Rules and Regulations

Federal Register
Vol. 66, No. 105
Thursday, May 31, 2001

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 241 and 245

[INS No. 2113–01, AG Order No. 2429–2001]

RIN 1115–AG05

Executive Office for Immigration Review; Adjustment of Status for Certain Nationals of Nicaragua, Cuba, and Haiti

AGENCY: Immigration and Naturalization Service, and Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements the changes that the Legal Immigration Family Equity Act (LIFE Act) and the LIFE Act Amendments made to section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) and section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA). The LIFE Act and its Amendments provide that eligible aliens who are nationals of Nicaragua, Cuba, or Haiti may apply for adjustment of status to that of lawful permanent resident under NACARA or HRIFA without being subject to certain barriers that existed prior to the enactment of the LIFE Act and its amendments. This rule amends the Department of Justice's (Department's) regulations by incorporating the waivers, exceptions, and motion to reopen provisions mandated by the LIFE Act and its amendments.

DATES: *Effective date:* This interim rule is effective May 31, 2001.

Comment date: Written comments must be submitted on or before July 30, 2001.

ADDRESSES: For matters relating to the Immigration and Naturalization Service, please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 4034, Washington, DC 20536, or via fax to (202) 305–0143. To ensure proper handling please reference INS No. 2113–01 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment. For matters relating to the Executive Office for Immigration Review (EOIR), submit written comments to Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT: For matters relating to the Service, contact Kevin J. Cummings, Assistant Director, Residence and Status Branch, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington, DC 20536, telephone (202) 514–4754.

For matters relating to EOIR, contact Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Interim Regulation?

On December 21, 2000, President Clinton signed into law the Legal Immigration Family Equity Act (LIFE Act), Title XI of H.R. 5548 enacted by reference in Public Law 106–553, and the LIFE Act Amendments of 2000, Title XV of H.R. 5666 enacted by reference in Public Law 106–554. Section 1505 of the LIFE Act Amendments makes technical corrections to NACARA and HRIFA to provide that the reinstatement of removal orders under section 241(a)(5) of the Immigration and Nationality Act (Act) no longer applies to applicants for benefits under NACARA and HRIFA, and that the grounds of inadmissibility under sections 212(a)(9)(A) and 212(a)(9)(C) of the Act may be waived for aliens applying for adjustment under section 202 of NACARA and section 902 of HRIFA. The purpose of this interim rule is to make existing Department regulations conform to these new laws.

Why Were NACARA Section 202 and HRIFA Amended?

Applicants for adjustment of status under NACARA and HRIFA were originally subject to the reinstatement provisions of section 241(a)(5) of the Act. An alien subject to reinstatement of a removal order is not eligible for any relief under the Act, including waivers of any ground of inadmissibility necessary to establish eligibility for NACARA 202 or HRIFA adjustment. In addition, were such applicants found to be inadmissible under sections 212(a)(9)(A) or (C) of the Act, they would have been required to seek consent to reapply from the Attorney General in order to qualify for an exception to these grounds of inadmissibility. Because a significant number of otherwise eligible aliens were believed to be ineligible for adjustment of status under NACARA or HRIFA because of these statutory restrictions, Congress enacted the LIFE Act and its amendments to ameliorate this problem.

What Does This Interim Rule Change?

In accordance with the LIFE Act and the LIFE Act Amendments, the Department is amending its regulation to reflect that the grounds of inadmissibility under sections 212(a)(9)(A) and 212(a)(9)(C) of the Act may now be waived for applicants for adjustment of status under NACARA and HRIFA, and that section 241(a)(5) of the Act no longer applies to such applicants.

Sections 212(a)(9)(A) and 212(a)(9)(C) of the Act are grounds of inadmissibility relating to aliens previously removed and aliens who are unlawfully present in the United States after previous immigration violations, respectively. Section 212(a)(9)(A)(ii) of the Act provides that an alien who has been previously deported or removed, or who has departed the United States voluntarily while under an outstanding order of deportation or removal, is inadmissible for at least 10 years; section 212(a)(9)(A)(iii) of the Act provides that the Attorney General may authorize exceptions. Section 212(a)(9)(C) of the Act provides that an alien is inadmissible if he or she enters or attempts to enter without being admitted (without inspection) on or after April 1, 1997, following an order of deportation or removal, or if he or she enters or attempts to enter without being

