

Rules and Regulations

Federal Register

Vol. 57, No. 37

Tuesday, February 25, 1992

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 242, 264, 274a, 299

[INS No. 1414-91]

RIN 1115-AC39

Applicant Processing for Family Unity Benefits

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: On August 30, 1991, the Service published a proposed rule, at 56 FR 42948, to implement the provisions of the new Family Unity Program created by section 301 of the Immigration Act of 1990, Public Law 101-649. The provisions would allow temporary stay of deportation and work authorization for certain eligible immigrants. For the proposed regulations the comment period ended on September 30, 1991. In drafting this interim rule, the Service has considered the comments submitted in response to the proposed rule. The Service is publishing an interim regulation at this time so that the public might comment on provisions that are new or different from those contained in the proposed rule.

DATES: This interim rule is effective October 1, 1991. Written comments must be submitted on or before March 26, 1992.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536-0002. To ensure proper handling, please reference INS number 1414-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT:

Jack Hartsoch, Office of Service Center Operations, Immigration and Naturalization Service, 425 I Street NW., room 4014, Washington, DC 20536, telephone (202) 514-5309.

SUPPLEMENTARY INFORMATION:

On November 29, 1990, the Immigration Act of 1990, Public Law 101-649, was enacted. Section 301 provides for relief from deportation, and the granting of employment authorization, to an eligible immigrant who is the spouse or unmarried child of a legalized alien holding temporary or permanent residence pursuant to sections 210 or 245A of the Immigration and Nationality Act, or permanent residence under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment). This new program supersedes the administrative Family Fairness Program.

Comments

The discussion that follows summarizes the comments submitted in response to the proposed rule and explains the revisions adopted in the interim rule.

Personal Checks as Payment

Numerous commenters asserted that the Service's decision not to accept personal checks to pay the Family Unity Program application fee would be burdensome.

The regulations have been revised to provide for the acceptance of personal checks consistent with § 103 of this chapter, which outlines general filing requirements that apply to applications and petitions.

Legalization Application Pending as of May 5, 1988

Several commenters asked the Service to clarify whether a legalization application pending on May 5, 1988 and later granted can be the basis of benefits for the legalized alien's spouse and children under the Family Unity Program.

This rule has been revised to clarify that an alien whose legalization application was filed on or before May 5, 1988 but not approved until after that date will be treated as having been a legalized alien as of May 5, 1988 for purposes of the Family Unity Program. However, a spouse or child of a person with a legalization application filed but

not decided on May 5, 1988 is ineligible to apply for benefits under the Family Unity Program until the legalization application is approved.

Common Law Marriages

Numerous commenters asserted that common-law marriages that are recognized by state law should also be recognized for the purpose of the Family Unity Program.

Common-law marriages, in those states where such marriages are recognized, can be a basis for family-sponsored immigrant classification. Eligibility for benefits under the Family Unity Program is based on the principles governing eligibility for family-sponsored second preference classification. Therefore, the interim regulation uses the same rules with regard to common-law marriages as those that apply to immigrant relative visa petitions.

Continuing Relationship to a Legalized Alien

Many commenters asserted that once eligibility for benefits under the Family Unity Program is initially established, benefits should not be lost merely because a marriage ends or because a child turns twenty-one or marries.

Under the statute the required relationship to a legalized alien must have existed on May 5, 1988. The issue is whether that relationship must continue in order for eligibility to continue, or whether the alien granted benefits under the Family Unity Program should be allowed to retain those benefits even if the required relationship ends.

The purpose of the Family Unity Program is to provide a transition for specified family members of legalized aliens to family-sponsored second preference immigrant status. This is evident not only from section 301, but also from its interrelationship with section 112, which created up to an additional 55,000 visa numbers in fiscal years 1992, 1993, and 1994 for spouses and children of eligible legalized aliens under the family-sponsored second preference classification.

If benefits under the Family Unity Program were retained even after a required relationship ended by divorce or death, and the person became ineligible for family-sponsored second preference classification, the alien could

potentially remain in the Family Unity Program without a means to become a permanent resident. This would go far beyond Congress's intent for the program, and would be inconsistent with section 205 of the Immigration and Nationality Act.

In essence there are two issues that must be addressed when determining whether a person's relationship to a legalized alien can be a basis for eligibility under the Family Unity Program. The first issue is whether the person was the spouse or unmarried child of the legalized alien as of May 5, 1988. The statute establishes this cut-off date. Any relationship established after that date cannot confer eligibility under the Family Unity Program.

Since the purpose of the statute is to provide a transition for certain family members of legalized aliens to family-sponsored second preference immigrant status, the second issue is whether the alien applying for benefits under the Family Unity Program continues to qualify for family-sponsored second preference classification based on the relationship which confers eligibility under the Family Unity Program.

Therefore, if the legalized alien's marriage has ended, the former spouse cannot retain benefits under the Family Unity Program: under these circumstances, he or she would not be qualified to make the transition to family-sponsored second preference immigrant status. For the same reason, if the legalized alien's child marries, he or she cannot retain benefits under the Family Unity Program.

However, the unmarried child of a legalized alien does not lose benefits under the Family Unity Program on reaching the age of twenty-one. Because section 101(b)(1) of the Immigration and Nationality Act defines a "child" as an unmarried child under the age of twenty-one, to qualify under the Family Unity Program the child of a legalized alien must have been unmarried and under twenty-one as of May 5, 1988. Yet family-sponsored second preference status is available to the "unmarried son or unmarried daughter" (who has since reached age twenty-one) as well as to the unmarried "child" (who is under twenty-one) of a legalized alien. Because the Family Unity Program is designed to facilitate transition to second preference immigrant status, a person who was an unmarried child of a legalized alien on May 5, 1988 does not lose benefits under the Family Unity Program solely for having turned twenty-one after May 5, 1988. The rule has been revised to so specify.

In essence this regulation applies the same rules to the Family Unity Program

as those that apply to persons with approved family-sponsored immigrant petitions in similar circumstances. If a marriage to a petitioner ends by divorce or death, or the unmarried son or daughter of a lawful permanent resident petitioner marries, approval of an immigrant petition based upon that relationship is revoked, and that petition may no longer be used as a basis for immigration. This is consistent with 8 CFR § 205.

To further clarify that this program is based on family-sponsored second preference eligibility, the rule has also been modified to provide for denial of an extension of family unity benefits where an immigrant relative petition for family-sponsored second preference classification has not been filed by the legalized alien. The Service will notify the alien of the reason for the denial and afford him or her the opportunity to file another Application for Voluntary Departure under the Family Unity Program, Form I-817 once the Immigrant Petition for Relative, Fiance(e) or Orphan, Form I-130, has been filed in his or her behalf. The service will withhold a charging document for a period of 90 days for such denial. The termination provisions have also been revised to terminate family unity benefits where such a petition is denied because it is determined that the required relationship does not exist.

