contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on October 10, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–27652 Filed 10–17–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 213a and 299

[INS No. 1807–96]

RIN 1115–AE58

Affidavits of Support on Behalf of Immigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by establishing that an individual (the sponsor) who files an affidavit of support under section 213A of the Immigration and Nationality Act (the Act) on behalf of an intending immigrant incurs an obligation that may be enforced by a civil action. This rule also specifies the procedures that Federal, State, or local agencies or private entities must follow to seek reimbursement from the sponsor for provision of means-tested public benefits, and provides procedures of imposing the civil penalty provided for under section 213A of the Act, if the sponsor fails to give notice of any change of address. This rule is necessary to ensure that sponsors of aliens meet their obligations under section 213A of the Act.

DATES: *Effective Date:* This interim rule is effective on December 19, 1997.

Comment Date: Written comments must be submitted on or before February 17, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1807–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Miriam J. Hetfield, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536; telephone (202) 514–5014; or Lisa S. Roney, Office of Policy and Planning, 425 I Street NW., Room 6052, Washington, DC 20536; telephone (202) 514–3242.

SUPPLEMENTARY INFORMATION: On September 30, 1996, the President approved enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208. Section 531(a) of IIRIRA amends section 212(a)(4) of the Act to provide that an alien is inadmissible as an alien likely to become a public charge if the alien is seeking an immigrant visa, admission as an immigrant, or adjustment of status as: (a) An immediate relative, (b) a family-based immigrant, or (c) an employment-based immigrant, of a relative if the alien is the petitioning employer or owns a significant ownership interest in the entity that is the petitioning employer. To overcome this ground of inadmissibility, the alien must be the beneficiary of an affidavit of support filed under the new section 213A of the Act. Section 213A of the Act specifies the conditions that must be met in order for an affidavit of support to be sufficient to overcome the public charge inadmissibility ground.

Under 531(b) of IIRIRA, the new affidavit of support will be required for all applications for immigrant visas or for adjustment of status filed on or after December 19, 1997. Section 531(b) of IIRIRA excuses an applicant for admission from the affidavit of support requirement if the applicant had ''an official interview with an *immigration* officer'' before December 19, 1997. Because of the massive administrative burden that would result from requiring aliens who obtain immigrant visas before December 19, 1997, but do not apply for admission until on or after December 19, 1997, this interim rule designates Consular Officers as Immigration Officers, solely for purposes of section 531 of IIRIRA and this new part 213a. Thus, an alien who is issued an immigrant visa before December 19, 1997 will not be required to present an affidavit of support that complies with the requirements of section 213A of the Act, even if the alien does not apply for admission until December 19, 1997, or later.

Under section 213A of the Act, Form I–864, Affidavit of Support Under Section 213A of the Act, is a legally enforceable contract between the sponsor and the Federal Government, for the benefit of the sponsored immigrant and of any Federal, State, or local government agency or private entity that provides the sponsored immigrant with any means-tested public benefit. The sponsor must sign the Form I–864 before a notary public or a United States Immigration Officer or Consular Officer. By executing Form I–864, the sponsor agrees to provide the financial support necessary to maintain the sponsored immigrant at an income that is at least 125 percent of the Federal poverty line, unless the obligation has terminated. The sponsor also agrees to reimburse any agencies which provide means-tested public benefits to a sponsored immigrant. The sponsor must, under civil penalty, notify the Service and the State(s) in which the sponsored immigrant(s) reside of any change in the sponsor's address. Should the sponsored immigrant obtain any means-tested public benefit, with certain exceptions, the agency that provides the means-tested public benefit may, after first making a written request for reimbursement, sue the sponsor in Federal or State court to recover the unreimbursed costs of the means-tested public benefit, including costs of collection and legal fees. This interim rule implements section 213A of the Act by adding a new 8 CFR part 213a. Intending immigrants who require an affidavit of support under section 213A of the Act

Under section 212(a)(4)(C) of the Act, all family-sponsored immigrants, including immediate relatives, are inadmissible unless the petitioner has executed an affidavit of support under section 213A of the Act. Aliens who immigrate under the classification for battered spouses and children and widow/widowers (see sections 204(a)(1)(A) (ii), (iii), or (iv) and 204(a)(1)(B) (ii) or (iii) of the Act) do not require a Form I–864 to overcome the public charge ground of inadmissibility.

The Act also provides that certain employment-based immigrants under section 203(b) of the Act are

inadmissible unless an affidavit of support has been executed on their behalf. Sections 212(a)(4(D) and 213A(f)(4)(A) of the Act state that an employment-based immigrant requires an affidavit of support if a relative of the immigrant, or an entity in which a relative of the immigrant has a significant ownership interest, filed the employment-based immigrant petition. This interim rule defines a relative for purposes of this section as a spouse, parent, child, adult son or daughter, or sibling, which are relationships recognized in the Act as according immigration benefits. Neither the statute nor the legislative history defines the term ''significant ownership interest.'' The Service examined the use of the term in other statutes and regulations. Several statutes and regulations defined ''significant ownership interest'' as a 5 percent ownership interest in a for-profit entity. See 26 U.S.C. 613A(d)(3) and 26 CFR 1.613A–7 (for determining relationship between entities for purposes of determining limits on oil and natural gas depletion allowances); 42 CFR 424.22(d)(1) (physician's interest in a home health agency); 45 CFR 94.3 and 42 CFR 50.603 (for determining researcher's interest in an entity receiving research grants); 48 CFR 952.204–73(c) (for questions relating to foreign ownership of certain Department of Energy contractors). In only one situation was ''significant ownership interest'' defined to mean more than a 5 percent interest; 17 CFR 104.735–2 (for limiting investments of members of the Commodity Futures Trading Commission). And, in that case, it is a 10 percent ownership interest that is deemed significant. Accordingly, this interim regulation defines the term ''significant ownership interest'' as a 5 percent or greater ownership interest in a for-profit entity.

Aliens who are ''accompanying or following to join'' the beneficiary of a petition pursuant to section 203(d) of the Act are seeking an immigrant visa or adjustment of status under the same immigrant visa category as the beneficiary of the immigrant visa petition. See section 203(d) of the Act. This interim regulation, therefore, provides that a Form I–864 must be executed on behalf of any accompanying or following to join spouse or child under section 203(d) of the Act, if they are filing applications for immigrant visas or adjustment of status after December 19, 1997 in a classification for which an affidavit of support is required.

Affidavit of Support Sponsors Under Section 213A of the Act

Section 212(a)(4)(C)(ii) of the Act states that the person petitioning for the alien's admission on an immigrant relative visa petition must execute an affidavit of support in order for the alien to overcome the ground of inadmissibility. United States citizens who petition for an orphan under 8 CFR 204.3 must also execute a Form I–864. Similarly, under section 212(a)(4)(D) of the Act, the relative who filed an employment-based petition on behalf of the immigrant or a relative who has a significant ownership interest in the entity which filed an employment-based petition on behalf of the immigrant must also execute an affidavit of support. The petitioner must also sign and submit a separate Form I–864 on behalf of any spouse or children who accompany or follow to join the principal beneficiary of the immigrant visa petition. This interim rule uses the term ''sponsor'' to define the individual who executes an affidavit of support. A sponsor must be a natural person and cannot be a corporation or other entity.