admitted (without inspection) following an aggregate unlawful presence of more than 1 year on or after April 2, 1998. The Attorney General may authorize exceptions under section 212(a)(9)(C)(ii) of the Act. An alien who is inadmissible for the applicable period set forth in sections 212(a)(9)(A) or (C) of the Act is ineligible for adjustment of status unless he or she first obtains the Attorney General's consent to reapply for admission under the exception provisions of section 212 of the Act. The exception to inadmissibility under either section 212(a)(9)(A)(iii) or (C)(ii) of the Act may be obtained if the Attorney General has given consent to the alien to reapply for admission during the applicable period.

Section 241(a)(5) of the Act provides for the reinstatement of a removal order against any alien who illegally re-enters the United States after having been removed or after having departed voluntarily under an order of removal. It also bars any alien whose removal order has been reinstated from receiving any relief under the Act, including any waivers of grounds of inadmissibility necessary for the grant of adjustment of status.

This interim rule amends the Department's regulations at 8 CFR 245.13(a)(3) to clarify that section 241(a)(5) of the Act does not apply to applicants for adjustment of status under NACARA and HRIFA. Additionally, this interim rule amends 8 CFR 245.13 and 245.15 to establish special procedures to enable such applicants to seek waivers of sections 212(a)(9) (A) and (C) grounds of inadmissibility.

What Are the Section 212(a)(9)(A) and (C) Waiver Procedures?

The provisions of LIFE allow that an alien's inadmissibility under section 212(a)(9)(A) and section 212(a)(9)(C) of the Act may now be waived in NACARA 202 and HRIFA cases. While an otherwise inadmissible NACARA 202 or HRIFA adjustment applicant no longer has to obtain the consent of the Attorney General to reapply for admission, the LIFE Act amendments provide that in granting a waiver of these grounds of inadmissibility to NACARA 202 or HRIFA adjustment applicants, the Attorney General shall use the ''standards'' utilized in granting consent to reapply under sections 212(a)(9)(A)(iii) and (C)(ii) of the Act. This interim regulation provides that NACARA 202 and HRIFA applicants may apply for a waiver of any ground described in section 212(a)(9)(A) or (C) of the Act by filing a Form I–601, Application for Waiver of Ground of Excludability, with the required fee, unless that fee has been waived. NACARA 202 and HRIFA applicants may apply for a waiver of these grounds of inadmissibility while present in the United States and without regard to the normal requirement of filing a Form I–212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal.

Can a NACARA or HRIFA Adjustment Applicant Whose Case Was Previously Denied by the Service or Who Never Applied for This Relief File a Motion To Reopen?

An alien who is now eligible for adjustment of status under NACARA 202 or HRIFA as a result of the LIFE Act Amendments and whose application for adjustment of status under NACARA 202 or HRIFA has been denied by the Service may file a Motion to Reopen his or her case before the Service if:

(1) The Service has not issued a Notice to Appear (Form I–862), a Notice of Referral to Immigration Judge (Form I–863), or a Notice of Certification (Form I–290C) placing the alien in proceedings that are currently pending before the immigration judge; and

(2) The alien pays the filing fee for a motion to reopen set forth in 8 CFR 103.7(b)(1) or is granted a waiver of such fee in accordance with 8 CFR 103.7(c).

Also, an alien who was in proceedings and who has been made eligible for adjustment of status under the LIFE Act Amendments to NACARA or HRIFA, but who did not apply for such adjustment by the statutory deadline of March 31, 2000, or whose proceedings before EOIR resulted in a final order following a denial by the Service or EOIR of an application for adjustment of status under NACARA or HRIFA, may seek to reopen his or her removal proceedings before the Immigration Court or the Board of Immigration Appeals, as appropriate, for the sole purpose of applying for NACARA 202 or HRIFA adjustment. The alien must file such a motion to reopen on or before June 19, 2001.

What if an Alien Did Not Apply for Adjustment of Status and Was Never Placed in Exclusion, Deportation, or Removal Proceedings by the Service?

