; serving documents on parties.**

\* \* \* \* \*

(f) *Electronic filing.* All pleadings may be filed and served in electronic form at the MSPB e-Appeal site (<https://e-appeal.mspb.gov/>), provided the requirements of § 1201.14 are satisfied.

William D. Spencer,

Clerk of the Board.

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**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Parts 270, 274a, and 280**

RIN 1653-AA39

**DEPARTMENT OF JUSTICE**

**28 CFR Part 68**

**Executive Office for Immigration Review**

**8 CFR Part 1274a**

RIN 1125-AA61

[EOIR Docket No. 165F; A.G. Order No. 2944-2008]

**Inflation Adjustment for Civil Monetary Penalties Under Sections 274A, 274B, and 274C of the Immigration and Nationality Act**

**AGENCIES:** U.S. Immigration and Customs Enforcement, DHS; Executive Office for Immigration Review, Justice.

**ACTION:** Final rules.

**SUMMARY:** As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, the Department of Homeland Security and the Department of Justice are

publishing these rules adjusting for inflation the civil monetary penalties assessed or enforced by those two Departments under sections 274A, 274B, and 274C of the Immigration and Nationality Act (INA). The adjusted civil money penalties are calculated according to the specific formula laid out by law, and will be effective for violations occurring on or after the effective date of these rules.

**DATES:** These rules are effective March 27, 2008.

**FOR FURTHER INFORMATION CONTACT:** *Concerning amendments to 8 CFR parts 270 and 274a:* Marissa Hernandez, National Program Manager for Worksite Enforcement, Office of Investigations, 425 I Street, NW., Washington, DC 20536, telephone number (202) 307-0071 (not a toll free call).

*Concerning amendments made to 8 CFR part 1274a and 28 CFR part 68:* Kevin J. Chapman, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone number (703) 305-0470 (not a toll free call).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410 (Adjustment Act), 28 U.S.C. 2461 note, provides for the regular evaluation of civil monetary penalties to ensure that they continue to maintain their deterrent effect and that penalty amounts due the Federal Government are properly accounted for and collected.

On April 26, 1996, the President signed into law the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134. Section 31001 of that Act, also known as the Debt Collection Improvement Act of 1996 (Improvement Act), amended the Adjustment Act to provide more effective tools for government-wide collection of delinquent debt. Section 31001(s)(1) of the Improvement Act added a new section 7 to the Adjustment Act providing that any increase in a civil monetary penalty made pursuant to this Act shall apply only to violations that occur after the date the increase takes effect. The Improvement Act provides that the adjustments for inflation required by the Adjustment Act should be made every four years.

The amounts of the adjustments are determined according to a detailed formula specified in the Adjustment Act, incorporating a "cost-of-living adjustment" that is defined in section

5(b) of the Adjustment Act as being the percentage (if any) for each civil monetary penalty by which:

(1) The Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

In addition, section 5(a) of the Adjustment Act provides that any increase so determined under this formula is subject to rounding under the following specified standards:

- For penalties less than or equal to \$100, increases are rounded to multiples of \$10;
- For penalties greater than \$100 but less than or equal to \$1,000, increases are rounded to multiples of \$100;
- For penalties greater than \$1,000 but less than or equal to \$10,000, increases are rounded to multiples of \$1,000;
- For penalties greater than \$10,000 but less than or equal to \$100,000, increases are rounded to multiples of \$5,000;
- For penalties greater than \$100,000 but less than or equal to \$200,000, increases are rounded to multiples of \$10,000; and
- For penalties greater than \$200,000, increases are rounded to multiples of \$25,000.

Section 31001(s)(2) of the Improvement Act also provides that the first adjustment of a civil monetary penalty made pursuant to these procedures may not exceed 10 percent of the penalty.

##### **II. Civil Penalties Imposed After Hearing Before an Administrative Law Judge**

These final rules revise the current regulations implementing three different sections in the Immigration and Nationality Act (INA) that provide for the imposition of civil money penalties to be imposed for violations of the law, each of which include provisions for a hearing before an administrative law judge (ALJ) to adjudicate cases and set the amount of the penalty. The Department of Homeland Security (DHS) has enforcement responsibilities for two of these civil penalty provisions,<sup>1</sup> while the Civil Rights Division of the Department of Justice

has enforcement responsibilities for the third.

*Section 274A of the INA (8 U.S.C. 1324a).* Section 274A provides for imposition of civil penalties for various specified unlawful acts pertaining to the employment eligibility verification process (Form I-9) and the employment of unauthorized aliens. These penalties cover, among other things, the knowing employment of unauthorized aliens and the failure to comply with the employment verification requirements relating to completion of Form I-9.

