(b) *Ecosystem Services Credits for Conservation Improvements.* (1) USDA recognizes that environmental benefits will be achieved by implementing conservation practices and activities funded through WRP, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of a WRP easement, 30-year contract, or restoration cost-share agreement. NRCS asserts no direct or indirect interest in these credits. However, NRCS retains the authority to ensure that the requirements of the WRPO, contract, and easement deed are met. Where activities required under an environmental credit agreement may affect land covered under a WRP easement, 30-year contract, or restoration cost-share agreement, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such agreements.

(2) Section 1222(f)(2) of the Food Security Act of 1985 as amended, does not allow wetlands restored with Federal funds to be utilized for Food Security Act wetland mitigation purposes.

Signed this 9th day of January 2009, in Washington, DC.

Arlen L. Lancaster,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. E9–735 Filed 1–14–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1274a

[EOIR No. 166I; AG Order No. 3031–2009]

RIN 1125–AA64

Reorganization of Regulations on Control of Employment of Aliens

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Homeland Security Act of 2002, as amended, transferred the functions of the former Immigration and Naturalization Service (INS) from the Department of Justice to the Department of Homeland Security (DHS); however, it retained within the Department of Justice the functions of the Executive Office for Immigration Review (EOIR), a separate agency within the Department of Justice. Because the existing regulations often intermingled the responsibilities of the former INS and EOIR, this transfer required a reorganization of title 8 of the Code of Federal Regulations (CFR) in February 2003, including the establishment of a new chapter V in 8 CFR pertaining to EOIR. As part of this reorganization, a number of regulations pertaining to the responsibilities of DHS intentionally were duplicated in the new chapter V because of shared responsibilities. The Department of Justice now has determined that most of the duplicated regulations in part 1274a pertain to functions that are DHS's responsibility and do not need to be reproduced in EOIR's regulations in chapter V. This interim rule, therefore, deletes unnecessary regulations in part 1274a and makes appropriate reference to the applicable DHS regulations.

DATES: *Effective Date:* This rule is effective January 15, 2009.

Comments: Comments on this rule must be received by March 16, 2009.

ADDRESSES: Comments may be mailed to John N. Blum, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041. To ensure proper handling, please reference EOIR Docket No. 166I on your correspondence. You may submit comments electronically or view an electronic version of this interim rule at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John N. Blum, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. To inspect the agency's public docket file in person, you must make an appointment with agency counsel. Please see the ''For Further Information Contact'' paragraph below for agency counsel's contact information.

II. Background

The Homeland Security Act of 2002, as amended (HSA), transferred the functions of the former Immigration and Naturalization Service (INS or the Service) to the Department of Homeland Security (DHS). Public Law 107–296, tit. IV, subtits. D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002), as amended. The HSA, however, retained the functions of the Executive Office for Immigration Review (EOIR) within the Department of Justice, under the direction of the Attorney General. 6 U.S.C. 521; 8 U.S.C. 1103(g); see generally Matter of D–J–, 23 I&N Dec. 572 (A.G. 2003).

EOIR was created by the Attorney General in 1983 to combine the functions performed by INS special inquiry officers (now immigration judges) and the Board of Immigration Appeals (Board) into a single administrative agency within the Department of Justice, separate from the former INS. 48 FR 8038 (Feb. 25, 1983). This administrative structure separated the administrative adjudication functions from the enforcement and service functions of the former INS, both for administrative efficiency and to foster independent judgment in adjudication. The Office of the Chief Administrative Hearing Officer (OCAHO) and its administrative law judges (ALJs) were added to EOIR in 1987, following enactment of section 274A of the Immigration and Nationality Act (INA), 8 U.S.C. 1324a. *See* 52 FR 44971 (Nov. 24, 1987).

Because both INS and EOIR were agencies within the Department of Justice at that time, the regulations affecting these agencies were included in the same chapter (chapter I). Most of the immigration regulations were organized by subject, which often resulted in provisions relating to the former INS and to EOIR being intermingled in the same parts and sections.

III. Rationale

The enactment of the HSA and its transfer of functions of the former INS to DHS, however, required the creation of a new chapter for the regulations pertaining to EOIR, separate from the DHS regulations. Accordingly, the Attorney General published a rule transferring certain provisions that related to the jurisdiction and procedures of EOIR to a new chapter V of 8 CFR. 68 FR 9823 (Feb. 28, 2003). When the transfer of authority from the former INS to DHS took place in March 2003, the time available did not permit a thorough review of each of the provisions of the regulations where EOIR's and the former INS's responsibilities were intermingled in the same sections. As a result, the Department's rule duplicated in chapter V certain parts and sections of the regulations that related to the responsibilities of both the former INS and EOIR, respectively. The rule also made a number of technical amendments to chapters I and V to ensure that the authorities existing in the former INS and EOIR regulations prior to the transfer of functions to DHS remained in effect.