This rule does not apply to them. The legislation passed by Congress only applies to those aliens who are subject to final orders of deportation, exclusion, or removal and who applied for adjustment of status under NACARA 202 or HRIFA by the statutory deadline of March 31, 2000. The motion to reopen provisions of this rule only apply to aliens who would be subject to a reinstatement of a previous removal order under section 241(a)(5) of the Act, and/or who are inadmissible under section 212(a)(9)(A) or 212(a)(9)(C) of the Act. It should be noted that aliens who are subject to 212(a)(9)(C)(i)(I) but who have not previously applied for adjustment of status before March 31, 2000, are ineligible for the motion to reopen provisions of this rule.

What Happens if an Alien Is Presently in Exclusion, Deportation, or Removal Proceedings?

Persons who are presently in proceedings before the Immigration Court or the Board and are pursuing a timely filed application for adjustment of status under NACARA 202 or HRIFA will remain within the jurisdiction of EOIR. Such pending applications shall be adjudicated by the Immigration Court or the Board in accordance with the LIFE Act Amendments to NACARA 202 or HRIFA, as appropriate.

Under What Circumstances May an Alien Whose Proceedings Before the Immigration Court or the Board of Immigration Appeals Have Been Reopened in Accordance With the LIFE Act Amendments to NACARA 202 and HRIFA Apply for Adjustment of Status Before the Service?

An alien who is granted a motion to reopen under the LIFE Act Amendments to NACARA 202 or HRIFA by an Immigration Court or the Board may move to have the proceedings administratively closed for the purpose of filing with the Service an application for adjustment of status under NACARA 202 or HRIFA as amended by the LIFE Act Amendments. If the Service concurs in such a motion, the Immigration Court or the Board, as appropriate, may administratively close the proceedings for that purpose.

Good Cause Exception

The Department's implementation of this interim rule upon publication in the **Federal Register** with a post-promulgation period of public comments is based upon the ''good cause'' exception found at 5 U.S.C. 553(b)(B) and (d)(3). The reason and necessity for immediate implementation is because the LIFE Act and its amendments became effective immediately upon enactment on December 21, 2000. Because the law became effective upon enactment, aliens who may otherwise be ineligible for adjustment became eligible immediately. This regulation eliminates existing bars to HRIFA and NACARA 202 benefits by implementing statutorily

mandated waiver, exception, and motion to reopen provisions set forth in section 1505 of the LIFE Act amendments, which was included in the Consolidated Appropriations Act for 2001, Public Law 106–554. Publication of this interim rule with an immediate effective date will allow affected aliens to have their cases processed expeditiously.

As noted previously, an alien subject to a final order of exclusion, deportation, or removal who has been made eligible for adjustment of status under the LIFE Act Amendments to NACARA or HRIFA, but who did not apply for such adjustment by the statutory deadline of March 31, 2000, may seek to reopen his or her removal proceedings before the Immigration Court or the Board of Immigration Appeals, as appropriate, to apply for NACARA 202 or HRIFA adjustment. Such an alien must file his or her motion to reopen on or before June 19, 2001. Issuance of a proposed rule at this time would delay a final rule for several weeks, thereby denying such aliens an opportunity to file a motion to reopen before the statutory deadline. In light of all the foregoing, the Department finds that it would be unnecessary and contrary to the public interest to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Attorney General has reviewed this rule and, by approving it, certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule applies to individual aliens who wish to apply for adjustment of status under NACARA or HRIFA. It does not have an effect on small entities as that term is defined in 5 U.S.C. 601(6).

Executive Order 12866: Regulatory Planning and Review

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132: Federalism

This rule will not have substantial direct effects on the States, on the 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, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

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 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.

Executive Order 12988: Civil Justice Reform

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

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 1 year, and 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.

Paperwork Reduction Act

There are no new information collection requirements in this rule. Forms I–212 and I–601 have previously been approved for use by the Office of Management and Budget under the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

List of Subjects

8 CFR Part 241

Aliens.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

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

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

1. The authority citation for part 241 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1223, 1227, 1253, 1255, and 1330; 8 CFR part 2.

2. Section 241.8 is amended by:

a. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and by

b. Adding a new paragraph (d), to read as follows:

§ 241.8 Reinstatement of removal orders.