U.S. Immigration and Customs Enforcement (ICE), in DHS, conducts the investigations and initiates the process for imposing civil money penalties with respect to employer sanctions under section 274A of the INA and 8 CFR part 274a.

*Section 274B of the INA (8 U.S.C. 1324b).* Section 274B provides for imposition of civil penalties for specified actions constituting immigration-related unfair employment practices. These penalties cover, among other things, discrimination against job applicants or employees based on nationality or citizenship status, and violations of the law by an employer who refuses to accept permissible documents presented by an employee in compliance with the Form I-9 requirements (for example, by insisting that an employee must present a so-called "green card" even though the employee has already presented proper documentation to complete Form I-9).

The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), a component within the Civil Rights Division of the Department of Justice, is responsible for investigating alleged violations of section 274B of the INA pertaining to unfair immigration-related employment practices (called "charges"). See 28 CFR part 44. After investigating the charges, OSC is authorized to file a complaint to initiate a civil penalty proceeding. The law also includes a private action provision allowing the person making a charge to file a complaint directly if OSC has not filed a complaint within 120 days after receiving the charges.

*Section 274C of the INA (8 U.S.C. 1324c).* Section 274C provides for imposition of civil penalties for specified actions relating to immigration-related document fraud.

ICE conducts the investigations and initiates the process for imposing civil money penalties with respect to document fraud under section 274C of the INA and 8 CFR part 270.

*Hearings for Adjudicating Complaints and Imposing Penalties.* Each of these

<sup>1</sup> Although the enforcement of these provisions of the immigration laws was initially assigned to the Attorney General, and had been delegated to the former Immigration and Naturalization Service (INS), the Homeland Security Act abolished the former INS and transferred its functions to DHS, effective March 1, 2003. See 6 U.S.C. 251, 291.

three sections of the INA provides that, when administrative hearings are necessary to adjudicate the complaints and impose the civil penalties, the hearings are to be conducted before an ALJ. Accordingly, the Attorney General established the Office of the Chief Administrative Hearing Officer (OCAHO), an office within the Executive Office for Immigration Review (EOIR) in the Department of Justice, to conduct the ALJ hearings for civil penalty actions under each of these three statutes. See 28 CFR part 68.

ALJ hearings are conducted in every case under section 274B of the INA. However, an ALJ hearing is conducted under sections 274A and 274C of the INA only if the subject of the civil penalty proceeding requests an administrative hearing, after the issuance of ICE's notice of intent to fine describing the violations and stating the intended amount of the civil penalties. If the subject does not submit a request for an ALJ hearing within the time allowed, then the civil penalties are imposed as determined by ICE. If the subject does make a timely request for a hearing, then an ALJ adjudicates the alleged violations and issues a decision, including a determination of the amount of the civil penalties imposed for any violations found, pursuant to the rules in 28 CFR part 68. An ALJ decision in a case arising under section 274A or 274C of the INA is subject to review by the Chief Administrative Hearing Officer and the Attorney General, as provided in 28 CFR 68.54 and 68.55.

Because both DHS and EOIR can impose penalties relating to employer sanctions and document fraud cases (sections 274A and 274C, respectively), the current regulations of both Departments specify the range of penalties applicable in these kinds of cases. As noted above, the minimum and maximum civil penalty amounts for each violation will necessarily be the same whether the penalties are imposed by DHS without a hearing, or by OCAHO after an administrative hearing. See 8 CFR 274a.10 and 270.3; 28 CFR 68.52(c) and (e).

### III. Adjustment of Civil Money Penalties

Under the Adjustment Act, as amended, federal agencies are obligated to adopt, by regulation, revised amounts for statutory civil penalties in order to account for inflation. These regulations carry out that statutory mandate. Since the statutory formula is extremely detailed, leaving no discretion as to setting the specific amounts, these rules implement the new inflation adjustments for the civil penalties

without the need for a notice and comment period.

Pursuant to the authority of the Adjustment Act, the Department of Justice has previously adjusted the civil money penalties for inflation, increasing the specific amounts stated in sections 274A, 274B, and 274C of the INA. The amounts of the civil money penalties currently being imposed under these provisions were last adjusted for inflation in 1999. See 64 FR 7066 (Feb. 12, 1999) (amending 28 CFR part 68); 64 FR 47099 (Aug. 30, 1999) (amending 8 CFR parts 270 and 274a, among others). Since then, as noted, the division of responsibilities between the Attorney General and the Secretary of DHS requires action by both Departments in order to effectuate a further adjustment of the civil penalties, since the current civil penalty amounts are codified in the implementing regulations of both Departments.

