(C) Evidence of:

(*1*) Either:

(*i*) The child having only a sole parent, as that term is defined in § 204.3(b) of this chapter;

(*ii*) The death of one parent; or

(*iii*) Certification by competent Haitian authorities that one parent is presumed dead as a result of his or her disappearance, within the meaning of that term as set forth in § 204.3(b) of this chapter; and

(*2*) A copy of a written statement executed by the sole parent, or the sole remaining parent, irrevocably releasing all parental rights based upon the inability of that parent to provide proper care for the child.

(5) * * *

(i) Evidence, showing the date, location, and manner of his or her arrival in the United States, such as:

(A) A photocopy of the Form I–94 issued at the time of the alien's arrival in the United States;

(B) A copy of the airline or vessel records showing transportation to the United States;

(C) Other similar documentation; or

(D) If none of the documents in paragraphs (k)(5)(i)(A)–(C) of this section are available, a statement from the applicant, accompanied by whatever evidence the applicant is able to submit in support of that statement; and

(ii) Either:

(A) Evidence from a State, local, or other court or governmental authority having jurisdiction and authority to make decisions in matters of child welfare establishing such abandonment; or

(B) Evidence to establish that the applicant would have been considered to be abandoned according to the laws of the State where he or she resides, or where he or she resided at the time of the abandonment, had the issue been presented to the proper authorities.

* * * * *

(m) *Secondary evidence.* Except as otherwise provided in this paragraph, if the primary evidence required in this section is unavailable, church or school records, or other secondary evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, affidavits may be submitted. The applicant may submit as many types of secondary evidence as necessary to establish birth, marriage, or other relevant events. Documentary evidence establishing that primary evidence is unavailable must accompany secondary evidence of birth or marriage in the home country. The unavailability of such documents may be shown by submission of a copy of the written request for a copy of such documents which was sent to the official keeper of the records. In adjudicating the application for adjustment of status under section 902 of HRIFA, the Service or immigration judge shall determine the weight to be given such secondary evidence. Secondary evidence may not be submitted in lieu of the documentation specified in paragraphs (i) or (j) of this section. However, subject to verification by the Service, if the documentation specified in this paragraph or in paragraphs (h)(3)(i), (i), (j), (l)(1), and (l)(2) of this section is already contained in the Service's file relating to the applicant, the applicant may submit an affidavit to that effect in lieu of the actual documentation.

* * * * *

PART 274A—CONTROL OF EMPLOYMENT OF ALIENS

5. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2; Pub. L. 101–410, 104 Stat 890, as amended by Pub. L. 104–34, 110 Stat 1321.

§ 274a.12 [Amended]

6. In § 274a.12, paragraph (c)(9) is amended in the second sentence by removing the words ''§§ 245.13(j) and 245.13(k) of this chapter'' and adding in its place the words ''§§ 245.13(j) and 245.15(n) of this chapter''.

§ 274a.13 [Amended]

7. In § 274a.13, paragraph (d) is amended in the first sentence by removing the words ''insofar as it is governed by §§ 245.13(j) and 245.15(k) of this chapter'' and adding in its place the words ''insofar as it is governed by §§ 245.13(j) and 245.15(n) of this chapter''.

PART 299—IMMIGRATION FORMS

8. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

9. Section 299.1 is amended in the table by revising the entry for Form ''I–485 Supplement C'', to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* *	*	* * * * *
I–485 Supplement C	12–01–99	HRIFA Supplement to Form I–485 Instructions.
* *	*	* * * * *

Dated: March 17, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–7204 Filed 3–21–00; 3:47 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 212, 240, 245, 274a and 299

[INS No. 1893–97; AG Order No. 2293–2000]

RIN 1115–AF04

Adjustment of Status for Certain Nationals of Nicaragua and Cuba

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

ACTION: Final rule.

SUMMARY: This rule implements section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) by establishing procedures for certain nationals of Nicaragua and Cuba who have been residing in the United States to become lawful permanent residents of this country. This rule allows them to obtain lawful permanent resident status without applying for an immigrant visa at a United States consulate abroad, and waives many of the usual requirements for this benefit.

DATES: This final rule is effective March 24, 2000.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Immigration and Naturalization Service*—Suzy Nguyen, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington, DC 20536, telephone (202) 514–5014; *For matters relating to the Executive Office for Immigration Review*—Chuck Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

What Are the Basic Provisions of Section 202 of NACARA and the Interim Regulation Published on May 21, 1998?

The Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted as title II of the District of Columbia Appropriations Act, 1998, Public Law 105–100 (111 Stat. 2160, 2193), was signed into law on November 19, 1997. As amended by Public Law 105–139 (111 Stat. 2644), which was signed into law the same day, section 202 of NACARA allows certain Nicaraguan and Cuban nationals who are physically present in the United States to adjust status to that of lawful permanent resident. In order to be eligible for benefits under NACARA, an applicant must be a national of Nicaragua or Cuba; must be admissible to the United States under all provisions of section 212(a) of the Immigration and Nationality Act (Act), other than those provisions specifically excepted by NACARA; must have been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment is filed (not counting absences totaling 180 days or less); and must properly file an application before April 1, 2000. In addition, certain family members of NACARA beneficiaries are also eligible for adjustment of status under NACARA.

The interim regulation published in the **Federal Register** by the Department of Justice (Department) on May 21, 1998, explained the forms, supporting documentation, and process through which a principal applicant, or an applicant who is a dependent of a principal applicant, may apply for adjustment of status under section 202 of NACARA. It provided that an alien who is currently in exclusion, deportation, or removal proceedings may file his or her application with the immigration court, unless the immigration court administratively closes such proceedings for the specific purpose of allowing the alien to apply for adjustment before the Immigration and Naturalization Service (Service or INS). The regulation also added an eighth method to the seven contained in the statute for proving commencement of physical presence in the United States. Additionally, it explained the process through which a NACARA adjustment applicant may seek authorization to work in the United States or to travel outside of the country. Finally, the regulation provided a vehicle through which certain aliens who are outside the United States may seek authorization to be paroled into the country for the purpose of applying for adjustment of status.

How Many Comments Were Received From Interested Parties During the Comment Period?

There were 36 separate comments received from various organizations, individuals, and other interested parties. That number included three Members of Congress, one representative of a foreign government, numerous nongovernmental organizations, and several attorneys and law firms. Also included in that number are 2 petitions, 1 with 426 signatures and the other with 66 signatures, and 124 identical letters signed by the members of 1 organization, making a total of 649 individuals and organizations who participated in the public comment process. The Department wishes to thank all participants for their insightful comments.

What Were the Specific Comments and How Is the Department Amending the Regulation as a Result?

