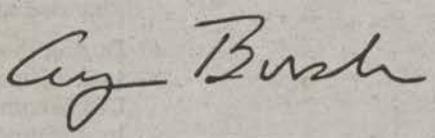
directly or with the support of other international organizations such as NATO and the Western European Union (WEU).

Today the Euro-Atlantic community continues to be challenged by the legacy of the Cold War. The peoples of Europe's emerging states face many difficulties as they strive to overcome deeply rooted political and economic problems imposed by decades of Soviet repression and communist rule. Yet, during this period of great change, the principles set forth in the 1975 Helsinki Final Act and reaffirmed at follow-on meetings of the CSCE continue to offer a steady guide to peaceful, cooperative relations among states and to the just and democratic conduct of governments.

In recognition of the contributions of the CSCE toward the expansion of human rights and toward the development of a strong Euro-Atlantic partnership for freedom, the Congress, by Senate Joint Resolution 310, has designated August 1, 1992, as "Helsinki Human Rights Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim August 1, 1992, as Helsinki Human Rights Day and reaffirm the United States commitment to upholding human dignity and freedom—principles that are enshrined in the Helsinki Final Act. As we Americans observe this day with appropriate programs and activities, let us remember all those courageous individuals and groups of individuals who have made tremendous sacrifices to secure the freedoms that we enjoy. The God-given and inalienable rights affirmed in our Declaration of Independence and guaranteed by our Constitution are rights that many people in the world still struggle to obtain. Building on the foundation that was laid at Helsinki 17 years ago and that was fortified there last month, let us recommit ourselves to making peace and liberty the common heritage of all.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of July, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.



[FR Doc. 92-18338
Filed 7-29-92; 4:04 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 57, No. 148
Friday, July 31, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 204 and 245

[INS No. 1450-91]

RIN 1115-AD05

Special Immigrant Status; Aliens Who Have Served Honorably (or Are Enlisted To Serve) in the Armed Forces of the United States for at Least 12 Years

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The purpose of the "Armed Forces Immigration Adjustment Act of 1991" is to provide special immigrant status to a limited number of foreign nationals who have served honorably on active duty status in the Armed Forces of the United States. Congress enacted this legislation to provide eligible enlistees/veterans (and their spouses and children) with an opportunity to become lawful permanent resident aliens of the United States and thus become immediately eligible to apply for Naturalization as United States citizens. The Act contains its own numerical limitation scheme for these special immigrants, and adds a new subsection to section 245 of the Immigration and Nationality Act to accommodate their adjustment of status to that of aliens lawfully admitted for permanent residence. This regulation is necessary to recognize the patriotism and valor of aliens who, by virtue of their military service, have clearly demonstrated a commitment to support and defend the Constitution and laws of the United States.

DATES: This interim rule is effective on July 31, 1992. Written comments must be received on or before August 31, 1992.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Divisions, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference INS number 1450-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Susan A. Dugas, Senior Immigration Examiner, Adjudications Branch, Immigration and Naturalization Service, 425 I Street, NW.; room 7223, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: Public Law 102-110, enacted on October 1, 1991, amends the Immigration and Nationality Act to provide for special immigrant status for certain aliens who, pursuant to a bilateral international agreement or treaty, have served honorably (or are enlisted to serve) in the Armed Forces of the United States after October 15, 1978, and who apply for such status. This law further requires that such service be after lawful enlistment outside the United States and be for a period of twelve years or, alternatively, for six years if the individual has reenlisted for an additional six years. Nationals of the Philippines, the Federated States of Micronesia, and the Republic of the Marshall Islands are allowed to enlist in the United States Armed Forces each year, however, in the case of the latter two independent states, few of their nationals will have enlisted outside the United States, while most natives of the Philippines have to date enlisted in the Philippines. With the exception of wartime service under certain conditions, previous United States immigration law provided no special benefits for foreign nationals who enlisted in the Armed Forces of the United States. As a result, these individuals could not become United States citizens, were denied entry into positions that require access to classified information, and were denied entry into military officer programs.

The desire of Congress to recognize United States military service members has been historically demonstrated by the provisions of special naturalization benefits based upon military service. The recent implementation of Public Law 101-249, Posthumous Citizenship for Active Duty Service Act of 1990, clearly demonstrates the continuing desire of Congress to provide special recognition and benefits to aliens who serve or have served in the Armed Forces of the United States.

The grant of special immigrant classification pursuant to Public Law 102-110 allows the intended beneficiaries of section 101(a)(27)(K) of the Immigration and Nationality Act (the Act) to become eligible for an immigrant visa or adjustment of status to that of aliens lawfully admitted for residence. Generally, an applicant for such benefits must have served honorably for the required twelve years of active military duty and at least some part of that service must have occurred after October 15, 1978. However, an alien on active duty status at the time of seeking special immigrant status under section 101(a)(27)(K) of the Act, and who has served a total of six years of active duty, needs only to establish, to the satisfaction of the Immigration and Naturalization Service (Service), that he or she has reenlisted to incur a total active duty service obligation of at least twelve years. Public Law 102-110 also requires that the executive department of the Armed Forces under which the immigrant serves or served must have recommended the granting of special immigrant status to the immigrant.

This rule includes application procedures for the special immigrant including submission of evidence of past service or reenlistment, and the written recommendation of special immigrant status by the executive department of the military, to be submitted to the Service with Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. In order to make filing for benefits under section 101(a)(27)(K) of the Act as efficient and expeditious as possible, Service procedures will require that the alien obtain the certification of service and recommendation for special immigrant status directly from the executive department under which he or she served or is serving, before filing Form I-360 with the Service.

Allocation of Visa Numbers

Once an alien is granted special immigrant status under section 101(a)(27)(K) of the Act, his or her visa issuance is charged to the allocation of

employment-based fourth preference visas provided by section 203(b)(4) of the Act for the following year.

Numerical Limitations

Public Law 102–110 contains its own unique numerical limitation scheme for this category of special immigrant and requires that existing immigration ceilings for a given year be reduced by one third of the number of aliens granted special immigrant status under Public Law 102–110 during the previous year. The statute limits the number of military special immigrants granted visas or adjustment to permanent residency to a total of 2,000 per year for natives of countries which have a numerical limitation treaty or agreement with the United States allowing for enlistment of their nonresident nationals into the Armed Forces of the United States and to a total of 100 annually for countries without such a treaty. These limits do not apply to spouses and children of these special immigrants.