In these final rules, the Secretary is amending 8 CFR parts 274a and 270 of the DHS regulations to incorporate the revised schedule of civil penalties, as adjusted for inflation according to the statutory formula described above.

At the same time, the Attorney General is amending 28 CFR part 68 of the Justice Department regulations (the rules governing ALJ proceedings in OCAHO) to make conforming changes reflecting the adjusted schedule of civil penalties.

The Attorney General is also revising a provision in the EOIR regulations, 8 CFR part 1274a.10, to eliminate the current language and to substitute a cross-reference to the existing DHS regulations in 8 CFR part 274a and the existing OCAHO regulations in 28 CFR part 68. Section 1274a.10, which simply reproduces the existing DHS regulations at 8 CFR 274a.10, was promulgated in 2003, in connection with the transfer of authority from the former INS to DHS. To ensure that all relevant authority relating to the shared responsibilities was preserved, the Attorney General at that time duplicated in their entirety the regulations in 8 CFR part 274a (which were being transferred to DHS) into the then-new part 1274a so that these provisions would also continue to be part of the Attorney General's regulations. See 68 FR 9824 (Feb. 28, 2003). However, since the penalty provisions in section 1274a.10 do not add anything to the existing regulatory provisions, the Attorney General is now revising section 1274a.10 to eliminate the duplicative language and to substitute new language cross-referencing the existing DHS regulations in 8 CFR 274a.10 and the existing OCAHO regulations in 28 CFR part 68.

As noted, the current amounts of the civil money penalties under these three statutory provisions were last adjusted, by regulation, in 1999. Pursuant to section 5(b) of the Adjustment Act, the cost of living adjustment is calculated with reference to the Consumer Price Index for all urban consumers for June 1999 (497.9) and for June 2007 (the year preceding the current inflation adjustments) (624.1). This works out to an inflation adjustment of 25.35 percent. Pursuant to the statutory formula specified in the Adjustment Act, the civil money penalties under sections 274A, 274B, and 274C of the INA are being adjusted as indicated in the chart below.

It should be noted that when the inflation adjustment formula was applied in 1999, not all of the penalties were affected. A few remained unchanged because the inflation adjustment when the calculations were last made in 1999 was too small to warrant an inflation increase under the statutory rounding formula set forth in the Adjustment Act. Nonetheless, for the convenience of the reader, we have reproduced those provisions in the chart.

Two sets of penalties were not adjusted before because they were below the threshold for an inflation adjustment in 1999, the last time the penalties were adjusted for inflation, but they are being adjusted by this rule:

- Section 403(a)(4)(C)(ii) of the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. 104-208, Div. C (codified at 8 U.S.C. 1324a note and described in 28 CFR 68.52(c)(6)) provides for a civil penalty of not less than \$500 and not more than \$1,000 for an employer participating in the electronic employment eligibility verification program who fails to notify DHS that it ultimately was unable to confirm an employee's employment eligibility.

- Section 274C(a) of the INA was amended in 1997 to provide for a civil penalty of not less than \$250 and not exceeding \$2,000 in two additional circumstances: paragraph (5) covers preparing, filing, or assisting others in preparing or filing falsely made or fraudulent documents or each proscribed activity; and paragraph (6) relates to presenting a travel document to board an air or sea carrier but then failing to present that document upon arrival at the U.S. port of entry.

Because these penalties are being adjusted for the first time, the penalties are being increased by ten percent, the maximum allowable increase for initial increases provided for by section 31001(s)(2) of the Improvement Act. In

addition, this rule makes a conforming change to 8 CFR 280.53, which references the second set of penalties, since these penalties are now being adjusted.