If there is a spouse or any children immigrating with a sponsored immigrant, the sponsor may complete the Form I–864 for the principal immigrant and sign and submit photocopies of the completed form and all accompanying documentation for each spouse and/or child listed in part 3 of the Form I–864. The sponsor must sign each photocopy of the form I–864 with an original signature before a notary public or an Immigration or Consular Officer. If a spouse or child files an application for an immigrant visa or adjustment of status 6 months or more after the sponsor originally signed the affidavit of support, the sponsor must execute a new Form I–864 on his or her behalf.

Sponsorship Requirements

Section 213A(f)(1) of the Act sets forth the requirements to be a sponsor. The individual executing the Form I–864 must be a citizen or national of the United States or a lawful permanent resident of the United States, be at least 18 years of age, be domiciled in the United States or any of its territories or possessions, and demonstrate the means to maintain an income of at lease 125 percent of the Federal poverty guideline (100 percent of the poverty guideline for sponsors on active duty in the Armed Forces of the United States who are petitioning for their spouse or child).

The term ''domicile'' is defined in accordance with the generally accepted definition of the term. A lawful permanent resident who is living abroad is considered to have a domicile in the United States if he or she has applied for and obtained preservation of residence benefit under section 316(a) or 317 of the Act. A U.S. citizen living abroad whose employment meets the requirements of section 319(b)(1) of the Act will be considered to have a domicile in the United States.

Sections 213A(f)(1)(E) and 213A(f)(5) of the Act state that a sponsor, including a joint sponsor, must demonstrate the means to maintain an annual income equal to at least 125 percent of the Federal poverty line. Section 213A(f)(3) of the Act reduces the income requirements to 100 percent of the Federal poverty line for persons on active duty (other than active duty for training) in the Armed Forces of the Untied States who are filing petitions on behalf of their spouse or child. Under section 213A(h) of the Act, the ''Federal poverty line'' means the level of income equal to the official poverty line, as defined by the Director of the Office of Management and budget and revised annually by the Secretary of Health and Human Services, that is applicable to the size of the sponsor's household. For purposes of the Form I–864, the Service and Consular Posts will use the most recent income-poverty guidelines published in the **Federal Register** by the Department of Health and Human Services. These guidelines are updated annually, and the Service and Consular Posts will begin to use updated guidelines on the first day of the second month after the date the guidelines are published in the **Federal Register.**

Section 213A(f)(6)(A)(iii) of the Act defines the size of the sponsor's household for purposes of determining ability to maintain income. The sponsor's household size includes the sponsor, all persons who are related to the sponsor by birth, marriage, or adoption and who live at the same residence as the sponsor, including the sponsor's spouse, and any other dependents whom the sponsor has lawfully claimed on the sponsor's personal Federal income tax return (even if those dependents do no live with the sponsor), plus all aliens included in the current affidavit of support, and any immigrants who have been previously sponsored under section 213A of the Act, unless the obligation has terminated.

By signing the new affidavit of support under section 213A of the Act, the sponsor agrees to provide support to maintain the sponsored immigrant(s) at or above 125 percent of the Federal poverty line. See section 213A(a)(1)(A) of the Act. Because the sponsor has an

obligation to support the sponsored immigrant(s) at or above 125 percent of the poverty line, for purposes of the Form I–864, the sponsor's household size is increased by the number of immigrants sponsored in the affidavit of support. This applies to all affidavits of support under section 213A of the Act, regardless of whether the sponsored immigrant(s) will be living in the same residence as the sponsor. Therefore, under this interim rule, the sponsor's ability to maintain income is measured against the number of family members residing with the sponsor and other dependents, plus any persons for whom the sponsor has previously executed a Form I–864 for whom the support obligation has not terminated, and the number of immigrants sponsored in the current affidavit of support.

Section 213A(f)(6)(A)(i) of the Act provides that a sponsor must provide a copy of the sponsor's individual Federal income tax return for each of the 3 most recent tax years, and that the sponsor must certify under penalty of perjury that the copies are true and correct copies of the returns as filed with the Internal Revenue Service (IRS). The new Form I–864 includes a certification that any attached tax returns are true and correct copies. Accordingly, this interim rule requires the sponsor to attach his or her Federal income tax returns as filed with the IRS for each of the 3 most recent tax years. If the sponsor has not filed tax returns for any of the 3 most recent tax years, he or she must explain his or her failure to file. For purposes of demonstrating means to maintain income, the total income, before deductions, in the sponsor's tax return for the most recent taxable year will be generally determinative. See section 213A(f)(6)(B) of the Act. If the sponsor can establish that he or she was not legally obligated to file a Federal income tax return for any of the 3 most recent tax years, other evidence of annual income may be considered.

In order to meet the income threshold, the sponsor may rely on his or her own income, the income of his or her spouse, and the income of any other individuals who are related to the sponsor by birth, marriage, or adoption, and have been living in the sponsor's residence for the previous 6 months or who are listed as dependents on the sponsor's most recent income tax return. In order to rely on the income of these other persons, however, the sponsor must include with the affidavit of support a written contract on Form I–864A, Contract Between Sponsor and Household Member, between the sponsor and each person whose income the sponsor will rely on to meet the income threshold. This written contract will provide that each person whose income the sponsor will rely on has agreed, in consideration of the sponsor's signing of the Form I–864, to assist the sponsor in supporting the sponsored immigrant(s), to be held jointly and severally liable for payment of any reimbursement obligation that the sponsor may incur, and to submit to the personal jurisdiction of any competent court.

If the sponsor will rely on the income of a member of the sponsor's household who is also the immigrant who is sponsored in the affidavit of support being filed, the sponsored immigrant need not sign a Form I–864A, unless the sponsored immigrant's income will be used to determine the sponsor's ability to support a spouse or any children listed in Part 3 of Form I–864 who are immigrating with the sponsored immigrant. If there is no spouse or child immigrating with the sponsored immigrant, then there will be no need for the sponsored immigrant to sign a Form I–864A. If, however, the sponsor seeks to rely on a sponsored immigrant's income to establish the sponsor's ability to support the sponsored immigrant's spouse and/or children, then the sponsored immigrant whose income is to be relied on must sign the Form I–864A, agreeing to make his or her income available to support the other sponsored immigrants. Either the sponsor, as a party to the contract, or the sponsored immigrant(s) and any Federal, State, local, or private agency, as third party beneficiaries, will be able to bring a civil action to enforce the written contract.

Federal individual income tax returns for the 3 most recent tax years must be attached to the Form I–864 for each individual whose income is used to qualify. These individuals must certify on Form I–864A, under penalty of perjury, that any attached tax returns are true and correct copies of the returns as submitted to the IRS. If any of these individuals has no legal obligation to file a Federal income tax return for any of the 3 most recent tax years, he or she must explain his or her failure to file and provide other evidence of annual income. The sponsor and any other individual whose income is used to a qualify must also submit current evidence of employment or self-employment (if any).

After calculating household income, the sponsor must determine whether his or her total income level meets or exceeds the poverty guidelines, based on the applicable household size, including family members residing with the sponsor, dependents, and any immigrants sponsored in the Form I–864 being filed or in a previous Form I–864 where the obliagion has not terminated. There may be instances in which an Immigration or Consular Officer may question the sponsor's ability to maintain income based on the sponsor's current employment situation, on the Federal income tax returns for the 3 most recent tax years, or on receipt of welfare benefits.

