the **Federal Register** on May 8, 1998 (63 FR 25572). That final rule revised and clarified certain conditions and limitations in part 135 for instrument flight rule (IFR), passenger-carrying operations in single-engine aircrafts.

DATES: Effective May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Daniel Meier, 202–267–8166.

Correction of Publication

In final rule FR Doc. 98–12229, on page 25572 in the **Federal Register** issue of May 8, 1998 make the following corrections:

1. On page 25572, from the top of the heading in column 1, on line 4, insert the Special Federal Aviation Regulation (SFAR) number and the amendment numbers to read, ''SFAR 81; Amdt. Nos. 11–43, 135–72'' following the docket number.

Issued in Washington, DC on February 8, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–3515 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125 and 135

[Docket No. FAA–1998–4954; Amdt. Nos. 91–257, 121–270, 125–31, 135–73]

RIN 2120–AG70

Crewmember Interference, Portable Electronic Devices, and Other Passenger Related Requirements; Correction.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendments; correction.

SUMMARY: This document contains a correction to the final rule, technical amendments, published in the **Federal Register** on January 7, 1999 (64 FR 1076). That final rule clarified that certain provisions of the current rules are applicable to passengers and others aboard the aircraft.

DATES: Effective January 7, 1999.

FOR FURTHER INFORMATION CONTACT: Carol Toth, 202–267–3073.

Correction of Publication

In final rule FR Doc. 99–58, on page 1076 in the **Federal Register** issue of January 7, 1999 make the following correction:

1. On page 1076, from the top of the heading in column 1, on line 4, insert the amendment numbers to read ''Amdt. Nos. 91–257, 121–270, 125–31, 135–73'' following the docket number.

Issued in Washington, DC on February 8, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–3516 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 172, 173, and 184

Foods and Drugs; Technical Amendments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 12, 1999 (64 FR 1758). The document amended the regulations that incorporate by reference analytical methods in the ''Food Chemical Codex'' 3d edition, by updating these references to the 4th edition. The document was published with an error. This document corrects that error.

EFFECTIVE DATE: January 12, 1999.

FOR FURTHER INFORMATION CONTACT: Silvia R. Fasce, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 99–563, appearing on page 1758 in the **Federal Register** of Tuesday, January 12, 1999, the following correction is made:

1. On page 1761, in the first column, in amendatory instruction ''17'', beginning in the forth line, the phrase ''number '1' '' is corrected to read ''numbers '1' and '2' ''.

Dated: February 2, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–3559 Filed 2–11–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 68

[EOIR No. 116P; A.G. Order No. 2203–99]

RIN 1125–AA17

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

AGENCY: Office of the Chief Administrative Hearing Officer, Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations of the Office of the Chief Administrative Hearing Officer (OCAHO) pertaining to employer sanctions, unfair immigration-related employment practice cases, and immigration-related document fraud. The interim rule implements various provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Debt Collection Improvement Act of 1996, and makes various other changes to the OCAHO's procedural regulations.

DATES: This interim rule is effective March 15, 1999. Written comments must be submitted on or before April 13, 1999.

ADDRESSES: Please submit written comments to the Chief Administrative Hearing Officer, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2519, Falls Church, Virginia 22041. To ensure proper handling, please reference EOIR number 1125–AA17 on your correspondence. Comments are available for public inspection at the above address by calling (703) 305–0858 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Peggy Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone number (703) 305–0470.

SUPPLEMENTARY INFORMATION: The IIRIRA, enacted on September 30, 1996, amends the employer sanctions, unfair immigration-related employment practices and document fraud sections of the Immigration and Nationality Act (INA) in several ways (sections 274A, 274B and 274C of the INA, respectively). The Debt Collection Improvement Act of 1996, Pub. L. No.

104–134, Title III, (''Debt Collection Improvement Act''), 110 Stat. 1321, 1321–1358 (1996), mandates that the civil penalties in each of these three sections of the INA be adjusted to reflect inflation. Finally, the OCAHO has examined its regulations and is making various changes perceived as necessary in light of case-by-case experiences since the 1991 amendments to its regulations. All of the changes to the OCAHO's regulations set forth herein are designed to make the regulations comport with one of the aforementioned statutes, clarify any existing ambiguity, and/or similarly contribute to the fair and efficient administration of sections 274A, 274B, and 274C of the INA.

Heading and Table of Contents

The interim regulation amends the heading to Part 68, the rules of practice and procedure for administrative hearings before Administrative Law Judges in the OCAHO, to include document fraud cases as well as unlawful employment of aliens cases and unfair immigration-related employment practice cases. Document fraud cases were previously addressed elsewhere in regulations, but the interim regulation includes this category of cases here because the OCAHO in fact deals with these cases in a similar procedural manner as it does with unlawful employment of aliens cases and unfair immigration-related employment cases.

The interim regulation amends the Table of Contents to include new language in the section title for § 68.33 to indicate that the section now discusses participation of parties. The interim regulation also amends the table of contents to include new sections, §§ 68.55 through 68.58. The new sections were added due to the reorganization of § 68.53 *Administrative and Judicial Review*, which was divided into four sections in order to distinguish between the various procedures for obtaining review of an order. As a result of adding new sections, § 68.54 *Filing of the official record* was renumbered and became § 68.58.

Scope of Rules

The interim regulation amends § 68.1 to utilize the official title of the Federal Rules of Civil Procedure (Rules) in stating that the Rules may be used as a guideline in any adjudicatory proceeding before the OCAHO in which a situation arises that is outside the scope of the rules laid out in this part of the Code of Federal Regulations, the Administrative Procedure Act, or any other applicable statute, executive order, or regulation.

Definitions

The interim regulation amends the definition of ''adjudicatory proceeding'' to clarify that it means an administrative proceeding before the OCAHO that commences with the filing of a complaint. This revised definition also eliminates the need for the separate definition of ''commencement of proceeding.''

The interim regulation adds definitions for ''certification'' (new paragraph (d)) and ''certify'' (new paragraph (e)), in order to provide guidance for parties who must determine their obligations under the rules and comply with them. The interim regulation defines the former term essentially to mean a formal writing that has been signed by the person making the certification as an attestation to the truth of the content of the writing. Specific definitions are provided in individual paragraphs for the terms ''certified court reporter,'' ''certified mail'' and ''certified copy.'' The term ''certify'' in paragraph (e) is simply defined as ''the act of executing a certification.''

The interim regulation also adds definitions for ''decision,'' ''final agency order,'' ''final order'' and ''interlocutory order,'' and amends the definition of ''order'' in order to distinguish between the various actions that may be taken by and within the OCAHO. A ''decision'' refers to any finding of fact or conclusion of law by an Administrative Law Judge (ALJ) or by the Chief Administrative Hearing Officer (CAHO); an ''order'' means a determination or mandate by an ALJ, CAHO, or the Attorney General that resolves some point or directs some action in the proceeding; an ''interlocutory order'' is an order that decides some intervening matter pertaining to the cause of action and is not a final decision of the whole controversy; a ''final order'' is an order by an ALJ that disposes of a particular proceeding or a distinct portion thereof, thereby concluding the jurisdiction of the ALJ with respect to the portion referred to in the order; and a ''final agency order'' is an ALJ's final order or a CAHO's order that has not been modified, vacated, or remanded in any way within the time period set forth in the regulation, or, alternatively, an order by the Attorney General. Finally, the definition of ''issued'' is also amended to clarify that it refers to the action taken when an order becomes a final agency order.

The definitions for ''prohibition of indemnity bond cases,'' ''unfair immigration related employment practice cases,'' and ''unlawful employment cases'' are reduced to simple cross-references to the applicable statutes. It was determined that summarizing these statutory causes of action in the regulations is not essential and could conceivably lead to unnecessary litigation over perceived differences between the regulatory definition and the applicable statute itself. A similar approach was taken with regard to the definition of ''document fraud cases'' which had not previously been mentioned in the definitions section.

The interim regulation also adds or amends certain other definitions. The definition of ''entry'' is amended to clarify that it applies to all orders signed under these regulations as well as to define the term as used in section 274B(i)(1). The definition of ''entry'' is thus amended to clarify that an order is ''entered'' when it is signed by an ALJ, the CAHO, or the Attorney General. A definition for ''respondent'' is added to clarify that it means a party, other than a complainant, to an adjudicatory proceeding against whom findings may be made or who may be required to provide relief or to take remedial action. The interim regulation adds a definition for ''INA'' to clarify that this term in the regulations refers to the Immigration and Nationality Act. Finally, a definition for ''Debt Collection Improvement Act'' is added to clarify that references to that statute in the regulations refer to the Debt Collection Improvement Act of 1996.

The interim regulation renumbers the paragraphs of § 68.2 to incorporate the new entries and to keep the definitions in alphabetical order. Thus, the changes begin with paragraph (a), Adjudicatory proceeding, and end with paragraph (cc), Unfair immigration-related employment practice cases.

Conforming Amendment

The interim regulation amends § 68.3 to add the phrase ''representative of record'' at § 68.3(a)(1) and (3) as a conforming amendment, in light of the new provisions in § 68.33 *infra* outlining the parameters within which lay representatives are permitted to represent parties before the ALJs.

Service and Filing of Documents

The interim regulation amends § 68.6 to add a provision at § 68.6(c) for the filing of certain documents by facsimile only to toll a time limit. A party may only file by facsimile in response to a time limit that is imposed by statute, regulation, or order. The signed originals of such documents must be forwarded concurrently with the transmission of the facsimile. Service of

the documents on the opposing party must be made by facsimile or same-day hand delivery, or, if neither of those means is feasible, by overnight mail. The serving party must indicate the means of service on the certification of service. Also added are provisions applying the procedure outlined in § 68.6(c) to the service and filing requirements pertaining to administrative review by the CAHO set forth at § 68.54(c) and described *infra*.

Responsive Pleadings—Answer

In the first sentence of § 68.9(b), the phrase ''shall constitute a waiver'' is changed to ''may be deemed to constitute a waiver.'' This technical correction is necessary to comport with actual practice and with the last sentence of § 68.9(b), which provides that a default judgment is not automatic, but at the discretion of the ALJ.

Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted

The interim regulation amends § 68.10 to clarify that the ALJ may dismiss a complaint for failure to state a claim upon which relief may be granted either upon motion by the respondent or *sua sponte*. However, in the prehearing phase of a proceeding, the ALJ shall allow the complainant an opportunity to be heard before *sua sponte* dismissing a complaint in its entirety for failure to state a claim on which relief may be granted.

Consent Findings or Dismissal

The interim regulation amends § 68.14(a)(2) to provide that the ALJ may require parties to file settlement agreements with the ALJ.

Technical Corrections

The interim regulation amends § 68.18 to make the following technical corrections at § 68.18(a): (1) the word ''subsection'' is changed to the word ''paragraph,'' and (2) the phrase ''of this section'' is added to the last sentence of paragraph (a).