* * * * *

(d) *Exception for applicants for benefits under section 902 of HRIFA or sections 202 or 203 of NACARA.* If an alien who is otherwise subject to this section has applied for adjustment of status under either section 902 of Division A of Public Law 105–277, the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA), or section 202 of Pubic Law 105–100, the Nicaraguan Adjustment and Central American Relief Act (NACARA), the provisions of section 241(a)(5) of the Immigration and Nationality Act shall not apply. The immigration officer may not reinstate the prior order in accordance with this section unless and until a final decision to deny the application for adjustment has been made. If the application for adjustment of status is granted, the prior order shall be rendered moot.

* * * * *

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

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

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681–538; 8 CFR part 2.

4. Section 245.13 is amended by:

a. Adding the words ''as amended and without regard to section 241(a)(5) of the Act,'' immediately after ''Pub. L. 105–100,'' in the introductory text in paragraph (a);

b. Designating existing text in paragraph (c) as paragraph (c)(1);

c. Adding a heading for paragraph (c)(1);

d. Adding a new paragraph (c)(2);

e. Revising the heading for paragraph (d);

f. Designating existing text in paragraph (d)(4) as paragraph (d)(4)(i);

g. Adding a new paragraph (d)(4)(ii);

h. Revising paragraph (m);

i. Removing the word ''or'' at the end of paragraph (n)(3)(i);

j. Removing the period at the end of paragraph (n)(3)(ii) and inserting ''; or'' in its place; and

h. Adding a new paragraph (n)(3)(iii).

The revisions and additions read as follows:

§ 245.13 Adjustment of status of certain nationals of Nicaragua and Cuba under Public Law 105–100.

* * * * *

(c) * * *

(1) *General.* * * *

(2) *Special rule for waiver of inadmissibility grounds for NACARA applicants under section 212(a)(9)(A) and 212(a)(9)(C) of the Act.* An applicant for adjustment of status under section 202 of Public Law 105–100 who is inadmissible under section 212(a)(9)(A) or 212(a)(9)(C) of the Act, may apply for a waiver of these grounds of inadmissibility while present in the United States. Such an alien must file a Form I–601, Application for Waiver of Grounds of Excludability, with the director of the Texas Service Center if the application for adjustment is pending at that office, with the district director having jurisdiction over the application if the application for adjustment is pending at a district office, with the Immigration Judge having jurisdiction if the application for adjustment is pending before the Immigration Court, or with the Board of Immigration Appeals if the appeal is pending before the Board.

* * * * *

(d) *General.* * * *

(4) * * *

(ii) An alien may file a motion to reopen with the Immigration Court or the Board of Immigration Appeals, whichever had jurisdiction last, if the alien is present in the United States and subject to a final order of exclusion, deportation, or removal and has been denied adjustment of status under section 202 of NACARA by an Immigration Court or the Board or who never applied for adjustment of status on or before March 31, 2000, with either the Service, the Immigration Court or the Board, and who is now eligible for adjustment as a result of section 1505(a)(1) of the Legal Immigration Family Equity Act of 2000 (LIFE) and the LIFE amendments, Public Law 106–553 and Public Law 106–554, respectively. As provided by § 1505(a)(2) of the LIFE Act and its amendments, such a motion to reopen must be filed on or before June 19, 2001.

* * * * *

(m) *Denial and review of decision.*

(1) If the director denies the application for adjustment of status under the provisions of section 202 of Public Law 105–100, the director shall notify the applicant of the decision. The director shall also:

(i) In the case of an alien who is not maintaining valid nonimmigrant status and who had not previously been placed in exclusion, deportation or removal proceedings, initiate removal proceedings in accordance with § 239.1 of this chapter during which the alien may renew his or her application for adjustment of status under section 202 of Public Law 105–100; or

(ii) In the case of an alien whose previously initiated exclusion, deportation, or removal proceedings had been administratively closed or continued indefinitely under paragraph (d)(3) of this section, advise the Immigration Court that had administratively closed the proceedings, or the Board, as appropriate, of the denial of the application. Upon a motion to recalendar filed by the Service, the Immigration Court or the Board will then recalendar or reinstate the prior exclusion, deportation or removal proceedings, during which the alien may renew his or her application for adjustment under section 202 of Public Law 105–100; or

(iii) In the case of an alien who is the subject of an outstanding final order of exclusion, deportation, or removal, refer the decision to deny the application by filing a Form I–290C, Notice of Certification, with the Immigration Court that issued the final order for consideration in accordance with paragraph (n) of this section.