If the petitioner is unable to demonstrate the means to maintain income equal to at least 125 percent of the poverty line, the intending immigrant is inadmissible under section 212(a)(4) of the Act, unless the petitioner and/or the sponsored immigrant(s) demonstrate significant assets which are available for the support of the sponsored immigrant(s) or a joint sponsor also executes a Form I–864. In order to be a joint sponsor, the individual must execute a separate Form I–864 and must accept joint legal responsibility with the petitioning sponsor and have an income and/or assets, based on his or her household size, including dependents and the number of persons previously and currently sponsored on Form I–864, which meets or exceeds 125 percent of the Federal poverty line. See section 213A(f)(5) of the Act.

Under section 213A(f)(6)(A)(ii) of the Act, a sponsor may demonstrate the means to maintain income through demonstration of significant assets of the sponsor and/or the sponsored immigrant(s), if such assets are available for the support of the sponsored immigrant(s). This section allows either the sponsor or the sponsored immigrant(s) to demonstrate that he or she owns significant assets which enable the sponsor to demonstrate that sufficient resources exist to support the sponsored immigrant(s), even if the sponsor's household income is below the Federal poverty line. The sponsor may also rely on the assets of any individuals who are listed as dependents on the sponsor's tax return for the most recent tax year or any individuals who are related to the sponsor by birth, marriage, or adoption and have been living in the sponsor's residence for the previous 6 months, provided that such individuals execute a contract on Form I–864A. Because section 213A(f)(6)(A)(ii) of the Act specifically permits the sponsor to rely on the assets of the immigrant sponsored in the affidavit of support being filed, the sponsored immigrant is not required to sign Form I–864A in order for the Consular Officer or Immigration Officer to consider the sponsored immigrant's assets. To

reiterate, a sponsored immigrant who is a member of the sponsor's household is required to sign a Form I–864A only if the sponsor will rely on that sponsored immigrant's *income* to show the sponsor's ability to support a spouse or child immigrating with the sponsored immigrant.

The Service has determined that assets must be sufficient to support the intending immigrant(s) for at least 5 years, if necessary. Under section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–194, any alien (with certain exceptions) who obtains lawful permanent resident status after enactment is ineligible for any Federal means-tested public benefit for a period of 5 years. In addition, 5 years is the general residency requirement to qualify for naturalization. See section 316(a) of the Act. This interim rule, therefore, provides that significant assets must total at least five times the difference between the Federal poverty line and the sponsor's household income.

Effect of Affidavit of Support

Under section 213A(a)(1) of the Act, the execution of an affidavit of support under section 213A of the Act, coupled with the sponsored immigrant's acquisition of permanent residence, creates a contract between the sponsor and the U.S. Government which is legally enforceable against the sponsor by the sponsored immigrant, any Federal, State, or local governmental agency, or by any other entity which provides any means-tested public benefits to the sponsored immigrant. The sponsor is obligated to reimburse government agencies and private entities which provide means-tested public benefits to the sponsored alien. Section 423(d) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 specifically exempts some benefits from the reimbursement requirement. This interim rule defines ''means-tested public benefit'' as both a ''Federal means-tested public benefit'' and a ''State means-tested public benefit.'' The former is defined as any public benefit funded in whole or in part by funds provided by the Federal Government that the Federal agency administering the Federal funds defines as a ''Federal means-tested public benefit.'' As of the date of the publication of this interim rule, two Federal agencies had published notices stating which of the programs they administer are considered ''Federal means-tested public benefits.'' The Department of Health and Human Services has determined that payments under the Medicaid and Temporary Assistance to Needy Families (TANF) programs are the only ''Federal means-tested public benefits'' paid by that agency which are not otherwise exempted from reimbursement and relevant provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. See 62 FR 45256 (August 26, 1997). The Social Security Administration has determined that the only ''Federal means-tested public benefits'' paid by that agency which are not otherwise exempted from reimbursement and relevant provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are Supplemental Security Income (SSI) payments made under Title XVI of the Social Security Act. See 62 FR 45284 (August 26, 1997).

''State means-tested public benefit'' is defined as any public benefit for which no Federal funds are provided that a State, State agency, or political subdivision of a State defines as a ''means-tested public benefit.'' This interim rule also indicates that Federal agencies and States should issue determinations of which benefits are considered ''means-tested public benefits'' before the effective date of this rule or as soon as possible thereafter. In addition, no benefit is considered to be a means-tested public benefit if it is a benefit described in sections 401(b), 411(b), 422(b), or 423(d) of Public Law 104–193. Means-tested benefits may be determined on such bases as income, resources, or the financial need of an individual, household, or unit.

Under section 213A(a)(2) of the Act, the sponsor's obligation terminates upon the sponsored immigrant's naturalization or when the sponsored immigrant has worked or can be credited with 40 qualifying quarters of work. This interim rule also provides that the sponsor's obligation terminates if the sponsor or the sponsored immigrant dies, or if the sponsored immigrant ceases to hold permanent resident status and has departed the United States. Termination of the support obligation does not relieve the sponsor, or the sponsor's estate, of any liability for reimbursement that accrued before the termination of the support obligation. If the sponsor can establish that the obligation to support an immigrant under a previous Form I–864 no longer exists, that immigrant will not be considered as part of the sponsor's household size for purposes of determining the sponsor's income requirement when executing a new affidavit of support on behalf of another alien.

Sponsor's Change of Address Obligations

Under section 213A(d) of the Act, the sponsor must notify the Attorney General and the State in which each sponsored immigrant is currently a resident of the sponsor's new address within 30 days of any change of address. If the sponsor fails to do so, the sponsor may be subject to a civil penalty. The sponsor meets the obligation of reporting a change of address by completing Form I–865, Sponsor's Notice of Change of Address, and filing the completed Form I–865 with the Service. Any agency which provides means-tested public benefits may obtain information on the sponsor's current address through the Service's established system for verifying alien status. Since this information will be available to an agency through this verification procedure, the Service will consider the sponsor's filing of Form I–865 with the Service as sufficient for complete compliance with requirements of section 213A(d)(1) of the Act. This is, a sponsor will be considered to have given notice to both the Service and the State where the sponsored immigrant resides, and so will avoid a civil penalty under section 213A(d)(2) of the Act, if the sponsor files a properly completed Form I–865 with the Service in accordance with new 8 CFR 213a.3. The States do not have independent authority to impose a civil penalty under section 213A(d) of the Act; section 213A(d)(2) expressly gives enforcement authority to the Attorney General. This rule is not intended to preempt a State from requiring a sponsor to file a change of address with the State, as well as with the Service. But failure to comply with a State's requirement, if any, will not subject the sponsor to a civil penalty under section 213A(d) of the Act, if the sponsor filed the Form I–865 with the Service.

The Service will adjudicate cases involving imposition of the civil penalty for failure to comply with the section 213A(d) change of address requirement under the previously established procedures for cases involving civil penalties under the Act. These procedures are codified at 8 CFR part 280. If the sponsor is a lawful permanent resident, the sponsor must also comply with the change of address requirement imposed by 8 CFR 265.1, in addition to the change of address requirement of section 213A(d) of the Act.