Statute	Min/ Max	Current penalty	Year last adjusted	CPI factor (2008) (percent)	Raw increase (2008)	Rounder	Rounded increase	Adjusted penalty
<b>Hiring, recruiting and referral employer sanctions, first order</b>								
8 U.S.C. 1324a(e)(4)(A)(i) .... 8 CFR 274a.10(b)(1)(ii)(A)	Min. ...	275	1999 .....	25.35	70	100 .....	100	375
8 U.S.C. 1324a(e)(4)(A)(i) .... 8 CFR 274a.10(b)(1)(ii)(A)	Max. ..	2,200	1999 .....	25.35	558	1,000 .....	1,000	3,200
<b>Hiring, recruiting and referral employer sanctions, second order</b>								
8 U.S.C. 1324a(e)(4)(A)(ii) .... 8 CFR 274a.10(b)(1)(ii)(B)	Min. ...	2,200	1999 .....	25.35	558	1,000 .....	1,000	3,200
8 U.S.C. 1324a(e)(4)(A)(ii) .... 8 CFR 274a.10(b)(1)(ii)(B)	Max. ..	5,500	1999 .....	25.35	1,394	1,000 .....	1,000	6,500
<b>Hiring, recruiting and referral employer sanctions, subsequent order</b>								
8 U.S.C. 1324a(e)(4)(A)(iii) .... 8 CFR 274a.10(b)(1)(ii)(C)	Min. ...	3,300	1999 .....	25.35	836	1,000 .....	1,000	4,300
8 U.S.C. 1324a(e)(4)(A)(iii) .... 8 CFR 274a.10(b)(1)(ii)(C)	Max. ..	11,000	1999 .....	25.35	2,788	5,000 .....	5,000	16,000
<b>Paperwork violation</b>								
8 U.S.C. 1324a(e)(5) ..... 8 CFR 274a.10(b)(2) 28 CFR 68.52(c)(5)	Min. ...	110	1999 .....	25.35	28	100 .....	0	110
8 U.S.C. 1324a(e)(5) ..... 8 CFR 274a.10(b)(2)	Max. ..	1,100	1999 .....	25.35	279	1,000 .....	0	1,100
<b>Violation relating to participating employer's failure to notify DHS of final nonconfirmation of employee's employment eligibility [Not previously adjusted]</b>								
8 U.S.C. 1324a (note) ..... 28 CFR 68.52(c)(6)	.....	500	enacted in 1997 ....	29.97	150	10% cap by statute	50	550
8 U.S.C. 1324a (note) ..... 28 CFR 68.52(c)(6)	.....	1,000	enacted in 1997 ....	29.97	300	10% cap by statute	100	1,100
<b>Unlawful employment of aliens, per person, first order</b>								
8 U.S.C. 1324a(e)(4)(A)(i) .... 28 CFR 68.52(c)(1)(i)	Min. ...	275	1999 .....	25.35	70	100 .....	100	375
8 U.S.C. 1324a(e)(4)(A)(i) .... 28 CFR 68.52(c)(1)(i)	Max. ..	2,200	1999 .....	25.35	558	1,000 .....	1,000	3,200
<b>Unlawful employment of aliens, per person, second order</b>								
8 U.S.C. 1324a(e)(4)(A)(ii) .... 28 CFR 68.52(c)(1)(ii)	Min. ...	2,200	1999 .....	25.35	558	1,000 .....	1,000	3,200
8 U.S.C. 1324a(e)(4)(A)(ii) .... 28 CFR 68.52(c)(1)(ii)	Max. ..	5,500	1999 .....	25.35	1,394	1,000 .....	1,000	6,500
<b>Unlawful employment of aliens, per person, subsequent order</b>								
8 U.S.C. 1324a(e)(4)(A)(ii) .... 28 CFR 68.52(c)(1)(ii)	Min. ...	3,300	1999 .....	25.35	836	1,000 .....	1,000	4,300
8 U.S.C. 1324a(e)(4)(A)(iii) .... 28 CFR 68.52(c)(1)(iii)	Max. ..	11,000	1999 .....	25.35	2,788	5,000 .....	5,000	16,000
<b>Violation/prohibition of indemnity bonds</b>								
8 U.S.C. 1324a(g)(2) ..... 8 CFR 274a.8(b) 28 CFR 68.52(c)(7)	.....	1,100	1999 .....	25.35	279	1,000 .....	0	1,100
<b>Document fraud, first order—for violations described in 8 U.S.C. 1324c(a)(1)–(4)</b>								
8 U.S.C. 1324c(d)(3)(A) ..... 8 CFR 270.3(b)(1)(ii)	.....	275	1999 .....	25.35	70	100 .....	100	375