The issues raised by commenters generally fell into 14 areas, each of which will be discussed separately, as follows:

1. Treatment of an Ineligible Spouse or Child

A significant number of commenters expressed concern about the requirement that a spouse or child of a principal applicant be a national of Nicaragua or Cuba in order to qualify for the benefits of section 202 of NACARA. Some questioned whether the language of the statute specified that the dependent be a national of Nicaragua or Cuba, while others recognized that the language so specified, but felt that the agency has the authority to ''correct'' the language through regulation. Still other commenters suggested that the Department create a family unity program for ineligible dependents and provide them with a blanket waiver of section 212(a)(9)(B) of the Act (which creates a 3-year bar for aliens who have been unlawfully present for more than 180 days and a 10-year bar for those who have been unlawfully present for 1 year or more). While the Department is sympathetic to the problem faced by non-Nicaraguan, non-Cuban dependents, section 202(d)(1)(A) of NACARA clearly states that the alien spouse must be ''a national of Nicaragua or Cuba.'' While the courts have held that an agency has a certain amount of latitude in drafting implementing regulations if the statute is unclear on an issue, the agency has no such latitude where the statute is clear. Only a statutory change can redress the issue of eligibility for non-Nicaraguan and non-Cuban dependents. Likewise, a statutory change would be required to create a family unity program for ineligible dependents and to waive the provisions of section 212(a)(9)(B) of the Act. Accordingly, no changes are being made to the regulation on this point.

2. Other Statutory Issues

Some commenters wanted clarification in the regulation on whether sections 212(a)(6)(B), 240B(d), 241(a)(5) (and also by extension 212(a)(9)(C)), and ''the former section 242B'' of the Act applied to NACARA applicants. One party also requested information regarding the number of persons affected by section 241(a)(5) of the Act. Although incorporating a discussion of each of these provisions in 8 CFR 245.13 would unnecessarily complicate the regulation, we have decided to address them in this supplementary information.

Section 212(a)(6)(B) of the Act provides that if an alien failed to attend a removal hearing, he or she is inadmissible for a period of 5 years from his or her subsequent departure or removal. In order to be barred from adjusting status under NACARA, an alien would (1) have to fail to attend a removal hearing; (2) depart or be removed from the United States; (3) re-enter the United States; and (4) apply for adjustment under NACARA. If any of these four steps is missing, the alien would not be inadmissible under section 212(a)(6)(B) of the Act; if all four are present, he or she would be inadmissible and, therefore, ineligible for adjustment of status under section 202 of NACARA.

If an alien was permitted to depart voluntarily but failed to do so, he or she would be barred by section 240B(d) of

the Act from receiving benefits under certain specified provisions of the Act. Because a NACARA applicant would not be seeking benefits under one of the sections specified in section 240B(d) of the Act, section 240B(d) of the Act would not apply.

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. An alien who has been previously deported is inadmissible for the applicable period set forth in the Act and may only overcome such inadmissibility by obtaining the applicable waiver of inadmissibility authorized under section 212(a)(9) of the Act (such waiver is more commonly referred to as permission to reapply for admission after deportation) before being granted adjustment of status (including adjustment under section 202 of NACARA). Because such a waiver is relief (from inadmissibility) under the Act for which an alien subject to reinstatement is ineligible, a previously deported alien who has re-entered the United States illegally at a time when his or her previous exclusion, deportation, or removal rendered him or her inadmissible to the United States is ineligible to adjust status under section 202 of NACARA. The Service does not know how many otherwise-eligible Nicaraguans and Cubans are barred from adjusting under section 202 due to the provisions of section 241(a)(5) of the Act, but judging solely from the volume of inquiries received on the issue, the number may be significant.

The issue of a previous exclusion, deportation, or removal also arises in connection with section 212(a)(9)(C)(i)(II) of the Act, which provides that:

> Any alien who * * * has been ordered removed under section 235(B)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

Section 202(a)(2) of NACARA specifically provides that ''[a]n alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1).'' Accordingly, merely having been *ordered* removed does not make an alien inadmissible to the United States and, therefore, ineligible for adjustment under NACARA, but departing while under such order and then entering or attempting to re-enter without being properly admitted does.

The former section 242B of the Act was replaced by section 308(b)(6) of IIRIRA, and incorporated into the new section 240(b)(7) of the Act. That section bars an alien against whom a final order of removal is entered *in absentia* from eligibility for relief under certain specified sections of the Act. As with section 240B(d) of the Act, because a NACARA applicant is seeking adjustment under a provision of law that is separate from the Act, section 240(b)(7) (formerly section 242B) of the Act does not apply.

Some commenters inquired whether someone who is already a lawful permanent resident (LPR) may ''readjust'' under NACARA in order to obtain some ancillary benefit. In accordance with Board precedent, *see e.g., Matter of Krastman,* 11 I&N Dec. 720, 721 (BIA 1966), the ability of an alien who is an LPR to apply for and be granted adjustment of status to that of an alien lawfully admitted for permanent residence is limited to cases in which the alien is at risk of losing his or her current LPR status, i.e., the alien has been found to be subject to removal from the United States. Otherwise, an alien who is currently an LPR would have to abandon that status by leaving the United States with the intent of abandoning his or her residence in the United States before he or she could be considered eligible for NACARA adjustment. Like other eligible aliens currently abroad, a former LPR whom the Service believes has abandoned his or her status may apply for, and may be granted, parole into the United States in order to file a NACARA adjustment application. However, since each parole request must be considered on its own merits and must be based on either urgent humanitarian reasons or significant public benefit, there are no guarantees that such a parole request would be approved. The alien could end up stranded outside the United States.

One commenter felt that, because NACARA was modeled after the Cuban Adjustment Act of 1966, any Nicaraguan or Cuban who had been in the United States for 1 year should be allowed to adjust status. While there are certain similarities between the two statutes, there are also significant differences, including differences relating to the eligibility requirements. Merely being present in the United States for a year does not enable someone to apply for adjustment of status under NACARA.

Some commenters wanted the Department to provide an exception for those aliens who were deported from the United States more than 180 days before the NACARA enactment date and who as a result had already been absent for more time than allowed under section 202(b)(1) of NACARA. This suggested change exceeds the agency's rulemaking authority and could only be accomplished through new legislation.

3. Documentation Required for Proving Commencement of Physical Presence

In the supplementary information relating to the interim regulation, the Department specifically requested suggestions from interested parties concerning the documentation that may be used to establish physical presence in the United States on or prior to December 1, 1995. In particular, the Department stated that it was:

> soliciting public comments on the need for any additional methods of establishing commencement of physical presence in the United States and suggestions as to what those additional methods should be, including whether the documentary standards listed in 8 CFR 245.13(e)(3) for demonstrating continuity of physical presence should also be applied to the requirement for demonstrating commencement of physical presence.