Actions for Reimbursement

This interim rule implements section 213A(b) of the Act by specifying the

manner in which an agency or entity requesting reimbursement must notify the sponsor of his or her obligations and how a Federal, State, or local agency or private entity may take judicial action to obtain reimbursement. Requests for reimbursement must be served by personal service, as defined by 8 CFR 103.5a(a)(2). The request for reimbursement shall specify the date the sponsor's affidavit of support was received by the Service or Consular office, the sponsored immigrant's name, alien registration number, address, and date of birth, as well as the type(s) of means-tested public benefit that the sponsored immigrant received, the dates the sponsored immigrant received the means-tested public benefit(s), and the total amount of the means-tested public benefit(s) received. It is not necessary to make a separate request for each type of means-tested public benefit, nor for each separate payment. The agency may instead aggregate in a single request all benefit payments the agency has made as of the date of the request. The request for reimbursement shall also notify the sponsor that the sponsor must, within 45 days of the date of service, respond to the request for reimbursement either by paying the reimbursement or by arranging to commence payments pursuant to a payment schedule that is agreeable to the program official. If the sponsor fails to respond to a formal request for reimbursement issued by a nongovernmental entity or a government agency within 45 days by indicating a willingness to commence payment, the agency or entity may sue the sponsor in State or Federal court. Section 213A(b)(2) of the Act sets forth the procedures to compel reimbursement. Section 213A(b)(2)(C) fixes a 10-year statute of limitations on suits to collect reimbursement.

Reports to Congress

Section 213A(i)(3) of the Act and section 565 of IIRIRA require the Attorney General to make periodic reports to Congress. This interim rule incorporates these reporting requirements into 8 CFR 213a.4(b). Under section 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, an agency that provides means-tested public benefits may deem the income and resources of an immigrant to include the income of any sponsor (including the income of the sponsor's spouse) who has executed an affidavit of support on behalf of the immigrant. However, if an agency determines that without its assistance the immigrant would be unable to obtain food and shelter, the amount of income that may be attributed to the immigrant is limited to the support the sponsor and spouse actually provide to the sponsored immigrant. If the agency makes this determination, section 421(e)(2) requires the agency to notify the Attorney General of information that the Attorney General would need to make the report required under section 565 of IIRIRA.

Notice and Comment Requirements

Sections 531(b) and 551(c) of the IIRIRA, Public Law 104–208, make the new affidavit of support requirement effective as of the date that is 60 days after promulgation of the new affidavit of support form. The Service is promulgating the new affidavit of support form simultaneously with the publication of this interim rule. To begin using the new affidavit of support form without this accompanying rule would cause widespread confusion about these new requirements. Only by having this rule in effect on the date that aliens must begin submitting the new affidavit of support can this confusion be mitigated. For this reason, the Commissioner finds that good cause exists to make this rule effective without observing the provisions of 5 U.S.C. 553 for prior notice and comment. The Commissioner nevertheless invites written comments on this interim rule and, in formulating the final rule, will consider any written comments that are received timely.

Regulatory Flexibility Act

The Commissioner has determined, in accordance with 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is that this rule applies to the individual sponsor and the sponsored immigrant, who are not within the definition of small entities established by 5 U.S.C. 601(6). In this regard, it is important to note that it is the immigrant's relative in that relative's individual capacity, and not the firm, that incurs the obligation to support an employment-based immigrant who is subject to the affidavit of support requirement. Since the duties imposed on the sponsor arise from the sponsor's participation in a voluntary Federal program, this rule is not a Federal private sector mandate, as defined by 2 U.S.C. 658(7)(A)(ii). The rule implements statutory requirements placed on Federal, State, and local government agencies related to seeking reimbursement of benefits from a sponsor under an affidavit of support. Agencies must also make certain reports to the Service. Under 2 U.S.C. 1531, however, no Federal Intergovernmental Mandate Assessment is required because this rule ''incorporate[s] requirements specifically set forth in law.''

Executive Order 12866

The Commissioner considers this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, because, over time, it will have a significant economic impact on the Federal Government in excess of $100 million.

Under provisions included in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, most immigrants are barred from receiving SSI benefits and food stamps until they become U.S. citizens or can be credited with 40 quarters of work. This restriction applies to most newly arriving immigrants, and to any aliens who were already admitted as immigrants, but whose eligibility for benefits was not preserved under the Balanced Budget Act of 1997, Public Law 105–33. Most immigrants are also barred from most other Federal means-tested public benefits for their first 5 years in the United States. Veterans and persons on active duty in the U.S. military, their spouses and dependent children and their unremarried surviving spouses are exempt from the 5-year ban. Refugees, asylees, aliens whose deportation or removal is being withheld, immigrants who are Cuban-Haitian entrants and certain Amerasian immigrants are also exempt. American Indians born in Canada referred to in section 289 of the Act are exempt from the 5-year ban with respect to SSI and Medicaid benefits only. The number of newly admitted permanent residents in these categories who are subject to the affidavit of support requirement in section 213A of the Act is small.

This regulation implements provisions of the Personal Responsibility Act and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 which require that all family-based and certain employment-based immigrants be sponsored through legally enforceable affidavits of support. If a sponsored immigrant applies for Federal means-tested public benefits, all of the income and resources of the sponsor and the sponsor's spouse will be deemed to be available to the sponsored immigrant in determining eligibility for the benefit. In most cases this would make the sponsored immigrant ineligible for the benefit sought. Affidavits of support will be enforceable against sponsors by any agency providing Federal, State, or local means-tested benefits, with certain

exceptions (notably emergency medical care, disaster relief, school lunches, foster care, student loans, and Head Start benefits) to sponsored immigrants until the sponsored immigrants become U.S. citizens or can be credited with 40 quarters of work.

Significant savings due to deeming of the income and resources of sponsors and their spouses to sponsored immigrants will accrue only after the fifth anniversary of welfare and illegal immigration reform implementation. Before that time, savings would be minimal since very few new immigrants would be exempt from the bar to receiving benefits, and only a small fraction of that group would be expected to apply for Federal means-tested benefits, resulting in the deeming of sponsors' income and resources.

Estimates of cost savings due to the deeming of sponsors' incomes to immigrants who seek benefits made in early 1996 during consideration of illegal immigration reform legislation are not applicable because they could not take into account the enactment of welfare reform in August 1996 which preempted the impacts of sponsor deeming by making most permanent resident aliens, with or without sponsors, ineligible for Federal means-tested public benefits for 5 years, and potentially longer for SSI and food stamps.

Because of the 5-year ban on immigrant access to means-tested public benefits, the Congressional Budget Office has projected that savings due to the deeming of sponsor's income will not begin to be realized until the first immigrants who arrived after the enactment of welfare reform are no longer subject to the 5-year ban. According to the Congressional Budget Office, the greatest savings to the Federal Government will be realized in the Medicaid program since most permanent residents will remain ineligible for SSI and food stamp benefits until they become U.S. citizens, at which time sponsor deeming will no longer apply. Therefore, savings in the Medicaid program due to the deeming of sponsor income and resources through the legally enforceable affidavit of support are projected as first becoming significant in the sixth full year following implementation, fiscal year 2003. Based on Congressional Budget Office data, savings to the Medicaid program resulting from the new sponsorship deeming provisions are estimated to be about $300 million in that year. Savings due to the deeming of sponsor income and resources to sponsored immigrants who would otherwise apply for Medicaid are estimated to increase to about $600 million in 2004, $900 million in 2005, $1.3 billion in 2006, and $1.7 billion in 2007. Reduced Federal outlays beginning in 2003 are transfers from permanent resident aliens and their families to the U.S. Treasury to the extent that third parties such as States and charities do not increase their spending to cover these benefits.

There will also be administrative costs to the Federal Government associated with these provisions. Some of these costs may be offset by subsequent adjustments to fees for Consular immigrant visa and Service adjustment of status applications, a cost borne primarily by new family-based immigrants to the United States. The Department of State and the Immigration and Naturalization Service will print and distribute the new affidavits of support forms to their offices in the United States and overseas, and will review affidavits of support for an estimated 565,000 family-based immigrants annually. The number of employment-based immigrants who will need affidavits of support is unknown but assumed to be small.