(2) Aliens who were denied adjustment of status by the director, but who are now eligible for such adjustment of status pursuant to section 1505(a)(1) of the LIFE Act and amendments, and have not been referred to immigration proceedings as specified in paragraph (m)(1) of this section may file a motion to reopen with the Service. If an alien has been referred to the Immigration Court or has filed an appeal with the Board after an Immigration Court has denied the application for adjustment under NACARA section 202, and proceedings are pending, then the application for adjustment of status will be adjudicated in accordance with section 1505(a) of the LIFE Act and its amendments. An alien present in the United States subject to a final order of removal after his or her application was denied by an Immigration Court or the Board, but who was made eligible for adjustment pursuant to section 1505(a) of the LIFE Act and its amendments may file a motion to reopen with the Immigration Court or the Board, whichever had jurisdiction last. Pursuant to section 1505(a)(2) of the LIFE Act and its amendments, motions to reopen proceedings before the Immigration Court or the Board must be filed on or before June 19, 2001.

(n) * * *

(3) * * *

(iii) Upon a motion to reopen filed not later than June 19, 2001, by an alien present in the United States who became eligible for adjustment of status under section 202 of Public Law 105–100, as amended by section 1505, Public Law 106–554.

* * * * *

5. Section 245.15 is amended by:

a. Revising the sentence in the introductory text in paragraph (b);

b. Adding a new paragraph (e)(3);

c. Redesignating paragraphs (g)(3)(i) and (g)(3)(ii) as paragraphs (g)(3)(iii) and (g)(3)(iv), respectively;

d. Redesignating the introductory text of paragraph (g)(3) as paragraph (g)(3)(i);

e. Adding new paragraph (g)(3)(ii);

f. Designating existing text in paragraph (r)(1) as paragraph (r)(1)(i);

g. Adding a new paragraph (r)(1)(ii);

h. Adding a new paragraph (r)(4);

i. Removing the word ''or'' at the end of paragraph (s)(4)(i);

j. Removing the period at the end of paragraph (s)(4)(ii), and inserting a ''; or'' in its place; and by

k. Adding a new paragraph (s)(4)(iii).

The revisions and additions read as follows:

§ 245.15 Adjustment of status of certain Haitian nationals under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA).

* * * * *

(b) * * * Section 902 of Division A of Public Law 105–277, the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA), provides special rules for adjustment of status for certain nationals of Haiti, and without regard to section 241(a)(5) of the Act, if they meet the other requirements of HRIFA.

* * * * *

(e) * * *

(3) *Special rule for waiver of inadmissibility grounds for HRIFA applicants under section 212(a)(9)(A) and 212(a)(9)(C) of the Act.* An applicant for adjustment of status under HRIFA who is inadmissible under section 212(a)(9)(A) or 212(a)(9)(C) of the Act, may apply for a waiver of these grounds of inadmissibility while present in the United States. Such an alien must file Form I–601, Application for Waiver of Grounds of Excludability. If the application for adjustment is pending at the Nebraska Service Center, Form I–601 must be filed with the director of that office. If the application for

adjustment is pending at a district office, Form I–601 must be filed with the district director having jurisdiction over the application. If the application for adjustment is pending before the immigration court, Form I–601 must be filed with the immigration judge having jurisdiction, or with the Board of Immigration Appeals if the appeal is pending before the Board.

* * * * *

(g) * * *

(3) * * *

(ii) An alien present in the United States who is subject to a final order of exclusion, deportation, or removal and has been denied adjustment of status under section 902 of HRIFA by the Immigration Court or the Board, or who never applied for adjustment of status with the Service, an Immigration Court, or the Board on or before March 31, 2000, and who was made eligible for HRIFA benefits under the Legal Immigration Family Equity Act of 2000 (LIFE Act) and LIFE amendments, Public Law 106–553 and Public Law 106–554, respectively, may file a motion to reopen with either the Immigration Court or the Board, whichever had jurisdiction last. As provided by the LIFE Act, motions to reopen must be filed on or before June 19, 2001.

* * * * *

(r) * * *

(1) * * *

(ii) An alien made eligible for adjustment of status under HRIFA by the LIFE Act amendments and whose case has not been referred to EOIR under paragraphs (r)(2) or (r)(3) of this section, may file a motion to reopen with the Service.

