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 as follows:

(A) *First offense*. Not less than $250 and not exceeding $2,000 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act before September 29, 1999, and not less than $275 and not exceeding $2,200, for each fraudulent document or each proscribed activity on or after September 29, 1999.

(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) through (a)(4) of the Act before September 29, 1999, and not less than $2,200 and not exceeding $5,500, for each fraudulent document or each proscribed activity occurring on or after September 29, 1999.

(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.

[57 FR 33866, July 31, 1992, as amended at 64 FR 47101, Aug. 30, 1999]

PART 271—DILIGENT AND REASONABLE EFFORTS TO PREVENT THE UNAUTHORIZED ENTRY OF ALIENS BY THE OWNERS OF RAILROAD LINES, INTERNATIONAL BRIDGES OR TOLL ROADS

AUTHORITY: 8 U.S.C. 1103 and 1321.

§ 271.1 Procedures for inspections.

(a) *Applicability*. The following terms and conditions apply to those owners or operators of railroad lines, international bridges, or toll roads, which provide a means for an alien to come to the United States.

(b) *Inspection of facility*. Based upon a written request by the owners or operators, the INS district director or his designee shall inspect the facility or method utilized in order to ensure that owners and operators have acted diligently in taking adequate steps to prevent the unlawful entry of aliens into the United States. Such measures may include but are not necessarily limited to fencing, barricades, lighting, or security guards. If the district director determines that preventive measures are inadequate, he or she shall advise the owners or operators in writing, citing the reasons for such determination. If the owners or operators believe the requirements of the district director to be excessive or unnecessary, they may request that the Regional Commissioner having jurisdiction over the location where the facility is located, review the district director's requirements. The Regional Commissioner shall advise the owners or operators in writing of the results of his or her review.

(c) *Preventive measures and certification*. Upon a determination by the district director that reasonable and adequate preventive measures have been taken by the owners and operators, he or she shall certify that the owners and operators shall not be liable for the penalty described in section 271(a), so long as the facility or method utilized is maintained in the condition in which approved and certified.

(d) *Revocation of certification*. The District Director having jurisdiction over the location where the facility is located, in his or her discretion, may at any time, conduct an inspection of said facility to determine if any violation is occurring. If the facility is found to be not in compliance, said certification will be revoked.

[53 FR 26036, July 11, 1988]