Under current procedures Consular and Immigration Officers determine whether each new immigrant is likely to become a public charge, either through examining a non-legally binding affidavit of support or other documentation, including demonstration of significant assets or job offers in the United States. The new legally enforceable affidavit and supporting documentation are likely to take longer to review for many principal immigrants. The cost of the additional review of the new affidavit of support is not expected to exceed $1 million annually.

The Immigration and Naturalization Service will also maintain automated sponsorship information on some 565,000 new family-based immigrants annually and make this information available to benefit-providing agencies. Federal and State agencies administering Federal means-tested public benefit programs will also have costs associated with deeming sponsor income and resources and recovering the costs of any benefits provided to sponsored immigrants. These costs will depend on the number of cases where sponsored immigrants apply for means-tested benefits and the number of instances in which agencies provide means-tested public benefits and subsequently request sponsors to reimburse the cost of the benefits and/or sue for recovery of these funds.

This regulation may also have an economic impact on State and local governments, either because they choose to deem sponsor income and resources for their own programs or because they choose to make their own locally or State-funded assistance programs available to permanent residents while they are not eligible for Federal means-tested programs. Savings to States from reduced use of Federally funded means-tested public benefits toward which States match funds may be offset by some increased use of locally and State-funded programs. In the absence of information about what actions States will choose to take, costs and savings to State and local governments are not estimated.

Supporting immigrants so that they will not become public charges may also impose costs on sponsors. These costs are hard to quantify since in many cases the sponsored immigrants will become largely or entirely self-supporting. Under the sponsorship provisions of the law, sponsors are required to support the immigrants for whom they have signed affidavits of support at 125 percent of the poverty line until the sponsorship obligation terminates, usually through the naturalization of the sponsored immigrants.

Executive Order 12612

This rule does 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. The rule will benefit the States by protecting their treasuries from the burden of supporting immigrants who are not entitled to receive means-tested public benefits. The burdens on the States under this rule are the requirements (a) to request reimbursement from the sponsor before suing the sponsor for reimbursement and (b) to notify the Service, if the State elects to make a determination under section 421(e) of the Personal Responsibility and Work Opportunity Act of 1996. These requirements simply incorporate requirements that already exist by statute. Moreover, the States remain free to determine whether to sue for reimbursement in a given case, or to make a determination under section 421(e). Therefore, in accordance with Executive Order 12612, the Commissioner determines that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule may result in an annual effect on the economy of $100 million or more, as discussed in the preceding paragraphs pertaining to Executive Order 12866.

Paperwork Reduction Act

The information collection requirements contained in this rule (Form I–864, Affidavit of Support Under Section 213A of the Act, Form I–864A, Contract Between Sponsor and Household Member, and Form I–865, Sponsor's Notice of Change of Address), have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

List of Subjects

8 CFR Part 213a

Administrative practice and procedure, Aliens, Affidavits of Support, Immigrants Immigration and Nationality Act.

8 CFR Part 299

Aliens, Forms, Immigration, Reporting and recordkeeping requirements.

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

1. A new part 213a is added, to read as follows:

PART 213a—AFFIDAVITS OF SUPPORT ON BEHALF OF IMMIGRANTS

Sec.

Authority: 8 U.S.C. 1183a; 8 CFR part 2.

§ 213a.1 Definitions.

As used in this part, the term:

Domicile means the place where a sponsor has a residence, as defined in section 101(a)(33) of the Act, in the United States, with the intention to maintain that residence for the foreseeable future, *provided*, that a permanent resident who is living abroad temporarily shall be considered to be domiciled in the United States if the permanent resident has applied for and obtained the preservation of residence benefit under section 316(b) or section 317 of the Act, *and provided further*, that a citizen who is living abroad temporarily shall be considered to be domiciled in the United States if the citizen's employment abroad meets the requirements of section 319(b)(1) of the Act.

Federal poverty line means the level of income equal to the poverty guidelines as issued by the Secretary of Health and Human Services in accordance with 42 U.S.C. 9902 that is applicable to a household of the size involved. For purposes of considering the Form I–864, Affidavit of Support Under Section 213A of the Act, the Service and Consular Posts will use the most recent income-poverty guidelines published in the **Federal Register** by the Department of Health and Human Services. These guidelines are updated annually, and the Service and Consular Posts will begin to use updated guidelines on the first day of the second month after the date the guidelines are published in the **Federal Register.**

Household income means the income used to determine whether the sponsor meets the minimum income requirements under sections 213A(f)(1)(E), 213A(f)(3), or 213A(f)(5) of the Act. It includes the sponsor's income and may also include the incomes of any individuals who either are related to the sponsor by birth, marriage, or adoption and have been living in the sponsor's residence for the previous 6 months or are lawfully listed as dependents on the sponsor's Federal income tax return for the most recent tax year, even if such dependents do not live at the same residence as the sponsor.

Household size means the number obtained by adding: (1) The sponsor and all persons living at the same residence with the sponsor who are related to the sponsor by birth, marriage, or adoption; (2) all persons whom the sponsor has claimed as a dependent on the sponsor's Federal income tax return for the most recent tax year, even if such persons do not live at the same residence as the sponsor; and (3) the number of aliens the sponsor has sponsored under any prior Forms I–864 for whom the sponsor's support obligation has not terminated, plus the number of aliens to be sponsored under the current Form I–864, even if such aliens do not or will not live at the same residence as the sponsor.

Immigration Officer, solely for purposes of this part, includes a Consular Officer, as defined by section 101(a)(9) of the Act, as well as an Immigration Officer, as defined by § 103.1(j) of this chapter.

Income means an individual's gross income, for purposes of the individual's Federal income tax liability, including a joint income tax return.

Intending immigrant means any beneficiary of an immigrant visa petition filed under section 204 of the Act, including any alien who will accompany or follow-to-join the principal beneficiary.

Means-tested public benefit means either a Federal means-tested public benefit, which is any public benefit funded in whole or in part by funds provided by the Federal Government that the Federal agency administering the Federal funds has determined to be a Federal means-tested public benefit under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, or a State means-tested public benefit, which is any public benefit for which no Federal funds are provided that a State, State agency, or political subdivision of a State has determined to be a means-tested public benefit. No benefit shall be considered to be a means-tested public benefit if it is a benefit described in sections 401(b), 411(b), 422(b) or 423(d) of Public Law 104–193.

Program official means the officer or employee of any Federal, State, or local government agency or of any private agency that administers any means-tested public benefit program who has authority to act on the agency's behalf in seeking reimbursement of means-tested public benefits.

Relative means a husband, wife, father, mother, child, adult son, adult daughter, brother, or sister.

Significant ownership interest means an ownership interest of 5 percent or more in a for-profit entity that filed an immigrant visa petition to accord a prospective employee an immigrant status under section 203(b) of the Act.

Sponsor means a person who either is eligible to execute or has executed an affidavit of support under this part.

Sponsored immigrant means an immigrant on whose behalf a sponsor has executed an affidavit of support under this part, including any spouse or child who will accompany or follow-to-join the beneficiary of an immigrant visa petition filed by a sponsor.

§ 213a.2 Use of affidavit of support.