Exemptions From Certain Numerical Limitations

Persons who qualify for special immigrant status under section 101(a)(27)(K) of the Act as of the date of enactment of Public Law 102–110 (October 1, 1991) are exempt from separate numerical limitations of 2,000 (for countries with a treaty, namely, the Philippines) and 100 in all other cases. Persons not eligible as of the date of enactment are charged to both the country and the special immigrant numerical limits by reducing the numbers of employment-based visas and per country levels for a given year for natives of the foreign state. For countries "at ceiling", there are special rules for reductions in the number of employment-based immigrant visas for natives of the foreign state.

Public Law 102–110 specifically provides that spouses and children of eligible applicants be accorded special immigrant classification if they are "accompanying or following to join" special immigrants. This rule sets forth specific procedures for derivative beneficiaries (eligible spouses and children) under section 101(a)(27)(K) of the Act to apply for lawful permanent resident status, whether they are in the United States or outside the United States.

Pursuant to current immigration law, members of the Armed Forces of the United States who are travelling under official orders are not subject to inspection when entering the United States. This creates a problem for anyone seeking to adjust status to that of a lawful permanent resident under section 245 of the Act (which requires that the adjustment applicant must have been inspected and admitted, or paroled). In order to facilitate adjustment of status for Armed Forces special immigrants, Congress amended section 245 of the Act to provide that a special immigrant described in section 101(a)(27)(K) "shall be deemed, for the purposes of subsection (a), to have been paroled into the United States". Furthermore, although section 245(c) generally prohibits the adjustment of status of aliens who have failed to continuously maintain lawful nonimmigrant status or who have been employed without authorization in the United States, Armed Forces special immigrants (and their spouses and children) are exempt from this provision. Once the spouse or child of an Armed Forces special immigrant is granted special immigrant classification, and desires to adjust status in the United States, his or her application for adjustment will be adjudicated in accordance with the provisions of 8 CFR part 245 and new subsection 245(g) of the Act.

This rule also provides for automatic revocation of a petition to classify special immigrant classification under the general provisions of section 205 of the Act. Such revocation will occur if the special immigrant ceases to be a qualified enlistee by failing to complete the required active duty service obligation for reasons other than an honorable discharge, prior to entering the United States with an immigrant visa or to approval of an application for adjustment of status to that of a lawful permanent resident. This provision is necessary in order to ensure that the alien continues to meet the qualifications set forth in the Act at the time the Armed Forces special immigrant is admitted to the United States for lawful permanent residence. If the Service is made aware by formal notification from the appropriate executive department that a section 101(a)(27)(K) special immigrant who has already been granted permanent residence fails to complete the total active duty service obligation for reasons other than an honorable discharge, the alien may become subject to the deportation provisions of section 241 of the Act, provided the alien is one of the classes of deportable aliens specified in section 241 of the Act. The Service may also pursue rescission proceedings under section 246 of the Act if the military special immigrant was not in fact eligible for adjustment of status.

If a special immigrant who obtains benefits under section 101(a)(27)(K) of the Act is granted status as an alien lawfully admitted for permanent residence, and meets the requirements of section 328 or 329 of the Act, he or she may file immediately for naturalization. The Service anticipates that the majority of section 101(a)(27)(K) special immigrants who obtain permanent residence will benefit by becoming eligible to apply for naturalization immediately. This rule includes instructions for the Service officer who conducts the adjustment of status interview to advise an applicant of his or her eligibility for immediate naturalization, if *prima facie* eligibility under section 328 or 329 of the Act is demonstrated.

An applicant may appeal the district director's decision to deny a petition for special immigrant status to the Associate Commissioner for Examinations in accordance with 8 CFR part 103, which this rule revises accordingly.

The Service's implementation of this rule as an interim rule, with a provision for a thirty-day period to receive public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553 (d)(3) and (b)(B). The reasons and the necessity for immediate implementation of this interim rule are as follows: The "Armed Forces Immigration Adjustment Act of 1991", Public Law 102–110, created a new special immigrant classification for aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years. The effect of this rule is to extend special immigrant status to a number of aliens who served honorably (or are enlisted to serve) on active duty with the United States Armed Forces. It does not restrict or remove any existing benefits. It is necessary to proceed with interim regulations, rather than proposed regulations, in order to allow the intended beneficiaries to apply for lawful permanent residence as soon as possible. Public Law 102–110 was enacted October 1, 1991 and became effective 60 days from enactment.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been cleared by the

Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 245

Administrative practice and procedure, Aliens, Employment, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.1 [Amended]

2. In § 103.1, paragraph (f)(2)(xxxv) is amended by removing the word "and" immediately after the ";".

3. In § 103.1, paragraph (f)(2)(xxxvi) is amended by removing the "." at the end of the sentence and adding in its place "; and".

4. In § 103.1, a new paragraph (f)(2)(xxxvii) is added to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(2) * * *

(xxxvii) Petition for Armed Forces Special Immigrant under § 204.9 of this chapter.

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

5. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

6. A new § 204.9 is added to read as follows:

§ 204.9 Special immigrant status for certain aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years.

(a) *Petition for Armed Forces special immigrant.* An alien may not be classified as an Armed Forces special immigrant unless the alien is the beneficiary of an approved petition to classify such an alien as a special immigrant under section 101(a)(27)(K) of the Act. The petition must be filed on Form I–360, Petition for Amerasian, Widow or Special Immigrant.

(1) *Who may file.* An alien Armed Forces enlistee or veteran may file the petition for Armed Forces special immigrant status in his or her own behalf. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

(2) *Where to file.* The petition must be filed with the Service office having jurisdiction over the place of the alien's current or intended place of residence in the United States, or with the overseas Service office having jurisdiction over the alien's residence abroad.

(b) *Eligibility.* An alien is eligible for classification as a special immigrant under section 101(a)(27)(K) of the Act if:

(1) The alien has served honorably on active duty in the Armed Forces of the United States after October 15, 1978;

(2) The alien's original lawful enlistment was outside the United States (under a treaty or agreement in effect October 1, 1991) for a period or periods aggregating—

(i) Twelve years, and who, if separated from such service, was never separated except under honorable conditions; or

(ii) Six years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this rule and who has reenlisted to incur a total active duty service obligation of at least 12 years;

(3) The alien is a national of an independent state which maintains a treaty or agreement allowing nationals of that state to enlist in the United States Armed Forces each year; and

(4) The executive department under which the alien has served or is serving has recommended the granting of special immigrant status to the immigrant.