In particular, 8 CFR part 274a (Control of Employment of Aliens) contained definitional, substantive, and procedural material relevant to both the former INS and the Special Counsel for Immigration-Related Unfair Employment Practices of the Department's Civil Rights Division under 28 CFR 0.53, as well as the predicates to civil penalty proceedings before OCAHO. It was for this reason and out of an abundance of caution that, in 2003, the Attorney General duplicated the existing portions of part 274a, found in chapter I of the regulations, into a new part 1274a, located in chapter V.

The Department had intended to address over time the regulatory overlaps resulting from the 2003 rule by eliminating or substantially reducing any duplicative parts and sections that intermingled EOIR's and the former INS's authority. The expectation was that DHS would revise the regulations in chapter I of 8 CFR by eliminating provisions exclusively relating to the immigration judges', the Board's, and the OCAHO ALJs' respective authorities (since those provisions are properly codified in the regulations governing EOIR), and that the Department would revise the regulations pertaining to EOIR in chapter V by eliminating the duplicative provisions that did not relate exclusively to EOIR's authority.

Based on experience acquired since the transfer of the former INS's substantive immigration authority to DHS, it is apparent that most of the duplicative provisions in part 1274a pertain to matters that are the responsibility of DHS. Accordingly, there is no reason or need for those provisions of part 274a to be reproduced in a separate part 1274a.

Moreover, DHS has begun to implement substantive revisions to part 274a, making clear that the existing duplicative regulatory provisions in part 1274a are not only unnecessary but potentially confusing. Recently, after notice and public comment, DHS is revising 8 CFR 274a.1(l) with respect to an employer's response to receiving notices from the Social Security Administration (SSA) indicating that certain employees' social security numbers as reflected in the employer's records do not match SSA's records. Safe-Harbor Procedures for Employers Who Receive a No-Match Letter, 72 FR 45611 (Aug. 15, 2007) (final rule); 73 FR 15944 (Mar. 26, 2008) (supplemental proposed rule). These regulatory revisions are within DHS' statutory authority under sections 103 and 274A of the INA, and are properly codified in the DHS regulations in 8 CFR part 274a. However, because they do not relate directly to EOIR's authority, these changes would not be incorporated into the provisions of 8 CFR part 1274a.

In addition, the Secretary of Homeland Security and the Attorney General recently published final rules to implement inflation adjustments in the amounts of civil penalties to be imposed under section 274A of the INA. 73 FR 10130 (Feb. 26, 2008).

In order to remove unnecessary redundancies, and to avoid any possible confusion based on changes to part 274a that are not also codified in part 1274a, the Department is removing all but a few provisions in the current part 1274a. This rule also adds a new general provision to section 1274a.1, noting that the substantive and procedural regulations relating to the implementation of the employment verification provisions of section 274A of the INA are contained in 8 CFR part 274a, and that the procedures for hearings before an ALJ relating to civil penalties sought by DHS under section 274A are contained in 28 CFR part 68. This new provision also states that, to the extent they are relevant, the provisions of 8 CFR part 274a are applicable in any adjudicatory proceedings before EOIR.

The only provisions remaining in part 1274a, therefore, are those that may have a direct impact on the authority of the OCAHO ALJs:

- Section 1274a.9(e) and (f) relating to the time allowed for seeking an ALJ hearing to challenge a DHS civil penalty and the consequences for failure to request an ALJ hearing; and
- Section 1274a.10 relating to the penalties to be imposed by an ALJ in a case arising under section 274A of the INA.

This rule revises § 1274a.9(e) and (f) to replace references to the former INS or the Service with references to DHS. This rule also slightly revises the existing language of § 1274a.9(f) for clarity; that is, the rule now expressly states that respondents who fail to make a timely request for a hearing are not entitled to a hearing before an ALJ. The change to § 1274a.10 has already been implemented in the rules published on February 26, 2008.

IV. Effect

This action is not a substantive change and does not alter any interpretation of the provisions of the INA or affect the legal rights of any person. The existing regulations codified in 8 CFR part 274a are unaffected by this rule, and the removal of entirely duplicative provisions in part 1274a does not alter the legal status quo.