Depositions

The interim regulation reorganizes § 68.22 into three paragraphs: (a) *Notice*; (b) *When, how, and by whom taken*; and (c) *Motion to terminate or limit examination*. This reorganization should make it easier to locate particular information within the section.

The interim regulation also adds a new provision to paragraph (b) regarding recorded depositions. This paragraph provides that an oral deposition may be recorded by audiotape or videotape, at the discretion of the ALJ. Moreover, the costs of recording the deposition must be paid by the party taking the deposition. Either party may arrange for a transcript of the deposition to be made. Also added is a thirty (30) day time limit for witness review of any transcript or recording and a provision for witness corrections.

Motion to Compel Response to Discovery; Sanctions

The interim regulation amends § 68.23 in two ways: first, it specifies that any motion filed with an ALJ to compel either a response to a request for discovery or an inspection must be accompanied by a certification that the movant has ''conferred or attempted to confer'' with the nonmovant in a good faith effort to obtain the information or material sought to be discovered in the absence of participation by the ALJ. Second, a new paragraph (d) is added: ''Evasive or incomplete response.'' This paragraph provides that an evasive or incomplete response to discovery may be treated as a failure to respond to the discovery request, thus permitting the party seeking discovery to seek an order to compel the discovery in accordance with the rest of this section.

Use of Depositions at Hearings

The interim regulation amends § 68.24 by adding paragraph (a)(7) to allow a party to offer deposition testimony in stenographic or nonstenographic form. The party shall be required to provide a transcript of the testimony offered in nonstenographic form, a requirement that parallels the Federal Rules of Evidence.

Participation of the Parties and Representation

The interim regulation amends § 68.33 by using ''Participation of the Parties'' instead of ''Appearance'' and uses ''proceeding'' instead of ''hearing'' to make the provision clearer. References to ''counsel'' have been changed to reflect the fact that a representative in an OCAHO proceeding is not required to be an attorney. The sentence allowing representation at no expense to the government was moved to § 68.33(e). The interim regulation amends § 68.33 to allow a law student under supervision of an attorney to appear before an ALJ. In addition, the interim regulation establishes that upon a motion for substitution or withdrawal of an attorney, the ALJ shall enter a written order either granting or denying the motion.

The interim regulation also outlines the parameters within which lay representation of parties before the ALJs is permitted. An individual who is neither an attorney nor a law student and who wishes to represent a party must file a detailed written application with the ALJ demonstrating that the individual possesses the knowledge and skills essential to rendering valuable service in the proceedings. The individual must file the application within ten days from the receipt of the Notice of Hearing and Complaint by the party on whose behalf the individual is filing the application, unless the ALJ extends this time period. The ALJ may inquire as to the qualification or ability of any non-attorney to act as a representative at any time, and may issue an order denying any individual the privilege of appearing if the ALJ finds that such individual meets any of the following characteristics: does not possess the requisite qualifications to represent others; is lacking in character or integrity; has engaged in unethical or improper professional conduct; or has engaged in an act involving moral turpitude. The ALJ may not deny the privilege of appearing on the basis of the aforementioned characteristics to any person who appears on his or her own behalf, or who appears on behalf of a corporation, partnership or association of which the person is a partner or general officer. Similarly, any person who represents him or herself or any corporation, partnership or unincorporated association of which that individual is a partner or general officer need not file a written application to appear. However, such persons must file a notice of appearance as set forth in § 68.33(f). The interim regulation changes the caption and substance of § 68.33(g) to reflect the fact that lay representatives are permitted to represent parties before the ALJs and that they also may withdraw from OCAHO proceedings.

Standards of Conduct

The current OCAHO regulations require in § 68.35(a) that ''[A]ll persons appearing before an ALJ are expected to act with integrity, and in an ethical manner.'' Under § 68.35(b) of the current regulations, an ALJ may exclude from OCAHO proceedings parties, witnesses, and their representatives for, among other things, ''refusal to adhere to reasonable standards of orderly and ethical conduct [and] failure to act in good faith. * * *'' This interim rule does not endeavor to amend or amplify these general standards. However, persons seeking further guidance on the standards of conduct expected in OCAHO proceedings are encouraged to consult the Federal Bar Association

Standards of Civility in Professional Conduct (''FBA Standards''), as published in 45 *The Federal Lawyer*, No. 1 (Jan. 1998). Copies of the FBA Standards may be obtained from The Office of the Chief Administrative Hearing Officer, 5107 Leesburg Pike Suite 2519, Falls Church, Virginia 22041. A copy of the FBA Standards will also be attached to each notice of hearing served by OCAHO pursuant to 28 CFR § 68.3.

Motion for Summary Decision

The interim regulation amends § 68.38(a) to clarify that a motion for summary decision is directed to the ''complaint,'' as opposed to the ''proceeding.'' Section 68.38(c) is amended to clarify that a summary decision shall be entered if the ALJ determines that there is no genuine issue as to any material fact and that a party is entitled to summary decision. Section 68.38(d) is also amended to clarify that a summary decision may be a final order and is consistent with the changes in the definitions in § 68.2.

In Camera and Protective Orders

Section 68.42(b) is amended by deleting ''to a respondent'' and inserting ''producing'' before ''party'' to take account of situations in which a complainant may seek material sensitive to a respondent.

Final Order of the Administrative Law Judge

The interim regulation amends § 68.52 in a number of ways. First, it changes the heading from *Decision and order of the Administrative Law Judge* to *Final order of the Administrative Law Judge,* and uses the term *final order* throughout the section. This change was necessary because § 68.52 pertains to final orders and this change is consistent with the definitions provided in § 68.2. The interim regulation also adds a provision to paragraph (a) that permits an ALJ to order a copy of any proposed order submitted to the ALJ by a party to be submitted on a 3.5″ microdisk.

The interim regulation further amends § 68.52 in several ways in order to comply with the Debt Collection Improvement Act and IIRIRA. The Debt Collection Improvement Act amends the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101–410, § 5(b), 104 Stat. 890, 28 U.S.C.A. § 2461 (note), to mandate the adjustment of all civil monetary penalties assessed or enforced by Federal agencies to reflect inflation. The amounts of the adjustments are determined according to a formula set forth in the Federal Civil Penalties Inflation Adjustment Act of 1990, and incorporate a ''cost-of-living adjustment'' that is defined as:

> 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. *Id.* § 5(b).

The formula multiplies the current penalty amount by the appropriate cost-of-living adjustment, and then rounds that number to the nearest multiple of $10, $100, $1,000, $5,000, $10,000 or $25,000 in accordance with section 5(a) of the Federal Civil Penalties Inflation Adjustment Act of 1990. The rounded increase is then compared to a maximum penalty increase cap of ten percent (10%) of the current penalty (note that this cap only applies to the first adjustment of any civil monetary penalty). If the maximum allowable increase is lower than the rounded increase, then the maximum increase is added onto the current penalty to form the adjusted penalty. If the maximum allowable increase is greater than the rounded increase—this generally occurs when the rounded increase is $0—then the rounded increase is added onto the current penalty to form the adjusted penalty.

Following this formula, the OCAHO's civil monetary penalties are adjusted as indicated in figures 1 through 3. The Debt Collection Improvement Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require that ''[a]ny increase under [the] Act in a civil money penalty shall apply only to violations which occur after the date the increase takes effect.'' *See* 28 U.S.C. 2461 (note). Therefore, violations occurring prior to March 15, 1999, are subject to the unadjusted penalties shown in Figures 1–3 while violations occurring on or after March 15, 1999, are subject to the adjusted penalties as set out in Figures 1–3.

FIGURE 1.—UNLAWFUL EMPLOYMENT OF ALIENS AND EMPLOYMENT VERIFICATION

Statutory and regulatory citation	Unadjusted penalty	Min./Max.	Year	CPI factor (percent)	Raw increase	Rounder	Rounded increase	10% increase	Smaller increase	Adjusted penalty
	Unlawful employment of unauthorized aliens, per person, first order								Per violation	
8 USC 1324a(e)(4)(A)(i) 28 CFR 68.52(c)(1)(i)	$250	Min.	1986	48.89	$122	$100	$100	$25	$25	$275
8 USC 1324a(e)(4)(A)(i) 28 CFR 68.52(c)(1)(i)	2,000	Max.	1986	48.89	978	1,000	1,000	200	200	2,200
	Unlawful employment of unauthorized aliens, per person, second order								Per violation	
8 USC 1324a(e)(4)(A)(ii) 28 CFR 68.52(c)(1)(ii)	2,000	Min.	1986	48.89	978	1,000	1,000	200	200	2,200
8 USC 1324a(e)(4)(A)(ii) 28 CFR 68.52(c)(1)(ii)	5,000	Max.	1986	48.89	2,444	1,000	2,000	500	500	5,500
	Unlawful employment of unauthorized aliens, per person, subsequent order								Per violation	
8 USC 1324a(e)(4)(A)(iii) 28 CFR 68.52(c)(1)(iii)	3,000	Min.	1986	48.89	1,467	1,000	1,000	300	300	3,300
8 USC 1324a(e)(4)(A)(iii) 28 CFR 68.52(c)(1)(iii)	10,000	Max.	1986	48.89	4,889	1,000	5,000	1,000	1,000	11,000
	Unlawful employment of unauthorized aliens, paperwork violations								Per violation	
8 USC 1324a(e)(5) 28 CFR 68.52(c)(5)	100	Min.	1986	48.89	49	10	50	10	10	110
8 USC 1324a(e)(5) 28 CFR 68.52(c)(5)	1,0000	Max	1986	48.89	489	100	500	100	100	1,100
	Unlawful employment of unauthorized aliens, violation/prohibition of indemnity bonds								Per violation	
8 USC 1324a(g)(2) 28 CFR 68.52(c)(7)	1,000	Max.	1986	48.89	489	100	500	100	100	1,100