* * * * *

(4)(i) An alien whose case has been referred to the Immigration Court under paragraphs (r)(2) or (r)(3) of this section, or who filed an appeal with the Board after his or her application for adjustment of status under section 902 of HRIFA was denied, and whose proceedings are pending, and who is now eligible for adjustment of status under HRIFA as amended by section 1505(b) of the LIFE Act and its amendments, may renew the application for adjustment of status with either the Immigration Court or the Board, whichever has jurisdiction. The application will be adjudicated in accordance with section 1505(b) of the LIFE Act and its amendments.

(ii) An alien present in the United States who is subject to a final order of exclusion, deportation or removal after his or her HRIFA adjustment application was denied by an Immigration Court or the Board, but who was made eligible for HRIFA adjustment as a result of section 1505(b) of the LIFE Act and its amendments, may file a motion to reopen with either the Immigration Court or the Board, whichever had jurisdiction last. Such motion to reopen must be filed on or before June 19, 2001.

(s) * * *

(4) * * *

(iii) Upon a motion to reopen filed not later than June 19, 2001, by an alien present in the United States who became eligible for adjustment of status under HRIFA, as amended by section 1505, of Public Law 106–554.

* * * * *

Dated: May 24, 2001.

Larry D. Thompson,

Acting Attorney General.

[FR Doc. 01–13642 Filed 5–30–01; 8:45 am]

BILLING CODE 4410–10–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AG44

Licensing Proceedings for the Receipt of High-Level Radioactive Waste at a Geologic Repository: Licensing Support Network, Design Standards for Participating Websites

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its Rules of Practice applicable to the use of the Licensing Support Network (LSN) for the licensing proceeding on the disposal of high-level waste (HLW) at a geologic repository. The amendments will establish the basic data structure and transfer standards (''design standards'') that participant LSN websites must use to make documentary material available. The amendments will also clarify the authority of the LSN Administrator (LSNA) to establish guidance for LSN participants on how best to meet the design standards and to review participant designs for compliance with the standards. Finally, the amendments will clarify the timing of participant compliance certifications.

EFFECTIVE DATE: July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–1642, e-mail FXC@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's regulations in 10 CFR part 2, Subpart J, provide for the use of an electronic information management system in the HLW repository licensing proceeding. Originally issued on April 14, 1989 (54 FR 14925), the information management system currently required by Subpart J is to have the following functions:

(1) To provide a Licensing Support Network (LSN) that allows full text search and retrieval access to the relevant documents of all parties and potential parties to the HLW repository licensing proceeding beginning in the time period before the Department of Energy (DOE) submits its license application for the repository;

(2) To provide for electronic submission of filings by the parties, as well as the orders and decisions of the Atomic Safety and Licensing Board during the proceeding; and

(3) To provide access to an electronic version of the HLW repository licensing proceeding docket for use during the hearing.

The creation of the LSN—originally called the ''Licensing Support System'' (LSS)—was stimulated by the requirements of Section 114(d)(2) of the Nuclear Waste Policy Act of 1982 (NWPA). This provision requires the Commission to issue a final decision approving or disapproving issuance of the construction authorization for a geologic repository for HLW within three years of the ''submission'' (i.e., docketing) of the DOE license application.[1] The Commission anticipated that the HLW proceeding would involve a substantial number of documents created by well-informed parties regarding numerous, complex issues. The Commission believed that

[1] The Commission interprets the requirement in Section 114(d) of the NWPA that the Commission ''shall issue a final decision approving or disapproving the issuance of a construction authorization not later than three years after the date of submission'' (emphasis added) of the license application, as three years from the docketing of the application. This interpretation is consistent with the Commission's general practice since its establishment in 1975 to tie hearing schedules to the docketing of a license application rather than the tendering of the application by the applicant, for the obvious reason that a license application may be substantially deficient in some material respect and must be returned to the applicant. This practice is reflected in the HLW repository hearing schedule contained in Appendix D to 10 CFR Part 2. However, the Commission would note that for purposes of DOE's obligation, under Section 114(b) of the NWPA, to ''submit'' the license application not later than ninety days after the date on which the recommendation of site designation is effective, the term ''submit'' would be interpreted as ''tender'', i.e., as in DOE's obligation to ''tender'' the license application to the NRC.