(c) *Derivative beneficiaries.* A spouse or child accompanying or following to join a principal immigrant who has requested benefits under this section may be accorded the same special immigrant classification as the principal alien. This may occur whether or not the spouse or child is named in the petition and without the approval of a separate petition, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the principal immigrant.

(1) The relationship of spouse and child as defined in section 101(b)(1) of the Act must have existed at the time the principal alien's special immigrant application under section 101(a)(27)(K) of the Act was approved. The spouse or child of an immigrant classified as a section 103(a)(27)(K) special immigrant is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(2) When a spouse or child of an alien granted special immigrant status under section 101(a)(27)(K) of the Act is in the United States but was not included in the principal alien's application, the spouse or child shall file Form I–485, Application to Register Permanent Residence or Adjust Status, with the director having jurisdiction over his or her place of residence, regardless of the status of that spouse or child in the United States. The application must be supported by evidence that the principal alien has been granted special immigrant status under section 101(a)(27)(K) of the Act.

(3) When a spouse or child of an alien granted special immigrant status under section 101(a)(27)(K) of the Act is outside the United States, the principal alien may file Form I–824, Application for Action on an Approved Application or Petition, with the office which approved the original petition.

(4) *Revocation of derivative status.* The termination of special immigrant status for a person who was the principal applicant shall result in termination of the special immigrant status of a spouse or child whose status was based on the special immigrant application of the principal.

(d) *Documents which must be submitted in support of the petition.*

(1) A petition to classify an immigrant as a special immigrant under section 101(a)(27)(K) of the Act must be accompanied by the following:

(i) Certified proof of reenlistment (after 6 years of active duty service), or certification of past active duty status of 12 years, issued by the authorizing official of the executive department in which the applicant serves or has served, which certifies that the applicant has the required honorable active duty

service and commitment. The authorizing official need not be at a level above the "local command". The certification must be submitted with Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant; and

(ii) Birth certificate of the applicant establishing that the applicant is a national of an independent state which maintains a treaty or agreement allowing nationals of that state to enlist in the United States Armed Forces each year.

(2) Any documents submitted in support of the petition must meet the evidentiary requirements as set forth in 8 CFR part 103.

(3) Submission of an original Form DD–214, Certificate of Release or Discharge from Active Duty; Form G–325b, Biographic Information; and Form N–426, Request for Certification of Military or Naval Service, is not required for approval of a petition for special immigrant status.

(e) *Decision.* The petitioner will be notified of the director's decision and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate Commissioner for Examinations in accordance with 8 CFR part 103.

(f) *Revocation under section 205 of the Act.* An alien who has been granted special immigrant classification under section 101(a)(27)(K) of the Act must meet the qualifications set forth in the Act at the time he or she is admitted to the United States for lawful permanent residence. If an Armed Forces special immigrant ceases to be a qualified enlistee by failing to complete the required active duty service obligation for reasons other than an honorable discharge prior to entering the United States with an immigrant visa or approval of an application for adjustment of status to that of an alien lawfully admitted for permanent residence, the petition designating his or her classification as a special immigrant is revoked automatically under the general provisions of section 205 of the Act. The Service shall obtain a current Form DD–214, Certificate of Release or Discharge from Active Duty, from the appropriate executive department for verification of the alien's failure to maintain eligibility for the classification under section 101(a)(27)(K) of the Act.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

7. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1154, 1182, 1186a, 1255, and 1257; 8 CFR part 2.

8. A new § 245.8 is added to read as follows:

§ 245.8 Adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act.

(a) *Application.* Each person applying for adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act must file a Form I–485, Application to Register Permanent Residence or Adjust Status, with the director having jurisdiction over the applicant's place of residence. Benefits under this section are limited to aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years, and their spouses and children. For purposes of this section, special immigrants described in section 101(a)(27)(K) of the Act and his or her spouse and children shall be deemed to have been paroled into the United States pursuant to section 245(g) of the Act. Each applicant must file a separate application with the appropriate fee.

(b) *Eligibility.* The benefits of this section shall apply only to an alien described in section 101(a)(27)(K) of the Act who applies for such adjustment. The accompanying spouse or child of an applicant for adjustment of status who benefits from Public Law 102–110 may also apply for adjustment of status. The provisions of section 245(c) of the Act do not apply to the principal Armed Forces special immigrant or to his or her spouse or child.

(c) *Interview of the applicant.* Upon completion of the adjustment of status interview for special immigrants under section 101(a)(27)(K) of the Act, the director shall make every effort to determine *prima facie* eligibility for naturalization benefits, if the applicant is to be granted status as an alien lawfully admitted for permanent residence. If the director determines that the applicant is immediately eligible for naturalization under section 328 or 329 of the Act, the director shall advise the applicant that he or she is eligible to apply for naturalization on Form N–400, Application to File Petition for Naturalization. If the applicant wishes to apply for naturalization, the director shall instruct the applicant concerning the requirements for naturalization and provide him or her with the necessary forms.

(d) *Deportation provisions of section 241.* If the Service is made aware by notification from the appropriate executive department or by any other means that a section 101(a)(27)(K) special immigrant who has already been granted permanent residence fails to complete his or her total active duty service obligation for reasons other than an honorable discharge, the alien may become subject to the deportation provisions of section 241 of the Act, provided the alien is in one or more of the classes of deportable aliens specified in section 241 of the Act. The Service shall obtain a current Form DD–214, Certificate of Release or Discharge from Active Duty, from the appropriate executive department for verification of the alien's failure to maintain eligibility.

(e) *Rescission proceedings under section 246 of the Act.* If the Service determines that a military special immigrant under section 101(a)(27)(K) of the Act was not in fact eligible for adjustment of status, the Service may pursue rescission proceedings under section 246 of the Act.