63 FR 27823, 27824 (May 21, 1998). The rulemaking went on to state that commenters were ''encouraged to explain which classes of aliens would benefit from the proposal, and how the proposal could be implemented without severely compromising the integrity of the adjudicative process.'' *Id.*

The Department received a number of suggestions regarding this matter. The suggestions ranged from expanding the list to include any type of governmental or nongovernmental document or affidavit that the applicant wishes to submit, to condensing the list by limiting it to documents issued by an agency of the Federal Government and excluding documents issued by State and local authorities. Some commenters wanted the Department to accept documents issued by certain private service providers, such as physicians, attorneys, nonpublic schools, and the clergy. Other commenters wanted the Department to give special consideration to persons who, through the nature of their presence in the United States, did not create a ''paper trail,'' such as domestic servants and elderly ''stay-at-homes.'' One commenter proposed that the Department accept any documents that were dated by the government at the

time of issuance or receipt, including labor certification requests submitted by employers to the Department of Labor and visa petitions submitted to the Service.

Many commenters did not make suggestions as to how the Service could improve its ability to detect and deter fraud. Others took the view that the Service already has sufficient capability to detect and deter fraud through its interview and investigation procedures, and that there is no greater risk of fraud in NACARA applications than in other adjustment applications.

In addition, some commenters wanted the Department to clarify that under the existing regulations, the Form I–94, Record of Arrival and Departure, issued by the Service at the time of the alien's inspection and admission or parole is acceptable evidence of commencement of physical presence; others wanted the Department to clarify that the proof of commencement may relate to any time at or after entry and any time on or before December 1, 1995.

After carefully reviewing all of the comments in this regard, the Department has chosen not to expand the categories to include documents that are not based upon governmental records for the following reasons. The enumerated categories in the statute itself give strong indication that Congress intended that applicants provide the most reliable and readily verifiable evidence of the commencement of physical presence in the United States on or before December 1, 1995. Evidence in the form of contemporaneous governmental records (or copies of such contemporaneous records) provides the most reliable and readily verifiable means of documenting such physical presence. Nongovernmental records are generally more difficult to verify. Affidavits submitted by the applicant without independent corroboration raise serious reliability issues. Affidavits submitted by allegedly disinterested third parties on behalf of the applicant would also be problematic in that such affidavits would not provide a contemporaneous accounting of the relevant facts and therefore raise additional reliability concerns. In light of the foregoing, the Department does not think it prudent to extend the categories of documents that can be used to demonstrate commencement of physical presence beyond those set forth in the interim regulation, with one exception.

This one exception will allow an applicant who had attended a recognized private or religious school as a child (*i.e.,* under 21 years of age) to submit a transcript from that school as evidence of commencement of presence in the United States on or before December 1, 1995. This exception is being included in the regulation to ensure parity with the provisions of the regulation pertaining to the Haitian Refugee Immigration Fairness Act (HRIFA), which is in many ways comparable to section 202 of NACARA.

With this one exception, the Department will not expand the categories to include documents that are not based on governmental records. In so doing, the Department does not want to leave the impression that it is disparaging the recordkeeping processes or the integrity of nongovernmental organizations and individuals. Nor is the Department under the illusion that all governmental records are entirely reliable. Experience has shown, however, that governmental records are generally easier to verify than nongovernmental records.

Although one commenter correctly pointed out that the statutory list contains only documents that can be verified through the records of the Federal Government, the Department does not feel that it has sufficient justification at this time to make the requirement more restrictive.

The Department is, however, adopting the suggestions of those commenters who proposed that the list be expanded to include other documents for which governmental records exist. Beginning on the effective date of this final rule, the Department will accept as evidence of commencement of physical presence a certified copy of a Federal, State, or local governmental record that was created on or prior to December 1, 1995, shows that the applicant was present in the United States at the time, and establishes that the applicant sought on his or her own behalf, or some other party sought on the applicant's behalf, a benefit from the Federal, State, or local governmental agency maintaining such record. Additionally, the Department will accept as evidence of commencement of physical presence a certified copy of a Federal, State, or local governmental record that was created on or prior to December 1, 1995, that shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency maintaining such record. These changes will allow applicants to use records such as income tax returns, labor certification requests, and immigrant visa petitions. If the record involved is maintained by the Service, such as an immigrant visa petition, the copy need not be certified.

4. Documentation Required for Proving Continuity of Physical Presence

The interim regulation set forth a lower standard for documents evidencing continuity of presence, allowing applicants to submit both governmental and nongovernmental documents, so long as the document ''bears the name of the applicant, was dated at the time it was issued, and bears the signature of the authorized representative of the issuing authority.'' 8 CFR 245.13(e)(3). The interim regulation also provided a general guideline which stated that submission of one document for each 90-day period since December 1, 1995, would normally be sufficient to establish continuity. *Id.*

The Department received numerous comments regarding evidence needed to establish continuity of presence. One commenter suggested that evidence pertaining to a child (such as school records) should also apply to other family members. Another suggested that a letter from a landlord, utility, or bank detailing the records of that person or organization should be acceptable. Still others recommended accepting affidavits from employers or requiring no documentation at all.

In response to these suggestions, the Department has decided to expand the list of documents that may be used to establish continuity of physical presence to include certified copies of records maintained by organizations chartered by the government, such as public utilities, accredited private and religious schools, and banks. Additionally, if the applicant establishes that a family unit was in existence and cohabiting in the United States, documents evidencing presence of one member of that family unit may be used by other members of that same family unit. Letters and affidavits created after the fact, regardless of the source, will not be acceptable.

A number of commenters pointed out that many documents do not normally bear the signature or seal of the originator, including many documents that are listed in the interim regulation as acceptable, such as utility bills and other receipts, employment records, and credit card statements. The Department is modifying the regulation to state that if the document is normally signed, sealed, issued on letterhead stationary, or otherwise authenticated, it must bear such indication of authenticity.

One commenter pointed out that the reference in the interim regulation to ''pay checks'' should read ''pay stubs''

since the applicant would cash, not retain, the former, but might retain the latter. This correction is being made.

Some commenters suggested that the Department be flexible with regard to persons who have not created a ''paper trail'' such as domestics and the elderly. Others suggested that adjudicators be given a wide range of latitude with regard to continuity documents in general, urging the Department to be flexible with regard to the 90-day guideline.

Adjudicators already have a fair amount of latitude with regard to issues involving continuity of presence. The 90-day guideline was never intended to be a hard-and-fast rule, but rather more of a suggestion designed to guide applicants in judging the amount of documentation to submit. An adjudicator who is otherwise satisfied could always accept less frequent documentation as evidence of continuity of physical presence. Likewise, an adjudicator who has doubts about the alien's claim of continuity could request additional, and more frequent, documentation.