FIGURE 2.—UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

Statutory and regulatory citation	Unadjusted penalty	Min./Max.	Year	CPI factor (percent)	Raw increase	Rounder	Rounded increase	10% increase	Smaller increase	Adjusted Penalty
	Unfair immigration-related employment practices, per person, first order								Per violation	
8 USC 1324b(g)(2)(B)(iv)(I) ..... 28 CFR 68.52(d)(1)(viii)	$250	Min.	1990	25.47	$64	$100	$100	$25	$25	$275
8 USC 1324b(g)(2)(B)(iv)(I) ..... 28 CFR 68.52(d)(1)(viii)	2,000	Max.	1990	25.47	509	1,000	.....	200	200	2,200
	Unfair immigration-related employment practices, per person, second order								Per violation	
8 USC 1324b(g)(2)(B)(iv)(II) ..... 28 CFR 68.52(d)(1)(ix)	2,000	Min.	1990	25.47	509	1,000	.....	200	200	2,200
8 USC 1324b(g)(2)(B)(iv)(II) ..... 28 CFR 68.52(d)(1)(ix)	5,000	Max.	1990	25.47	1,273	1,000	1,000	500	500	5,500
	Unfair immigration-related employment practices, per person, subsequent order								Per violation	
8 USC 1324b(g)(2)(B)(iv)(III) ..... 28 CFR 68.52(d)(1)(x)	3,000	Min.	1990	25.47	764	1,000	1,000	300	300	3,300
8 USC 1324b(g)(2)(B)(iv)(III) ..... 28 CFR 68.52(d)(1)(xii)	10,000	Max.	1990	25.47	2,547	1,000	3,000	1,000	1,000	11,000
	Unfair immigration-related employment practices, document abuse								Per violation	
8 USC 1324b(g)(2)(B)(iv)(IV) ..... 28 CFR 68.52(d)(1)(xii)	100	Min.	1990	25.47	25	10	30	10	10	110
8 USC 1324b(g)(2)(B)(iv)(IV) ..... 28 CFR 68.52(d)(1)(xii)	1,000	Max.	1990	25.47	255	100	300	100	100	1,100

FIGURE 3.—CIVIL PENALTY DOCUMENT FRAUD

Statutory and regulatory citation	Unadjusted penalty	Min./Max.	Year	CPI factor (Percent)	Raw increase	Rounder	Rounded increase	10% increase	Smaller increase	Adjusted penalty
	Document fraud, first order								Per document	
8 USC 1324c(d)(3)(A) ..... 28 CFR 68.52(e)(1)(i)	$250	Min.	1990	25.47	$64	$100	$100	$25	$25	$275
8 USC1324c(d)(3)(A) ..... 28 CFR 68.52(e)(1)(i)	2,000	Max.	1990	25.47	509	1,000	.....	200	200	2,200
	Document fraud, second order								Per document	
8 USC 1324c(d)(3)(B) ..... 28 CFR 68.52(e)(1)(ii)	2,000	Min.	1990	25.47	509	1,000	.....	200	200	2,200
8 USC 1324c(d)(3)(B) ..... 28 CFR 68.52(e)(1)(ii)	5,000	Max.	1990	25.47	1,273	1,000	1,000	500	500	5,500

Following this initial adjustment, the Debt Collection Improvement Act requires that penalties be further adjusted at least every four years. The interim regulation adds new paragraphs to this section stating that the OCAHO's civil monetary penalties will be subject to inflationary adjustments at least every four years. These paragraphs are located at §§ 68.52(c)(8), 68.52(d)(2) and 68.52(e)(3).

The interim regulation also amends § 68.52 in order to conform the section to the requirements of IIRIRA. Sections 401–05 of IIRIRA require the Attorney General to conduct three pilot programs concerning employment eligibility verification. Section 402(e)(2) of IIRIRA provides that upon a determination by an ALJ that a person or entity has violated section 274A(a)(1)(A) or (a)(2) of the INA (knowingly hiring, recruiting or referring for a fee, or knowingly continuing to employ an unauthorized alien), the ALJ's order may require the respondent to participate in and comply with the terms of one of these pilot programs. The interim regulation adds paragraph (c)(2) to this section in order to reflect this requirement. Former paragraphs (c)(1)(ii) through (c)(1)(iv) are renumbered paragraphs (c)(3) through (c)(5) accordingly.

The interim regulation also adds a new paragraph (c)(6) to comport with section 403(a)(4)(C)(ii) of IIRIRA, which requires that, where a person or entity participating in one of the pilot programs has failed to provide notice of final nonconfirmation of employment eligibility of an individual to the Attorney General as required by section 403(a)(4)(C)(i) of IIRIRA, the civil monetary penalty shall be not less than $500 and not more than $1,000 for each individual with respect to whom a violation occurred. Succeeding paragraphs are renumbered accordingly.

The interim regulation adds another remedy to the list of requirements that may be included in an ALJ's order against a person or entity whom it has been determined engaged in an unfair immigration-related employment practice. As provided in section 402(e)(2) of IIRIRA, the ALJ may require the person or entity to participate in and comply with the terms of one of the pilot programs regarding employment verification set forth in sections 401–05 of IIRIRA. The required participation would be limited to the person's or entity's hiring or recruitment or referral of individuals in a state covered by such a pilot program. This provision of the interim regulation appears as paragraph (d)(1)(xi).

The heading for paragraph (c)(7) and the text for paragraph (c)(9) were altered to conform to the definition in § 68.2 (y).

In the renumbered paragraph (d)(1)(xii) of the interim regulation, an intent requirement is added to reflect an amendment to section 274B(a)(6) of the INA made by section 421(a) of IIRIRA. A person or entity may only be assessed the civil monetary penalty set forth in this paragraph if the person or entity has requested more or different documents than are required under section 274A(b) or refused to honor documents that on their face reasonably appear to be genuine for the purpose or with the intent of discriminating against an individual in violation of 274B(a)(1). Also, in paragraph (d)(3), the provision stipulating the commencement of the

period of time for which back pay may be awarded is changed from not earlier than two years prior to the filing of the complaint to not earlier than two years prior to the ''filing of a charge with the Special Counsel.'' This alteration brings the regulation into conformance with the language in the INA.

In paragraphs (e)(1)(i) through (e)(1)(iv), the interim regulation changes the language indicating how each document fraud penalty is to be applied in order to track the language of the INA as amended by section 212 of IIRIRA. Thus, the current clauses authorizing the assessment of the specified penalty for ''each document used, accepted or created and each instance of use, acceptance or creation,'' as prohibited by section 274C(a) of the INA, are replaced in the interim rule with ''each document that is the subject of a violation'' under section 274C(a). Paragraphs (e)(1)(iii) and (iv) address penalties for violations of the additional document fraud charges added to the INA by IIRIRA pertaining to the false making of documents or applications and the failure to present upon arrival at a United States port of entry a document relating to an alien's eligibility to enter the United States that had previously been presented before boarding a common carrier.

Finally, paragraph (g) states, in accordance with sections 274A(e)(7) and 274C(d)(4) of the INA, that if the CAHO does not modify, vacate, or remand the ALJ's final order and the order is not referred to the Attorney General for review (*see* discussion of § 68.55 *infra*), then the ALJ's order becomes the final agency order sixty (60) days after the date of the ALJ's order. In a case arising under section 274B of the INA, the ALJ's order becomes the final agency order on the date the order is issued.

Administrative and Judicial Review

The interim regulation makes a number of changes for purposes of clarification to former § 68.53 of the OCAHO's regulations. For clarity and greater ease of reference, § 68.53 was divided in order to address discrete topics in separate sections. Section 68.53(a)(2), addressing when the ALJ's order becomes a final agency order in the absence of review by the CAHO or the Attorney General, was relocated as a new § 68.52(g). Section 68.53(d), addressing review of an interlocutory order of an ALJ in cases arising under sections 274A and 274C of the INA, was redesignated as § 68.53. Section 68.53(a)(1), addressing administrative review of an order of an ALJ in cases arising under sections 274A and 274C of the INA was redesignated as § 68.54. Section 68.53(a)(3), addressing judicial review of a final agency order in cases arising under sections 274A and 274C of the INA, was redesignated as a new § 68.56. Section 68.53(b), addressing judicial review of the final agency order of the ALJ in cases arising under section 274B of the INA, was redesignated as a new § 68.57. Section 68.54, ''Filing of the official record,'' was renumbered accordingly as § 68.58.

The provisions of § 68.53, governing CAHO review of an interlocutory order of an ALJ in cases arising under sections 274A and 274C of the INA, have been revised to allow a party to move for CAHO review of such an order without first seeking ALJ certification of the order for review. The revision requires that such a motion for CAHO review be made within ten (10) days of the entry of the order. In addition, the current five (5) day deadline for ALJ certification of an interlocutory order has been eliminated and replaced with a requirement that the ALJ state in the order itself if interlocutory review is appropriate. The CAHO is given ten (10) days from the date of the entry of the order to determine on the CAHO's own initiative to review an interlocutory order. The standards to be used in determining if interlocutory review is appropriate have been simplified by providing that both the ALJ and the CAHO shall use the same standards to determine if interlocutory review is warranted.

The authority to stay the proceeding pending review of an interlocutory order, currently limited to the ALJ, has been extended to the CAHO as well, in keeping with the current law governing the federal court system, which permits the district judge or the court of appeals or a judge thereof to stay proceedings in district court pending an interlocutory appeal. *See* 28 U.S.C. § 1292(b). The CAHO continues to have thirty (30) days to modify or vacate an interlocutory order; however, the more systematic briefing deadlines and service requirements of § 68.54(b)–(d) *infra* are incorporated by reference.

Paragraph (d) clarifies the effect of interlocutory review. An order by the CAHO modifying or vacating an interlocutory order shall also remand the case to the ALJ. Further proceedings in the case shall be conducted consistent with the CAHO's order. Whether or not an interlocutory order is reviewed by the CAHO, all parties retain the right to request administrative review of the final order of the ALJ with respect to all issues in the case.

Although the separate step of certifying an interlocutory order for CAHO review has been eliminated in this interim rule as a streamlining measure, § 68.53 still requires that the standards governing the appropriateness of interlocutory review must be met as a threshold matter before a review of the merits of any such order can take place. This is because, under established administrative law principles, interlocutory review is disfavored and should not be readily available to the parties as a regular means of challenging interlocutory orders of the ALJ during a proceeding. Interlocutory review can be not only disruptive of the trial proceedings but can also impose a burden on the reviewing authority, which would be asked to render judgment on an interlocutory issue without the benefit of a full record below. For these reasons, § 68.53 is intended to make clear to the parties that interlocutory review is not a matter of routine and is strictly controlled by the ALJ and the CAHO.

In the title for § 68.54 (formerly § 68.53(a)), the interim regulation adds the word ''Administrative'' in front of the word ''review'' to clarify that this portion of the regulation deals with administrative—not judicial—review of orders entered by an ALJ in cases arising under sections 274A and 274C of the INA.

Throughout § 68.54 the term ''decision and order'' is changed to ''order'' or ''final order'' in order to clarify existing ambiguity and conform with the definitions in § 68.2.

Paragraph 68.54(a) discusses the CAHO's discretionary authority to review ALJs' final orders. Paragraph (a)(1) specifies that a party may file with the CAHO a written request for administrative review of an ALJ's order within ten (10) days of the entry of the ALJ's order. Paragraph (a)(2) clarifies the procedure to be used when the CAHO decides to review an order on the CAHO's own motion. The CAHO will issue a notification of review containing the issues to be reviewed within ten (10) days of the entry of the ALJ's order.

Paragraph (b) provides for written and oral arguments in cases in which administrative review has been requested or ordered. The parties may file briefs or other written statements within twenty-one (21) days of the date of entry of the ALJ's order. Paragraph (b)(2) grants the CAHO discretion to permit or require additional filings or to conduct arguments in person or telephonically. Given the thirty (30) day statutory time limit for CAHO review, it is anticipated that this discretion would be exercised sparingly.