Dated: June 17, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92–18080 Filed 7–30–92; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Part 270

[INS No. 1408–92]

RIN 1115–AC36

Penalties for Document Fraud

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule establishes within title 8 of the Code of Federal Regulations a new part 270, penalties for civil document fraud. Section 544 of the Immigration Act of 1990, Public Law 101–649, 104 Stat. 4978 (November 29, 1990), provides for civil penalties for certain specified acts involving document fraud. This regulation establishes the procedures to be followed in the investigation of civil document fraud violations which will enable the Immigration and Naturalization Service to impose civil monetary penalties against those persons or entities involved in immigration related document fraud.

EFFECTIVE DATE: July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Jill Arndt, Senior Special Agent, Investigations Division, Immigration and Naturalization Service, 425 I Street, NW., room 7025, Washington, DC 20536, telephone 202–514–3093.

SUPPLEMENTARY INFORMATION: This rule amends title 8 of the Code of Federal

Regulations by adding a new part 270 relating to civil document fraud. This new part was necessitated by section 544 of the Immigration Act of 1990 (IMMACT), Public Law 101–649 (November 29, 1990), which amended the Immigration and Nationality Act (the Act) by adding section 274C, civil penalties for document fraud. On May 31, 1991, the Immigration and Naturalization Service (INS or the Service) published at 56 FR 24758 a proposed rule governing these provisions. As a result of the public comments received in response to the proposed rule, several changes have been incorporated into this final rule. What follows is an analysis of those sections of the proposed rule upon which comments were made. With the exception of the minor printing and typographical errors, the remaining sections of the proposed rule have been incorporated into the final regulation.

Section 270.1 defines the term "document." Twelve commenters suggested that the definition was too broad and beyond the scope of the statute. Commenters suggested that the definition of document be restricted to documentation used in satisfying the employment verification requirements of the Act.

Section 274C(a) of the Act provides that it is unlawful for any person or entity knowingly: (1) To forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of this Act; (2) to use, attempt to use, possess, obtain, accept, receive, or provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act; or (3) to use, attempt to use, or to provide, or attempt to provide any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of satisfying a requirement of this Act (emphasis supplied). The term "this Act" is defined in section 1 of IMMACT. Generally, when a provision of IMMACT is incorporated into the Immigration and Nationality Act of 1952, as amended, "this Act" refers to the Immigration and Nationality Act (title 8, United States Code) in its entirety. The preamble provides:

> Except as specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to or repeal of a provision, the reference shall be deemed to be made to the Immigration and Nationality Act.

This language makes it clear that new provisions such as section 274C should be construed, in the absence of explicit evidence to the contrary, as operating upon the material provisions of the entire Act. Thus section 274C is applicable not only to document fraud in the employment verification system, such as fraudulent entries on Forms I–9 (Employment Eligibility Verification), but also to such document fraud as may be material to any other provision of the Act. Moreover, section 274C(a) (4) makes it unlawful "to accept, receive, or to provide any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of complying with section 274A(b)" (emphasis supplied). This is the only one of the four prohibited activities specified in section 274C which relates exclusively to section 274A. If Congress had intended to penalize only document fraud activities relating solely to the employer sanctions provisions of the Act, all four of the activities enumerated under section 274C would have been specifically directed to section 274A of the Act. Therefore, the Service has retained the definition in the proposed rule.

Section 270.2, paragraph (b) provides, in part, that the Service may initiate an investigation upon receipt of a complaint from a third party. Eleven commenters found this provision to be unclear. Commenters correctly assumed that a "third party" could be the same as "any person or entity having knowledge of a violation or a potential violation," as stated in § 270.2 paragraph (a). The rule has been slightly revised to eliminate any confusion about the relationship between paragraphs (a) and (b).

Many commenters suggested that a Notice of Intent to Fine should not be issued if it is based solely on hearsay in the form of Forms I–213 (Record of Deportable Alien), reports from INS informants, and other INS internal reports. Hearsay is admissible in administrative proceedings, and in appropriate circumstances, may be sufficient to support a finding of a violation. See, *e.g., United States* v. *Mester Mfg. Co.*, 1 OCAHO 18 (6/17/88), *aff'd*, 879 F.2d 561 (9th Cir. 1989). Therefore, the Service maintains the language of the proposed rule.

Section 270.2, paragraph (c) provides that prior to the initiation of proceedings before an administrative law judge, the Service may issue subpoenas. Twelve commenters suggested that the INS does not have statutory authority to issue subpoenas in administrative section 274C investigations. In section 274C(d)(1)(B) of the Act, Congress gave individual subpoena authority to administrative law judges. The commenters claimed that since the Service was not specified under section 274C(d)(l)(B), the INS does not have the authority to issue subpoenas. INS subpoena authority contained in section 235(a) of the Act grants the Attorney General, any immigration officer, or a special inquiry officer the authority to issue subpoenas for the production of books, papers, and documents relating to any matter which is material and relevant to the enforcement of the Act. Ten commenters cited *United States* v. *Ramirez*, 905 F.2d 97 (5th Cir. 1990), and *United States* v. *Minker*, 350 U.S. 179 (1956), as a basis for limiting the INS's subpoena power under section 235(a). In *Minker*, however, the Supreme Court held only that an immigration officer may not subpoena a naturalized citizen to testify in an administrative proceeding if the purpose of such proceeding is to institute denaturalization proceedings (which requires a judicial hearing in a Federal District Court) against the citizen. This decision did not in any way limit the Service's subpoena power as it relates to other sections of the Act. See *Minker*, 350 U.S. at 185. *Ramirez*, does not in any way limit the INS's subpoena power. In fact, the question whether the INS had the authority to issue administrative subpoenas in the first instance was not raised by the parties. The district court *Ramirez* decision was reversed on jurisdictional grounds. The circuit court of appeals decision makes it clear that a respondent who receives an INS-issued administrative subpoena cannot seek judicial review of that subpoena until the Service seeks judicial enforcement.

Although no reported case has directly addressed the Service's authority to issue an administrative subpoena to enforce section 274A of the Act, numerous unpublished decisions from federal courts have uniformly upheld this power. Once a complaint in an employer sanctions case is filed with the Office of the Chief Administrative Hearing Officer, it is the practice of the Service to obtain subpoenas from the presiding administrative law judge. The Service intends to follow the same practice in civil document fraud cases. Therefore, the Service retains the language of the proposed rule.

Section 270.2, paragraph (e) delineates the contents of a Notice of Intent to Fine. Thirteen commenters suggested that the Notice of Intent to Fine does not provide the respondent with an adequate explanation of the basis for the charge. The Notice of Intent to Fine provides the respondent with a detailed list of the factual allegations which serve as the basis for the violations charged by the Service, and with citations to the statutory provision(s)

alleged to have been violated. The Service therefore retains the language of the proposed rule.