However, the Department has determined that the guideline, which had been intended to ease the burden on applicants by assisting them in gauging how much documentation to submit, might instead become a hindrance and may result in some applicants believing that without a certain minimum amount of documentation they are ineligible to apply for or receive the benefit of adjustment of status under NACARA. Accordingly, the Department is removing the guideline from the regulation, and applicants should simply submit sufficient documentation to satisfy the adjudicating officer or immigration judge that they have maintained continuous presence in the United States within the meaning of NACARA.

As with evidence of commencement, some commenters believed that the fraud risk relating to continuity of presence was no greater than in other applications, and that the Service's existing resources were sufficient to detect and deter fraud. Others felt that the potential for fraud in adjustment of status under NACARA is quite high, and that the regulation should be carefully drafted in order to combat such fraud. The Department takes a very serious view of the potential for fraud involved in applications for adjustment of status under section 202 of NACARA, and finds that regardless of whether or not the fraud potential is greater than that pertaining to other applications, there is certainly no reason to decrease the minimal level of fraud deterrence embodied in the interim regulation.

Finally, the regulation is being modified to clarify one point regarding continuity of presence that some persons may have misinterpreted. The statute allows an applicant to be absent from the United States for up to 180 days after establishing physical presence on or prior to December 1, 1995. Some persons have erroneously interpreted this to mean that absences between the last (pre-December 2, 1995) date on which the applicant commenced physical presence and December 1, 1995, do not count toward the 180-day maximum. The correct interpretation is that all absences between the last pre-December 2, 1995, date on which the applicant commenced physical presence and the date on which the application is approved count toward the 180-day maximum, with the exception of those periods for which time is tolled pursuant to § 245.13(o).

5. Local Police Clearance Requirements

Several commenters were concerned about the requirement that applicants for adjustment under NACARA submit local police clearances, finding it burdensome at best, and impossible to meet at worst. Some wanted the provision modified to allow for statewide (instead of local) clearances, others wanted it waived for minors or where the applicant's local police department refuses to issue a clearance; still others wanted it dropped entirely.

Although there is considerable value in obtaining local police clearances in addition to the nationwide fingerprint clearance, for certain individuals obtaining such local clearances may be extremely difficult or impossible through no fault of the individual. Accordingly, the final regulation is being modified to allow the director or immigration judge having jurisdiction over the application to waive the local police clearance. This waiver will be available upon presentation of a letter or similar documentation from the local police agencies involved showing that the applicant attempted to obtain such clearance but was unable to do so because of local or State policy.

Additionally, for persons who live, or have lived, in locations where the local authorities have made a blanket decision not to issue such clearances for immigration purposes, the regulation is being modified to provide a general exemption from the local police clearance requirement insofar as it relates to time periods when the applicant resided in that locale. One example of such location is New York City.

The regulation is being further clarified to explain that where multiple local law enforcement agencies have jurisdiction over an alien's residence (e.g., city police and county sheriff), the applicant may obtain a clearance from either agency, and that for those individuals living in states where the state police maintain a compilation of all local arrests and convictions, a statewide clearance is sufficient.

6. Determining Nationality

One commenter suggested that all applicants be required to establish nationality through a birth certificate that has been certified by the issuing governmental authority in accordance with 8 CFR 287.6(b).

All applicants are required to meet the proof of official records requirements set forth in 8 CFR 287.6 which, with regard to all documents submitted in support of this and other applications, requires either an official publication of the record, or a copy attested to by an authorized official. However, it should be noted that the Service regulation at 8 CFR 103.2(b) permits submission of secondary evidence and photocopies of documents under certain circumstances.

7. Fee for Fingerprinting Services

One commenter requested that the regulation clarify whether the applicant must pay an additional $25 fee for fingerprinting, in addition to the regular fee for filing an application for adjustment of status. Each applicant who is 14 years of age or older must be fingerprinted and must pay the fingerprinting fee at the time of filing the application for adjustment. The regulation has been clarified in this regard.

8. Employment Authorization

The Department received a number of comments on the employment authorization issuance process. As set forth in the interim regulation, the current process involves the Service's issuing employment authorization on an expedited basis to those applicants whose application is supported by evidence that may be verified through existing Service records. Other applicants must wait up to 180 days (the maximum timeframe allowed under the statute) while the Service adjudicates the application for adjustment of status. A number of commenters, citing the potential hardship to applicants, wanted the Service to issue employment authorization to all applicants immediately upon filing; one, citing the

need to deter fraud, wanted the Service to wait the full 180 days in all cases; and one supported the process as set forth in the interim regulation. Upon examination of all the comments, the Department has concluded that the process set forth in the interim regulation provides the best balance between deterring fraud by mala fide applicants and alleviating financial hardship for bona fide applicants. Accordingly, no changes are being made with regard to the work authorization issue.

Some commenters pointed out the apparent conflict between the statement in the interim rule's supplementary information that the Department ''will authorize employment for applicants whose cases have been pending for fewer than 180 days only if the applicant applies for work authorization and adjustment at the same time,'' and the lack of such concurrent filing requirement in § 245.13(j)(2). The Department has decided not to require that an applicant file concurrently in order to benefit from the more expedited of the two procedures. Accordingly, the language in the interim regulation will not be changed.

9. Travel and Parole Issues

Several commenters expressed concern about the provisions in the interim regulation that allow the Director of the Texas Service Center (TSC) to authorize parole for aliens outside the United States. One questioned the authority of the Attorney General (acting through the Director of the TSC) to authorize parole under these circumstances; a second did not want the Director of the TSC to authorize any paroles for persons to come to the United States; a third wanted the regulation to eliminate, or at least to restrict greatly the Director of the TSC's ability to authorize parole; and a fourth sought assurance that the Service would use a ''tighter screening mechanism'' to prevent abuse.

An explanation of the parole process, and how it relates to the NACARA adjustment program, may help to clarify the Service's approach. The authority to authorize parole into the United States is contained in section 212(d)(5) of the Act, which states:

> (5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 214(f), in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.
>
> (B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.

The Attorney General has delegated her authority to authorize parole to the Commissioner of the Immigration and Naturalization Service. In the case of an alien who is seeking parole from outside the United States, that authority is normally redelegated to the Director of the INS Office of International Affairs and to the overseas district director having jurisdiction over the area in which the alien is located. The effect of the May 21, 1998, regulation was to expand the list of persons to whom this authority has been re-delegated to include the Director of the TSC for NACARA-related parole requests only. There have been no changes in the process for requesting, the standards for adjudicating, or the statutory authority for issuing parole. Parole determinations will still be made on a case-by-case basis, and the applicant for parole will still have to establish that urgent humanitarian reasons or significant public benefits exist. If the evidence shows that the positive factors (such as the desirability of reuniting a family or allowing an otherwise-eligible alien to participate in this special adjustment of status program which Congress has established) are outweighed by negative discretionary factors, the parole request will be denied as a matter of discretion. Minor changes have been made in the regulation at § 245.13(k) to clarify this point.