The substantive and procedural regulations in part 274a and in other parts of the immigration regulations are within the Secretary's authority to promulgate and revise, pursuant to section 103 of the INA, except to the extent that some remaining provisions of the DHS regulations deal directly with the authority of EOIR adjudicators (an overlap that DHS and the Department are working to eliminate as discussed above). As noted, regulatory provisions that go to the powers, procedures, and authority of the immigration judges, the Board, or the ALJs in EOIR are within the Attorney General's exclusive authority. For example, regulatory provisions granting or limiting EOIR's jurisdiction, authorizing EOIR adjudicators to exercise specific authorities, or directing EOIR adjudicators to act in a certain way are properly within the Attorney General's authority to promulgate, rather than DHS's. However, Congress has vested in DHS the authority to

promulgate regulations interpreting and applying the provisions of the INA—except insofar as the INA confers authority on the President, the Attorney General, or the Secretary of State—and has vested in the Attorney General the authority to issue binding interpretations on all questions of law pursuant to section 103(a)(1) of the INA.

The premise of this rule that the provisions of part 274a are properly applicable in adjudicatory proceedings before EOIR is not new. The Department previously has made clear that the Attorney General need not personally promulgate immigration regulations in order for those regulations to be applicable in proceedings before EOIR; Attorney General Ashcroft addressed similar issues at the time of the adoption of the rule to reform the Board's adjudicatory processes in 2002, 67 FR 54878 (Aug. 26, 2002). [1] As with any such regulation adopted by an administrative agency pursuant to delegated statutory authority, the substantive or ''legislative'' regulations adopted by DHS (or by the former INS) within the scope of its delegated authority under the INA are properly deemed to have the ''force and effect of law.'' Thus, the DHS legislative regulations are properly treated as part of the governing law, not merely as ''guidance'' or recommendations for EOIR adjudicators to consider.[2]

V. Conclusion

In summary, this interim rule deletes certain unnecessary duplicative provisions in part 1274a and revises the remaining provisions in a way that references applicable regulations in part 274a. The Department and DHS plan to review other duplicated provisions of the immigration regulations in the future to determine whether additional provisions in different parts of the regulations also should be deleted to simplify the Code of Federal Regulations.

Administrative Procedure Act

The Department of Justice finds that good cause exists for adopting this rule as an interim rule with provision for post-promulgation public comment under 5 U.S.C. 553 because this rule only makes technical amendments to the organization, procedures, and practices of the Department of Justice to improve the organization of the Department regulations and reflects the transfer of functions contemplated by the Homeland Security Act of 2002. Similarly, because this interim rule makes changes in internal delegations and procedures, and is a recodification of existing regulations, this interim rule is not subject to the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

Paperwork Reduction Act

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

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 million 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 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Congressional Review Act

This action pertains to agency organization, procedures, and practices and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review and accordingly this rule has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the

[1] *See* 67 FR at 54884 (citations omitted):

The immigration regulations, however, include not only those rules adopted personally by the Attorney General, but also substantive and procedural rules duly promulgated by the Commissioner of the Service, under an express delegation of rulemaking authority from Congress to the Attorney General and, in turn, from the Attorney General to the Commissioner. The Department fully recognizes and reiterates, of course, that the Board and the immigration judges are independent of the Service (although some court opinions contain language that appears to blur this key distinction). For this reason, the Attorney General, and not the Commissioner, has consistently promulgated the regulations that govern the organization, procedures, or powers of the Board and the immigration judges and the conduct of immigration proceedings. The authority delegated to the Commissioner to promulgate substantive or ''legislative'' rules does properly extend, however, to the interpretation of the general provisions of the Act. A regulation adopted pursuant to delegated statutory authority and pursuant to applicable rulemaking requirements under the Administrative Procedure Act has the ''force and effect of law'' as a substantive or legislative rule. * * * The language of this rule makes explicit what was implicit in the current version of § 3.1.

A fundamental premise of the immigration enforcement process must be that the substantive regulations codified in title 8 of the Code of Federal Regulations are binding in all administrative settings, and this specifically includes substantive regulations interpreting and applying the provisions of the Act. * * * [T]he respondents, the immigration judges, the Service, and the public at large should not be left to wonder whether the regulations interpreting and applying the substantive provisions of the Act will be binding in administrative proceedings under the Act.

Such regulations themselves, of course, are susceptible to interpretation and application of their regulatory language by the immigration judges and the Board. However, if a substantive rule clearly defines a statutory term, or reflects a legal interpretation of the statutory provisions, then the position set forth in the rule will govern both the actions of the Service and the adjudication of immigration proceedings before the immigration judges and the Board.

[2] To the extent that an EOIR adjudicator may believe that an applicable regulation may not be consistent with the statute, the decisions of the ALJs or the Chief Administrative Hearing Officer in cases arising under sections 274A and 274C of the INA are subject to review by the Attorney General, as are the decisions of the Board, see 28 CFR 68.55, 8 CFR 1003.1(h)(1), and the Attorney General can decide when and how to exercise his ultimate authority to determine all questions of law with respect to matters arising under the INA. *See, e.g., Matter of Ponce de Leon-Ruiz*, 21 I&N Dec. 154 (BIA 1996; A.G. 1997) (the Board adhered to the regulatory interpretation in its decision but referred the case to the Attorney General for review in light of the Board's concern that the regulatory provision was not consistent with the statutory language); section 103(a)(1) and (g)(1), 8 U.S.C. 1103(a)(1) and (g)(1).

relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

List of Subjects in Part 1274a

Administrative practice and procedure, Immigration.