Filing Requirements

Many commenters requested that the Service not reject or deny an application because of filing errors. Some commenters also asked the Service to allow more time to submit additional information and documents that have been requested by the Service and to allow more time to submit a response to a notice of termination.

Again, to ensure consistency with application procedures for other Service programs, these provisions have been revised so that the general requirements and procedures for applications and petitions in 8 CFR part 103 and §§ 264.1(a), 299.1, and 299.5 will govern.

Fees

One commenter requested that the Service operate the program without charging a fee. Numerous other commenters asked for a family cap of \$225.

The Service cannot dispense with the fee entirely because it will inevitably incur costs in administering the Family Unity Program. If it does not recover these costs by charging the appropriate fee, it would have to divert financial resources from its other programs. Failing to create an essentially self-

sufficient Family Unity Program, therefore, could unfairly transfer costs of this program to applicants for other Service programs.

The Service has, however, adopted the suggestion to place a family cap on application fees. The Family Unity Program was designed to create a path to immigrant status for members of the families of legalized aliens. A special family cap was placed on the application fees of aliens when they applied for legalization. The Service has decided in this case to follow this similar family fee policy because the Family Unity Program stems directly from the Legalization Program. Under the interim rule, the maximum amount payable by the members of a family filing their applications concurrently will be \$225.00. The Service will require the usual fee from any person filing an application for benefits under the Family Unity Program at a different time than the other members of that person's family. As stated above, the Service is taking this action for reasons specific to the Family Unity Program, and the action does not relate to any other fee structure or to any other category of applicant or petitioner.

Commenters also asked the Service to reconsider the fee for an application to extend voluntary departure under the program.

The Service anticipates that many aliens will not require an extension because they will acquire status as a lawful permanent resident alien through other provisions of law. This will be accelerated by the operation of section 112 of the Immigration Act of 1990, which created up to 55,000 additional visa numbers for fiscal years 1992, 1993, and 1994 to speed the transition of spouses and minor children of legalized aliens.

However, the Service acknowledges that some family unity aliens will need extensions. The Service determined not to waive or reduce the fee for those persons who would require extensions, partly because such fees would be necessary to help meet the operational costs of reviewing continuing eligibility and providing extensions. Furthermore, requiring the same fee for both initial applications and applications for an extension would address a potential source of confusion. If an alien would mistakenly regard the initial application for benefits under the Family Unity Program as an application to extend benefits under the former Family Fairness Program, and then would mark the initial application as one for an extension, the Service examiner could easily correct the mistake and move

forward with the application. If the fee for an extension differed from an initial application fee, the examiner would have to return the application for resubmission with the correct fee. This would slow the application process for both the Service and the applicant. Therefore, the Service will not eliminate or reduce the application fee for extensions.

Nevertheless, in keeping with the reasoning related to the initial filing, the Service will provide a family cap of \$225.00 for family members filing concurrently for extensions. Any member of a family filing an application for extended benefits under the Family Unity Program subsequent to such filing by other family members will be required to submit a separate fee.

Section 103.7(b)(1) is revised to provide for a fee, consistent with 31 U.S.C. 9701 and the guidelines of the Office of Management and Budget in OMB Circular A-25, for an application for an initial grant of Family Unity Program benefits and for an application to extend Family Unity Program benefits.

Entry Before May 5, 1988

Several commenters asserted that the proposed definition of "entered into the United States before May 5, 1988" was confusing and erroneously linked "parole" with the term "entered". In order to avoid confusion, and because the key term "entry" is defined at section 101(a)(13) of the Immigration and Nationality Act, the Service has removed the proposed definition from the rule.

Deportability Versus Excludability

A number of commenters requested that the rule be clarified to state that ineligibility for benefits under the Family Unity Program is based on an alien's deportability, and not on excludability. The regulation has been revised to clarify that ineligibility is based on the deportation grounds specified in the enabling legislation.

Waivers

Many commenters, referring to waivers allowed in connection with the Legalization Program, asked the Service to allow waivers of applicable grounds of deportation for "humanitarian purposes, family unity, or public interest."

Specific waiver provisions were included in the Immigration Reform and Control Act of 1986, Public Law 99-603, which created the Legalization Program. No such language exists in the Family Unity Program enabling legislation. Thus, no statutory basis exists for the

Service to incorporate the broader Legalization waiver standards into the Family Unity Program.

Further, the Family Unity Program cannot be equated with the Legalization Program in this regard. The Legalization Program contains all of its own requirements for each phase of the process. In the Family Unity Program the alien must also meet requirements imposed under a separate provision of law, since the Family Unity Program is designed to facilitate transition to second preference family-sponsored immigrant status. To permit an alien to enter the program by waiving a ground of deportability that could not be waived when the alien applied for immigrant status would go beyond Congress's intent for the program by conferring program benefits on an alien who could not then make the transition to immigrant status.

Unlimited Stay of Deportation

One commenter asked that the regulations be revised to provide for an unlimited stay of deportation. However, this would fail to account for the situation in which an alien loses eligibility for Family Unity Program benefits or becomes deportable. Therefore, a fixed period of voluntary departure is warranted, as opposed to an unlimited stay of deportation. Moreover, the extension process allows the Service to assess continuing Family Unity Program eligibility. To be consistent with this principle, and to avoid redundancy, the Service has deleted the proposed revision of 8 CFR 243.4, which would have established stay of deportation procedures in connection with the Family Unity Program.

Employment Authorization

Many commenters asserted that the enabling legislation mandates employment authorization for those granted Family Unity Program benefits. A number of commenters also asked the Service not to charge a fee for the issuance of an employment authorization document.

In the interim rule, the proposed revision of section 274a of this chapter has been changed to reflect that employment authorization stems from the grant of voluntary departure under the program. The alien need not apply for authorization under section 274a.12(c) of this chapter. However, as with most categories of aliens authorized to work as an incident of their status, the alien must obtain an employment authorization document by filing an Application for Employment Authorization, Form I-765. This

documentary requirement is necessary as part of the Service's efforts to prohibit the unlawful employment of aliens, and the Service must charge the standard fee in order to recover the costs of authorizing employment in connection with the Family Unity Program.

Many commenters also requested that interim work authorization be granted for the time period between the granting of an application and the issuance of the employment authorization document (EAD).

This issue does not relate simply to the Family Unity Program but to all employment matters. The Service has taken steps to establish a uniform employment authorization process for all its programs. To create a special exception or different document for the Family Unity Program would be inconsistent with these efforts.

Furthermore, any form of interim work authorization would be less secure and would present problems to federal, state, and local agencies and to educational institutions and employers.