(a) *General.* (1) In any case specified in paragraph (a)(2) of this section, an intending immigrant is inadmissible as an alien likely to become a public charge, unless a sponsor has executed on behalf of the intending immigrant a Form I–864, Affidavit of Support Under Section 213A of the Act, in accordance with section 213A of the Act, this section, and the instructions on Form I–864. An affidavit of support is executed when a sponsor signs a Form I–864 before a notary public or an Immigration or Consular Officer and that form I–864 is submitted to an Immigration or Consular officer. The sponsor must execute a separate affidavit of support for each visa petition beneficiary and for each alien who will accompany or follow-to-join a visa petition beneficiary. For any spouse or children immigrating with a sponsored immigrant, the sponsor may execute an affidavit of support by submitting photocopies of the Form I–864 and all accompanying documentation, but each photocopy of the Form I–864 must have an original signature. Under this rule, a spouse or child is immigrating with a sponsored immigrant if he or she is listed in Part 3 of Form I–864 and applies for an immigrant visa or adjustment of status within 6 months of the date the Form I–864 is originally signed. The signature on the Form I–864, including photocopies, must be notarized by a notary public or signed before an Immigration or Consular Officer.

(2) (i) Except for cases specified in paragraph (a)(2)(ii) of this section, paragraph (a)(1) of this section applies to any application for an immigrant visa or for adjustment of status filed on or before December 19, 1997, in which an intending immigrant seeks an immigrant visa, admission as an immigrant, or adjustment of status as:

(A) An immediate relative under section 201(b)(2)(A)(i) of the Act;

(B) A family-based immigrant under section 203(a) of the Act; or

(C) An employment-based immigrant under section 203(b) of the Act, if a relative of the intending immigrant either filed the employment-based immigrant petition or has a significant ownership interest in the entity that filed the immigrant visa petition on behalf of the intending immigrant.

(ii) Paragraph (a)(1) of this section shall not apply if the intending immigrant:

(A) Filed a visa petition on his or her own behalf pursuant to section 204(a)(1)(A)(ii), (iii), or (iv) or section 204(a)(1)(B)(ii) or (iii) of the Act, or who seeks to accompany or follow-to-join an immigrant who filed a visa petition on his or his own behalf pursuant to section 204(a)(1)(A)(ii), (iii), or (iv) or section 204(a)(1)(B)(ii) or (iii) of the Act; or

(B) Seeks admission as an immigrant on or after December 19, 1997, in a category specified in paragraph (a)(2)(i) of this section with an immigrant visa issued before December 19, 1997.

(b) *Affidavit of support sponsors.* The following individuals must execute Form I–864 on behalf of the intending immigrant in order for the intending immigrant to be found admissible on public charge grounds:

(1) *For immediate relatives and family-based immigrants.* The person who filed the immigrant visa petition, the approval of which forms the basis of the intending immigrant's eligibility to apply for an immigrant visa or adjustment of status as an immediate relative or as a family-sponsored immigrant, must execute a Form I–864 on behalf of the intending immigrant.

(2) *For employment-based immigrants.* A relative of an intending immigrant seeking an immigrant visa under section 203(b) of the Act who either filed the immigrant visa petition on behalf of the intending immigrant or owns a significant ownership interest in an entity that filed an immigrant visa petition on behalf of the intending immigrant.

(c) *Sponsorship requirements.* (1) *General.* A sponsor must:

(i) Be at least 18 years of age;

(ii) Be domiciled in the United States or any territory or possession of the United States; and

(iii) (A) Be a citizen of the United States or an alien lawfully admitted for permanent residence in the case described in paragraph (a)(2)(i)(A) or (B) of this section; or

(B) Be a citizen or national of the United States or an alien lawfully admitted for permanent residence in the case described in paragraph (a)(2)(i)(C) of this section or if the individual is a joint sponsor.

(2) *Demonstration of ability to support sponsored immigrants.* In order for the intending immigrant to overcome the public charge ground of inadmissibility, the sponsor must demonstrate the means to maintain an annual income of at least 125 percent of the Federal poverty line. If the sponsor is on active duty in the Armed Forces of the United States (other than active duty for training) and the intending immigrant is the sponsor's spouse or child, the sponsor's income must equal at least 100 percent of the Federal poverty line.

(i) *Proof of income.* (A) The sponsor must file with the Form I–864 a copy of his or her Federal income tax returns for each of the 3 most recent taxable years, if he or she had a legal duty to file. By executing Form I–864, the sponsor certifies under penalty of perjury under United States law that each return is a true and correct copy of the return that the sponsor filed with the Internal Revenue Service for that taxable year.

(B) If the sponsor had no legal duty to file a Federal income tax return for any of the 3 most recent tax years, the sponsor must explain why he or she had no legal duty to a file a Federal income tax return for each year for which no Federal income tax return is available. If the sponsor had no legal obligation to file a Federal income tax return, he or she may submit other evidence of annual income.

(C) (1) The sponsor's ability to meet the income requirement will be determined based on the sponsor's household income. The sponsor may rely entirely on his or her own income as his or her household income if it is sufficient to meet the requirement. If needed, the sponsor may include in his or her household income the incomes of other individuals if they either are related to the sponsor by birth, marriage, or adoption and have been living in the sponsor's residence for the previous 6 months or are lawfully listed as dependents on the sponsor's Federal income tax return for the most recent tax year. In order for the Immigration Officer or Consular Officer to consider the income of any of these individuals, the sponsor must include with the Form I–864 a written contract on Form I–864A between the sponsor and each other individual on whose income the sponsor seeks to rely.

Under this written contract each other individual must agree, in consideration of the sponsor's signing of the Form I–864, to provide to the sponsor as much financial assistance as may be necessary to enable the sponsor to maintain the sponsored immigrants at the annual income level required by section 213A(a)(1)(A) of the Act, to be jointly and severally liable for any reimbursement obligation that the sponsor may incur, and to submit to the personal jurisdiction of any court that has subject matter jurisdiction over a civil suit to enforce the contract or the affidavit of support. The sponsor, as a party to the contract, may bring suit to enforce the contract. The sponsored immigrants and any Federal, State, or local agency or private entity that provides a means-tested public benefit to a sponsored immigrant are third party beneficiaries of the contract between the sponsor and the other individual or individuals on whose income the

sponsor relies and may bring an action to enforce the contract in the same manner as third party beneficiaries of other contracts. If there is no spouse or child immigrating with the sponsored immigrant, then there will be no need for the sponsored immigrant to sign a Form I–864A, even if the sponsor will rely on the income of the sponsored immigrant to meet the income requirement. If, however, the sponsor seeks to rely on a sponsored immigrant's income to establish the sponsor's ability to support the sponsored immigrant's spouse or children, then the sponsored immigrant whose income is to be relied on must sign the Form I–864A.

(2) If the sponsor relies on the income of any other individual, the sponsor must also attach that individual's Federal income tax returns for each of the 3 most recent tax years. That individual must certify, under penalty of perjury, on Form I–864A that each tax return submitted is a true and correct copy of the Federal income tax return filed with the Internal Revenue Service. If that individual has no legal obligation to file a Federal income tax return, he or she must explain and submit other evidence of annual income. If the individual whose income the sponsor will rely on is not lawfully claimed as a dependent on the sponsor's Federal income tax return for the most recent tax year, then the sponsor must also attach proof of the relationship between the sponsor and that individual and proof of residency in the sponsor's residence during at least the preceding 6 months.

(ii) *Proof of employment or self-employment.* The sponsor must attach evidence of current employment which provides the sponsor's salary or wage, or evidence of current self employment. If the sponsor is unemployed or retired, the sponsor must state the length of his or her unemployment or retirement. The same information must be provided for any other person whose income is used to qualify under this section.

(iii) *Determining the sufficiency of an affidavit of support.* The sufficiency of an affidavit of support shall be determined in accordance with this paragraph.

(A) *Income.* The sponsor shall first calculate the total income attributable to the sponsor under paragraph (c)(2)(i)(C) of this section.

(B) *Number of persons to be supported.* The sponsor shall then determine his or her household size as defined in § 213a.1.

(C) *Sufficiency of Income.* The sponsor's income shall be considered sufficient if the household income calculated under paragraph (c)(2)(iii)(A) of this section would equal at least 125 percent of the Federal poverty line for the sponsor's household size as defined in § 213a.1, except that the sponsor's income need only equal at least 100 percent of the Federal poverty line for the sponsor's household size, if the sponsor is on active duty (other than for training) in the Armed Forces of the United States and the intending immigrant is the sponsor's spouse or child.

(iv) *Inability to meet income requirement.* If the sponsor is unable to meet the minimum income requirement in paragraph (c)(2)(iii) of this section, the intending immigrant is inadmissible unless the sponsor and/or the intending immigrant demonstrates significant assets or a joint sponsor executes a separate Form I–864.

(A) *Significant assets.* The sponsor may submit evidence of the sponsor's ownership of significant assets, such as savings accounts, stocks, bonds, certificates of deposit, real estate, or other assets. A sponsored immigrant may submit evidence of the sponsored immigrant's assets as a part of the affidavit of support, even if the sponsored immigrant is not required to sign a Form I–864A. The assets of any person who has signed a Form I–864A will also be considered in determining whether the assets are sufficient to meet this requirement. The combined cash value of all the assets (the total value of the assets less any offsetting liabilities) must exceed five times the difference between the sponsor's household income and the Federal poverty line for the sponsor's household size (including all immigrants sponsored in any affidavit of support in force under this section).

B. *Joint sponsor.* A joint sponsor must execute a separate Form I–864 on behalf of the intending immigrant(s) and be willing to accept joint and several liability with the sponsor. A joint sponsor must meet the eligibility requirements under paragraph (c)(1) of this section. A joint sponsor's household income must meet or exceed the income requirement in paragraph (c)(2)(iii) of this section unless the joint sponsor can demonstrate significant assets as provided in paragraph (c)(2)(iv)(A) of this section.

(v) *Immigration or Consular Officer's determination of insufficient income and/or assets.* Notwithstanding paragraphs (c)(2)(iii) (C) and (c)(2)(iv) (A) and (B) of this section, an Immigration Officer or Consular Officer may determine the income and/or assets of the sponsor or a joint sponsor to be insufficient if the Immigration Officer or Consular Officer determines, based on the sponsor's or joint sponsor's employment situation, income for the previous 3 years, assets, or receipt of welfare benefits, that the sponsor or joint sponsor cannot maintain his or her income at the required level.

(vi) *Verification of employment, income and assets.* The Government may pursue verification of any information provided on or with Form I–864, including information on employment, income, or assets, with the employer, financial or other institutions, the Internal Revenue Service, or the Social Security Administration.

(vii) *Effect of fraud or material concealment or misrepresentation.* If the Consular Officer or Immigration Officer finds that the sponsor or joint sponsor has concealed or misrepresented facts concerning income, or household size, or any other material fact, the Consular Officer or Immigration Officer shall conclude that the affidavit of support is not sufficient to establish that the sponsored immigrant is not likely to become a public charge, and the sponsor or joint sponsor may be liable for criminal prosecution under the laws of the United States.

(d) *Legal effect of affidavit of support.* Execution of a Form I–864 under this section creates a contract between the sponsor and the U.S. Government for the benefit of the sponsored immigrant, and of any Federal, State, or local governmental agency or private entity that administers any means-tested public benefits program. The sponsored immigrant, or any Federal, State, or local governmental agency or private entity that provides any means-tested public benefit to the sponsored immigrant after the sponsored immigrant acquires permanent resident status, may seek enforcement of the sponsor's obligations through an appropriate civil action.

(e) *Termination of support obligation.* (1)(i) The sponsor's support obligation with respect to a sponsored immigrant terminates by operation of law when the sponsored immigrant:

(A) Becomes a citizen of the United States;

(B) Has worked, or can be credited with, 40 qualifying quarters of work; *provided,* that the sponsored immigrant is not credited with any quarter beginning after December 31, 1996, during which the sponsored immigrant receives any Federal means-tested public benefit;

(C) Ceases to hold the status of an alien lawfully admitted for permanent residence and has departed the United States; or

(D) Dies.

(ii) The sponsor's support obligation also terminates if the sponsor dies.

(2) The termination of the sponsor's support obligation does not relieve the sponsor (or the sponsor's estate) of any reimbursement obligation under section 213A(b) of the Act that accrued before the support obligation terminated.

(f) In the case of an alien who seeks to follow-to-join the principal sponsored immigrant, as provided for by section 203(d) of the Act, the same sponsor who filed the visa petition and affidavit of support for the principal sponsored immigrant must, at the time that the alien seeks to follow-to-join the principal sponsored immigrant, sign an affidavit of support on behalf of the alien who seeks to follow-to-join the principal sponsored immigrant. If that sponsor has died, then the alien who seeks to follow-to-join the principal sponsored immigrant shall be held to be inadmissible, unless another person, who would qualify as a joint sponsor if the principal sponsor were still alive, submits on behalf of the alien who seeks to follow-to-join the principal sponsored immigrant, an affidavit of support that meets the requirements of this section. If the original sponsor is deceased and no other eligible sponsor is available, the principal sponsored immigrant may sign an affidavit of support on behalf of the alien seeking to follow-to-join the principal immigrant, if the principal sponsored immigrant can meet the requirements of paragraph (c) of this section.

§ 213a.3 Notice of change of address.

(a) *General.* If the address of a sponsor (including a joint sponsor) changes for any reason while the sponsor's support obligation under the affidavit of support remains in effect with respect to any sponsored immigrant, the sponsor shall file Form I–865, Sponsor's Notice of Change of Address, with the Service no later than 30 days after the change of address becomes effective.

(b) *Civil penalty.* (1) *Amount of penalty.* (i) Except as provided in paragraph (b)(1)(ii) of this section, if the sponsor fails to give notice in accordance with paragraph (a) of this section, the Service may impose on the sponsor a civil penalty in an amount within the penalty range established in section 213A(d)(2)(A) of the Act.

(ii) If the sponsor, knowing that the sponsored immigrant has received any means-tested public benefit, fails to give notice in accordance with paragraph (a) of this section, the Service may impose on the sponsor a civil penalty in an amount within the penalty range established in section 213A(d)(2)(B) of the Act.

(2) *Procedure for imposing penalty.* The procedure for imposing a civil penalty under this paragraph follows that which is established at 8 CFR part 280.

(c) *Change of address.* If the sponsor is an alien, filing Form I–865 under this section does not satisfy or substitute for the change of address notice required under § 265.1 of this chapter.

§ 213a.4 Actions for reimbursement, public notice, and congressional reports.

(a) *Requests for reimbursement.*

Requests for reimbursement under section 213A(b)(2) of the Act must be served by personal service, as defined by § 103.5a(a)(2) of this chapter. The request for reimbursement shall specify the date the sponsor's affidavit of support was received by the Service, the sponsored immigrant's name, alien registration number, address, and date of birth, as well as the types of means-tested public benefit(s) that the sponsored immigrant received, the dates the sponsored immigrant received the means-tested public benefit(s), and the total amount of the means-tested public benefit(s) received. It is not necessary to make a separate request for each type of means-tested public benefit, nor for each separate payment. The agency may instead aggregate in a single request all benefit payments the agency has made as of the date of the request. The request for reimbursement shall also notify the sponsor that the sponsor must, within 45 days of the date of service, respond to the request for reimbursement either by paying the reimbursement or by arranging to commence payments pursuant to a payment schedule that is agreeable to the program official. Prior to filing a lawsuit against a sponsor to enforce the sponsor's support obligation under section 213A(b)(2) of the Act, a Federal, State, or local governmental agency or a private entity must wait 45 days from the date it issues a written request for reimbursement under section 213A(b)(1) of the Act. If a sponsored immigrant, a Federal, State, or local agency, or a private entity sues the sponsor and obtains a final civil judgment against the sponsor, the sponsored immigrant, the Federal, State, or local agency, or the private entity shall mail a certified copy of the final civil judgment to the Service's Statistics Branch, 425 I Street, NW., Washington, DC 20536. The copy should be accompanied by a cover letter that includes the reference ''Civil Judgments for Congressional Reports under section 213A(i)(3) of the Act.'' Failure to file a certified copy of the final civil judgment in accordance with this section has no effect on the plaintiff's ability to collect on the judgment pursuant to law.

(b) Federal, State, and local government agencies should issue public notice of determinations regarding which benefits are considered ''means-tested public benefits'' prior to December 19, 1997, the date the new affidavit of support goes into effect, or as soon as possible thereafter. Additional notices should be issued whenever an agency revises its determination of which benefits are considered ''means-tested public benefits.''

(c) *Congressional reports.* (1) For purposes of section 213A(i)(3) of the Act, a sponsor shall be considered to be in compliance with the financial obligations of section 213A of the Act unless the sponsored immigrant or a Federal, State, or local agency or private entity has sued the sponsor, obtained a final judgment enforcing the sponsor's obligations under section 213A(a)(1)(A) or 213A(b) of the Act, and mailed a certified copy of the final judgment to the Service's Statistics Branch, 425 I Street, NW., Washington, DC 20536.

(2) If a Federal, State, or local agency or private entity that administers any means-tested public benefit makes a determination under section 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 in the case of any sponsored immigrant, the program official shall send written notice of the determination, including the name of the sponsored immigrant and of the sponsor, to the Service's Statistics Branch. The written notice should include the reference ''Determinations under 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.''

§ 213a.5 Relationship of this part to other affidavits of support.

Nothing in this part precludes the continued use of Form I–134, Affidavit of Support (other than INA section 213A), or of Form I–361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian, in any case, other than a case described in § 213a.2(a)(2), in which these forms were used prior to enactment of section 213A of the Act. The obligations of section 213A of the Act do not bind a person who executes Form I–134 or Form I–361, although the person who executes Form I–361 remains subject to the provisions of section 204(f)(4)(B) of the Act and of § 204.4(i) of this chapter.

PART 299—IMMIGRATION FORMS

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

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

3. Section 299.1 is amended by adding the entries for Forms ''I–864,'' ''I–864A,'' and ''I–865'' to the listing of forms, in proper numerical sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	* * *
I–864	10–06–97	Affidavit of Support Under Section 213A of the Act.
I–864A ...	10–06–97	Contract Between Sponsor and Household Member.
I–865	10–06–97	Sponsor's Notice of Change of Address.
*	*	* * *

4. Section 299.5 is amended by adding to the list of forms, in proper numerical sequence, the entries for Forms ''I–864,'' ''I–864A'' and ''I–865'' to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
*	*	* * *
I–864	Affidavit of Support under Section 213A of the Act.	1115–0214
I–864A ...	Contract between Sponsor and Household Member.	1115–0214
I–865	Sponsor's Notice of Change of Address.	1115–0215
*	*	* * *

Dated: October 8, 1997.

Doris Meissner,

Commissioner, Immigrant and Naturalization Service.

[FR Doc. 97–27605 Filed 10–17–97; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 261

[Docket No. R–0975]

Rules Regarding Availability of Information

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) hereby amends its Rules Regarding Availability of Information (Rules) to reflect recent changes in the Freedom of Information Act (FOIA) as a result of the Electronic Freedom of Information Act Amendments (EFOIA). In order to account for future amendments to the Rules, the sections have been renumbered.

The review of the Board's Rules that produced this final rule was conducted in accordance with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994. In this regard, the amendments to the Rules clarify certain provisions and simplify the processing of requests for access to information in certain circumstances.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel, (202/452–2418), Legal Division; or Susanne K. Mitchell, Manager, Freedom of Information Office (202/452–2407). For the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD)(202/452–3544), Board of Governors of the Federal Reserve System, 20th and Constitution, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Last year, Congress passed the Electronic Freedom of Information Act Amendments of 1996, Public Law 104–231, which amends the Freedom of Information Act, 5 U.S.C. 552. Among other things, EFOIA requires agencies to promulgate regulations that provide for expedited processing of requests for records, and permits agencies to promulgate regulations that provide for multitrack processing of requests. In addition to amending its Rules to comply with EFOIA, the Board has taken this opportunity, in accordance with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, to review and streamline those Rules.[1] In addition, the Board is amending the Rules to take account of various statutes that have been enacted since the Rules were last revised in 1988.[2]

To implement these changes, the Board published proposed changes to Subparts A, B, and D of its Rules on June 10, 1997 (62 FR 31526). The Board received four comments: one from a Federal Reserve Bank, one from a commercial bank, one from a credit union, and one from a community group. Three of the comments supported the proposal; the community group, however, opposed some of the proposed changes. A discussion of the specific comments is included in the section-by-section analysis. In 1996, the Board published for comment proposed amendments to the Rules (61 FR 7436, February 28, 1996) that primarily concerned Subpart C of the Rules and the definitions in Subpart A of terms that are used in Subpart C. In addition, the Board had proposed changes to certain portions of Subpart B and Subpart D, which were republished in the June 1997 proposed rule. The changes to Subparts A, B and D are being adopted in this final rule; the proposed amendments to Subpart C are still under consideration.

Subpart A

Subpart A contains the General Provisions, describing the authority, purpose, and scope; listing the definitions applicable to this part, and explaining the responsibilities of the Secretary of the Board as custodian of the Board's records. The changes to this subpart are primarily in the ''Authority'' section to clarify the ability of the Board to provide exempt records to certain entities outside of the FOIA process in specific circumstances. In addition, certain definitions that were included in the section on FOIA fees and fee waivers have been moved forward to the ''Definitions'' section. One commenter noted that the definition of ''records'' specifically excludes handwritten notes, and questions the authority for this exclusion. The intention was to exclude personal notes that are not a part of official Board records. This, however, is accomplished by the exclusion of personal files, so the reference to handwritten notes has been deleted.

Section 261.3 is amended to clarify that authority delegated to the General Counsel and other officers of the Board may be subdelegated. An additional change to § 261.3(c) states that the Secretary of the Board is the Board's agent for service of all process, and that

[1] The regulatory citations contained in this final rule refer to the regulation, as amended. As noted above, the sections have been renumbered.

[2] The Board's Rules have been implemented in a manner consistent with these and other changes described in this final rule.