

§ 270.1

8 CFR Ch. I (1–1–10 Edition)

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§ 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 post-marked 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 coun-

try, 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