■ Accordingly, for the foregoing reasons, part 1274a of chapter V of title 8 of the Code of Federal Regulations is amended as follows:

PART 1274a—CONTROL OF EMPLOYMENT OF ALIENS

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

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

■ 2. Revise § 1274a.1 to read as follows:

§ 1274a.1 Employer requirements.

(a) *Applicable regulations.* The regulations of the Department of Homeland Security (DHS) relating to the implementation of the employment eligibility and verification provisions of section 274A of the Immigration and Nationality Act (Act) are contained in 8 CFR part 274a.

(b) *Adjudication of civil penalty proceedings.* The procedures for hearings before an administrative law judge relating to civil penalties sought by DHS under section 274A of the Act are contained in 28 CFR part 68. The regulations governing employment eligibility and verification in 8 CFR part 274a are applicable to hearings before an administrative law judge and, to the extent relevant, to cases before an immigration judge or the Board of Immigration Appeals.

§§ 1274a.2, 1274a.3, 1274a.4, 1274a.5, 1274a.6, 1274a.7 and 1274a.8 [Removed]

■ 3. Remove sections 1274a.2 through 1274a.8.

■ 4. Section 1274a.9 is amended by:

■ a. Removing and reserving paragraphs (a) through (d);

■ b. Amending paragraph (e) by removing the terms ''the INS'' and ''the Service'' and adding in their place the term ''DHS''; and by

■ c. Revising paragraph (f), to read as follows:

§ 1274a.9 Enforcement procedures.

* * * * *

(f) *Failure to file a request for a hearing.* If the respondent does not file a request for a hearing in writing within thirty days of the date of service of a Notice of Intent to Fine (thirty-five days if served by ordinary mail), the final order issued by DHS shall not be subject to a hearing before an administrative law judge under 28 CFR part 68.

Subpart B [Removed and reserved]

■ 5. Remove and reserve subpart B.

Dated: January 7, 2009.

Michael B. Mukasey,

Attorney General.

[FR Doc. E9–526 Filed 1–14–09; 8:45 am]

BILLING CODE 4410–30–P

FARM CREDIT ADMINISTRATION

12 CFR Part 622

RIN 3052–AC47

Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This regulation implements cost-of-living adjustments to civil money penalties (CMPs) that the Farm Credit Administration (FCA) may impose under the Farm Credit Act of 1971, as amended (Farm Credit Act), and under the National Flood Insurance Reform Act of 1994 (Reform Act). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (FCPIA Act), requires all Federal agencies with the authority to impose CMPs to evaluate those CMPs periodically to ensure that they continue to maintain their deterrent value.

DATES: *Effective Date:* The regulation will become effective on January 16, 2009.

FOR FURTHER INFORMATION CONTACT:

Michael T. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4124, TTY (703) 883–4434,

or

Howard I. Rubin, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4029, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this regulation is to recalculate the CMP inflation adjustments consistent with the FCPIA Act.

II. Background

A. Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended

The FCPIA Act requires every Federal agency with authority to issue CMPs to enact regulations that adjust its CMPs pursuant to the inflation adjustment formula in section 5(b) of the FCPIA Act.[1] Each Federal agency was required to issue these regulations by October 23, 1996, and adjust them when necessary at least once every 4 years thereafter. Section 6 of the amended FCPIA Act specifies that inflation-adjusted CMPs will apply only to violations that occur after the effective date of the adjustment. The inflation adjustment is based on the percentage increase in the Consumer Price Index (CPI).[2] Specifically, section 5(b) of the FCPIA Act defines the term ''cost-of-living adjustment'' 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.'' Furthermore, the increase for each CMP that is adjusted for inflation must be rounded using a method prescribed by section 5(a) of the FCPIA Act.

B. CMPs Issued Under the Farm Credit Act

Section 5.32(a) of the Farm Credit Act provides that any FCS institution or any officer, director, employee, agent, or other person participating in the conduct of the affairs of an FCS institution who violates the terms of a final order issued under section 5.25 or 5.26 of the Farm Credit Act must pay up to $1,000 per day for each day during which such violation continues. Orders issued by FCA under section 5.25 or 5.26 of the Farm Credit Act include

[1] *See* 28 U.S.C. 2461 note. Section 3(2) of the amended FCPIA Act defines a CMP as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

[2] The CPI is published by the Department of Labor, Bureau of Statistics, and is available at its Web site: *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.*