One commenter did not want the Department to issue parole authorization to any alien who returned to his or her home country during any portion of the 180 days of absence from the United States permitted by section 202(b)(1) of NACARA. Although the suggestion might be appropriate if NACARA were to require the applicant to establish, for example, that he or she would risk persecution or extreme hardship if he or she went home, there is no such requirement, and the commenter's suggestion will not be adopted.

One commenter felt that if the Service revoked the alien's parole, the regulation should either require the district director to make a bond redetermination or authorize the immigration judge to set bond. As indicated in the passage cited above, when parole is terminated the alien is returned to the custody of the Service and is treated as any other applicant for admission. Under existing statutory and regulatory provisions, the district director then has the option of placing the alien into removal proceedings, admitting the alien (if he or she is admissible), or reparoling the alien. If the decision is to admit or reparole the alien, the district director may require that certain conditions be met, including the posting of an appropriate bond. *See* 8 CFR §§ 212.5(c)(1), 214.1(a)(3).

10. Jurisdictional Issues Between the Service and the Executive Office for Immigration Review (EOIR)

One commenter suggested that the regulation be modified to allow an alien whose application for adjustment is denied by the Service to renew his or her application in proceedings before the Immigration Court regardless of whether the proceedings occur before or after the March 31, 2000, expiration date of the NACARA program. Although section 202(a)(1)(A) of NACARA provides that applications for adjustment must be filed by March 31, 2000, section 202(e) of NACARA also provides that applicants for adjustment of status shall have the same right to, and procedures for, administrative review as are provided to other applicants for adjustment under section 245 of the Act, or aliens subject to removal proceedings under section 240 of the Act. The Department interprets the deadline in section 202(a)(1)(A) of NACARA as relating only to the initial application for adjustment and not to any renewed application in removal proceedings following a denial of the initial application by the Service, provided that initial application was properly filed. The regulation is being modified accordingly.

Another commenter contended that all initial applications must be filed before the Service, and that EOIR only has appellate jurisdiction. The Department does not agree. The authority to adjudicate applications for adjustment of status under section 202 of NACARA rests with the Attorney General. It is well within her authority to assign initial jurisdiction over the applications to the Service (for those aliens who are not in removal proceedings) and to the Immigration Court (for those aliens who are in such proceedings), and to provide that the Board of Immigration Appeals has

appellate jurisdiction over cases decided by immigration judges. This arrangement is in keeping with the provisions of section 202(e) of NACARA.

One commenter suggested that aliens in proceedings before the Immigration Court be afforded the option of applying for adjustment before either the Service or the Immigration Court. Section 245.13(d)(3) already provides an alien in proceedings with a mechanism by which he or she may request administrative closure of such proceedings for the purpose of seeking adjustment of status under section 202 of NACARA before the Service.

One commenter suggested that aliens whose requests for administrative closure are granted be required to apply for adjustment before the Service within a fixed number of days of the granting of administrative closure. The Department considered this approach when drafting the interim regulation, but concluded that the difficulties inherent in administering it would far exceed any benefits.

Finally, one commenter suggested that for those cases which are referred to an immigration judge on a Form I–290C, Notice of Certification, for a ''NACARA-only hearing'' because the applicant had already been subject to an order of exclusion, deportation, or removal at the time the application was filed, the ''NACARA-only hearing'' should be conducted under the same rules of procedure as the proceeding in which the alien received the order of exclusion, deportation, or removal. Under this suggestion, an alien who was placed in exclusion or deportation proceedings prior to the enactment of IIRIRA would not be subject to the post-IIRIRA Immigration Court procedures. The Department does not agree with this suggestion, since the ''NACARA-only hearing'' is a new proceeding, not a reopening of the old exclusion or deportation proceeding.

11. Compliance With the Unfunded Mandates Reform Act of 1995

One commenter suggested that the interim rule implicated the Unfunded Mandates Reform Act of 1995. The interim rule merely implements a statutory provision providing permanent residency for certain qualified aliens. Neither the statute nor the interim rule mandates a State or local jurisdiction to provide any services not already provided to aliens who adjust their status to that of lawful permanent resident under other provisions of immigration law. The Department has no reason to believe that the implementation of section 202 of NACARA will result in any expenditures by State or local governments that are in contravention of the Unfunded Mandates Act.

12. Waiver of Interviews

The Department received a wide range of comments regarding waiver of interviews. One commenter stated that all applicants should be interviewed; a second wanted fewer restrictions on the types of interviews the Director of the TSC can waive; and a third wanted the Service to waive interviews for all children under age 14. It is important to remember that the Service does not waive interviews in order to avoid work for itself or inconvenience to the applicant, but rather because doing so enables it to concentrate its limited resources on those cases most warranting interview. The Department believes this can be best accomplished by giving the Director of the TSC the authority to waive interviews only in those cases that, first, are supported by evidence of commencement of physical presence that can be verified through Service records; second, have no unresolved questions about the applicant's eligibility; and third, do not require a waiver of inadmissibility. Accordingly, no changes will be made in the regulation in this regard.

13. Stay of Removal

A number of commenters felt that the Service should either grant stays of removal to all applicants for adjustment of status under section 202 of NACARA (*i.e.,* without fee or application), or require the application but waive the fee. Most of those who expressed the former view cited subsections 202(c)(1) and (2) of NACARA in support of their view. However, those subsections read:

> (1) IN GENERAL—The Attorney General shall provide by regulation for an alien subject to a final order of deportation or removal *to seek* a stay of such order based on the filing of an application under subsection (a).
>
> (2) DURING CERTAIN PROCEEDINGS—Notwithstanding any provision of the Immigration and Nationality Act, the Attorney General shall not order any alien to be removed from the United States, *if the alien is in exclusion, deportation, or removal proceedings* under any provision of such Act and has applied for adjustment of status under subsection (a), except where the Attorney General has rendered a final administrative determination to deny the application. [Emphasis Added]

Taken together, these two subsections clearly indicate that Congress intended that, with regard to any alien who is the beneficiary of a properly-filed application for adjustment of status under section 202 of NACARA and who is in exclusion, deportation, or removal proceedings before an immigration judge, or whose case is on appeal to the Board of Immigration Appeals (the Board), neither the immigration judge nor the Board may issue an order of exclusion, deportation, or removal unless and until the application for adjustment is denied. The alien does not need to file any request, motion, or other form beyond the application for adjustment itself in order to benefit from this automatic protection.