Experience has indicated that the time limits imposed by § 68.54(a) and (b) for seeking review and filing briefs are

necessary to provide for an orderly consideration of the parties' submissions within the thirty (30) day review period specified in sections 274A(e)(7) and 274C(d)(4) of the INA.

Similarly, in light of the thirty (30) day review period, paragraph (c) requires that filing or service of all requests for review, notifications of review, briefs or other filings relating to review by the CAHO be made by facsimile or same day hand delivery, or if such filing or service cannot be made, by overnight delivery.

Paragraph (d)(1) adds an explicit provision for remand to clarify that, in addition to modification or vacation of an ALJ's order within thirty (30) days of the entry of such order, the CAHO also has the option to remand an ALJ's order back to the ALJ for further proceedings consistent with the CAHO's order. In addition, paragraph (d)(2) clarifies the procedures in the event of remand by the CAHO. Paragraph (d)(3) states that the CAHO has thirty (30) days from the date of his or her order to make any necessary technical corrections so that the CAHO may do so without having to issue a formal *erratum* order.

Paragraph (e) states that the CAHO's order becomes the final agency order thirty (30) days subsequent to the date of the CAHO's modification or vacation, unless it is referred to the Attorney General for further administrative review (*see* discussion of § 68.55 *infra*).

Section 68.55 implements section 379 of IIRIRA, which provides for Attorney General review of ALJ or CAHO final orders in cases arising under section 274A or 274C of the INA. Under paragraph (a), the CAHO shall refer to the Attorney General for review any final order which the Attorney General directs the CAHO to refer to the Attorney General within thirty (30) days of the entry of an order modifying or vacating the ALJ's final order or within sixty (60) days of the entry of the ALJ's final order if the CAHO does not modify or vacate the ALJ's final order.

Paragraph (b) provides that the CAHO will refer to the Attorney General for review any final order that the Commissioner of Immigration and Naturalization requests be referred to the Attorney General within thirty (30) days of the entry of an order modifying or vacating the ALJ's final order or within sixty (60) days of the entry of the ALJ's final order if the CAHO does not modify or vacate the ALJ's final order. Pursuant to paragraph (b)(1), the Commissioner cannot request referral of an ALJ's order to the Attorney General unless the Immigration and Naturalization Service has first sought review of that order by the CAHO. In addition, under paragraph (b)(2), the request must be in writing, must contain a succinct statement of the reasons the case should be reviewed by the Attorney General, and copies must be transmitted to all other parties to the case and to the ALJ. Under paragraph (b)(3), the Attorney General, in the exercise of the Attorney General's discretion, may accept the Commissioner's request for referral of the case for review by issuing a written notice of acceptance within sixty (60) days of the date of the request. Copies of such written notice shall be transmitted to all parties in the case and the CAHO.

Paragraph (c) provides the procedure for Attorney General review. Under paragraph (c)(1), when a case is referred to the Attorney General, all parties must have an opportunity to respond to the referral and submit briefs or other written statements. Under paragraph (c)(2), when the Attorney General directs the CAHO to refer a final order to the Attorney General or when the Commissioner of Immigration and Naturalization requests referral of a final order to the Attorney General and the Attorney General accepts that referral, then the Attorney General shall enter an order that adopts, modifies, vacates, or remands the order. Any order of the Attorney General under this provision must be in writing and be transmitted to all parties in the case and to the CAHO. No specific deadline is established for the Attorney General's review. Under paragraph (c)(3), if the Attorney General remands either the CAHO's order or the ALJ's order, further proceedings will be conducted in accordance with the Attorney General's order, and administrative review of the ALJ's or CAHO's subsequent final order will be conducted in accordance with §§ 68.54 and 68.55.

Paragraph (d)(1) clarifies that if the Attorney General does issue an adoption, modification, or a vacation, that order becomes the final agency order on the date it is entered. Paragraph (d)(2) indicates that any final order referred to the Attorney General pursuant to § 68.55(b) becomes the final agency order sixty (60) days subsequent to such referral unless the Attorney General issues a written notification of acceptance of the referral before the sixty (60) day period expires.

Miscellaneous Changes

In §§ 68.14, 68.27, 68.38, 68.42, 68.52, 68.53 and 68.54 all references to ''issue'' or ''issuance'' have been changed to ''enter'' or ''entry'' in order to comport with the amended definitions of ''entry'' and ''issue'' in § 68.2.

Good Cause Exception

The decision of the Executive Office for Immigration Review to implement this rule as an interim rule, with provision for post-promulgation public comment, is based upon the ''good cause'' exception found at 5 U.S.C. 553(d). It is necessary and proper to implement this interim rule promptly because, to a significant extent, the language of the regulation merely tracks the language of the implementing statute. Moreover, because this interim rule implements amendments to sections 274A, 274B and 274C of the INA which became effective September 30, 1996, prompt implementation is necessary to provide corresponding rules of practice and procedure for administrative hearings under 274A, 274B and 274C. Finally, these regulations do not make any substantive changes or take away rights which that established in the statute or earlier rules of practice and procedure.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it 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

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant economic impact on a substantial number of small entities. No additional costs will be incurred as a result of this rule.

Executive Order 12866

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has

not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

Executive Order 12988

This rule complies with the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

Public Comment

The Executive Office for Immigration Review invites public comments within sixty days of the publication date of these rules. In particular, any suggestions for changes that might make the Administrative Law Judge hearing process more accessible for small businesses, including the possibility of streamlined procedures, would be appreciated.

List of Subjects in 28 CFR Part 68

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

Accordingly, title 28, part 68 of the Code of Federal Regulations is amended as follows:

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

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 301, 554; 8 U.S.C. 1103, 1324a, 1324b, and 1324c.

2. The heading of part 68 is revised to read as set forth in the heading above.

3. Revise §§ 68.1, 68.2, 68.3, 68.6, 68.7, 68.9, 68.10, 68.14, 68.18, 68.22, 68.23, 68.24, 68.27, 68.33, 68.38, 68.42, 68.52, 68.53, and 68.54, and add §§ 68.55 through 68.58 to read as follows:

§ 68.1 Scope of rules.

The rules of practice in this part are applicable to adjudicatory proceedings before Administrative Law Judges of the Executive Office for Immigration Review, United States Department of Justice, with regard to unlawful employment cases under section 274A of the INA, unfair immigration-related employment practice cases under section 274B of the INA, and document fraud cases under section 274C of the INA. Such proceedings shall be conducted expeditiously, and the parties shall make every effort at each stage of a proceeding to avoid delay. To the extent that these rules may be inconsistent with a rule of special application as provided by statute, executive order, or regulation, the latter is controlling. The Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled by these rules, by the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation.

§ 68.2 Definitions.

For purposes of this part:

Adjudicatory proceeding means an administrative judicial-type proceeding, before the Office of the Chief Administrative Hearing Officer, commencing with the filing of a complaint and leading to the formulation of a final agency order;

Administrative Law Judge means an Administrative Law Judge appointed pursuant to the provisions of 5 U.S.C. 3105;

Administrative Procedure Act means those provisions of the Administrative Procedure Act, as codified, which are contained in 5 U.S.C. 551 through 559;

Certification means a formal assertion in writing of the specified fact(s), signed by the person(s) making the certification and thereby attesting to the truth of the content of the writing, except as follows:

(1) ''Certified court reporter'' means a person who has been deemed by an appropriate body to be qualified to transcribe or record testimony during formal legal proceedings,

(2) ''Certified mail'' means a form of mail similar to registered mail by which sender may require return receipt from addressee, and

(3) ''Certified copy'' means a copy of a document or record, signed by the officer to whose custody the original is entrusted, thereby attesting that the copy is a true copy;

Certify means the act of executing a certification;

Chief Administrative Hearing Officer or an official who has been designated to act as the Chief Administrative Hearing Officer, is the official who, under the Director, Executive Office for Immigration Review, generally administers the Administrative Law Judge program, exercises administrative supervision over Administrative Law Judges and others assigned to the Office of the Chief Administrative Hearing Officer, and who, in accordance with sections 274A(e)(7) and 274C(d)(4) of the INA, exercises discretionary authority to review the decisions and orders of Administrative Law Judges adjudicated under sections 274A and 274C of the INA;

Complainant means the Immigration and Naturalization Service in cases arising under sections 274A and 274C of the INA. In cases arising under section 274B of the INA, ''complainant'' means the Special Counsel (as defined in this section), and also includes the person or entity who has filed a charge with the Special Counsel, or, in private actions, an individual or private organization;

Complaint means the formal document initiating an adjudicatory proceeding;

Consent order means any written document containing a specified remedy or other relief agreed to by all parties and entered as an order by the Administrative Law Judge;

Debt Collection Improvement Act means the Debt Collection Improvement Act of 1996, Pub. L. 104–134, Title III, 110 Stat. 1321 (1996);

Decision means any findings of fact or conclusions of law by an Administrative Law Judge or the Chief Administrative Hearing Officer;

Document fraud cases means cases involving allegations under section 274C of the INA.

Entry means the date the Administrative Law Judge, Chief Administrative Hearing Officer, or the Attorney General signs the order; *Entry* as used in section 274B(i)(1) of the INA means the date the Administrative Law Judge signs the order;

Final agency order is an Administrative Law Judge's final order, in cases arising under sections 274A and 274C of the INA, that has not been modified, vacated, or remanded by the Chief Administrative Hearing Officer pursuant to § 68.54, referred to the Attorney General for review pursuant to § 68.55(a), or accepted by the Attorney General for review pursuant to § 68.55(b)(3). Alternatively, if the Chief Administrative Hearing Officer modifies or vacates the final order pursuant to § 68.54, the modification or vacation becomes the final agency order if it has not been referred to the Attorney General for review pursuant to § 68.55(a) or accepted by the Attorney General for review pursuant to § 68.55(b)(3). If the Attorney General enters an order that modifies or vacates either the Chief Administrative Hearing Officer's or the Administrative Law Judge's order, the Attorney General's

order is the final agency order. In cases arising under section 274B of the INA, an Administrative Law Judge's final order is also the final agency order;

Final order is an order by an Administrative Law Judge that disposes of a particular proceeding or a distinct portion of a proceeding, thereby concluding the jurisdiction of the Administrative Law Judge over that proceeding or portion thereof;

Hearing means that part of a proceeding that involves the submission of evidence, either by oral presentation or written submission;

Interlocutory order means an order that decides some point or matter, but is not a final order or a final decision of the whole controversy; it decides some intervening matter pertaining to the cause of action and requires further steps to be taken in order for the Administrative Law Judge to adjudicate the cause on the full merits;

INA means the Immigration and Nationality Act of 1952, ch. 477, Pub. L. 82–414, 66 Stat. 163, as amended;