Voluntary Departure Under Section 242.5

Many commenters asserted that where a family unity application is denied, consistent with 8 CFR part 103, the regulations should require mandatory consideration of voluntary departure separately under 8 CFR 242.5. There is no statutory basis for such an automatic procedure, nor is one desirable. Consideration of a request for voluntary departure under 8 CFR 242.5 requires information different from that contained in an application under the Family Unity Program. Creating the suggested mechanism thus would unnecessarily burden both the applicant and the Service. In any case, a person denied benefits under the Family Unity Program may request voluntary departure outside that program under 8 CFR 242.5 at his or her option.

Appeals

Several commenters suggested modifications to the procedures by which an alien could appeal a denial of benefits under the Family Unity Program.

After review, however, the Service has eliminated the proposed administrative appeal procedure. First, there is no statutory instruction to create such a procedure within the Family Unity Program, as there is, for example, within the Temporary Protected Status Program at section 224A(b)(5)(B) of the Immigration and Nationality Act. Second, § 242.6(e)(3) of the rule provides

an automatic ninety-day delay between the denial of an alien's initial application under the program and the referral of the decision for enforcement action. This delay is designed to create an opportunity for renewed consideration of the alien's claim to benefits under a process that will likely prove both faster and less expensive than the appeal procedure would have been.

This revised process would be more effective in several ways. First, it is faster for the Service to process another application than it is for the administrative appeals unit to review the case. This is important because employment authorization would not be granted during a review process. Second, the cost of resubmitting an I-817 application (\$75) is lower than the cost of filing an administrative appeal (\$110). The Service has therefore concluded that the benefits of the more streamline reapplication process outweigh those of the proposed administrative appeal procedure. In this case, the applicant also has the opportunity to seek judicial review if the reapplication process is ultimately unsuccessful.

Orders to Show Cause

Many commenters asked the Service to limit the issuance of Orders to Show Cause (OSC) to "egregious" cases. However, the Service must fulfill its enforcement responsibilities as outlined in the Immigration and Nationality Act. Therefore, this provision remains unchanged.

Advance Parole

Several commenters expressed concern over such possible consequences of advance parole as exclusion and loss of the possibility of future suspension of deportation, and urged the Service to change its position on this matter. Section 304 of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Public Law 102-232 modifies this policy. Pursuant to this provision, an alien in the program who leaves the United States with advance authorization, and who is not excludable on a ground referred to in section 301(a)(1) of the Immigration Act of 1990 when he or she returns, shall be inspected and admitted in the same immigration condition the alien had at the time of departure. Thus the alien will continue to be ineligible to adjust status under section 245 of the Immigration and Nationality Act, since voluntary departure is not a "status" under the Act. The alien will obtain authorization using the advance parole mechanism, form I-131, Application for Travel

Document. Upon his or her return to the U.S., however, the alien will not be paroled, but instead will be reinstated to voluntary departure under the Family Unity Program.

Effect of Loss of Legalization Status

One commenter asked that the Service clarify the effect on a person granted benefits under the Family Unity Program if the legalized alien on whose status those benefits were based has lost status as a legalized alien.

The regulations have been clarified to indicate that Family Unity Program benefits would be terminated in such a case because the requisite relationship to a legalized alien would no longer exist.

Automatic Termination of Benefits

Section 242.6(g) is reserved for the future publication of a proposed rule to allow for the automatic termination of Family Unity Program benefits of aliens for whom a final order of deportation or exclusion has been entered subsequent to a grant of program benefits.

The Service has retained in this interim rule the provision which pertains to termination after notice. An alien will be given notice of the Service's intent to terminate his or her benefits under the Family Unity Program and will be given 30 days to respond to the basis for the intended termination and may submit additional evidence to the Service in rebuttal. This provision is also consistent with the provision found at 8 CFR 205.2 pertaining to revocation of approval of immigrant petitions under section 203 of the Immigration and Nationality Act.

Miscellaneous Revisions

In addition to those discussed above, the Service has made certain revisions to the proposed rule in order to avoid duplication of other provisions of this chapter, the Immigration and Nationality Act, as amended, or other applicable statutes. For example, the proposed definitions of the terms "felony" and "misdemeanor" have been removed from the rule because the terms are defined elsewhere, at 18 U.S.C. 1. Likewise, all references to Form I-94, Nonimmigrant Visa Waiver Arrival Departure Form, have been removed, since a Form I-94 will not be issued for those receiving benefits under the Family Unity Program. Rather, approval for such benefits will be reflected on Form I-797 Notice of Action.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial

number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 242

Administrative practice and procedure, Aliens, Crime.

8 CFR Part 243

Administrative practice and procedure, Aliens, Deportation, Reporting and recordkeeping requirements.

8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative Practice and Procedure, Aliens, Employment, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

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

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1304; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In section 103.7 paragraph (b)(1) is amended by adding in proper numerical sequence the following form:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I-817. For filing application for voluntary departure under the Family Unity Program—\$75.00. The maximum amount payable by the members of a family filing their applications concurrently shall be \$225.00.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

3. The authority citation for part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1252; 8 CFR part 2.

4. In part 242, a new section 242.6 is added to read as follows:

§ 242.6 Family Unity Program.

(a) *General.* Except as otherwise specifically provided in paragraph (b) of this section, the definitions contained in the Immigration and Nationality Act shall apply to the administration of this section.

(b) *Definitions.* As used in this section:

Eligible immigrant means a qualified immigrant who is the spouse or unmarried child of a legalized alien.

Legalized alien means an alien who:

(1) Is a temporary or permanent resident under section 210 or 245A of the Immigration and Nationality Act; or

(2) Is a permanent resident under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment).

(c) *Eligibility.*—(1) *General.* An alien who is not a lawful permanent resident is eligible to apply for benefits under the Family Unity Program if he or she establishes:

(i) That he or she entered the United States on or before May 5, 1988, and has been residing in the United States since that date; and

(ii) That on May 5, 1988, he or she was the spouse or unmarried child of a legalized alien, and that he or she has been eligible continuously since that time for family-sponsored second preference immigrant status under section 203(a)(2) of the Immigration and Nationality Act based on the same relationship.

(2) *Legalization application pending as of May 5, 1988.* An alien whose legalization application was filed on or before May 5, 1988 but not approved until after that date will be treated as having been a legalized alien as of May 5, 1988 for purposes of the Family Unity Program.

(d) *Ineligible aliens.* The following categories of aliens are ineligible for benefits under the Family Unity Program:

(1) An alien who is deportable under any paragraph in section 241(a) of the Act, except paragraphs (1)(A), (1)(B), (1)(C)(i), (1)(D), and (3); provided that an alien who is deportable under paragraph (1)(A) is also ineligible for benefits under the Family Unity Program if deportability is based upon an exclusion ground described in section 212(a), paragraphs (2)(A), (2)(B), (2)(C), (3)(A), (3)(B), (3)(C), (3)(D) or (3)(E) of the Act;

(2) An alien who has been convicted of a felony or three or more misdemeanors in the United States; or

(3) An alien described in section 243(h)(2) of the Immigration and Nationality Act.