Eleven commenters suggested that the language in § 270.2, paragraph (e)(1) referring to "the penalty that will be imposed" should be changed to read "the monetary amount of the penalty the Service intends to impose." Commenters maintained that the phrase "will be imposed" implies that a final decision has been made. The Service agrees with the commenters. Therefore, the language in § 270.2(e)(1) has been modified in accordance with the above-stated suggestion.

Twelve commenters suggested that because of adverse consequences that might result from the issuance of a final order under section 274C, the Notice of Intent to Fine should include a statement advising alien respondents of the consequences of such final order. The Notice of Intent to Fine is designed to initiate both section 274A and section 274C proceedings. A Notice of Intent to Fine containing an advisal to an alien respondent that a final order issued under section 274C will result in exclusion and/or deportation proceedings pursuant to the Act would be confusing to non-alien respondents. Service officers will be required to provide all respondents with Form I–822 (Notice of Rights and Waiver of Right to Contest a Notice of Intent to Fine). This form notifies respondents of their rights and of the consequences of a final order issued under section 274C of the Act. Therefore, the Service retains the language of the proposed rule.

In the proposed rule, § 270.2, paragraph (e) stated that the Notice of Intent to Fine will include an advisal to the respondent that the person or entity has the right to request a hearing before an administrative law judge, and that such a request must be received by the Service within 30 days from the service of the Notice of Intent to Fine. Twelve commenters suggested that this 30-day period be lengthened. These commenters alleged that many respondents may require additional time to obtain legal advice or counsel. Congress felt that 30 days would be a sufficient amount of time in which to request a hearing under ordinary circumstances, and the Service agrees that it should not take a respondent more than 30 days to request a hearing under normal circumstances. However, in order to address the possibility of extraordinary or compelling circumstances, the final rule will extend the 30-day time period to 60 days, and will further provide that a postmark date within the 60-day time period will constitute a timely request for hearing. Section 270.2 has been changed to reflect these changes.

Twelve commenters suggested that the Notice of Intent to Fine should be sent to the respondent by certified mail. The INS agrees with the commenters, and the service of a Notice of Intent to Fine will be accomplished by personal service pursuant to 8 CFR 103.5a(a)(2). This section defines personal service as some form of hand delivery of the document or mailing the document by certified or registered mail, return receipt requested to the person's last known address.

Twelve commenters suggested that § 270.2, paragraph (e)(2)(iii) and § 270.2, paragraph (f) should provide a respondent with an opportunity (based on good cause) to file a request for a hearing after the 30-day time period has otherwise expired. Commenters included postal delays and delays in the respondent's ability to obtain a translation of the document as examples of good cause for a delay. The final rule accommodates these commenters' suggestions by extending the time period in which to request a hearing from 30 days to 60 days. Furthermore, the final rule deems a request for hearing postmarked within the 60 days as timely. Sections 270.2(e)(2)(iii) and § 270.2(f) have been modified to reflect the change.

Twelve commenters suggested that the English version of a Notice of Intent to Fine be accompanied by a translation into the respondent's language to ensure that non-English-speaking respondents are advised of proposed charges and rights. Many of the commenters suggested that a bilingual notice is required pursuant to section 545 of IMMACT. Section 545 of IMMACT (section 242B(a)(3) of the Act) requires that deportation charging documents (Orders to Show Cause) be available in both Spanish and English. The issuance of a Notice of Intent to Fine does not initiate deportation proceedings. Therefore, section 545 is not applicable to this regulation, and the Service maintains the language of the proposed rule.

Eleven commenters suggested that the Notice of Intent to Fine contain a properly addressed form for the respondent to use and return in order to request a hearing. The INS may consider the feasibility of this suggestion in the future. However, time constraints make it necessary for the INS to implement this program with a separate written request for a hearing. On October 3, 1991, an interim rule amending 28 CFR part 68, Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens and Unfair Immigration-Related Employment Practices, was published in the **Federal Register**. This regulation, applicable to both sections 274A and 274C cases, was revised in part to permit a request for hearing to serve as a notice of appearance. The Service, after consultation with the Office of the Chief Administrative Hearing Officer (OCAHO), will consider the commenter's suggestion for future modification of the Notice of Intent to Fine.

Section 270.2, paragraph (f) provides in pertinent part that a respondent may waive the authorized period in which to request a hearing before an administrative law judge and ask that the INS issue a final order. Eleven commenters suggested that this sentence be deleted. Commenters maintained that unrepresented respondents would not be advised properly of the adverse effects a Final Order may have in future immigration proceedings. Comments conveyed concerns that respondents in custody could be misled or coerced into signing a waiver of their right to a hearing. Citing *Orantes-Hernandez* v. *Meese*, 685 F. Supp. 1488 (C.D. Cal. 1988), *aff'd*, 919 F.2d. 549 (9th Cir. 1990) as an example, commenters claimed that the courts take a dim view of waivers of statutory rights. In *Orantes-Hernandez* v. *Meese*, the INS was required to notify detainees of their right to representation by counsel in deportation proceedings and their right to apply for asylum in the United States. The decision did not prohibit the INS from accepting requests for voluntary departure. The Service recognizes that a waiver, in order to be given effect, must be made voluntarily and with full knowledge of the consequences. Accordingly, the INS intends to fully advise respondents (including detainees) of their rights under section 274C prior to the acceptance of a waiver.

Several commenters maintained that unrepresented respondents in custody would unwittingly be misled into signing a waiver of their right to a hearing. Congress did not grant to the INS authority to hold a respondent in custody solely for the purpose of section 274C administrative fine proceedings. The custody status of a detained person is not based on the issuance of a Notice of Intent to Fine in section 274C proceedings. The Service, therefore, maintains the language of the proposed rule.

Two commenters suggested that the waiver provision of section 270 should not be implemented without responsible safeguards. Prior to the execution of a waiver, the respondent will be advised of his or her rights provided under section 274C of the Act. Additionally, if the respondent is not a United States citizen he or she will be advised that a waiver of a section 274C hearing will result in the issuance of a final order for a violation of section 274C and the respondent will be excludable and/or deportable from the United States pursuant to the Act. The regulation has been revised accordingly.