Issued as used in section 274A(e)(8) and section 274C(d)(5) of the INA means the date on which an Administrative Law Judge's final order, the Chief Administrative Hearing Officer's order, or an adoption, modification, or vacation by the Attorney General becomes a final agency order;

Motion means an oral or written request, made by a person or a party, for some action by an Administrative Law Judge;

Order means a determination or mandate by an Administrative Law Judge, the Chief Administrative Hearing Officer, or the Attorney General that resolves some point or directs some action in the proceeding;

Ordinary mail refers to the mail service provided by the United States Postal Service using only standard postage fees, exclusive of special systems, electronic transfers, and other means that have the effect of providing expedited service;

Party includes all persons or entities named or admitted as a complainant, respondent, or intervenor in a proceeding; or any person filing a charge with the Special Counsel under section 274B of the INA, resulting in the filing of a complaint, concerning an unfair immigration-related employment practice;

Pleading means the complaint, motions, the answer thereto, any supplement or amendment thereto, and reply that may be permitted to any answer, supplement, or amendment submitted to the Administrative Law Judge or, when no judge is assigned, the Chief Administrative Hearing Officer;

Prohibition of indemnity bond cases means cases involving allegations under section 274A(g) of the INA;

Respondent means a party to an adjudicatory proceeding, other than a complainant, against whom findings may be made or who may be required to provide relief or take remedial action;

Special Counsel means the Special Counsel for Unfair Immigration-Related Employment Practices appointed by the President under section 274B of the INA, or his or her designee or in the case of a vacancy in the Office of Special Counsel, the officer or employee designated by the President who shall act as Special Counsel during such vacancy;

Unfair immigration-related employment practice cases means cases involving allegations under section 274B of the INA.

Unlawful employment cases means cases involving allegations under section 274A of the INA, other than prohibition of indemnity bond cases;

§ 68.3 Service of complaint, notice of hearing, written orders, and decisions.

(a) Service of complaint, notice of hearing, written orders, and decisions shall be made by the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge to whom the case is assigned either:

(1) By delivering a copy to the individual party, partner of a party, officer of a corporate party, registered agent for service of process of a corporate party, or attorney or representative of record of a party;

(2) By leaving a copy at the principal office, place of business, or residence of a party; or

(3) By mailing to the last known address of such individual, partner, officer, or attorney or representative of record.

(b) Service of complaint and notice of hearing is complete upon receipt by addressee.

(c) In circumstances where the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge encounters difficulty with perfecting service, the Chief Administrative Hearing Officer or the Administrative Law Judge may direct that a party execute service of process.

* * * * *

§ 68.6 Service and filing of documents.

(a) *Generally.* An original and four copies of the complaint shall be filed with the Chief Administrative Hearing Officer. An original and two copies of all other pleadings, including any attachments, shall be filed with the Chief Administrative Hearing Officer by the parties presenting the pleadings until an Administrative Law Judge is assigned to a case. Thereafter, all pleadings shall be delivered or mailed for filing to the Administrative Law Judge assigned to the case, and shall be accompanied by a certification indicating service to all parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Except as required by § 68.54(c) and paragraph (c) of this section, service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The person serving the document shall certify to the manner and date of service.

(b) *Discovery.* The parties shall not file requests for discovery, answers, or responses thereto with the Administrative Law Judge. The Administrative Law Judge may, however, upon motion of a party or on his or her own initiative, order that such requests for discovery, answers, or responses thereto be filed.

(c) *Where a time limit is imposed by statute, regulation, or order.* Pleadings and briefs may be filed by facsimile with either an Administrative Law Judge or, in the case of a complaint, with the Chief Administrative Hearing Officer, only to toll the running of a time limit. All original signed pleadings and other documents must be forwarded concurrently with the transmission of the facsimile. Any party filing documents by facsimile must include in the certification of service a certification that service on the opposing party has also been made by facsimile or by same-day hand delivery, or, if service by facsimile or same-day hand delivery cannot be made, a certification that the document has been served instead by overnight delivery service. In the case of requests for administrative review, briefs or other filings relating to review by the Chief Administrative Hearing Officer, filing, or service shall be made using the procedure set forth in this paragraph pursuant to § 68.54(c).

§ 68.7 Form of pleadings.

(a) Every pleading shall contain a caption setting forth the statutory provision under which the proceeding is instituted, the title of the proceeding, the docket number assigned by the Office of the Chief Administrative Hearing Officer, the names of all parties (or, after the complaint, at least the first party named as a complainant or respondent), and a designation of the type of pleading (e.g., complaint, motion to dismiss). The pleading shall be signed, dated, and shall contain the

address and telephone number of the party or person representing the party. The pleading shall be on standard size (8½ x 11) paper and should also be typewritten when possible.

(b) A complaint filed pursuant to section 274A, 274B, or 274C of the INA shall contain the following:

(1) A clear and concise statement of facts, upon which an assertion of jurisdiction is predicated;

(2) The names and addresses of the respondents, agents, and/or their representatives who have been alleged to have committed the violation;

(3) The alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred; and,

(4) A short statement containing the remedies and/or sanctions sought to be imposed against the respondent.

(5) The complaint must be accompanied by a statement identifying the party or parties to be served by the Office of the Chief Administrative Hearing Officer with notice of the complaint pursuant to § 68.3.

(c) Complaints filed pursuant to sections 274A and 274C of the INA shall be signed by an attorney and shall be accompanied by a copy of the Notice of Intent to Fine and Request for Hearing. Complaints filed pursuant to section 274B of the INA shall be accompanied by a copy of the charge, previously filed with the Special Counsel pursuant to section 274B(b)(1), and a copy of the Special Counsel's letter of determination regarding the charges.

(d) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process, provided that all copies are clear and legible.

(e) All documents presented by a party in a proceeding must be in the English language or, if in a foreign language, accompanied by a certified translation.

* * * * *

§ 68.9 Responsive pleadings—answer.

(a) *Time for answer.* Within thirty (30) days after the service of a complaint, each respondent shall file an answer.

(b) *Default.* Failure of the respondent to file an answer within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.

(c) *Answer.* Any respondent contesting any material fact alleged in a complaint, or contending that the amount of a proposed penalty or award is excessive or inappropriate, or contending that he or she is entitled to judgment as a matter of law, shall file an answer in writing. The answer shall include:

(1) A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation; a statement of lack of information shall have the effect of a denial (any allegation not expressly denied shall be deemed to be admitted); and

(2) A statement of the facts supporting each affirmative defense.

(d) *Reply.* Complainants may file a reply responding to each affirmative defense asserted.

(e) *Amendments and supplemental pleadings.* If a determination of a controversy on the merits will be facilitated thereby, the Administrative Law Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to complaints and other pleadings at any time prior to the issuance of the Administrative Law Judge's final order based on the complaint. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make the pleading conform to the evidence. The Administrative Law Judge may, upon reasonable notice and such terms as are just, permit supplemental pleadings setting forth transactions, occurrences, or events that have occurred or new law promulgated since the date of the pleadings and which are relevant to any of the issues involved.

§ 68.10 Motion to dismiss for failure to state a claim upon which relief can be granted.

(a) The respondent, without waiving the right to offer evidence in the event that the motion is not granted, may move for a dismissal of the complaint on the ground that the complainant has failed to state a claim upon which relief can be granted. The filing of a motion to dismiss does not affect the time period for filing an answer.

(b) The Administrative Law Judge may dismiss the complaint, based on a motion by the respondent or without a motion from the respondent, if the Administrative Law Judge determines that the complainant has failed to state a claim upon which relief can be granted. However, in the prehearing phase of an adjudicatory proceeding brought under this part, the Administrative Law Judge shall not dismiss a complaint in its entirety for failure to state a claim upon which relief may be granted, upon his or her own motion, without affording the complainant an opportunity to show cause why the complaint should not be dismissed.

* * * * *

§ 68.14 Consent findings or dismissal.

(a) *Submission.* Where the parties or their authorized representatives or their counsel have entered into a settlement agreement, they shall:

(1) Submit to the presiding Administrative Law Judge:

(i) The agreement containing consent findings; and

(ii) A proposed decision and order; or

(2) Notify the Administrative Law Judge that the parties have reached a full settlement and have agreed to dismissal of the action. Dismissal of the action shall be subject to the approval of the Administrative Law Judge, who may require the filing of the settlement agreement.

(b) *Content.* Any agreement containing consent findings and a proposed decision and order disposing of a proceeding or any part thereof shall also provide:

(1) That the decision and order based on consent findings shall have the same force and effect as a decision and order made after full hearing;

(2) That the entire record on which any decision and order may be based shall consist solely of the complaint, notice of hearing, and any other such pleadings and documents as the Administrative Law Judge shall specify;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the decision and order entered into in accordance with the agreement.

(c) *Disposition.* In the event an agreement containing consent findings and an interim decision and order is submitted, the Administrative Law Judge, within thirty (30) days or as soon as practicable thereafter, may, if satisfied with its timeliness, form, and substance, accept such agreement by entering a decision and order based upon the agreed findings. In his or her discretion, the Administrative Law Judge may conduct a hearing to determine the fairness of the agreement, consent findings, and proposed decision and order.

* * * * *

§ 68.18 Discovery—general provisions.

(a) *General.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things, or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. The frequency or extent of these methods may be limited by the Administrative Law Judge upon his or her own initiative or pursuant to a motion under paragraph (c) of this section.

(b) *Scope of discovery.* Unless otherwise limited by order of the Administrative Law Judge in accordance with the rules in this part, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter.

(c) *Protective orders.* Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the Administrative Law Judge may make any order that justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) The discovery not be had;

(2) The discovery may be had only on specified terms and conditions, including a designation of the time, amount, duration, or place;

(3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery; or

(4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters.

(d) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his or her response to include information thereafter acquired, except as follows:

(1) A party is under a duty to supplement timely his or her response with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he or she is expected to testify, and the substance of his or her testimony.

(2) A party is under a duty to amend timely a prior response if he or she later obtains information upon the basis of which:

(i) He or she knows the response was incorrect when made; or

(ii) He or she knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Administrative Law Judge upon motion of a party or agreement of the parties.

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§ 68.22 Depositions.

(a) *Notice.* Any party desiring to take the deposition of a witness shall give notice in writing to the witness and other parties of the time and place of the deposition, and the name and address of each witness. If documents are requested, the notice shall include a written request for the production of documents. Not less than ten (10) days written notice shall be given when the deposition is to be taken within the continental United States, and not less then twenty (20) days written notice shall be given when the deposition is to be taken elsewhere, unless otherwise permitted by the Administrative Law Judge or agreed to by the parties.

(b) *When, how, and by whom taken.* The following procedures shall apply to depositions:

(1) Depositions may be taken by oral examination or upon written interrogatories before any person having power to administer oaths. The party taking a deposition upon oral examination shall state in the notice the method by which the testimony shall be recorded. Unless the Administrative Law Judge orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by non-stenographic means.