There is no such automatic protection with regard to an alien who became the subject of a final order of exclusion, deportation, or removal prior to his or her filing the application for adjustment under section 202 of NACARA. If the alien wishes to receive protection from the enforcement of an existing order of exclusion, deportation, or removal, he or she must ''seek a stay of such order.'' The process for seeking a stay of removal is to file Form I–246, Application for Stay of Removal, and pay the required fee, through the local Service office. It must be noted that the filing of Form I–246 is not a prerequisite to applying for, or being granted, benefits under section 202 of NACARA; the decision to seek a stay of removal is strictly up to the alien. Accordingly, no change will be made to the regulation regarding the process for seeking a stay of removal. However, the Department does see a need for guidelines on the adjudication of such request for stay of removal. Accordingly, the regulation is being modified to reflect that, absent significant negative discretionary factors, if an alien files Form I–246, pays the fee, and submits evidence of the filing of an application for adjustment of status under section 202 of NACARA, execution of the order of exclusion, deportation, or removal shall be stayed until a decision is reached on the application for adjustment of status.

14. Typographical Errors, Technical Corrections and Stylistic Changes

One commenter pointed out that the regulation, as published in the **Federal Register** on May 21, 1998, contained a typographical error in 8 CFR 245.13(e)(2) wherein ''1997'' was typed instead of ''1995''. The May 21, 1998, version also contained the typographic error ''Untied'' instead of ''United'' in § 245.13(e)(12). These errors are being corrected. It should also be noted that on June 29, 1998, and again on July 21, 1998, the **Federal Register** published notices correcting two other typographical errors in the May 21 version. The first notice corrected the first sentence of the segment of the supplementary information entitled

''What Happens if an Application is Denied by the Immigration Court?'' to read: ''If the Immigration Court denies the NACARA adjustment application of an alien in exclusion, deportation, or removal proceedings before the Immigration Court, the decision may be appealed to the Board along with and under the same procedures as all other issues before the Immigration Court in those proceedings.'' The second notice corrected the reference in § 240.41 to read ''Public Law 105–100'' instead of ''Pub L. 100''; it also corrected the amendatory language for the appropriate phrase in § 274a.13(d) to read ''§ 274a.12(c)(8), which is governed by paragraph (a)(2) of this section, and § 274a.12(c)(9) insofar as it is governed by § 245.13(j) of this chapter.''

A second commenter requested that the Department incorporate into the regulation a number of issues that were discussed in the supplementary information. In particular, the commenter wanted the Department to include in the regulation provisions specifying the procedure and language used by the Service to notify an alien whose application has been approved of the delivery of the Permanent Residence Card and the process for obtaining temporary evidence of alien registration. The commenter also wanted the Department to include in the regulation provisions specifying the procedure and language used by the Service to notify an alien whose application has been denied of the Service's decision and the right to renew the application for adjustment in proceedings before an immigration judge. Finally, the commenter requested that the regulation contain more specificity regarding the process by which the Board may remand a case to the immigration judge. Several of these suggestions have been adopted, especially where needed for purposes of clarity. Other suggestions pertained to matters that are standard to the adjudication process and are either already covered elsewhere in the regulation or are so basic as to not warrant special coverage in this particular section of the regulation.

Additionally, the Department has noted that in the interim regulation published on May 21, 1998, it failed to provide a mechanism whereby persons outside the United States who are seeking parole authorization pursuant to § 245.13(k)(2) and who must file either an Application for Permission to Reapply for Admission to the United States After Deportation or Removal (Form I–212) or an Application for Waiver of Grounds of Excludability (Form I–601) could file such applications concurrently with the request for parole authorization. This oversight has been corrected by making slight modifications to §§ 212.2 and 212.7. These modifications will allow such applicants to file Forms I–212 and I–601 with the Director of the TSC concurrently with the Form I–131.

Finally, it has come to the Department's attention that the application of current regulations (8 CFR § 103.2(a)(7)) and practice to NACARA applications filed with fee waiver requests may inadvertently result in certain applicants later being deemed to have missed the application deadline due to no fault on the part of the applicant. Currently an application submitted with a fee waiver request is not considered properly filed and does not retain a receipt date until the fee waiver is granted. In cases where a fee waiver is denied, the application is returned to the applicant with instructions to resubmit the application with the appropriate fee at which time the application will be considered properly filed and will be assigned a receipt date. Thus, under current regulations and practice were the Service or Immigration Court to deny a request for a waiver of the NACARA application fee after March 31, 2000, and return the application, the alien could not file another application with the fee because the filing deadline would have already passed. Given the statutorily mandated filing deadline of March 31, 2000, the Department believes that it would be appropriate to modify the regulations with respect to this group of cases to avoid a potentially harsh and irreversible result. Accordingly, the regulations are being amended to afford an applicant whose NACARA fee waiver request is denied the opportunity to submit the required fee within 30 days of notice that the fee waiver request was denied and thereby maintain a timely filing date.

In addition, in a case over which the Board has jurisdiction, an application received by the Board before April 1, 2000, that has been properly signed and executed is considered to be filed before the statutory deadline without payment of the fee or submission of a fee waiver request. Upon remand by the Board, the payment of the fee or a request for a fee waiver is made upon submission of the application to the Immigration Court in accordance with 8 CFR 240.11(f). The regulations are being amended to afford an applicant whose NACARA adjustment fee waiver request is denied the opportunity to submit the required fee within 30 days of the notice that the fee waiver request was denied. If the required fee is not paid within 30 days, the applicant will no longer be considered to have filed a timely NACARA adjustment application.

Good Cause Exception

The Department's implementation of this final rule effective upon publication in the **Federal Register** is based upon the ''good cause'' exception found at 5 U.S.C. 553(d)(3). By statute, all NACARA adjustment applicants must file their applications before April 1, 2000. Immediate implementation of this final rule is necessary to ensure that NACARA applicants are able to avail themselves of the modifications made in this final rule as soon as possible before the end of the application period. Accordingly, delaying the effective date of this final rule for 30 days would be contrary to the public interest.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule allows certain Nicaraguan and Cuban nationals to apply for adjustment of status; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Executive Order 12866

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

This regulation 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. 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

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

The information collection requirement contained in this rule (Form I–485 Supplement B) has been revised. Accordingly, it has been submitted and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act. The changes to the form are effective with the issuance of this rule.

Plain Language in Government Writing

The President's June 1, 1998, Memorandum published at 63 FR 31885, concerning Plain Language in Government Writing, applies to this proposed rule.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies)

8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR Parts 3, 240, 245, 274a, and 299, which was published at 63 FR 27823 on May 21, 1998, is adopted as a final rule with the following changes, and part 212 is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 212.2(g)(3) is amended by:

a. Removing the reference to ''§ 245.15(l)'' and adding in its place ''§ 245.15(t)(2)'', and by

b. Adding a new sentence at the end of the paragraph to read as follows:

§ 212.2 Consent to reapply for admission after deportation, removal, or departure at Government expense.

* * * * *

(g) * * *

(3) * * * If an alien who is an applicant for parole authorization under § 245.13(k)(2) of this chapter requires consent to reapply for admission after deportation, removal, or departure at Government expense, or a waiver under section 212(g), 212(h), or 212(i) of the Act, he or she may file the requisite Form I–212 or Form I–601 at the Texas Service Center concurrently with the Form I–131, Application for Travel Document.

* * * * *

3. Section 212.7 is amended by:

a. Adding a new paragraph (a)(1)(iv);

b. Removing the word ''or'' at the end of paragraph (b)(2)(iii);

c. Removing the period at the end of paragraph (b)(2)(iv) and adding in its place a ''; or''; and by

d. Adding a new paragraph (b)(2)(v), to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

(a) * * *

(1) * * *

(iv) *Parole authorization applicant under § 245.13(k)(2) of this chapter.* An applicant for parole authorization under § 245.13(k)(2) of this chapter who is inadmissible and seeks a waiver under section 212(h) or (i) of the Act must file an application on Form I–601 with the Director of the Texas Service Center adjudicating the Form I–131.

* * * * *

(b) * * *

(2) * * *

(v) The Texas Service Center if the alien is outside the United States and is seeking parole authorization under § 245.13(k)(2) of this chapter.

* * * * *

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

4. 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; 8 CFR part 2.

5. Section 245.13 is amended by:

a. Revising paragraph (d)(2);

b. Adding a sentence at the end of paragraph (d)(5)(i);

c. Revising paragraph (e);

d. Adding five new sentences immediately before the last sentence in paragraph (g);

e. Revising the last sentence in paragraph (j)(1);

f. Revising the last sentence in paragraph (k)(1);

g. Adding a sentence at the end of paragraph (k)(2);

h. Adding a new sentence immediately after the first sentence in paragraph (l);

i. Revising the first sentence in the introductory text in paragraph (m); and by

j. Revising paragraphs (m)(1) and (m)(2), to read as follows:

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

* * * * *

(d) * * *

(2) *Proceedings pending before the Board of Immigration Appeals.* Except as provided in paragraph (d)(3) of this section, in cases where a motion to reopen or motion to reconsider filed with the Board on or before May 21, 1998, or an appeal, is pending, the Board shall remand, or reopen and remand, the proceedings to the Immigration Court for the sole purpose of adjudicating an application for adjustment of status under section 202 of Public Law 105–100, unless the alien is clearly ineligible for adjustment of status under section 202 of Public Law 105–100. If the immigration judge denies, or the alien fails to file, the application for adjustment of status under section 202 of Public Law 105–100, the immigration judge shall certify the decision to the Board for consideration in conjunction with the previously pending appeal or motion.

* * * * *

(5) * * *

(i) *With the Service.* * * * Absent evidence of the applicant's statutory ineligibility for adjustment of status under section 202 of Public Law 105–100 or significant negative discretionary factors, a Form I–246 filed by a bona fide applicant for adjustment under section 202 of Public Law 105–100 shall be approved, and the removal of the applicant shall be stayed until such time as the application for adjustment has been adjudicated in accordance with this section.

* * * * *

(e) *Application and supporting documents.* Each applicant for adjustment of status must file a Form I–485, Application to Register Permanent Residence or Adjust Status. An applicant should complete Part 2 of Form I–485 by checking box ''h—other'' and writing ''NACARA—Principal'' or ''NACARA—Dependent'' next to that block. Each application must be accompanied by:

(1) The fee prescribed in § 103.7(b)(1) of this chapter;

(2) If the applicant is 14 years of age or older, the fee for fingerprinting prescribed in § 103.7(b)(1) of this chapter;

(3) Evidence of commencement of physical presence in the United States at any time on or before December 1, 1995. Such evidence may relate to any time at or after entry and may consist of either:

(i) Documentation evidencing one or more of the activities specified in section 202(b)(2)(A) of Public Law 105–100;

(ii) A copy of the Form I–94, Record of Arrival and Departure, issued to the applicant at the time of his or her inspection and admission or parole;

(iii) Other documentation issued by a Federal, State, or local authority provided such other documentation bears the signature, seal, or other authenticating instrument of such authority (if the document normally bears such instrument), was dated at the time of issuance, and bears a date of issuance not later than December 1, 1995. Examples of such other documentation include, but are not limited to:

(A) A State driver's license;

(B) A State identification card issued in lieu of a driver's license to a nondriver;

(C) A county or municipal hospital record;

(D) A public college or public school transcript; and

(E) Income tax records;

(iv) A copy of a petition on behalf of the applicant that was submitted to the Service on or before December 1, 1995, and that lists the applicant as being physically present in the United States;

(v) A certified copy of a Federal, State, or local governmental record that was created on or prior to December 1, 1995, shows that the applicant was present in the United States at the time, and establishes that the applicant sought on his or her own behalf, or some other party sought on the applicant's behalf, a benefit from the Federal, State, or local governmental agency keeping such record;

(vi) A certified copy of a Federal, State, or local governmental record that was created on or prior to December 1, 1995, shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or

(vii) In the case of an applicant who, while under the age of 21, attended a private or religious school in the United States on or prior to December 1, 1995, a transcript from such private or religious school, provided that the school:

(A) Is registered with, approved by, or licensed by, appropriate State or local authorities;

(B) Is accredited by the State or regional accrediting body, or by the appropriate private school association; or

(C) Maintains enrollment records in accordance with State or local requirements or standards;

(4) Evidence of continuity of physical presence in the United States since the last date on or prior to December 1, 1995, on which the applicant established commencement of physical presence in the United States. Such documentation may have been issued by any governmental or nongovernmental authority, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the issuing authority or its authorized representative, if the document would normally contain such authenticating instrument. Such documentation may include, but is not limited to:

(i) School records;

(ii) Rental receipts;

(iii) Utility bill receipts;

(iv) Any other dated receipts;

(v) Personal checks written by the applicant bearing a dated bank cancellation stamp;

(vi) Employment records, including pay stubs;

(vii) Credit card statements showing the dates of purchase, payment, or other transaction;

(viii) Certified copies of records maintained by organizations chartered by the government, such as public utilities, accredited private and parochial schools, and banks;

(ix) If the applicant establishes that a family unit was in existence and cohabiting in the United States, documents evidencing the physical presence in the United States of another member of that same family unit; and

(x) If the applicant has had correspondence or other interaction with the Service, a list of the types and dates of such correspondence or other contact that the applicant knows to be contained or reflected in Service records;

(5) A copy of the applicant's birth certificate;

(6) If the applicant is between 14 and 79 years of age, a completed Biographic Information Sheet (Form G–325A);

(7) A report of medical examination, as specified in § 245.5;

(8) Two photographs, as described in the instructions to Form I–485;