Section 270.2, paragraph (f) provides in part that any written request for a hearing submitted in a foreign language must be accompanied by an English language translation. Eleven commenters suggested that this requirement is an unreasonable burden. Commenters maintained that limited access to a translation service could interfere with the respondent's right to request a hearing. The respondent is responsible for filing a written request for a hearing in a timely manner. This is a jurisdictional prerequisite, *United States* v. *Candelario Martinez, Jr.*, OCAHO Case No. 90100172 (6/6/90), and language that does not reasonably communicate respondent's desire for a hearing is not sufficient to invoke the jurisdiction of the tribunal; *United States* v. *Rosewood Office Products*, 1 OCAHO 193 (7/6/90). The INS must be able to tell, from the face of the document, that the respondent wishes to request a hearing. This can only be accomplished with a translation accompanying a request submitted in a foreign language. Therefore, the Service maintains the language of the proposed rule. This is consistent with translation requirements in other immigration proceedings. See 8 CFR 3.31 (deportation proceedings); 8 CFR 274a.9(d) (employer sanctions cases before the Service); 28 CFR 68.7(e) (administrative law judge proceedings).

Section 270.2, paragraph (g) provides that if a respondent does not file a timely written request for a hearing before an administrative law judge, the INS shall issue a final order from which there is no appeal. Nine commenters suggested that section 274C(d)(2)(B) of the Act empowered the Attorney General, not the INS, with the authority to issue final orders. Section 103(a) of the Act provides, in substance, that the Attorney General shall be charged with the administration and enforcement of the Act, and that he may require or authorize any employee of the Service or the Department of Justice to exercise any of the powers, privileges, or duties conferred or imposed by the Act *or regulations issued thereunder* upon any other employee of the Service (emphasis supplied); 28 CFR 0.105. The Attorney General has delegated this authority to the Commissioner of the INS; 8 CFR §§ 2.1 and 100.2(a). Promulgation of these regulations is undertaken pursuant to that delegation of authority.

One commenter suggested that since a section 274C Notice of Intent to Fine has potential exclusion and deportation consequences, the Service should be required to prove the allegation of fraud before an administrative law judge even if the respondent fails to request a hearing. Citing *Woodby* v. *INS*, 385 U.S. 276 (1966), the commenter maintained that an administrative law judge should be required to make an affirmative finding that there was clear, convincing, and unequivocal evidence that the respondent engaged in document fraud before an order could be used for the purposes of deportation. Section 274C(d)(2)(B) of the Act provides that if no hearing is requested, the order of the Attorney General (through the INS) is final and unappealable. Failure to request a hearing does not trigger the hearing process. Therefore, the Service feels it inappropriate to adopt the suggestion. *Woodby* was a case of statutory interpretation based on other grounds of deportation, namely entry without inspection and engaging in prostitution. The case holds only that in the deportation proceeding itself the grounds must be proved by clear and convincing evidence. It did not purport to limit the power of Congress to prescribe grounds of deportation which might be proved in whole or in part by evidence of the outcome of prior and distinct judicial or administrative proceedings. Nor did the *Woodby* Court purport to dictate the standard of review in such prior and distinct proceedings. For instance, where deportability is based on termination of conditional permanent residence, such termination is effected in a non-judicial context with a requirement of clear and convincing evidence; at the subsequent deportation hearing, the Service must prove the termination of conditional residence—but not the underlying facts—by clear and convincing evidence. See section 241(a)(1)(D) of the Act. Similarly, in the civil document fraud context, *Woodby* stands only for the proposition that the facts giving rise to the ground of deportation—including the existence of a final order—must be proved by clear and convincing evidence. Congress itself has set forth the standard of proof in the proceeding that gives rise to the final order, by providing in section 274C(d)(2)(B) of the Act that such an order can come into existence without an administrative hearing. Moreover, with the passage of the Immigration Act of 1990, Congress specifically provided that an alien who is the subject of a final order for violation of section 274C is deportable. Section 307(h)(8) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Public Law No. 102–232, 105 Stat. 1733 (1991) (to be codified at section 241(a)(3)(C) of the Act). Therefore, *Woodby* is inapposite. The failure to timely request a hearing on the allegations contained in a Notice of Intent to Fine issued pursuant to section 274C of the Act results in a final and unappealable order for document fraud. A subsequent deportation proceeding charging an alien with deportability is a distinct proceeding governed by other provisions of the Act.

Twelve commenters expressed the opinion that the language of section 274C(d)(2)(B) of the Act indicates that a final order entered in the absence of a timely, written request for a hearing is only unappealable administratively. Commenters cited section 274C(d)(5) of the Act to propose that such an order may be subject to judicial review. Arguably, section 274C could be read to permit a respondent to ignore the administrative process and proceed directly to a federal appeals court. However, this cannot be what Congress intended.

The doctrine of failure to exhaust administrative remedies is well settled at law. See, *e.g.*, *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50–51 (1938). The purposes of this doctrine are to discourage frequent and deliberate flouting of agency procedure, to promote judicial economy, and to permit the agency to develop the facts and to apply its expertise. See *Cutler* v. *Hayes*, 818 F.2d 879, 890–91 (D.C. Cir. 1987). There are exceptions to this doctrine, such as when the agency process is no longer available, would not afford appropriate relief, or would necessarily be denied; *Panola Land Buyers Ass'n.* v. *Shuman*, 762 F.2d 1550, 1556 (11th Cir. 1985).

Not only would the commenters' interpretation allow a respondent to flout agency procedure, it would prevent the development of the facts and the creation of an administrative record. These latter effects are especially important in civil document fraud cases, where judicial review is vested directly in an appellate rather than a trial court. Moreover, although the administrative process is no longer available if a person or entity has failed to file a

request for hearing within 60 days, a statutory interpretation permitting a person or entity to ignore the administrative process and proceed directly to federal court would frustrate Congress's intent in creating an administrative proceeding for civil document fraud in the first instance. It is beyond peradventure that Congress did not intend to give greater rights to a litigant who has circumvented the administrative procedures set forth in the statute than to one who has followed these procedures. Therefore, the Service construes this section as requiring exhaustion of administrative remedies.

Section 270.3, paragraph (a) provides that nothing in section 274C of the Act shall be construed to diminish or qualify any of the penalties available for activities prohibited by this section but proscribed as well in title 18, United States Code. One commenter suggested that the Service may have unintentionally narrowed the field of relevant criminal fraud provisions located throughout the United States Code. The commenter cited 8 U.S.C. 1306(c), false registration of an alien and 48 U.S.C. 408, fraudulent use of a social security card, as examples of additional criminal provisions not proscribed under title 18, United States Code. The Service recognizes that a variety of criminal provisions exist within the United States Code that relate to document fraud. None of these provisions are affected by the enactment of section 544 of IMMACT. Therefore, the Service deems it inappropriate to deviate from the specific language of the statute.

Eleven commenters suggested that Notices of Intent to Fine should not be issued until administrative law judges are appointed to handle section 274C hearings and the procedures for conducting such hearings are established pursuant to the Administrative Procedures Act. Administrative law judges to decide employer sanctions cases were provided by section 101(a)(1) of the Immigration Reform and Control Act of 1986. On October 3, 1991, the Department of Justice, Executive Office for Immigration Review, published an interim rule with request for comments at 56 FR 50049 which revised 28 CFR 68. This revised regulation makes it clear that 28 CFR 69 is also applicable to proceedings commenced under section 274C of the Act. The same administrative law judges that hear cases under section 274A and 274B of the Act will preside over section 274C cases.

One commenter stated that the 1967 Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267 (Jan. 31, 1967) (the "Protocol"), to which the United States is a party, requires the United States to abide by the substantive provision of the 1951 United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150 (July 28, 1951) (the "Convention"). Article 31(1) of the Convention provides as follows:

> A Contracting State shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened * * * enter or are present in their territory without authorization provided they present themselves without delay and show good cause for their illegal entry or presence.

The commenter views the issuance of a Notice of Intent to Fine for civil document fraud as a penalty prohibited by the Convention. The commenter's views are well taken. In order to avoid any conflict with the Convention, the Service will construe the document fraud penalties as inapplicable to a case in which the only presentation of the document was pursuant to direct departure from a country in which the alien has a well-founded fear of persecution or from which there is a significant danger that the alien would be returned to a country in which the alien would have a well-founded fear of persecution. The Service will not issue a Notice of Intent to Fine for any such act of document fraud committed by an alien prior to the opportunity to present himself or herself without delay to an INS officer and to show good cause for his or her illegal entry or presence in accordance with Article 31(1) of the Convention. A new paragraph (i) has been added to section 270.2 of the final rule to reflect this change.

In accordance with 5 U.S.C. 605(b), the Commissioner of the INS certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment pursuant to E.O. 12612.

Although this regulation becomes effective on the date of publication in the **Federal Register**, the statute permitted enforcement of causes of actions for violations of the statute occurring after its enactment on November 29, 1990. The regulation therefore contemplates Notices of Intent to Fine for violations occurring on or after November 29, 1990.

List of Subjects in 8 CFR Part 270

Administrative practice and procedure, Aliens, Employment, Fraud, Penalties.

Accordingly, for the reasons set forth in the preamble, chapter I of title 8 of the Code of Federal Regulations is amended by adding a new part 270 to read as follows:

PART 270—PENALTIES FOR DOCUMENT FRAUD

Sec.
270.1 Definitions.
270.2 Enforcement procedures.
270.3 Penalties.

Authority: 8 U.S.C. 1101, 1103, and 1324c.

§ 270.1 Definitions.

For the purpose of this part—

Document means an instrument on which is recorded, by means of letters, figures, or marks, matters which may be used to fulfill any requirement of the Act. The term "document" includes, but is not limited to, an application required to be filed under the Act and any other accompanying document or material;

Entity means any legal entity, including, but not limited to, a corporation, partnership, joint venture, governmental body, agency, proprietorship, or association, including an agent or anyone acting directly or indirectly in the interest thereof.

§ 270.2 Enforcement procedures.

(a) *Procedures for the filing of complaints.* Any person or entity having knowledge of a violation or potential violation of section 274C of the Act may submit a signed, written complaint to the Service office having jurisdiction over the business or residence of the potential violator or the location where the violation occurred. The signed, written complaint must contain sufficient information to identify both the complainant and the alleged violator, including their names and addresses. The complaint should also contain detailed factual allegations relating to the potential violation including the date, time and place of the alleged violation and the specific act or conduct alleged to constitute a violation of the Act. Written complaints may be delivered either by mail to the appropriate Service office or by personally appearing before any immigration officer at a Service office.

(b) *Investigation.* When the Service receives complaints from a third party in accordance with paragraph (a) of this section, it shall investigate only those complaints which, on their face, have a substantial probability of validity. The

Service may also conduct investigations for violations on its own initiative, and without having received a written complaint. If it is determined after investigation that the person or entity has violated section 274C of the Act, the Service may issue and serve upon the alleged violator a Notice of Intent to Fine.

(c) *Issuance of a subpoena.* Service officers shall have reasonable access to examine any relevant evidence of any person or entity being investigated. The Service may issue subpoenas pursuant to its authority under sections 235(a) and 287 of the Act, in accordance with the procedures set forth in § 287.4 of this chapter.

(d) *Notice of Intent to Fine.* The proceeding to assess administrative penalties under section 274C of the Act is commenced when the Service issues a Notice of Intent to Fine. Service of this notice shall be accomplished by personal service pursuant to § 103.5a(a)(2) of this chapter. Service is effective upon receipt, as evidenced by the certificate of service or the certified mail return receipt. The person or entity identified in the Notice of Intent to Fine shall be known as the respondent. The Notice of Intent to Fine may be issued by an officer defined in § 242.1 of this chapter or by an INS port director designated by his or her district director.

(e) *Contents of the Notice of Intent to Fine.*

(1) The Notice of Intent to Fine shall contain the basis for the charge(s) against the respondent, the statutory provisions alleged to have been violated, and the monetary amount of the penalty the Service intends to impose.

(2) The Notice of Intent to Fine shall provide the following advisals to the respondent:

(i) That the person or entity has the right to representation by counsel of his or her own choice at no expense to the government;

(ii) That any statement given may be used against the person or entity;

(iii) That the person or entity has the right to request a hearing before an administrative law judge pursuant to 5 U.S.C. 554–557, and that such request must be filed with INS within 60 days from the service of the Notice of Intent to Fine; and

(iv) That if a written request for a hearing is not timely filed, the Service will issue a final order from which there is no appeal.

(f) *Request for hearing before an administrative law judge.* If a respondent contests the issuance of a Notice of Intent to Fine, the respondent must file with the INS, within 60 days of the Notice of Intent to Fine, a written request for a hearing before an administrative law judge. Any written request for a hearing submitted in a foreign language must be accompanied by an English language translation. A request for hearing is deemed filed when it is either received by the Service office designated in the Notice of Intent to Fine, or addressed to such office, stamped with the proper postage, and postmarked within the 60-day period. In computing the 60-day period prescribed by this section, the day of service of the Notice of Intent to Fine shall not be included. In the request for a hearing, the respondent may, but is not required to, respond to each allegation listed in the Notice of Intent to Fine. A respondent may waive the 60-day period in which to request a hearing before an administrative law judge and ask that the INS issue a final order from which there is no appeal. Prior to execution of the waiver, a respondent who is not a United States citizen will be advised that a waiver of a section 274C hearing will result in the issuance of a final order and that the respondent will be excludable and/or deportable from the United States pursuant to the Act.

(g) *Failure to file a request for hearing.* If the respondent does not file a written request for a hearing within 60 days of service of the Notice of Intent to Fine, the INS shall issue a final order from which there shall be no appeal.

(h) *Issuance of the final order.* A final order may be issued by an officer defined in § 242.1 of this chapter, by an INS port director designated by his or her district director, or by the Director of the INS National Fines Office.

(i) *Service of the final order.*

(1) *Generally.* Service of the final order shall be accomplished by personal service pursuant to § 103.5a(a)(2) of this chapter. Service is effective upon receipt, as evidenced by the certificate of service or the certified mail return receipt.

(2) *Alternative provisions for service in a foreign country.* When service is to be effected upon a party in a foreign country, it is sufficient if service of the final order is made: (i) In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(ii) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or

(iii) when applicable, pursuant to § 103.5a(a)(2) of this chapter.

Service is effective upon receipt of the final order. Proof of service may be made as prescribed by the law of the foreign country, or, when service is pursuant to § 103.5a(a)(2) of this chapter, as evidenced by the certificate of service or the certified mail return receipt.

(j) *Declination to file charges for document fraud committed by refugees at the time of entry.* The Service shall not issue a Notice of Intent to Fine for acts of document fraud committed by an alien pursuant to direct departure from a country in which the alien has a well-founded fear of persecution or from which there is a significant danger that the alien would be returned to a country in which the alien would have a well-founded fear of persecution, provided that the alien has presented himself or herself without delay to an INS officer and shown good cause for his or her illegal entry or presence. Other acts of document fraud committed by such an alien may result in the issuance of a Notice of Intent to Fine and the imposition of civil money penalties.

§ 270.3 Penalties.

(a) *Criminal penalties.* Nothing in section 274C of the Act shall be construed to diminish or qualify any of the penalties available for activities prohibited by this section but proscribed as well in title 18, United States Code.

(b) *Civil penalties.* A person or entity may face civil penalties for a violation of section 274C of the Act. Civil penalties may be imposed by the Service or by an administrative law judge for violations under section 274C of the Act. The Service may charge multiple violations of section 274C of the Act in a single Notice of Intent to Fine, and may impose separate penalties for each such unlawful act in a single proceeding or determination. However, in determining whether an offense is a first offense or a subsequent offense, a finding of more than one violation in the course of a single proceeding or determination will be counted as a single offense.

(1) A respondent found by the Service or an administrative law judge to have violated section 274C of the Act shall be subject to an order:

(i) To cease and desist from such behavior; and

(ii) To pay a civil penalty according to the following schedule:

(A) *First offense.* Not less than $250 and not more than $2,000 for each fraudulent document or each proscribed activity described in section 274C (a)(1)–(a)(4) of the Act, or

(B) *Subsequent offenses.* Not less than $2,000 and not more than $5,000 for each fraudulent document or each proscribed

activity described in section 274C (a)(1)–(a)(4) of the Act.

(2) Where an order is issued to a respondent composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for a fee for employment (without reference to the practices of, and not under the common control of or common control with, another subdivision), each subdivision shall be considered a separate person or entity.

Dated: July 23, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92–17850 Filed 7–30–92; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–71; Special Conditions No. 25–ANM–59]

Special Conditions: British Aerospace BAe 125–800A Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for certain British Aerospace BAe 125–800A airplanes modified by K–C Aviation, Inc. These airplanes are equipped with high-technology digital avionics systems that perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by these systems are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is July 21, 1992. Comments must be received on or before September 14, 1992.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–71, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked Docket No. NM–71. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Lium, FAA, Standardization Branch, ANM–113, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–1112.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–71." The postcard will be date stamped, and returned to the commenter.

Background

On April 6, 1992, K–C Aviation, Inc. applied to the FAA Chicago Aircraft Certification Office for a supplemental type certificate (STC) to modify certain BAe 125–800A airplanes. The BAe 125–800A are two flightcrew, two-engine airplanes, each with a maximum takeoff weight of up to 27,400 lbs. The proposed modification incorporates the installation of an Electronic Flight Instrument System (EFIS) and additional navigation and avionic systems. The equipment originally installed in these airplanes presented the required information in the form of analog displays. The information presented is flight critical. The EFIS as a digital system is vulnerable to high-intensity radiated fields external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), K–C Aviation, Inc. must show that the modified BAe 125–800A airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A3EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A3EU are as follows: Part 10 of the Civil Air Regulations (CAR), as amended November 1, 1963; part 36 of the FAR, as amended by Amendments 36–1 through 36–12; and Special Federal Aviation Regulation (SFAR) 27, as amended by Amendments 27–1 through 27–4. In addition, compliance has been established with the optional requirements of § 25.1419 (Ice Protection). This certification is equivalent to part 4b of the CAR, dated December 1953, as amended by Amendment 4b–1 through 4b–11, exclusive of § 4b.350(e), and includes Special Civil Air Regulation SR–422B.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 4b as amended) do not contain adequate or appropriate safety standards for the modified BAe 125–800A airplanes, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established by the regulations. (In this context, "novel or unusual design feature" means novel or unusual with respect to the applicable standards of part 25. Such features may or may not be unusual as far as industry "state of the art" is concerned.)

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it