(2) Each witness testifying upon deposition shall testify under oath and any other party shall have the right to cross-examine. The questions asked and the answers thereto, together with all objections made, shall be recorded as provided by paragraph (b)(1) of this section. The person administering the oath shall certify in writing that the transcript or recording is a true record of the testimony given by the witness. The witness shall review the transcript or recording within thirty (30) days of notification that it is available and subscribe in writing to the deposition, indicating in writing any changes in form or substance, unless such review is waived by the witness and the parties by stipulation.

(c) *Motion to terminate or limit examination.* During the taking of a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party, or improper questions asked. The deposition will then be adjourned. However, the objecting party or deponent must immediately move the Administrative Law Judge for a ruling on his or her objections to the deposition conduct or proceedings.

§ 68.23 Motion to compel response to discovery; sanctions.

(a) If a deponent fails to answer a question asked, or a party upon whom a discovery request is made pursuant to §§ 68.18 through 68.22 fails to respond adequately or objects to the request or to any part thereof, or fails to permit inspection as requested, the discovering party may move the Administrative Law Judge for an order compelling a response or inspection in accordance with the request. A party who has taken a deposition or has requested admissions or has served interrogatories may move to determine the sufficiency of the answers or objections thereto. Unless the objecting party sustains his or her burden of showing that the objection is justified, the Administrative Law Judge may order that an answer be served. If the Administrative Law Judge determines that an answer does not comply with the requirements of the rules in this part, he or she may order either that the matter is admitted or that an amended answer be served.

(b) The motion shall set forth and include:

(1) The nature of the questions or request;

(2) The response or objections of the party upon whom the request was served;

(3) Arguments in support of the motion; and

(4) A certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure information or material without action by the Administrative Law Judge.

(c) If a party, an officer or an agent of a party, or a witness, fails to comply with an order, including, but not limited to, an order for the taking of a deposition, the production of

documents, the answering of interrogatories, a response to a request for admissions, or any other order of the Administrative Law Judge, the Administrative Law Judge may, for the purposes of permitting resolution of the relevant issues and disposition of the proceeding and to avoid unnecessary delay, take the following actions:

(1) Infer and conclude that the admission, testimony, documents, or other evidence would have been adverse to the non-complying party;

(2) Rule that for the purposes of the proceeding the matter or matters concerning which the order was issued be taken as established adversely to the non-complying party;

(3) Rule that the non-complying party may not introduce into evidence or otherwise rely upon testimony by such party, officer, or agent, or the documents or other evidence, in support of or in opposition to any claim or defense;

(4) Rule that the non-complying party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both;

(6) In the case of failure to comply with a subpoena, the Administrative Law Judge may also take the action provided in § 68.25(e); and

(7) In ruling on a motion made pursuant to this section, the Administrative Law Judge may make and enter a protective order such as he or she is authorized to enter on a motion made pursuant to § 68.42.

(d) *Evasive or incomplete response.* For the purposes of this section, an evasive or incomplete response to discovery may be treated as a failure to respond.

§ 68.24 Use of depositions at hearings.

(a) *Generally.* At the hearing, any part or all of a deposition, so far as admissible, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness;

(2) The deposition of an expert witness may be used by any party for any purpose, unless the Administrative Law Judge rules that such use would be unfair or a violation of due process;

(3) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association which is a party, may be used by any other party for any purpose;

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Administrative Law Judge finds:

(i) That the witness is dead;

(ii) That the witness is out of the United States or more than 100 miles from the place of hearing unless it appears that the absence of the witness was procured by the party offering the deposition;

(iii) That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment;

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist to make it desirable, in the interest of justice, and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used;

(5) If only part of a deposition is offered in evidence by a party, any other party may require him or her to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts; and

(6) Substitution of parties does not affect the right to use depositions previously taken; and, when a proceeding in any hearing has been dismissed and another proceeding involving the parties or their representatives or successors in interest has been brought (or commenced), all depositions lawfully taken and duly filed in the former proceeding may be used in the latter if originally taken therefor.

(7) A party offering deposition testimony may offer it in stenographic or nonstenographic form, but if in nonstenographic form, the party shall also be responsible for providing a transcript of the portions so offered.

(b) *Objections to admissibility.* Except as provided in this paragraph, objections may be made at the hearing to receiving in evidence any deposition or part thereof for any reason that would require the exclusion of the evidence if the witness were then present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

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§ 68.27 Continuances.

(a) *When granted.* Continuances shall only be granted in cases where the requester has a prior judicial commitment or can demonstrate undue hardship, or a showing of other good cause.

(b) *Time limit for requesting.* Except for good cause arising thereafter, requests for continuances must be filed not later than fourteen (14) days prior to the date of the scheduled proceeding.

(c) *How filed.* Motions for continuances shall be in writing, unless made during the prehearing conference or the hearing. Copies shall be served on all parties. Any motions for continuances filed fewer than fourteen (14) days before the date of the scheduled proceeding shall, in addition to the written request, be telephonically communicated to the Administrative Law Judge or a member of the Judge's staff and to all other parties.

(d) *Ruling.* Time permitting, the Administrative Law Judge shall enter a written order in advance of the scheduled proceeding date that either grants or denies the request. Otherwise, the ruling shall be made orally by telephonic communication to the party requesting the continuance, who shall be responsible for telephonically notifying all other parties. Oral orders shall be confirmed in writing by the Administrative Law Judge.

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§ 68.33 Participation of parties and representation.

(a) *Participation of parties.* Any party shall have the right to appear in a proceeding and may examine and cross-examine witnesses and introduce into the record documentary or other relevant evidence, except that the participation of any intervenor shall be limited to the extent prescribed by the Administrative Law Judge.

(b) *Person compelled to testify.* Any person compelled to testify in a

proceeding in response to a subpoena may be accompanied, represented, and advised by an individual meeting the requirements of paragraph (c) of this section.

(c) *Representation for respondents.* Persons who may appear before the Administrative Law Judges on behalf of respondents include:

(1) An attorney at law who is admitted to practice before the federal courts or before the highest court of any state, the District of Columbia, or any territory or commonwealth of the United States, may practice before the Administrative Law Judges. An attorney's own representation that the attorney is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise ordered by the Administrative Law Judge.

(2) A law student, enrolled in an accredited law school, may practice before an Administrative Law Judge. The law student must seek advance approval by filing a statement with the Administrative Law Judge proving current participation in a legal assistance program or clinic conducted by the law school. Practice before the Administrative Law Judge shall be under direct supervision of a faculty member or an attorney. An appearance by a law student shall be without direct or indirect remuneration. The Administrative Law Judge may determine the amount of supervision required of the supervising faculty member or attorney.

(3) An individual who is neither an attorney nor a law student may be allowed to provide representation to a party upon a written order from the Administrative Law Judge assigned to the case granting approval of the representation. The individual must file a written application with the Administrative Law Judge demonstrating that the individual possesses the knowledge of administrative procedures, technical expertise, or other qualifications necessary to render valuable service in the proceedings and is otherwise competent to advise and assist in the presentation of matters in the proceedings.

(i) *Application.* A written application by an individual who is neither an attorney nor a law student for admission to represent a party in proceedings shall be submitted to the Administrative Law Judge within ten (10) days from the receipt of the Notice of Hearing and complaint by the party on whose behalf the individual wishes to file the application. This period of time for filing the application may be extended upon approval of the Administrative Law Judge. The application shall set forth in detail the requesting individual's qualifications to represent the party.

(ii) *Inquiry on qualifications or ability.* The Administrative Law Judge may, at any time, inquire as to the qualifications or ability of any non-attorney to render assistance in proceedings before the Administrative Law Judge.

(iii) *Denial of authority to appear.* Except as provided in paragraph (c)(3)(iv) of this section, the Administrative Law Judge may enter an order denying the privilege of appearing to any individual whom the Judge does not possess the requisite qualifications to represent others; is lacking in character or integrity; has engaged in unethical or improper professional conduct; or has engaged in an act involving moral turpitude.

(iv) *Exception.* Any individual may represent him or herself or any corporation, partnership or unincorporated association of which that individual is a partner or general officer in proceedings before the Administrative Law Judge without prior approval of the Administrative Law Judge and without filing the written application required by this paragraph. Such individuals must, however, file a notice of appearance in the manner set forth in paragraph (e) of this section.

(d) *Representation for the Department of Justice.* The Department of Justice may be represented by the appropriate counsel in these proceedings.

(e) *Proof of authority.* Any individual acting in a representative capacity in any adjudicative proceeding may be required by the Administrative Law Judge to show his or her authority to act in such capacity. Representation of a respondent shall be at no expense to the Government.

(f) *Notice of appearance.* Except for a government attorney filing a complaint pursuant to section 274A, 274B, or 274C of the INA, each attorney shall file a notice of appearance. Such notice shall indicate the name of the case or controversy, the case number if assigned, and the party on whose behalf the appearance is made. The notice of appearance shall be signed by the attorney, and shall be accompanied by a certification indicating that such notice was served on all parties of record. A request for a hearing signed by an attorney and filed with the Immigration and Naturalization Service pursuant to section 274A(e)(3)(A) or 274C(d)(2)(A) of the INA, and containing the same information as required by this section, shall be considered a notice of appearance on behalf of the respondent for whom the request was made.

(g) *Withdrawal or substitution of a representative.* Withdrawal or substitution of an attorney or representative may be permitted by the Administrative Law Judge upon written motion. The Administrative Law Judge shall enter an order granting or denying such motion for withdrawal or substitution.

* * * * *

§ 68.38 Motion for summary decision.

(a) A complainant, not fewer than thirty (30) days after receipt by respondent of the complaint, may move with or without supporting affidavits for summary decision on all or any part of the complaint. Motions by any party for summary decision on all or any part of the complaint will not be entertained within the twenty (20) days prior to any hearing, unless the Administrative Law Judge decides otherwise. Any other party, within ten (10) days after service of a motion for summary decision, may respond to the motion by serving supporting or opposing papers with affidavits, if appropriate, or countermove for summary decision. The Administrative Law Judge may set the matter for argument and/or call for submission of briefs.

(b) Any affidavits submitted with the motion shall set forth such facts as would be admissible in evidence in a proceeding subject to 5 U.S.C. 556 and 557 and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of such pleading. Such response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(c) The Administrative Law Judge shall enter a summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

(d) *Form of summary decisions.* Any final order entered as a summary decision shall conform to the requirements for all final orders. A final order made under this section shall include a statement of:

(1) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(2) Any terms and conditions of the final order.

(e) *Hearings on issue of fact.* Where a genuine question of material fact is

raised, the Administrative Law Judge shall set the case for an evidentiary hearing.

* * * * *

§ 68.42 In camera and protective orders.