Statute	Min/ Max	Current penalty	Year last adjusted	CPI factor (2008) (percent)	Raw increase (2008)	Rounder	Rounded increase	Adjusted penalty
8 U.S.C. 1324c(d)(3)(A) ..... 8 CFR 270.3(b)(1)(ii)	.....	2,200	1999 .....	25.35	558	1,000 .....	1,000	3,200
<b>Document fraud, subsequent order—for violations described in 8 U.S.C. 1324c(a)(1)–(4)</b>								
8 U.S.C. 1324c(d)(3)(B) ..... 8 CFR 270.3(b)(1)(ii)	.....	2,200	1999 .....	25.35	558	1,000 .....	1,000	3,200
8 U.S.C. 1324c(d)(3)(B) ..... 8 CFR 270.3(b)(1)(ii)	.....	5,500	1999 .....	25.35	1,394	1,000 .....	1,000	6,500
<b>Document fraud, first order—for violations described in 8 U.S.C. 1324c(a)(5)–(6) [Not previously adjusted.]</b>								
8 U.S.C. 1324c(d)(3)(A) ..... 8 CFR 270.3(b)(1)(ii)	.....	250	enacted in 1997 ....	29.97	75	10% cap by statute	25	275
8 U.S.C. 1324c(d)(3)(A) ..... 8 CFR 270.3(b)(1)(ii)	.....	2,000	enacted in 1997 ....	29.97	599	10% cap by statute	200	2,200
<b>Document fraud, subsequent order—for violations described in 8 U.S.C. 1324c(a)(5)–(6) [Not previously adjusted.]</b>								
8 U.S.C. 1324c(d)(3)(B) ..... 8 CFR 270.3(b)(1)(ii)	.....	2,000	enacted in 1997 ....	29.97	599	10% cap by statute	200	2,200
8 U.S.C. 1324c(d)(3)(B) ..... 8 CFR 270.3(b)(1)(ii)	.....	5,000	enacted in 1997 ....	29.97	1,498	10% cap by statute	500	5,500
<b>Unfair immigration-related employment practices, per person, first order</b>								
8 U.S.C. 1324b(g)(2)(B)(iv)(I) 28 CFR 68.52(d)(1)(viii)	Min. ...	275	1999 .....	25.35	70	100 .....	100	375
8 U.S.C. 1324b(g)(2)(B)(iv)(I) 28 CFR 68.52(d)(1)(viii)	Max. ..	2,200	1999 .....	25.35	558	1,000 .....	1,000	3,200
<b>Unfair immigration-related employment practices, per person, second order</b>								
8 U.S.C. 1324b(g)(2)(B)(iv)(II) 28 CFR 68.52(d)(1)(ix)	Min. ...	2,200	1999 .....	25.35	558	1,000 .....	1,000	3,200
8 U.S.C. 1324b(g)(2)(B)(iv)(II) 28 CFR 68.52(d)(1)(ix)	Max. ..	5,500	1999 .....	25.35	1,394	1,000 .....	1,000	6,500
<b>Unfair immigration-related employment practices, per person, subsequent order</b>								
8 U.S.C. 1324b(g)(2)(B)(iv)(III). 28 CFR 68.52(d)(1)(x)	Min. ...	3,300	1999 .....	25.35	836	1,000 .....	1,000	4,300
8 U.S.C. 1324b(g)(2)(B)(iv)(III). 28 CFR 68.52(d)(1)(x)	Max. ..	11,000	1999 .....	25.35	2,788	5,000 .....	5,000	16,000
<b>Unfair immigration-related employment practices, document abuse</b>								
8 U.S.C. 1324b(g)(2)(B)(iv)(IV). 28 CFR 68.52(d)(1)(xii)	Min. ...	110	1999 .....	25.35	28	100 .....	0	110
8 U.S.C. 1324b(g)(2)(B)(iv)(IV). 28 CFR 68.52(d)(1)(xii)	Max. ..	1,100	1999 .....	25.35	279	1,000 .....	0	1,100

Again, these changes are being made pursuant to a detailed statutory formula that does not allow for any discretion or any variances from the results calculated. The higher civil penalty amounts will be effective for violations occurring on or after the effective date of these rules. For violations occurring prior to the effective date of these rules, the civil penalty amounts set forth in

the current regulations will continue to apply.<sup>2</sup>

<sup>2</sup> The current regulations, which implemented the last set of inflation adjustments in 1999, also include the ranges of civil penalty amounts for violations that occurred prior to the adjustment; that is, for violations that occurred prior to September 29, 1999, as well as violations that occurred after the 1999 adjustments were adopted. At this point, the revised regulations being adopted in these final rules do not set forth the civil penalty amounts for violations that occurred prior to the adoption of the adjusted civil penalty schedules in 1999, more than 8 years ago. Title 28 of the United States Code contains a “general” four-year statute

of limitations for civil actions where no precise statute of limitations has been specified. 28 U.S.C. 1658. In any event, the amounts of the civil penalties for violations occurring prior to the adoption of the 1999 regulations have already been codified in the regulations as they were in effect from 1999 until the day before the effective date of these new rules.

These rules fulfill the obligations of the Secretary and the Attorney General under the Adjustment Act, as amended, to adjust for inflation the civil monetary penalties under these three statutory provisions for which both Departments

have implementing responsibilities. In separate rulemaking actions in the future, the Secretary will be adjusting other civil money penalties that are within the responsibility of DHS, and the Attorney General will be adjusting other civil money penalties that are within the responsibility of the Department of Justice. See, e.g., 8 CFR 280.53; 28 CFR part 85.