(e) *Filing.*—(1) *General.* An application for voluntary departure under the Family Unity Program must be filed at the Service Center having jurisdiction over the alien's place of residence, on Form I-817, Application for Voluntary Departure under the Family Unity Program, along with the fee required in § 103.7 of this chapter and the initial evidence required on the application form. A separate application must be filed by each person claiming eligibility.

(2) *Decision.* Jurisdiction to decide an application for benefits under the Family Unity Program lies exclusively with the Service Center director. The director will provide the applicant with specific reasons for any decision to deny an application. Denial of an application may not be appealed. An applicant who believes that the grounds for denial have been overcome may submit another application with the appropriate fee and evidence.

(3) *Referral of denied cases for consideration of issuance of Order to Show Cause.* If an application is denied, the case will be referred to the district director with jurisdiction over the alien's place of residence for consideration of whether to issue an Order to Show Cause (OSC). The first case denied for an applicant will not be referred for an OSC until 90 days from the date of the denial, to allow the alien the opportunity to file a new I-817 application in order to attempt to overcome the basis of the denial.

(4) *Grant of voluntary departure.* An alien whose application for benefits under the Family Unity Program is granted will receive a two-year period of voluntary departure. The two-year period will begin on the date the Service grants the application.

(5) *Employment authorization.* An alien granted benefits under the Family Unity Program is authorized to be

employed in the United States and may apply for an employment authorization document on Form I-765, Application for Employment Authorization. The application must be filed with the district director having jurisdiction over the alien's place of residence. The application must be accompanied by the correct fee required by § 103.7 of this chapter. The alien must present Form I-797, Notice of Action, reflecting the grant of voluntary departure under the Family Unity Program, and a document issued by a legitimate agency of the United States or a foreign government which reasonably establishes the alien's identity, along with his or her application. The validity period of the employment authorization will coincide with the period of voluntary departure.

(6) *Travel.* An alien granted family unity benefits who intends to travel outside the United States and then return must apply for advance authorization using Form I-131, Application for Travel Document. The authority to grant an application for advance authorization for an alien granted family unity benefits rests solely with the district director. An alien who is granted advance authorization and returns to the United States in accordance with such authorization, and who is found not to be excludable on a ground of exclusion referred to in section 301(a)(1) of the Immigration Act of 1990, shall be inspected and admitted in the same immigration condition the alien had at the time of departure for the remainder of the two-year period granted under the Family Unity Program.

(7) *Extension of voluntary departure.* An application for an extension of voluntary departure under the Family Unity Program must be filed by the alien on Form I-817, along with the fee required in § 103.7 of this chapter and the initial evidence required on the application form. An extension may be granted if the alien's eligibility for benefits under the Family Unity Program continues. However, an extension may not be approved if a petition for family-sponsored immigrant status has not been filed on behalf of the applicant during the initial period of voluntary departure under the Family Unity Program. In such case the Service will notify the alien of the reason for the denial and afford him or her the opportunity to file another Form I-817 once the petition, Form I-130, has been filed in behalf of him or her. No charging document will be issued for a period of 90 days.

(f) *Effect on eligibility for benefits from financial assistance programs furnished under federal law.* An alien

granted Family Unity Program benefits based on a relationship to a legalized alien as defined in paragraph (b)(1) of this section is ineligible for public welfare assistance in the same manner and for the same period as the legalized alien is ineligible for such assistance under sections 245A(h) or 210(f), respectively, of the Act.

(g) *Termination.* (1) *Automatic termination.* [Reserved]

(2) *Termination after notice.* After notice, the Service may terminate benefits under the Family Unity Program when the necessity for the termination comes to the attention of the Service. Such grounds will exist in situations including, but not limited to, those in which:

(i) A determination is made that Family Unity Program benefits were acquired as the result of fraud or willful misrepresentation of a material fact;

(ii) The alien commits an act or acts which render him or her inadmissible as an immigrant or ineligible for benefits under the Family Unity Program;

(iii) The legalized alien upon whose status benefits under the Family Unity Program were based loses his or her legalized status;

(iv) The alien is the subject of a final order of deportation issued subsequent to the grant of benefits on any ground of deportability or excludability that would have rendered the alien ineligible for benefits under § 242.6(d)(1) of this chapter, regardless of whether the facts giving rise to such ground occurred before or after the benefits were granted; or

(v) A qualifying relationship to a legalized alien no longer exists. A person who qualified as the unmarried child of legalized alien on May 5, 1988 shall not be considered ineligible for benefits under the Family Unity Program solely as a result of having reached the age of 21.

(3) *Notice procedure.* Notice of intent to terminate and of the grounds thereof shall be sent pursuant to the provisions of § 103 of this chapter. The alien shall be given 30 days to respond to the notice and may submit to the Service additional evidence in rebuttal. Any final decision of termination shall also be sent pursuant to the provisions of § 103 of this chapter. Upon termination, the case will be referred to the district director with jurisdiction over the alien's place of residence for consideration of whether to issue an Order to Show Cause.

(4) *Effect of termination.* Termination of benefits under the Family Unity Program, other than as a result of a final order of deportation or exclusion, shall render the alien amenable to exclusion

or deportation proceedings under sections 236 or 242 of the Act, as appropriate.

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

7. The authority citation for part 264 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305.

8. In section 264.1 paragraph (a) is amended by adding in proper numerical sequence the following form:

§ 264.1 Registration and fingerprinting.

(a) * * *

* * * * *

I-817, Application for Voluntary Department under the Family Unity Program.

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PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

9. The authority citation for part 274a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

Subpart B—Employment Authorization

10. Section 274a.12 is amended by:

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

b. Revising paragraph (a)(12);

c. Removing the undesignated paragraph immediately following paragraph (a)(2); and

d. Adding a new paragraph (a)(13), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment

(a) *Aliens authorized employment incident to status.* Pursuant to the statutory or regulatory reference cited, the following classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. Any alien who is within a class of aliens described in paragraphs (a)(3) through (a)(8) or (a)(10) through (a)(13) of this section, and who seeks to be employed in the United States, must apply to the Service for a document evidencing such employment authorization.

* * * * *

(12) An alien granted Temporary Protected Status under section 244A of the Act for the period of time in that status, as evidenced by an employment authorization document issued by the Service; or

(13) An alien granted voluntary departure by the Attorney General under the Family Unity Program established by section 301 of the Immigration Act of 1990, as evidenced by an employment authorization document issued by the Service.

§ 274a.13 [Amended]

11. In § 274a.13, paragraph (a) is amended by revising the number "(1)" in the first sentence to read "(13)".

PART 299—IMMIGRATION FORMS

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

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

13. Section 299.1 is amended by adding in proper numerical sequence the following form:

§ 299.1 Prescribed forms.

* * * * *

I-817 (09/10/91)—Application for Voluntary Department under the Family Unity Program.

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14. Section 299.5 is amended by adding in proper numerical sequence the following form:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
I-817	Application for Voluntary Departure under the Family Unity Program.	1115-0166

Dated: February 18, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-4292 Filed 2-21-92; 10:12 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Amendment to policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising and amending its Policy on Cooperation With States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities (54 FR 7530; February 22, 1989). The amendment to the policy statement allows State representatives in adjacent States to observe NRC inspections at licensed facilities. "Adjacent States" are defined as States within the plume exposure pathway (within approximately a 10-mile radius) Emergency Planning Zone (EPZ) of a licensed facility in another State.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Frederick Combs, Assistant Director for State, Local and Indian Relations, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504-2325.

SUPPLEMENTARY INFORMATION:

Discussion

On February 22, 1989 (54 FR 7530), the Commission published the policy statement "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities." The policy statement was intended to provide a uniform basis for NRC/State cooperation as it relates to the regulatory oversight of commercial nuclear power plants and other nuclear production or utilization facilities. The policy statement allows State officials to accompany NRC on inspections and, under certain circumstances, enables States to enter instruments of cooperation (MOUs) which would allow States to participate in NRC inspection activities.

Analysis: On August 26, 1991 (56 FR 41968), the Commission published for comment a proposed amendment to the policy statement on Cooperation With States. This amendment would allow State representatives to observe NRC inspections at licensed facilities in adjacent States. "Adjacent States" are defined as States within the plume exposure pathway (within approximately a 10-mile radius) Emergency Planning Zone (EPZ) of a licensed facility in another State.

The Commission received seven comments on the proposed amendment: three from utilities, one from a utility organization, two from States and one from a public citizen's group.

Comments: One comment was received from Ohio Citizens for Responsible Energy Inc. ("OCRE")

which was generally supportive of the amendment. OCRE did suggest, however, that an adjacent State be defined as one which is within the plume exposure pathway EPZ or within a 10-mile radius of a nuclear facility located in another State. They claim this addition is necessary due to the periodic political proposals to reduce the plume exposure pathway EPZ from its current 10-mile radius to some smaller area, perhaps as small as 2-5 miles or even limited to the site boundary.

Response: EPZs are the designated areas for which planning is recommended to ensure that prompt and effective actions can be taken to protect the public in the event of an accident. NRC licensees, State and local governments and petitioners for rulemaking have often questioned the exact size and configuration of the plume exposure pathway EPZ. The Commission answered these questions in a policy statement (Long Island Lighting Company, Shoreham Nuclear Power Station, Unit 1, CLI-89-12, 26 NRC 383, 384, 385) as follows:

Implicit in the concept of "adequate protective measures" is the fact that emergency planning will not eliminate, in every conceivable accident, the possibility of serious harm to the public. Emergency planning can, however, be expected to reduce any public harm in the event of a serious but highly unlikely accident. Given these circumstances, it is entirely reasonable and appropriate for the Commission to hold that the rule precludes adjustments on safety grounds to the size of an EPZ that is "about 10 miles in radius." In the Commission's view, the proper interpretation of the rule would call for adjustment to the exact size of the EPZ on the basis of such straightforward administrative considerations as avoiding EPZ boundaries that run through the middle of schools or hospitals, or that arbitrarily carve out small portions of governmental jurisdictions. The goal is merely planning simplicity and avoidance of ambiguity as to the location for the boundaries.

As stated in the original *Federal Register* notice (February 22, 1989) during the comment period, NRC's reasoning behind limiting adjacent State observation to those States within the plume exposure pathway EPZ was twofold: First, a limit had to be set to allow Regional offices to manageably handle requests to observe inspections which might be made by host States and adjacent States. Second, the plume exposure pathway EPZ was determined to be that area (approximately 10 miles) requiring possibly prompt action in the event of an accident to reduce risk to the public. It is unlikely that any immediate protective actions would be required beyond the plume exposure pathway EPZ.

Therefore, it was felt those States with the most critical response efforts during emergency situations, and those with more immediate public health and safety risks, should be the States allowed to observe NRC inspections. These States would therefore become more familiar with plant safety issues.

Comment: A similar comment was received from the New York State Energy Office, which requests broadening the definition of "adjacent State" to include reciprocity for facilities further than the ten-mile radius around a plant to perhaps a fifty-mile radius.

Analysis: For the reasons stated above, NRC does not believe the plume exposure pathway or the definition of adjacent State should be changed. Furthermore, inclusion of all States which are within a fifty-mile radius of a reactor in another State would greatly increase the number of States eligible for observation of NRC inspections and also increase the administrative burden on the NRC, especially for highly-visible inspection efforts. The impact on NRC of having large numbers of requests for observations in inspections could become burdensome and negatively impact our own inspection program, and could adversely impact licensees.

Comment: The Nuclear Management and Resources Council (NUMARC) remains concerned if State representatives are allowed to carry out NRC inspection responsibilities. They also reiterated their previous concern with the original policy, that allowing State representatives, whether from a State in which a plant is located or an adjacent State within the plume exposure pathway, to conduct NRC inspections could result in a situation where a licensee could be subjected to dual, and perhaps conflicting, regulation by a State through this mechanism. NUMARC does believe that it is appropriate for the NRC and States to work together to coordinate the exercise of their complementary responsibilities, but feels that State representatives should not conduct NRC inspections.

Response: The concern of NUMARC regarding State representatives conducting NRC inspections was previously submitted and addressed in the summary of comments and NRC response section of the *Federal Register* notice adopting the final policy statement (54 FR 7530; February 22, 1989). There has been no change proposed to that aspect of the policy. This proposed change to the policy concerns only observations of inspections by representatives of adjacent States, not participation in inspection by these representatives. It

was decided that NRC does not have enough experience with participation agreements between the NRC and host States to expand that arena to adjacent States at this time. NRC will continue to monitor closely the implementation of this policy statement to ensure that it is not misapplied and that unintended results do not occur.

Comment: The Vermont Yankee Nuclear Power Corporation commented that they endorse the concept of the current policy of NRC cooperation with State governments, however they believe that the host state deserves special consideration where requests for observations are concerned. They request NRC to encourage the adjacent States to communicate with host state representatives on matters pertaining to the operation of host state nuclear power plants.

Response: In the Federal Register notice, NRC committed to limit team inspections to normally no more than one observer from each State. When there is a conflict, preference would be given to the host state for routine inspections, but the NRC Regional Administrator should make the final determination as to whether more than one State observer should be involved in the inspection. In addition, the protocol agreement in Appendix A of the Federal Register notice has been revised to accommodate a request from an adjacent State, strongly encourage communication with the host State, and give preference to the host State should a conflict exist. NRC will adhere to this policy and endorse two-way communication at every stage of the observation.

Comment: New Hampshire Yankee (NHY) transmitted several comments. One comment concerned the possible misinterpretation of the roles of host States and adjacent States. NHY states that the Discussion section makes it clear that adjacent States should be limited to an observation role whereas a host State, under certain conditions, may actually participate in inspections. The Statement of Policy, however, does not explicitly state these distinctions and limits. Similarly, under Implementation, the first sentence of the second paragraph states that the "NRC will consider State participation in inspections * * *" (emphasis added) without specifying that this refers to host States.

The second comment stated that NHY believes that the State Protocol should be changed to reflect that where an MOU allows actual host State participation in inspections, or even observations, the protocol for publicly releasing or commenting on the results

should be the same as for State observations. Release of information concerning the inspection should not occur before review by the NRC and issuance of the NRC inspection report.

The third comment expressed concern over ambiguity in the language regarding the number of State inspectors from the host and adjacent States. The Discussion indicates that the number of observers should normally be limited to the number of NRC inspectors and that team inspections should normally have no more than one observer from each State. The second bullet of the State Protocol sets a norm of one observer per NRC inspection. NHY believes that this language could lead to misunderstandings and the the Statement of Policy should clearly set forth the NRC's expectations on the total number of observers from the host and adjacent State including the case where the host State is actually participating in the inspection.

The fourth comment stated that NHY believes that State observations of routine inspections by the NRC Resident Inspectors should be limited to one individual from the host State, and that if States feel additional observers are needed this should be taken up as a special case.

The fifth comment states that NHY believes the State Protocol should clearly state that observers must obtain approval from the licensee as well as the NRC before removing any material from the site. This could be accomplished by simply having the observer formally submit a request for documents to the licensee through the NRC.

In their final comment, NHY requested that Maine be removed from the table listing adjacent States since they do not fall within the stated definition of the plume exposure pathway emergency planning zone.

Response: NRC agrees there may be some ambiguity regarding the roles of adjacent and host States in the policy statement. Therefore, we are amending the second paragraph under "Implementation," to read, "NRC will consider *host* State (emphasis added) participation in inspections and the inspection entrance and exit meetings, where the State-proposed agreement identifies the specific inspections they wish to assist NRC with and provides a program containing those elements as described in the policy statement." The modification clarifies NRC's intent to allow only host States to participate in NRC inspections.

With regard to the second comment, NRC enters into MOUs for participation where more detailed cooperation is

required. In the MOUs, a provision is included for the State to abide by NRC protocol by not publicly disclosing inspection findings prior to the release of the NRC inspection report.

Regarding NHY's third comment relating to the number of State inspectors to observe an inspection, NRC believes the policy is clearly stated. Although the protocol states that normally one observer will be allowed to observe an NRC inspection, some amount of discretion is needed to allow more inspectors to attend under special circumstances. There are a sufficient number of inspections which are event-related or have attracted significant public interest, to which States may want to send more than one observer. The policy does not address the number of State inspectors allowed to participate in an NRC inspection. It is expected the State will utilize only the minimum number of inspectors it needs to accomplish the best possible coverage of the inspection activity. In this regard, the MOUs under a participation arrangement affirm that the State will submit monthly inspection recommendations to the NRC Resident Inspector (or Regional Office) in sufficient time to allow NRC review before preparation of the inspection plan. NRC will review the State's recommendations and inform the State of any activities that appear to impose an undue burden on the licensee. The State will make adjustments to the State inspection recommendations, as necessary, to address NRC comments.

The fourth comment, pertaining to the number of State observers of routine inspections by NRC Resident Inspectors, has already been addressed. Requests for observations of routine inspections by the Resident will be treated the same as any other inspection.

NRC also agrees that the State observer should obtain licensee or NRC approval before removing material from the site. We have modified the protocol to incorporate this change.

Regarding NHY's final comment, we have deleted Maine from the table of adjacent States since it does not fall within the Seabrook Station's 10-mile plume exposure pathway emergency planning zone. The table is reprinted below.

Comment: Both Philadelphia Electric Company and the State of Arkansas commented that they support NRC's efforts to amend the policy.

The following list of host States and adjacent States (within the 10-mile plume exposure pathway emergency planning zone) along with these NRC-licensed facilities could be affected by

the proposed policy revision:

Plant	State	Adjacent state(s)
Beaver Valley.....	PA	OH, WV
Catawba.....	SC	NC
Cooper.....	NE	MO
Farley.....	AL	GA
Ft. Calhoun.....	NE	IA
Grand Gulf.....	MS	LA
Hope Creek.....	NJ	DE
Millstone.....	CT	NY
Peach Bottom.....	PA	MD
Prairie Island.....	MN	WI
Quad Cities.....	IL	IA
Salem.....	NJ	DE
Seabrook.....	NH	MA
Trojan.....	OR	WA
Vermont Yankee.....	VT	MA, NH
Yankee Rowe.....	MA	VT
Zion.....	IL	WI

A total of 17 utilities and 25 States could be affected by the policy revision.

Paperwork Reduction Act Statement

This final policy statement amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget approval number 3150-0163.

The public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNNB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019 (3150-0163), Office of Management and Budget, Washington, DC 20503.

Final Amendments to the Policy Statement

In section III, Statement of Policy (54 FR 7530 at 7538, February 22, 1989), the final sentence in the second paragraph is revised to read as follows:

Additionally, at the State's request, representatives from a State in which the NRC-licensed facility is located (the host State) and from a State within the plume exposure pathway emergency planning zone (EPZ)—(within approximately a ten-mile radius)—of an NRC-licensed facility located in another State (the adjacent State) will be able to observe specific inspections and/or inspection entrance and exit meetings where State representatives are knowledgeable in radiological health and safety matters.

In section III, Statement of Policy (54 FR 7530 at 7538, February 22, 1989), the third sentence in the third paragraph is revised to read as follows:

State participation in NRC programs would allow qualified State representatives from States in which an NRC-licensed facility is located, either individually or as a member of a team, to conduct specific inspection activities in accordance with NRC standards, regulations, and procedures in close cooperation with the NRC.

In section IV, Implementation (54 FR 7530 at 7538, February 22, 1989), the fifth, and final sentences in the first paragraph are revised to read as follows:

Host State or adjacent State representatives are free to attend as observers any public meeting between the NRC and its applicants and licensees.

Requests from host States and adjacent States to observe inspections and/or inspection entrance and exit meetings conducted by the NRC require the approval of the appropriate Regional Administrator.

Also, in section IV, Implementation, the first sentence in the second paragraph is revised to read as follows:

NRC will consider host State participation in inspections and the inspection entrance and exit meetings, where the State-proposed agreement identifies the inspections they wish to assist NRC with and provides a program containing those elements as described in the policy statement.

In Appendix A—Protocol Agreement for State Observation of NRC Inspections, the State Protocol Section, the eighth bullet is revised to read as follows:

- An observer will not be provided with proprietary or safeguards information. Observers will not remove any material from the site without NRC or licensee approval.

The full text of the Policy Statement with new wording is reprinted below.

Dated at Rockville, MD, this 18th day of February 1992.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,
Secretary of the Commission.

Statement of Policy

It is the NRC's policy to cooperate fully with State governments as they seek to respond to the expectations of their citizens that their health and safety be protected and that there be minimal impact on the environment as a result of activities licensed by the NRC. The NRC and the States have complementary responsibilities in protecting public health and safety and the environment. Furthermore, the NRC is committed to the full and timely disclosure of matters affecting the public and to the fair and uniform handling of all agency

interactions with the States, the public, and NRC licensees.

Accordingly, the NRC will continue to keep Governor-appointed State Liaison Officers routinely informed on matters of interest to the States. The NRC will respond in a timely manner to a State's requests for information and its recommendations concerning matters within the NRC's regulatory jurisdiction. If requested, the NRC will routinely inform State Liaison Officers of Public meetings between NRC and its licensees and applicants in order that State representatives may attend as observers. Additionally, at the State's request, representatives from a State in which the NRC-licensed facility is located (the host State) and from a State within the plume exposure pathway emergency planning zone (EPZ) (within approximately a 10-mile radius) of an NRC-licensed facility located in another State (the adjacent State) will be able to observe specific inspections and/or inspection entrance and exit meetings where State representatives are knowledgeable in radiological health and safety matters.

The Commission recognizes that the involvement of qualified State representatives in NRC radiological health and safety programs has the potential for providing additional safety benefit. Therefore, the NRC will consider State proposals to enter into instruments of cooperation for State participation in inspections and inspection entrance and exit meetings. State participation in NRC programs would allow qualified State representatives from States in which an NRC-licensed facility is located, either individually or as a member of a team, to conduct specific inspection activities in accordance with NRC standards, regulations, and procedures in close cooperation with the NRC. State activities will normally be conducted under the oversight of an authorized NRC representative with the degree of oversight dependent upon the activity involved. In the proposal to enter into an instrument of cooperation, the State must identify those activities for which cooperation with the NRC is desired. The State must propose a program that: (1) Recognizes the Federal Government, primarily NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act; (2) is in accordance with Federal standards and regulations; (3) specifies minimum

education, experience, training, and qualifications requirements for State representatives which are patterned after those of NRC inspectors; (4) contains provisions for the findings of State representatives to be transmitted to NRC for disposition; (5) would not impose an undue burden on the NRC and its licensees and applicants; and (6) abides by NRC protocol not to publicly disclose inspection findings prior to the release of the NRC inspection report.

Consistent with section 274c of the Act, the NRC will not consider State proposals for instruments of cooperation that do not include the elements listed above, which are designed to ensure close cooperation and consistency with the NRC inspection program. As a practical matter, the NRC is concerned that independent State inspection programs could direct an applicant's or licensee's attention to areas not consistent with NRC safety priorities, misinterpret NRC safety requirements, or give the perception of dual regulation. For purposes of this policy statement, an independent State inspection program is one in which State representatives would conduct inspections and assess NRC-regulated activities on a State's own initiative and authority without close cooperation with, and oversight by, an authorized NRC representative.

Instruments of cooperation between the NRC and the States, approved prior to the date of this policy statement will continue to be honored by the NRC. The NRC strongly encourages those States holding these agreements to consider modifying them, if necessary, to bring them into conformance with the provisions of this policy statement.

Implementation

As provided in the policy statement the NRC will routinely keep State Liaison Officers informed on matters of interest to the States. In general, all State requests should come from the State Liaison Officer to the appropriate NRC Regional Office. The NRC will make every effort to respond as fully as possible to all requests from States for information on matters concerning nuclear production or utilization facility safety within 30 days. The NRC will work to achieve a timely response to State recommendations relating to the safe operation of nuclear production or utilization facilities. Host State or adjacent State representatives are free to attend as observers any public meeting between the NRC and its applicant and licensees. The appropriate Regional Office will routinely inform State Liaison Officers of the scheduling of public meetings upon request. Requests from host States and adjacent

States to observe inspections and/or inspection entrance and exit meetings conducted by the NRC require the approval of the appropriate Regional Administrator.

NRC will consider host State participation in inspections and the inspection entrance and exit meetings, where the State-proposed agreement identifies the specific inspections they wish to assist NRC with and provides a program containing those elements as described in the policy statement. NRC may develop inspection plans along with qualified State representatives using applicable procedures in the NRC Inspection Manual. Qualified State representatives may be permitted to perform inspections in cooperation with, and on behalf of, the NRC under the oversight of an authorized NRC representative. The degree of oversight provided would depend on the activity. For instance, State representatives may be accompanied by an NRC representative initially, in order to assess the State inspectors' preparedness to conduct the inspection individually. Other activities may be conducted as a team with NRC taking the lead. All enforcement action will be undertaken by the NRC.

The Commission will decide policy matters related to agreements proposed under this policy statement. Once the Commission has decided the policy on a specific type of agreement, similar State-proposed agreements may be approved, consistent with Commission policy, by the Executive Director for Operations. A State-proposed instrument of cooperation will be documented in a formal MOU signed by NRC and the State.

Once the NRC has decided to enter into an MOU for State involvement in NRC inspections, a formal review, not less than six months after the effective date, will be performed by the NRC to evaluate implementation of the MOU and resolve any problems identified. Final agreements will be subject to periodic reviews and may be amended or modified upon written agreement by both parties and may be terminated upon 30 days written notice by either party.

Additionally, once State involvement in NRC activities at a nuclear production or utilization facility is approved by the NRC, the State is responsible for meeting all requirements of an NRC licensee and applicant related to personal safety and unescorted access of State representatives at the site.

Appendix A—Protocol Agreement for State Observation of NRC Inspections

NRC Protocol

- The Regional State Liaison Officer (RSLO) will normally be the lead individual responsible for tracking requests for State observation, assuring consistency regarding these requests, and for advising the Regional Administrator on the disposition of these requests. The appropriate technical representative or Division Director will communicate with the State on specific issues concerning the inspection(s).

- Requests for observations of Headquarters-based inspections will also be coordinated through the RSLO. Headquarters-based inspections should be referred through the RSLO to a technical representative designated by the Region.

- NRC will process written requests to the Regional Administrator through the State Liaison Officer (SLO). Requests should identify the type of inspection activity and facility the State wishes to observe.

- Limits on scope and duration of the observation period may be imposed if, in the view of the Regional Administrator, they compromise the efficiency or effectiveness of the inspection. Regions should use their discretion as to which, if any, inspections will be excluded from observations.

- States will be informed they must not release information concerning the time and purpose of unannounced inspections.

- The Region will make it clear to the licensee that the State views are not necessarily endorsed by NRC. The Region will also make it clear that only NRC has regulatory authority for inspection findings and enforcement actions regarding radiological health and safety.

State Protocol

- A State will make advance arrangements with the licensee for site access training and badging (subject to fitness for duty requirements), prior to the actual inspection.

- Normally, no more than one individual will be allowed to observe an NRC inspection.

- The State will be responsible for determining the technical and professional competence of its representatives who accompany NRC inspectors.

- An observer's communication with licensee will be through the appropriate NRC team member, usually the senior resident inspector or the team leader.

- When informed of an unannounced inspection, a State must not release information concerning its time and purpose.

- An observer will remain in the company of NRC personnel throughout the course of the inspection.

- State observation may be terminated by the NRC if the observer's conduct interferes with a fair and orderly inspection.

- An observer will not be provided with proprietary or safeguards information. Observers will not remove any material from the site without NRC or licensee approval.

- The State observer, in accompanying the NRC inspectors, does so at his or her own risk. NRC will not be responsible for injuries

or exposures to harmful substances which may occur to the accompanying individual during the inspection and will assume no liability for any incidents associated with the accompaniment.

- The State observer will be expected to adhere to the same conduct as NRC inspectors during an inspection accompaniment.

- If the State observer notices any apparent non-conformance with safety or regulatory requirements during the inspection, he/she will make those observations promptly known to the NRC team leader or lead inspector. Likewise, when overall conclusions or views of the State observer are substantially different from those of the NRC inspectors, the State will advise the team leader or lead inspector and forward those views, in writing, to the NRC Region. This will allow NRC to take any necessary regulatory actions.

- Under no circumstances should State communications regarding these inspections be released to the public or the licensee before they are reviewed by the NRC and the inspection report is issued. State communications may be made publicly available, similar to NRC inspection reports, after they have been transmitted to and reviewed by NRC.

Adjacent State Protocol

- An adjacent State is a State within the plume exposure pathway emergency planning zone (EPZ) (within approximately a 10-mile radius) of an NRC-licensed facility located in another State. A host State is a State in which an NRC-licensed facility is located. An adjacent State may request permission to observe NRC inspections at an NRC-licensed facility in a host State.

- The adjacent State SLO must communicate his/her request for observation to the Regional Administrator for the region in which the facility is located.

- The adjacent State SLO must also communicate his/her request to the host State SLO so that each State is aware of the other's intentions.

- If a host State and an adjacent State request observation of the same inspection, the Regional Administrator will make the final determination on the number of State observers who may attend the inspection. If there is a need to limit the number of observers, the Regional Administrator will routinely give preference to the host State observers.

- Adjacent State observers will abide by the same protocol in all aspects of the inspection as host States under this agreement.

Signature of State Observer

Date

[FR Doc. 92-4248 Filed 2-24-92; 8:45 a.m.]

BILLING CODE 7590-01-M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 900

[92-64]

Delegation of Authority to Issue Consolidated Obligations

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations relating to Delegation of Authority to the Office of Finance. The purpose of this action is to amend the delegation of authority to issue Federal Home Loan Bank (FHLBank) consolidated debentures, bonds or notes (consolidated obligations) on behalf of the Finance Board under section 11 of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1431). This amendment reflects the new structure of the Office of Finance.

EFFECTIVE DATE: February 13, 1992.

FOR FURTHER INFORMATION CONTACT: Charles Szlenker, Attorney, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

1. Overview

The Bank Act authorizes the Finance Board to issue FHLBank consolidated obligations. The proceeds raised by issuing the consolidated obligations are used by the FHLBanks to make advances to their members. The members in turn use those funds to facilitate housing finance. See 12 U.S.C. 1431 (b) and (c) (Supp. I 1989). The Finance Board delegates the ministerial duties of selling the obligations to the Office of Finance, a joint office of the Federal Home Loan Banks, created pursuant to section 2B(b)(2) of the Bank Act (12 U.S.C. 1422b(b)(2) (Supp. I 1989)).

This delegation to the Office of Finance is memorialized in a regulation. 56 FR 67158 (Dec. 30, 1991) (12 CFR 900.30). Specifically, that provision delegated the authority to the Director of the Office of Finance. The Finance Board recently promulgated regulations reorganizing the Office of Finance. See 57 FR 2832 (Jan. 24, 1992) (12 CFR 941.1-941.12). Consequently, the authority to issue the consolidated obligations will be specifically delegated to a newly created Office of Finance Board of Directors. This rule is a technical amendment to the Finance Board's regulations to reflect the new structure of the Office of Finance, and does not alter the recent reorganization of the

Office of Finance or the existing rights of holders of FHLBank consolidated obligations.

2. Prior Delegations of Authority

Section 401(h)(2) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, which replaced the former FHLBB with the Finance Board as the regulatory overseer of the FHLBanks, provided that all FHLBB resolutions and orders continued in effect until superseded by the Finance Board. 103 Stat. 183, 356 (1989) codified at 12 U.S.C. 1437 note. The Finance Board has relied on this authority to continue in effect all the delegations of authority to the Office of Finance issued by either the FHLBB's three member governing Board or by FHLBB Chairman's Orders. This regulation is intended to be the complete codification of the delegation of duties to the Office of Finance. Accordingly, all FHLBB resolutions and all FHLBB Chairman's Orders purporting to delegate any authority to the Office of Finance are superseded and void, effective as of the first meeting of the Office of Finance Board of Directors.

Administrative Procedures Act

The Finance Board is adopting this regulation as a final rule, effective on February 13, 1992. The Finance Board notes that the notice and comment requirements of the Administrative Procedures Act ("APA") (5 U.S.C. 553) may be suspended when the agency finds good cause that such requirements are unnecessary and incorporates its finding with the rulemaking. 5 U.S.C. at 553(b)(3)(B).

The Finance Board finds that notice and comment are unnecessary for two reasons. First, this regulation is a technical amendment that does not affect the rights of any member of the public. Second, the public already has received an opportunity to comment on issues raised in the Office of Finance restructuring since the regulation that created its Board of Directors provides for a comment period. See 57 FR 2832 (Jan. 24, 1992). The delegation created by this rulemaking does not raise any additional issues so no additional comment period is necessary.

Regulatory Flexibility Act

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