(a) *Privileged communications.* Upon application of any person, the Administrative Law Judge may limit discovery or introduction of evidence or enter such protective or other orders as in the Judge's judgment may be consistent with the objective of protecting privileged communications and of protecting data and other material the disclosure of which would unreasonably prejudice a party, witness, or third party.

(b) *Classified or sensitive matter.* (1) Without limiting the discretion of the Administrative Law Judge to give effect to any other applicable privilege, it shall be proper for the Administrative Law Judge to limit discovery or introduction of evidence or to enter such protective or other orders as in the Judge's judgment may be consistent with the objective of preventing undue disclosure of classified or sensitive matter. When the Administrative Law Judge determines that information in documents containing sensitive matter should be made available the Judge may direct the producing party to prepare an unclassified or nonsensitive summary or extract of the original. The summary or extract may be admitted as evidence in the record.

(2) If the Administrative Law Judge determines that this procedure is inadequate and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to any party, the Judge may so advise the parties and provide an opportunity for arrangements to permit a party or a representative to have access to such matter. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure.

* * * * *

§ 68.52 Final order of the Administrative Law Judge.

(a) *Proposed final order.* (1) Within twenty (20) days of filing of the transcript of the testimony, or within such additional time as the Administrative Law Judge may allow, the Administrative Law Judge may require the parties to file proposed findings of fact, conclusions of law, and orders, together with supporting briefs expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(2) The Administrative Law Judge may, by order, require that when a proposed order is filed for the Administrative Law Judge's consideration, the filing party shall submit to the Administrative Law Judge a copy of the proposed order on a 3.5″ microdisk.

(b) *Entry of final order.* Unless an extension of time is given by the Chief Administrative Hearing Officer for good cause, the Administrative Law Judge shall enter the final order within sixty (60) days after receipt of the hearing transcript or of post-hearing briefs, proposed findings of fact, and conclusions of law, if any, by the Administrative Law Judge. The final order entered by the Administrative Law Judge shall be based upon the whole record. It shall be supported by reliable and probative evidence. The standard of proof shall be by a preponderance of the evidence.

(c) *Contents of final order with respect to unlawful employment of unauthorized aliens.*

(1) If, upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity named in the complaint has violated section 274A(a)(1)(A) or (a)(2) of the INA, the final order shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of:

(i) Not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom there was a violation of either such paragraph occurring before March 15, 1999; 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 on or after March 15, 1999;

(ii) In the case or a person or entity previously subject to one final order under this paragraph (c)(1), not less than $2,000 and not more than $5,000 for each unauthorized alien with respect to whom there was a violation of either such paragraph occurring before March 15, 1999, and 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 on or after March 15, 1999; 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 $3,000 and not more than $10,000 for each unauthorized alien with respect to whom there was a violation of each such paragraph occurring before March 15, 1999, and 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 on or after March 15, 1999.

(2) The final order may also require the respondent to participate in, and comply with the terms of, one of the pilot programs set forth in Pub. L. 104–208, Div. C, sections 401–05, 110 Stat. 3009, 3009–655 to 3009–665 (1996) (codified at 8 U.S.C. 1324a (note)), with respect to the respondent's hiring or recruitment or referral of individuals in a state (as defined in section 101(a)(36) of the INA) covered by such a program.

(3) The final order may also require the respondent to comply with the requirements of section 274A(b) of the INA with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years; and to take such other remedial action as is appropriate.

(4) In the case of a person or entity composed of distinct, physically separate subdivisions, each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(5) If, upon a preponderance of the evidence, the Administrative Law Judge determines that a person or entity named in the complaint has violated section 274A(a)(1)(B) of the INA, except as set forth in paragraph (c)(6) of this section, the final order under this paragraph shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred before March 15, 1999, and not less than $110 and not more than $1,100 for each individual with respect to whom such violation occurred on or after March 15, 1999,. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(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.

(7) *Prohibition of indemnity bond cases.* If, upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated section 274A(g)(1) of the INA, the final order shall require the person or entity to pay a civil penalty of $1,000 for each individual with respect to whom such violation occurred before March 15, 1999, and $1,100 for each individual with respect to whom such violation occurred on or after March 15, 1999, and require the return of any amounts received in such violation to the individual or, if the individual cannot be located, to the general fund of the Treasury.

(8) *Adjustment of penalties for inflation.* The civil penalties cited in paragraph (c) of this section shall be subject to adjustments for inflation at least every four years in accordance with the Debt Collection Improvement Act.

(9) *Attorney's fees.* A prevailing respondent may receive, pursuant to 5 U.S.C. 504, an award of attorney's fees in unlawful employment and prohibition of indemnity bond cases. Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative, stating the actual time expended and the rate at which fees and other expenses were computed. An award of attorney's fees will not be made if the Administrative Law Judge determines that the complainant's position was substantially justified or special circumstances make the award unjust.

(d) *Contents of final order with respect to unfair immigration-related employment practice cases.*

(1) If, upon the preponderance of the evidence, the Administrative Law Judge determines that any person or entity named in the complaint has engaged in or is engaging in an unfair immigration-related employment practice, the final order shall include a requirement that the person or entity cease and desist from such practice. The final order may also require the person or entity:

(i) To comply with the requirements of section 274A(b) of the INA with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(ii) To retain for a period of up to three years, and only for purposes consistent with section 274A(b)(5) of the INA, the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

(iii) To hire individuals directly and adversely affected, with or without back pay;

(iv) To post notices to employees about their rights under section 274B and employers' obligations under section 274A;

(v) To educate all personnel involved in hiring and in complying with section 274A or 274B about the requirements of 274A or 274B;

(vi) To order, in an appropriate case, the removal of a false performance review or false warning from an employee's personnel file;

(vii) To order, in an appropriate case, the lifting of any restrictions on an employee's assignments, work shifts, or movements;

(viii) Except as provided in paragraph (d)(1)(xii) of this section, to pay a civil penalty of not less than $250 and not more than $2,000 for each individual discriminated against before March 15, 1999, and not less than $275 and not more than $2,200 for each individual discriminated against on or after March 15, 1999;

(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 $2,000 and not more than $5,000 for each individual discriminated against before March 15, 1999, and not less than $2,200 and not more than $5,500 for each individual discriminated against on or after March 15, 1999;

(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 $3,000 and not more than $10,000 for each individual discriminated against before March 15, 1999, and not less than $3,300 and not more than $11,000 for each individual discriminated against on or after March 15, 1999;

(xi) To participate in, and comply with the terms of, one of the pilot programs set forth in Pub. L. 104–208, Div. C, sections 401–05, 110 Stat. 3009, 3009–655 to 3009–665 (1996) (codified at 8 U.S.C. 1324a (note)), with respect to the respondent's hiring or recruitment or referral of individuals in a state (as defined in section 101(a)(36) of the INA) covered by such a program; and

(xii) In the case of an unfair immigration-related employment practice where a person or entity, for the purpose or with the intent of discriminating against an individual in violation of section 274B(a), requests more or different documents than are required under section 274A(b) or refuses to honor documents that on their face reasonably appear to be genuine, to pay a civil penalty of not less than $100 and not more than $1,000 for each individual discriminated against before March 15, 1999, and not less than $110 and not more than $1,100 for each individual discriminated against on or after March 15, 1999, or to order any of the remedies listed as paragraphs (d)(1)(i) through (d)(1)(vii) of this section.

(2) The civil penalties cited in paragraph (d) of this section shall be subject to adjustments for inflation at least every four years in accordance with the Debt Collection Improvement Act.

(3) Back pay liability shall not accrue from a date more than two years prior to the date of the filing of a charge with the Special Counsel. In no event shall back pay accrue from before November 6, 1986. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable. No order shall require the hiring of an individual as an employee, or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status unless it is determined that an unfair immigration-related employment practice exists under section 274B(a)(5) of the INA.

(4) In applying paragraph (d) of this section in the case of a person or entity composed of distinct, physically separate subdivisions, each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with another subdivision, each such subdivision shall be considered a separate person or entity.

(5) If, upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity named in the complaint has not engaged in and is not engaging in an unfair immigration-related employment practice, then the final order shall dismiss the complaint.

(6) *Attorney's fees.* The Administrative Law Judge in his or her

discretion may allow a prevailing party, other than the United States, a reasonable attorney's fee if the losing party's argument is without reasonable foundation in law and fact. Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative stating the actual time expended and the rate at which fees and other expenses were computed.

(e) *Contents of final order with respect to document fraud cases.* (1) If, upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated section 274C of the INA, the final order shall include a requirement that the respondent cease and desist from such violations and pay a civil money penalty in an amount of:

(i) Not less than $250 and not more than $2,000 for each document that is the subject of a violation under section 274C(a)(1) through (6) of the INA before March 15, 1999, 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)(1) through (6) of the INA on or after March 15, 1999; or,

(ii) 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)(1) through (6) of the INA before March 15, 1999, 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) (1) through (6) of the INA on or after March 15, 1999.

(2) In the case of a person or entity composed of distinct, physically separate subdivisions, each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(3) *Adjustment of penalties for inflation.* The civil penalties cited in paragraph (e) of this section shall be subject to adjustments for inflation at least every four years in accordance with the Debt Collection Improvement Act.

(4) *Attorney's fees.* A prevailing respondent may receive, pursuant to 5 U.S.C. 504, an award of attorney's fees in document fraud cases. Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative, stating the actual time expended and the rate at which fees and other expenses were computed. An award of attorney's fees shall not be made if the Administrative Law Judge determines that the complainant's position was substantially justified or special circumstances make the award unjust.

(f) *Corrections to orders.* An Administrative Law Judge may, in the interest of justice, correct any clerical mistakes or typographical errors contained in a final order entered in a case arising under section 274A or 274C of the INA at any time within thirty (30) days after the entry of the final order. Changes other than clerical mistakes or typographical errors will be considered in cases arising under sections 274A and 274C of the INA by filing a request for review to the Chief Administrative Hearing Officer by a party under § 68.54, or the Chief Administrative Hearing Officer may exercise discretionary review to make such changes pursuant to § 68.54. In cases arising under section 274B of the INA, an Administrative Law Judge may correct any substantive, clerical, or typographical errors or mistakes in a final order at any time within sixty (60) days after the entry of the final order.

(g) *Final agency order.* In a case arising under section 274A or 274C of the INA, the Administrative Law Judge's order becomes the final agency order sixty (60) days after the date of the Administrative Law Judge's order, unless the Chief Administrative Hearing Officer modifies, vacates, or remands the Administrative Law Judge's final order pursuant to § 68.54, or unless the order is referred to the Attorney General pursuant to § 68.55. In a case arising under section 274B of the INA, the Administrative Law Judge's order becomes the final agency order on the date the order is issued.

§ 68.53 Review of an interlocutory order of an Administrative Law Judge in cases arising under section 274A or 274C.