#### IV. Regulatory Analyses

##### *Administrative Procedure Act, 5 U.S.C. 553*

The Secretary and the Attorney General find that good cause exists under 5 U.S.C. 553(b)(3)(B) for immediate implementation of these final rules without prior notice and comment. These rules are a nondiscretionary ministerial action to conform the amount of civil penalties assessed or enforced by the Department of Homeland Security and the Department of Justice according to the statutorily mandated ranges as adjusted for inflation. The Secretary and the Attorney General are under a legal obligation to adjust these civil penalties for inflation. The calculation of these inflation adjustments follows the specific mathematical formula set forth in section 5 of the Adjustment Act.

##### *Regulatory Flexibility Act*

The Secretary and the Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), have reviewed these rules and by approving them certify that they will not have a significant economic impact on a substantial number of small entities. Only those entities which are determined to have violated Federal law and regulations would be affected by the inflation adjustments made by these rules, pursuant to the statutory requirement under the Adjustment Act, for the penalties imposed under sections 274A, 274B, and 274C of the INA.

##### *Executive Order 12866—Regulatory Planning and Review*

These rules have been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Secretary and the Attorney General have determined that these rules are not “significant regulatory actions” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly these rules have not been reviewed by the Office of Management and Budget.

##### *Executive Order 13132—Federalism*

These rules 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 13132, it is determined that these rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

##### *Executive Order 12988—Civil Justice Reform*

These rules meet the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

##### *Unfunded Mandates Reform Act of 1995*

These rules will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

##### *Small Business Regulatory Enforcement Fairness Act of 1996*

These rules are not major rules as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. These rules will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

##### *Paperwork Reduction Act*

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to these rules because there are no new or revised recordkeeping or reporting requirements.

#### List of Subjects

##### *8 CFR Part 270*

Administrative practice and procedure, Immigration, Law enforcement.

##### *8 CFR Part 274a*

Administrative practice and procedure, Immigration, Law enforcement.

##### *8 CFR Part 280*

Administrative practice and procedure, Immigration, Law enforcement.

##### *8 CFR Part 1274a*

Administrative practice and procedure, Immigration.

##### *28 CFR Part 68*

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil Rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Nationality, Non-discrimination.

#### Department of Homeland Security

##### *8 CFR Chapter I*

■ Accordingly, for the reasons set forth in the preamble and pursuant to my authority as Secretary of Homeland Security, parts 270, 274a, and 280 of chapter I of title 8 of the Code of Federal Regulations are amended as follows:

#### PART 270—PENALTIES FOR DOCUMENT FRAUD

■ 1. The authority citation for part 270 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, and 1324c; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

■ 2. Section 270.3 is amended by revising paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B), and adding paragraphs (b)(1)(ii)(C) and (b)(1)(ii)(D), to read as follows:

##### **§ 270.3 Penalties.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

##### *(A) First offense under section*

*274C(a)(1) through (a)(4).* Not less than \$275 and not exceeding \$2,200 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act before March 27, 2008, and not less than \$375 and not exceeding \$3,200 for each fraudulent document or each proscribed activity on or after March 27, 2008.

##### *(B) First offense under section*

*274C(a)(5) or (a)(6).* Not less than \$250 and not exceeding \$2,000 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act before March 27, 2008, and not less than \$275 and not exceeding \$2,200, for each fraudulent document or each proscribed activity on or after March 27, 2008.

*(C) Subsequent offenses under section 274C(a)(1) through (a)(4).* Not less than \$2,200 and not more than \$5,500 for

each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act before March 27, 2008, and not less than \$3,200 and not exceeding \$6,500, for each fraudulent document or each proscribed activity occurring on or after March 27, 2008.

(D) *Subsequent offenses under section 274C(a)(5) or (a)(6)*. Not less than \$2,000 and not more than \$5,000 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act before March 27, 2008, and not less than \$2,200 and not exceeding \$5,500, for each fraudulent document or each proscribed activity occurring on or after March 27, 2008.

\* \* \* \* \*

#### **PART 274a—CONTROL OF EMPLOYMENT OF ALIENS**

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

**Authority:** 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

■ 4. Section 274a.10 is amended by revising paragraphs (b)(1)(ii)(A), (b)(1)(ii)(B), and (b)(1)(ii)(C) to read as follows:

##### **§ 274a.10 Penalties.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(A) First offense—not less than \$275 and not more than \$2,200 for each unauthorized alien with respect to whom the offense occurred before March 27, 2008, and not less than \$375 and not exceeding \$3,200, for each unauthorized alien with respect to whom the offense occurred occurring on or after March 27, 2008;

(B) Second offense—not less than \$2,200 and not more than \$5,500 for each unauthorized alien with respect to whom the second offense occurred before March 27, 2008, and not less than \$3,200 and not more than \$6,500, for each unauthorized alien with respect to whom the second offense occurred on or after March 27, 2008; or

(C) More than two offenses—not less than \$3,300 and not more than \$11,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred before March 27, 2008 and not less than \$4,300 and not exceeding \$16,000, for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after March 27, 2008; and

\* \* \* \* \*

#### **PART 280—IMPOSITION AND COLLECTION OF FINES**

■ 5. The authority citation for part 280 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, and 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221–223, 226, 227, 230; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

##### **§ 280.53 [Amended].**

■ 6. Section 280.53 is amended by removing and reserving paragraph (d)(3).

#### **Department of Justice**

■ Accordingly, for the reasons set forth in the preamble and pursuant to my authority as Attorney General, part 1274a of chapter V of title 8 of the Code of Federal Regulations and part 68 of chapter I of title 28 of the Code of Federal Regulations are amended as follows:

#### **8 CFR Chapter V**

#### **PART 1274a—CONTROL OF EMPLOYMENT OF ALIENS**

■ 1. The authority citation for part 1274a is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1324a.

■ 2. Section 1274a.10 is revised to read as follows:

##### **§ 1274a.10 Penalties.**

The regulations pertaining to the imposition of penalties for violations of the provisions of section 274A of the Immigration and Nationality Act are contained in 8 CFR part 274a and 28 CFR part 68.

#### **28 CFR Chapter I**

#### **PART 68—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES IN CASES INVOLVING ALLEGATIONS OF UNLAWFUL EMPLOYMENT OF ALIENS, UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES, AND DOCUMENT FRAUD**

■ 3. The authority citation is revised to read as follows:

**Authority:** 5 U.S.C. 301, 554; 8 U.S.C. 1103, 1324a, 1324b, and 1324c; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

■ 4. In § 68.52, revise paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), (c)(6), (d)(1)(viii), (d)(1)(ix), (d)(1)(x), (e)(1)(i), and (e)(1)(ii) and add paragraphs (e)(1)(iii) and (iv) to read as follows:

#### **§ 68.52 Final order of the Administrative Law Judge.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Not less than \$275 and not more than \$2,200 for each unauthorized alien with respect to whom there was a violation of either such paragraph occurring before March 27, 2008; not less than \$375 and not more than \$3,200 for each unauthorized alien with respect to whom there was a violation of either such paragraph occurring on or after March 27, 2008;

(ii) In the case of a person or entity previously subject to one final order under this paragraph (c)(1), not less than \$2,200 and not more than \$5,500 for each unauthorized alien with respect to whom there was a violation of either such paragraph occurring before March 27, 2008, and not less than \$3,200 and not more than \$6,500 for each unauthorized alien with respect to whom there was a violation of either such paragraph occurring on or after March 27, 2008; or

(iii) In the case of a person or entity previously subject to more than one final order under paragraph (c)(1) of this section, not less than \$3,300 and not more than \$11,000 for each unauthorized alien with respect to whom there was a violation of each such paragraph occurring before March 27, 2008, and not less than \$4,300 and not more than \$16,000 for each unauthorized alien with respect to whom there was a violation of each such paragraph occurring on or after March 27, 2008.

\* \* \* \* \*

(6) With respect to a violation of section 274A(a)(1)(B) of the INA where a person or entity participating in a pilot program has failed to provide notice of final nonconfirmation of employment eligibility of an individual to the Attorney General as required by Pub. L. 104–208, Div. C, section 403(a)(4)(C), 110 Stat. 3009, 3009–661 (1996) (codified at 8 U.S.C. 1324a (note)), the final order under this paragraph shall require the person or entity to pay a civil penalty in an amount of not less than \$500 and not more than \$1,000 for each individual with respect to whom such violation occurred before March 27, 2008, and not less than \$550 and not more than \$1,100 for each individual with respect to whom such violation occurred on or after March 27, 2008.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

\* \* \* \* \*

(viii) Except as provided in paragraph (d)(1)(xii) of this section, to pay a civil penalty of not less than \$275 and not more than \$2,200 for each individual discriminated against before March 27, 2008, and not less than \$375 and not more than \$3,200 for each individual discriminated against on or after March 27, 2008;

(ix) Except as provided in paragraph (d)(1)(xii) of this section, in the case of a person or entity previously subject to a single final order under section 274B(g)(2) of the INA, to pay a civil penalty of not less than \$2,200 and not more than \$5,500 for each individual discriminated against before March 27, 2008, and not less than \$3,200 and not more than \$6,500 for each individual discriminated against on or after March 27, 2008;

(x) Except as provided in paragraph (d)(1)(xii) of this section, in the case of a person or entity previously subject to more than one final order under section 274B(g)(2) of the INA, to pay a civil penalty of not less than \$3,300 and not more than \$11,000 for each individual discriminated against before March 27, 2008, and not less than \$4,300 and not more than \$16,000 for each individual discriminated against on or after March 27, 2008;

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(i) Not less than \$275 and not more than \$2,200 for each document that is the subject of a violation under section 274C(a)(1) through (4) of the INA before March 27, 2008, and not less than \$375 and not more than \$3,200 for each document that is the subject of a violation under section 274C(a)(1) through (4) of the INA on or after March 27, 2008;

(ii) Not less than \$250 and not more than \$2,000 for each document that is the subject of a violation under section 274C(a)(5) or (6) of the INA before March 27, 2008, and not less than \$275 and not more than \$2,200 for each document that is the subject of a violation under section 274C(a)(5) or (6) of the INA on or after March 27, 2008;

(iii) In the case of a respondent previously subject to one or more final orders under section 274C(d)(3) of the INA, not less than \$2,200 and not more than \$5,500 for each document that is the subject of a violation under section 274C(a)(1) through (4) of the INA before March 27, 2008, and not less than \$3,200 and not more than \$6,500 for each document that is the subject of a violation under section 274C(a)(1) through (4) of the INA on or after March 27, 2008; or

(iv) In the case of a respondent previously subject to one or more final orders under section 274C(d)(3) of the INA, not less than \$2,000 and not more than \$5,000 for each document that is the subject of a violation under section 274C(a)(5) or (6) of the INA before March 27, 2008, and not less than \$2,200 and not more than \$5,500 for each document that is the subject of a violation under section 274C(a)(5) or (6) of the INA on or after March 27, 2008.

\* \* \* \* \*

Dated: January 23, 2008.

**Michael B. Mukasey,**

*Attorney General, Department of Justice.*

Dated: February 11, 2008.

**Michael Chertoff,**

*Secretary, Department of Homeland Security.*

[FR Doc. E8-3320 Filed 2-25-08; 8:45 am]

**BILLING CODE 4410-10-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 78

[Docket No. APHIS-2006-0183]

RIN 0579-AC21

### Brucellosis in Cattle; Research Facilities

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending brucellosis regulations by providing an exception in the definition of *herd* for animals held within a federally approved brucellosis research facility, in order to facilitate research on brucellosis-exposed or infected animals in those facilities. Prior to this rule, such animals constituted a herd, and the presence of brucellosis-positive herds within a State can adversely affect that State's brucellosis classification. By providing an exception for brucellosis-exposed or infected animals held within federally approved research facilities, this rule will enable initiation of necessary brucellosis research in Class Free States.

**DATES:** *Effective Date:* March 27, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dr. Debra Donch, National Brucellosis Epidemiologist, National Center for Animal Health Programs, VS, APHIS, 4700 River Road, Unit 136, Riverdale, MD 20737-1231; (301) 734-5952.

**SUPPLEMENTARY INFORMATION:**

## Background

Brucellosis is a contagious disease affecting animals and humans and caused by bacteria of the genus *Brucella*. The brucellosis regulations in 9 CFR part 78 (referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class A and Class B fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

In § 78.1, the regulations require that, to achieve and retain Class Free status, a State or area must have no cattle herds under quarantine. In the same section, *herd* is defined, in part, as "all animals under common ownership or supervision that are grouped on one or more parts of any single premises (lot, farm, or ranch)." Such a definition effectively precludes brucellosis research in Class Free States or areas, since infected animals may be used for such research, and the animals held in a research facility would be considered a herd under that definition of the term. Since expertise and infrastructure that could potentially benefit this country's brucellosis eradication efforts can be found in many Class Free States, this definition may impede the progress of brucellosis research and delay the eradication of the disease within the United States.

On December 13, 2006, we published in the **Federal Register** (71 FR 74826-74827) a proposal<sup>1</sup> to amend the definition of *herd* to create an exception for brucellosis-exposed or infected animals held within federally approved research facilities, so that such animals would no longer be considered a herd. We proposed this change to allow States to undertake brucellosis research

<sup>1</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=APHIS-2006-0183>.