(9) If the applicant is 14 years of age or older, a police clearance from each municipality where the alien has resided for 6 months or longer since arriving in the United States. If there are multiple local law enforcement agencies (e.g., city police and county sheriff) with jurisdiction over the alien's residence, the applicant may obtain a clearance from either agency. If the applicant resides or resided in a State where the State Police maintain a compilation of all local arrests and convictions, a statewide clearance is sufficient. If the applicant presents a letter from the local police agencies involved, or other evidence, to the effect that the applicant attempted to obtain such clearance but was unable to do so because of local or State policy, the director or immigration judge having jurisdiction over the application may waive the local police clearance. Furthermore, if such local police agency has provided the Service or the Immigration Court with a blanket statement that issuance of such police clearance is against local or state policy, the director or immigration judge having jurisdiction over the case may waive the local police clearance requirement regardless of whether the applicant individually submits a letter from that local police agency;

(10) If the applicant is applying as the spouse of another Public Law 105–100 beneficiary, a copy of their certificate of marriage and copies of documents showing the legal termination of all

other marriages by the applicant or the other beneficiary;

(11) If the applicant is applying as the child, unmarried son, or unmarried daughter of another (principal) beneficiary under section 202 of Public Law 105–100 who is not the applicant's biological mother, copies of evidence (such as the applicant's parent's marriage certificate and documents showing the legal termination of all other marriages, an adoption decree, or other relevant evidence) to demonstrate the relationship between the applicant and the other beneficiary;

(12) A copy of the Form I–94, Arrival-Departure Record, issued at the time of the applicant's arrival in the United States, if the alien was inspected and admitted or paroled; and

(13) If the applicant has departed from and returned to the United States since December 1, 1995, an attachment on a plain piece of paper showing:

(i) The date of the applicant's last arrival in the United States before or on December 1, 1995;

(ii) The date of each departure from the United States since that arrival;

(iii) The reason for each departure; and

(iv) The date, manner, and place of each return to the United States.

* * * * *

(g) *Filing.* * * * All applications must be accompanied by either the correct fee as specified in § 103.7(b)(1) of this chapter; or a request for a fee waiver in accordance with § 103.7(c) of this chapter. An application received by the Service or Immigration Court before April 1, 2000, that has been properly signed and executed and for which a waiver of the filing fee has been requested shall be regarded as having been filed before the statutory deadline regardless of whether the fee waiver request is denied provided that the applicant submits the required fee within 30 days of the date of any notice that the fee waiver request has been denied. In a case over which the Board has jurisdiction, an application received by the Board before April 1, 2000, that has been properly signed and executed shall be considered filed before the statutory deadline without payment of the fee or submission of a fee waiver request. Upon demand by the Board, the payment of the fee or a request for a fee waiver shall be made upon submission of the application to the Immigration Court in accordance with 8 CFR 240.11(f). If a request for a fee waiver is denied, the applicaion shall be considered as having been properly filed with the Immigration Court before the statutory deadline provided that the applicant submits the required fee within 30 days of the date of any notice that the fee waiver request has been denied. * * *

(j) * * *

(1) *Application.* * * * The applicant may submit Form I–765 concurrently with, or subsequent to, the filing of the Form I–485.

* * * * *

(k) * * *

(1) *Travel from and return to the United States while the application for adjustment of status is pending.* * * * Unless the applicant files an advance parole request prior to departing from the United States, and the Service approves such request, his or her application for adjustment of status under section 202 of Public Law 105–100 is deemed to be abandoned as of the moment of his or her departure. Parole may only be authorized pursuant to the authority contained in, and the standards prescribed in, section 212(d)(5) of the Act.

(2) *Parole authorization for the purpose of filing an application for adjustment of status under section 202 of Public Law 105–100.* * * * Parole may only be authorized pursuant to the authority contained in, and the standards prescribed in, section 212(d)(5) of the Act.

* * * * *

(l) *Approval.* * * * The director shall also advise the alien regarding the delivery of his or her Permanent Resident Card and of the process for obtaining temporary evidence of alien registration. * * *

(m) *Denial and review of decision.* 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, and of any right to renew the application in proceedings before the immigration judge. * * *

(1) 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. Such renewed application may be filed with the Immigration Court before, on, or after March 31, 2000, provided the initial application was properly filed with the Service on or before March 31, 2000; or

(2) In the case of an alien whose previously initiated exclusion, deportation, or removal proceeding had been administratively closed or continued indefinitely under paragraph (d)(3) of this section, advise the Immigration Court that had administratively closed the proceeding, or the Board, as appropriate, of the denial of the application. The Immigration Court or the Board will then recalendar or reinstate the prior exclusion, deportation, or removal proceeding, during which proceeding the alien may renew his or her application for adjustment under section 202 of Public Law 105–100. Such renewed application may be filed with the Immigration Court before, on, or after March 31, 2000, provided the initial application was properly filed with the Service on or before March 31, 2000; or

* * * * *

PART 299—IMMIGRATION FORMS

6. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

7. Section 299.1 is amended in the table by revising the entry for Form ''I–485 Supplement B'' to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	* * *
I–485 Supplement B	12–01–99	NACARA Supplement to Form I–485 Instructions.
*	*	* * *

Dated: March 15, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–7205 Filed 3–21–00; 3:47 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–06–AD; Amendment 39–11645; AD 2000–06–05]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Eurocopter France Model SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2 helicopters. This action requires replacing certain tail rotor blades before further flight after April 30, 2000. This amendment is prompted by loss of control of a helicopter due to a lightning strike on a tail rotor blade. This condition, if not corrected, could result in loss of a tail rotor blade and subsequent loss of control of the helicopter.

DATES: Effective April 10, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 23, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–06–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2 helicopters. The DGAC advises withdrawing tail rotor blades, part numbers (P/N) 332A12–0010, –0020, –0030, –0035, and –0045, and all dash numbers of these P/N, from service by March 31, 2000, due to an accident caused by a lightning strike on a tail rotor blade, P/N 332A–12–0010, fitted on an AS332 helicopter.

Eurocopter France has issued Service Bulletins 01.57 for the Models SA330 and 01.00.59 for the Models AS332, both dated November 23, 1999, which specify withdrawing tail rotor blades, P/N 332A12–0010, –0020, –0030, –0035, –0045, and all dash numbers of these P/N, from service. The DGAC classified these service bulletins as mandatory and issued AD's 2000–002–081(A) and 2000–003–075(A), both dated January 12, 2000, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2 helicopters of the same type designs registered in the United States, this AD is being issued to prevent failure of a tail rotor blade due to a lightning strike. This AD requires removing from service any tail rotor blade, P/N 332A–12–0010, –0020, –0030, –0035, and –0045, and all dash numbers of these P/N. The actions are required to be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, removing and replacing these tail rotor blades are required before further flight after April 30, 2000, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 7 helicopters will be affected by this AD, that it will take approximately 2 work hours to accomplish removing and replacing the tail rotor blades, and that the average labor rate is $60 per work hour. Required parts will cost approximately $150,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,050,840 to replace the tail rotor blades on the entire fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–06–AD.'' The postcard will be date stamped and returned to the commenter.