(a) *Authority.* In a case arising under section 274A or 274C of the Immigration and Nationality Act, the Chief Administrative Hearing Officer may, within thirty (30) days of the date of an Administrative Law Judge's interlocutory order, issue an order that modifies or vacates the interlocutory order. The Chief Administrative Hearing Officer may review an Administrative Law Judge's interlocutory order if:

(1) An Administrative Law Judge, when issuing an interlocutory order, states in writing that the Judge believes:

(i) That the order concerns an important question of law on which there is a substantial difference of opinion; and

(ii) That an immediate appeal will advance the ultimate termination of the proceeding or that subsequent review will be an inadequate remedy; or

(2) Within ten (10) days of the date of the entry of an interlocutory order a party requests by motion that the Chief Administrative Hearing Officer review the interlocutory order. This motion shall contain a clear statement of why interlocutory review is appropriate under the standards set out in paragraph (a)(1) of this section; or

(3) Within ten (10) days of the entry of the interlocutory order, the Chief Administrative Hearing Officer, upon the Officer's own initiative, determines that such order is appropriate for interlocutory review pursuant to the standards set out in paragraph (a)(1) and issues a notification of review. This notification shall state the issues to be reviewed.

(b) *Stay of proceedings.* Review of an Administrative Law Judge's interlocutory order will not stay the proceeding unless the Administrative Law Judge or the Chief Administrative Hearing Officer determines that the circumstances require a postponement.

(c) *Review by Chief Administrative Hearing Officer.* Review by the Chief Administrative Hearing Officer of an interlocutory order shall be conducted in the same manner as is provided for review of final orders in § 68.54(b) through (d). An interlocutory order, or an order modifying, vacating, or remanding an interlocutory order, shall not be considered a final agency order. If the Chief Administrative Hearing Officer does not modify, vacate, or remand an interlocutory order reviewed pursuant to paragraph (a) within thirty (30) days of the date that the order is entered, the Administrative Law Judge's interlocutory order is deemed adopted.

(d) *Effect of interlocutory review.* (1) An order by the Chief Administrative Hearing Officer modifying or vacating an interlocutory order shall also remand the case to the Administrative Law Judge. Further proceedings in the case shall be conducted consistent with the Chief Administrative Hearing Officer's order.

(2) Whether or not an interlocutory order is reviewed by the Chief Administrative Hearing Officer, all parties retain the right to request administrative review of the final order of the Administrative Law Judge pursuant to § 68.54 with respect to all issues in the case.

§ 68.54 Administrative review of a final order of an Administrative Law Judge in cases arising under section 274A or 274C.

(a) *Authority of the Chief Administrative Hearing Officer.* In a case arising under section 274A or 274C of the INA, the Chief Administrative Hearing Officer has discretionary authority, pursuant to sections 274A(e)(7) and 274C(d)(4) of the INA and 5 U.S.C. 557, to review any final order of an Administrative Law Judge in accordance with the provisions of this section.

(1) A party may file with the Chief Administrative Hearing Officer a written request for administrative review within ten (10) days of the date of entry of the Administrative Law Judge's final order, stating the reasons for or basis upon which it seeks review.

(2) The Chief Administrative Hearing Officer may review an Administrative Law Judge's final order on his or her own initiative by issuing a notification of administrative review within ten (10) days of the date of entry of the Administrative Law Judge's order. This notification shall state the issues to be reviewed.

(b) *Written and oral arguments.* (1) In any case in which administrative review has been requested or ordered pursuant to paragraph (a) of this section, the parties may file briefs or other written statements within twenty-one (21) days of the date of entry of the Administrative Law Judge's order.

(2) At the request of a party, or on the Officer's own initiative, the Chief Administrative Hearing Officer may, at the Officer's discretion, permit or require additional filings or may conduct oral argument in person or telephonically.

(c) *Filing and service of documents relating to administrative review.* All requests for administrative review, briefs, and other filings relating to review by the Chief Administrative Hearing Officer shall be filed and served by facsimile or same-day hand delivery, or if such filing or service cannot be made, by overnight delivery, as provided in § 68.6(c). A notification of administrative review by the Chief Administrative Hearing Officer shall also be served by facsimile or same-day hand delivery, or if such service cannot be made, by overnight delivery service.

(d) *Review by the Chief Administrative Hearing Officer.* (1) On or before thirty (30) days subsequent to the date of entry of the Administrative Law Judge's final order, but not before the time for filing briefs has expired, the Chief Administrative Hearing Officer may enter an order that modifies or vacates the Administrative Law Judge's order, or remands the case to the Administrative Law Judge for further proceedings consistent with the Chief Administrative Hearing Officer's order. However, the Chief Administrative Hearing Officer is not obligated to enter an order unless the Administrative Law Judge's order is modified, vacated or remanded.

(2) If the Chief Administrative Hearing Officer enters an order that remands the case to the Administrative Law Judge, the Administrative Law Judge will conduct further proceedings consistent with the Chief Administrative Hearing Officer's order. Any administrative review of the Administrative Law Judge's subsequent order shall be conducted in accordance with this section.

(3) The Chief Administrative Hearing Officer may make technical corrections to the Officer's order up to and including thirty (30) days subsequent to the issuance of that order.

(e) *Final agency order.* If the Chief Administrative Hearing Officer enters a final order that modifies or vacates the Administrative Law Judge's final order, and the Chief Administrative Hearing Officer's order is not referred to the Attorney General pursuant to § 68.55, the Chief Administrative Hearing Officer's order becomes the final agency order thirty (30) days subsequent to the date of the modification or vacation.

§ 68.55 Referral of cases arising under sections 274A or 274C to the Attorney General for review.

(a) *Referral of cases by direction of the Attorney General.* Within thirty (30) days of the entry of a final order by the Chief Administrative Hearing Officer modifying or vacating an Administrative Law Judge's final order, or within sixty (60) days of the entry of an Administrative Law Judge's final order, if the Chief Administrative Hearing Officer does not modify or vacate the Administrative Law Judge's final order, the Chief Administrative Hearing Officer shall promptly refer to the Attorney General for review any final order in cases arising under section 274A or 274C of the INA if the Attorney General so directs the Chief Administrative Hearing Officer. When a final order is referred to the Attorney General in accordance with this paragraph, the Chief Administrative Hearing Officer shall give the Administrative Law Judge and all parties a copy of the referral.

(b) *Request by Commissioner of Immigration and Naturalization for review by the Attorney General.* The Chief Administrative Hearing Officer shall promptly refer to the Attorney General for review any final order in cases arising under sections 274A or 274C of the INA at the request of the Commissioner of Immigration and Naturalization within thirty (30) days of the entry of a final order modifying or vacating the Administrative Law Judge's final order or within sixty (60) days of the entry of an Administrative Law Judge's final order, if the Chief Administrative Hearing Officer does not modify or vacate the Administrative Law Judge's final order.

(1) The Immigration and Naturalization Service must first seek review of an Administrative Law Judge's final order by the Chief Administrative Hearing Officer, in accordance with § 68.54 before the Commissioner of Immigration and Naturalization may request that an Administrative Law Judge's final order be referred to the Attorney General for review.

(2) To request referral of a final order to the Attorney General, the Commissioner of Immigration and Naturalization must submit a written request to the Chief Administrative Hearing Officer and transmit copies of the request to all other parties to the case and to the Administrative Law Judge at the time the request is made. The written statement shall contain a succinct statement of the reasons the case should be reviewed by the Attorney General and the grounds for appeal.

(3) The Attorney General, in the exercise of the Attorney General's discretion, may accept the Commissioner's request for referral of the case for review by issuing a written notice of acceptance within sixty (60) days of the date of the request. Copies of such written notice shall be transmitted to all parties in the case and to the Chief Administrative Hearing Officer.

(c) *Review by the Attorney General.* When a final order of an Administrative Law Judge or the Chief Administrative Hearing Officer is referred to the Attorney General pursuant to paragraph (a) of this section, or a referral is accepted in accordance with paragraph (b)(3) of this section, the Attorney General shall review the final order pursuant to section 274A(e)(7) or 274C(d)(4) of the INA and 5 U.S.C. 557. No specific time limit is established for the Attorney General's review.

(1) All parties shall be given the opportunity to submit briefs or other written statements pursuant to a schedule established by the Chief Administrative Hearing Officer or the Attorney General.

(2) The Attorney General shall enter an order that adopts, modifies, vacates, or remands the final order under review.

The Attorney General's order shall be stated in writing and shall be transmitted to all parties in the case and to the Chief Administrative Hearing Officer.

(3) If the Attorney General remands the case for further administrative proceedings, the Chief Administrative Hearing Officer or the Administrative Law Judge shall conduct further proceedings consistent with the Attorney General's order. Any subsequent final order of the Administrative Law Judge or the Chief Administrative Hearing Officer shall be subject to administrative review in accordance with § 68.54 and this section.

(d) *Final agency order.* (1) The Attorney General's order pursuant to paragraph (c) of this section (other than a remand as provided in paragraph (c)(3)) shall become the final agency order on the date of the Attorney General's order.

(2) If the Attorney General declines the Commissioner's request for referral of a case pursuant to paragraph (b) of this section, or does not issue a written notice of acceptance within sixty (60) days of the date of the Commissioner's request, then the final order of the Administrative Law Judge or the Chief Administrative Hearing Officer that was the subject of a referral pursuant to paragraph (b) shall become the final agency order on the day after that sixty (60) day period has expired.

§ 68.56 Judicial review of a final agency order in cases arising under section 274A or 274C.

A person or entity adversely affected by a final agency order may file, within forty-five (45) days after the date of the final agency order, a petition in the United States Court of Appeals for the appropriate circuit for review of the final agency order. Failure to request review by the Chief Administrative Hearing Officer of a final order by an Administrative Law Judge shall not prevent a party from seeking judicial review.

§ 68.57 Judicial review of the final agency order of an Administrative Law Judge in cases arising under section 274B.

Any person aggrieved by a final agency order issued under § 68.52(d) may, within sixty (60) days after entry of the order, seek review of the final agency order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. If a final agency order issued under § 68.52(d) is not appealed, the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge, other than the Immigration and Naturalization Service officer) may file a petition in the United States District Court for the district in which the violation that is the subject of the final agency order is alleged to have occurred, or in which the respondent resides or transacts business, requesting that the order be enforced.

§ 68.58 Filing of the official record.

Upon timely receipt of notification that an appeal has been taken, a certified copy of the record will be filed promptly with the appropriate United States Court.

Dated: January 8, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–1899 Filed 2–11–99; 8:45 am]

BILLING CODE 4410–30–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in March 1999.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during March 1999.

For annuity benefits, the interest assumptions will be 5.30 percent for the first 20 years following the valuation date and 5.25 percent thereafter. The annuity interest assumptions represent a decrease (from those in effect for February 1999) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.00 percent for the period during which a benefit is in pay status and during any years preceding the benefit's placement in pay status. The lump sum interest assumptions are unchanged from those in effect for February 1999.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during March 1999, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows: