PART 40—[AMENDED]

1. The authority citation for Part 40 is revised to read:

Authority: 8 U.S.C. 1104; Pub.L. 104–208, 110 Stat. 3009; 22 U.S.C. 2651a.

2. Section 40.41 is revised as follows:

§ 40.41 Public charge.

(a) Basis for Determination of Ineligibility. Any determination that an alien is ineligible under INA 212(a)(4) must be predicated upon circumstances indicating that, notwithstanding any affidavit of support that may have been filed on the alien's behalf, the alien is likely to become a public charge after admission, or, if applicable, that the alien has failed to fulfill the affidavit of support requirement of INA 212(a)(4)(C).

(b) Affidavit of Support. Any alien seeking an immigrant visa under INA 201(b)(2), 203(a), or 203(b), based upon a petition filed by a relative of the alien (or in the case of a petition filed under INA 203(b) by an entity in which a relative has a significant ownership interest), shall be required to present to the consular officer an affidavit of support on a form that complies with terms and conditions established by the Attorney General.

(c) Joint Sponsors. Submission of one or more additional affidavits of support by a joint sponsor/sponsors is required whenever the relative sponsor's household income and significant assets, and the immigrant's assets, do not meet the Federal poverty line requirements of INA 213A.

(d) Posting of Bond. A consular officer may issue a visa to an alien who is within the purview of INA 212(a)(4) (subject to the affidavit of support requirement and attribution of sponsor's income and resources under section 213A), upon receipt of a notice from INS of the giving of a bond or undertaking in accordance with INA 213 and INA 221(g), and provided further that the officer is satisfied that the giving of such bond or undertaking removes the likelihood that the alien will become a public charge within the meaning of this section of the law and that the alien is otherwise eligible in all respects.

(e) Prearranged Employment. An immigrant visa applicant relying on an offer of prearranged employment to establish eligibility under INA 212(a)(4), other than an offer of employment certified by the Department of Labor pursuant to INA 212(a)(5)(A), must provide written confirmation of the relevant information sworn and subscribed to before a notary public by the employer or an authorized employee or agent of the employer. The signer's printed name and position or other relationship with the employer must accompany the signature.

(f) Use of Federal Poverty Line Where INA 213A Not Applicable. An immigrant visa applicant, not subject to the requirements of INA 213A, and relying solely on personal income to establish eligibility under INA 212(a)(4), who does not demonstrate an annual income above the Federal poverty line, as defined in INA 213A (h), and who is without other adequate financial resources, shall be presumed ineligible under INA 212(a)(4).

Dated: December 19, 1997.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 97–33691 Filed 12–24–97; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 40

[Public Notice 2666]

Visas: Grounds of Ineligibility

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The act adds new grounds of inadmissibility to the United States for: certain aliens who have not been inoculated against infectious diseases designated by statute or by the Advisory Committee for Immunization Practices (ACIP); aliens who have been subject to certain civil penalties; alien student visa abusers; aliens present in the United States without admission or parole; aliens who fail to attend removal proceedings; unlawful alien voters; and former citizens who renounced United States citizenship in order to avoid paying taxes. Some of the sections cited above also provide for waivers of a number of grounds of inadmissibility. The rule also incorporates into the Department's regulations a delegation of authority from the Immigration and Naturalization Service pertaining to waivers of inadmissibility under § 212(a)(1)(A)(ii) of the Immigration and Nationality Act (INA), as amended. Finally, this rule makes a few miscellaneous technical corrections.

DATES: *Effective Dates:*

§ 40.11	September 30, 1996
§ 40.22	September 30, 1997.
§ 40.52	September 30, 1996
§ 40.61	April 1, 1997
§ 40.62	April 1, 1997
§ 40.66	September 30, 1996
§ 40.67	November 30, 1996
§ 40.91	April 1, 1997
§ 40.92	April 1, 1997
§ 40.93	April 1, 1997
§ 40.104	September 30, 1996
§ 40.105	September 30, 1996

Comment Date: Written comments must be submitted on or before February 27, 1998.

ADDRESSES: Written comments may be addressed to the Chief, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Washington, D.C. 20520–0106.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, (202) 663–1204.

SUPPLEMENTARY INFORMATION: Some of the provisions of IIRIRA implemented by this rule became effective on the date of enactment, September 30, 1996. Others became effective on November 30, 1996. Still others became effective on April 1, 1997. Therefore, in order to coincide with the effective dates mandated by Congress, the effective dates are listed in the **DATES** section of this document. Division ''C'' of the Omnibus Consolidated Appropriations Act, 1997 (the Illegal Immigration Reform and Alien Responsibility Act of 1996 (IIRIRA)), made substantial changes and additions to the INA affecting numerous regulations at 22 CFR, Subchapter E. On November 21, 1996, the Department published a final rule [61 FR 59182] to restructure the numbering of 22 CFR Part 40 in light of these additions. This rule incorporates changes to those sections of Part 40 shown in the table below.

22 CFR Part Affected	Heading	IIRIRA Section No.
§ 40.11	Medical Grounds of Ineligibility	§ 341
§ 40.22(b)	Suspended Sentences	§ 322
§ 40.52	Unqualified Physicians	N/A (typographic correction)
§ 40.61	Aliens Present Without Admission or Parole	§ 301

22 CFR Part Affected	Heading	IIRIRA Section No.
§ 40.62	Failure to Attend Removal Proceedings	§ 301
§ 40.66	Aliens Subject of Civil Penalty	§ 345
§ 40.67	Student Visa Abusers	§ 346
§ 40.91	Certain Aliens Previously Removed	§ 301
§ 40.92	Aliens Unlawfully Present	§ 301
§ 40.93	Aliens Unlawfully Present After Previous Immigration Violations	§ 301
§ 40.104	Unlawful Voters	§ 347
§ 40.105	Former Citizens Who Renounced Citizenship to Avoid Taxation	§ 352

22 CFR 40.11—Medical Grounds of Ineligibility

Section 341 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 amended the medical grounds of visa ineligibility under INA 212(a)(1)(A) to render inadmissible under INA 212(a)(1)(A)(ii) all applicants for immigrant visas and adjustment of status who fail to present documentation showing that they have been vaccinated against a broad range of vaccine-preventable diseases. The amendments to INA 212(a)(1)(A) by section 341 of IIRIRA became effective on the date of enactment, September 30, 1996. The diseases, as specifically identified in the statute are: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B ''and any other diseases which are designated by the Advisory Committee for Immunization Practices (ACIP).'' Section 341 of IIRIRA also prescribed new waiver provisions at INA 212(g)(2) for aliens: (1) who were initially missing required vaccinations but who subsequently obtained them; or (2) for whom one or more of the required vaccinations would be medically inappropriate as certified by the reviewing civil surgeon or panel physician in accordance with regulations established by the Department of Health and Human Services; or (3) who establish to the satisfaction of the Attorney General that compliance with the vaccination requirements under INA 212(a)(1)(A)(ii) would be contrary to the alien's religious beliefs or moral convictions. In its conference report, Congress indicated that the waiver authority of INA 212(g)(2) should be exercised in appropriate cases to permit admission where, for example: (1) the alien is unable to receive a safe dosage of a particular vaccine; (2) it is certified that the vaccine is unavailable in the alien's country of nationality; (3) an alien child undergoing a vaccination series over a given course of time has not had a reasonable opportunity to complete the required series; or (4) the alien is an active member of a religious faith that has notified the Attorney General that such vaccination(s) would contradict the fundamental tenets of the alien's religion.

The Department of State and the Immigration and Naturalization Service (INS) anticipate that large numbers of immigrant visa applicants will be rendered ineligible for visa issuance under the provisions of INA 212(a)(1)(A)(ii) but will routinely be eligible for waivers either because they initially did not have a required vaccination, but subsequently obtained it, or because the panel physician certified, in compliance with the HHS regulations, that a particular vaccination ''would not be medically appropriate.'' To minimize the administrative burden on INS and State, section 40.11(c) of this rule incorporates into the Department's regulations INS's delegation to consular officers of the authority to grant waivers of inadmissibility under INA 212(g)(2)(A) and (B). Under this delegation by INS, no waiver application (currently INS Form I–601) or fee is required, and consular officers may grant waivers under INA 212(g)(2)(A) and (B) without consulting with INS beforehand. INS has not delegated the authority to grant waivers under 212(g)(2)(C) for religious/moral reasons, however. Consistent with the statute, these waiver requests will be processed by INS on a case-by-case basis pursuant to regulations published by the Attorney General.

22 CFR 40.22—Suspended Sentences

Section 322 of IIRIRA amended section 101(a) of the INA by adding new paragraph 101(a)(48) which defines ''conviction'' and ''term of imprisonment.'' The new language of INA 101(a)(48)(B) is applicable to convictions and sentences at any time and directs that ''any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or part.'' Under United States criminal law, courts may either impose a sentence or suspend imposition of the sentence. In *Matter of Castro*, 19 I&N Dec. 692 (BIA 1988), the Board of Immigration Appeals held that, when the imposition of a sentence is suspended no sentence has actually been imposed. This decision was codified at 22 CFR 40.22(b), but has now been effectively reversed by new INA paragraph 101(a)(48). Accordingly, the regulation at 22 CFR 40.22(b) is being removed, and 22 CFR 40.22(c), (d), (e), and (f) are being redesignated (b), (c), (d), and (e), respectively.

22 CFR 40.52—Unqualified Physicians

A technical correction is made to 22 CFR 40.52 changing the incorrect reference cite ''INA 203(a)(2) and (3)'' to read ''INA 203(b)(2) and (3).''

22 CFR 40.61—Aliens Present Without Admission or Parole

Section 301(a), (b), and (d) of IIRIRA replaced the terms ''entry'' and ''excludable'' with ''admission'' and ''inadmissibility'' (see INA 101(a)(13) and 212(a)(6)(A) and (B)), and replaced the term ''deportation'' with ''removal'' (see INA 212(a)(9)).

Section 301(c) of IIRIRA essentially moved the former provisions of INA 212(a)(6)(A) and (B) to a new subparagraph (9)(A), and modified them by substituting new provisions relating to admissions at INA subparagraphs 212(a)(6)(A) and (B). The first of these, INA 212(a)(6)(A), makes inadmissible an alien who is in the United States without having been admitted or paroled or who has come into this country at a place other than a designated port of entry. This provision is written in the present tense and is designed to make the aliens described therein subject to grounds of inadmissibility rather than grounds of deportation. INA 212(a)(6)(A) applies only to aliens who are present in the United States. Thus, in the absence of an order of removal, it has no direct effect on the eligibility for a visa of an alien at a consular post and the regulation being added at 22 CFR 40.61 so states.

22 CFR 40.62—Failure To Attend Removal Proceedings

New INA 212(a)(6)(B) provides that an alien who, without reasonable cause, fails or refuses to attend or remain in attendance at removal proceedings shall be inadmissible for five years following departure or removal. Such an alien is thus also ineligible for a visa for that period of time. This ground of inadmissibility is being applied only to those aliens placed in removal proceedings on or after April 1, 1997, as set forth in INA 240, which was added by section 304(a) of IIRIRA.

Regulations pertaining to revised INA 212(a)(6) are being added to 22 CFR 40.61 and 40.62.

22 CFR 40.66—Subject of Civil Penalty

The Immigration Act of 1990, Pub. L. 101–649, added as a new ground of visa ineligibility, INA 212(a)(6)(F) rendering inadmissible any alien who is the subject of a final removal order for violating INA 274C relating to civil penalties for document fraud. INA 274C provides civil penalties for persons determined by an administrative law judge to have been involved in virtually any activity involving forged, altered or stolen documents used to meet a requirement or obtain a benefit under the INA. Section 345 of IIRIRA amended INA 212(a)(6)(F) by designating this ground of inadmissibility as subsection (F)(i) and creating a new subsection (F)(ii) providing for waivers of (F)(i) inadmissibilities under new INA 212(d)(12). (Waivers of the INA 212(a)(6)(F) (now (F)(i)) ground of inadmissibility were not available prior to the enactment of IIRIRA). Under INA 212(d)(12), the Attorney General may waive this ineligibility for certain permanent residents who have temporarily proceeded abroad voluntarily and not under an order of deportation or removal and are otherwise admissible to the United States as returning residents, and for aliens seeking admission or adjustment as immediate relatives or family-based beneficiaries, if the offense was committed solely to assist the alien's spouse or child and no previous civil money penalty was imposed against the alien under INA section 274C. The Department is, therefore, adding new regulations at 22 CFR 40.66 with respect to this new ground of inadmissibility and to provide for the above waiver.

22 CFR 40.67—Student Visa Abusers

Section 346 of IIRIRA added a new ground of inadmissibility for foreign student visa abusers. Under this ground, an alien having F–1 status as a student under INA 101(a)(15)(F)(i) who violates the provisions of INA 214(l) is inadmissible until he or she has been outside the United States for five continuous years after the date of violation. INA 214(l) became effective November 30, 1996, and applies only to aliens who initially obtain F–1 status on or after that date, or whose F–1 status is extended on or after that date. Under the provisions of INA 214(l), alien students may not be granted F–1 student status to attend a public elementary school or a publicly funded adult education program. Alien students may attend a public secondary school for no more than one year in F–1 classification and must reimburse the school system for the full, unsubsidized per capita cost of their education. Alien students may transfer from a private school to a public secondary school only if they meet the above payment requirements and can demonstrate that they will not exceed the one-year time limitation established for public secondary school attendance. However, INA 214(l) prohibits foreign students in F–1 status who are attending private schools from transferring into public elementary schools or publicly funded adult education programs (including language programs). The Department is, therefore, adding a new regulation at 22 CFR 40.67 to provide for the new ground of inadmissibility.

22 CFR 40.91—Certain Aliens Previously Removed

The provisions of INA 212(a)(9) were redesignated INA 212(a)(10) under IIRIRA 301(b). These regulations, formerly found at 22 CFR 40.91, 40.92 and 40.93, were redesignated as 40.101, 40.102 and 40.103 in the Department publication of November 21, 1996 [61 FR 59182]. The new provisions of INA 212(a)(9) (similar to the former INA 212(a)(6)(A) and (B)) were inserted as subparagraphs 212(a)(9)(A)(i) and (ii). The only substantive difference between the new INA 212(a)(9)(A) and the former INA 212(a)(6)(A) and (B) lies in the varying lengths of inadmissibility. The prior INA 212(a)(6)(A) provided for a one-year visa ineligibility period for an alien who had previously been excluded and deported. INA 212(a)(9)(A)(i) makes ineligible and inadmissible for 5 years an alien who has been found inadmissible and ordered removed, whether summarily at the port of entry or after removal proceedings under INA 240. The period of inadmissibility is 20 years after a second (or subsequent) removal and is permanent if the alien has been convicted of an aggravated felony. Similarly, the prior INA 212(a)(6)(B) rendered an alien who had previously been deported ineligible for a visa for 5 years (or 20 if the alien had been convicted of an aggravated felony), whereas in the new INA 212(a)(9)(A)(ii), the inadmissibility periods are 10 years following the first removal, 20 years after a second (or subsequent) removal, and permanently if the alien has been convicted of an aggravated felony. Either clause becomes inapplicable if prior to the alien's embarkation at a place outside the United States the Attorney General (in advance) grants the alien permission to reapply for admission. Regulations pertaining to the prior provisions of INA 212(a)(6), with appropriate amendments, have been moved to 22 CFR 40.91. The redesignated 22 CFR 40.91 contains the revised regulations implementing these changes.

22 CFR 40.92—Aliens Unlawfully Present

New INA 212(a)(9)(B)(i)(I) bars for three years after departure an alien who was ''unlawfully present'' in the United States (as defined in (B)(ii)) for a period of more than 180 days but less than one year, provided the alien departed voluntarily before the commencement of removal proceedings. Subparagraph (9)(B)(iv) provides for the ''tolling'' (suspension) of up to 120 days in the calculation of an alien's ''unlawful presence'' if: (1) the alien had been lawfully admitted or paroled and subsequently filed a nonfrivolous application for a change or extension of status before the end of the authorized period of stay (but became an overstay while the application was being adjudicated) and, (2) had not worked without authorization.

If the alien was in the United States unlawfully for one year or more as described at INA 212(a)(9)(B)(i)(II), the inadmissibility period is ten years. The new regulation at 22 CFR 40.92 provides for visa ineligibility under (9)(B)(i) for three years or ten years, as appropriate, and notes the possibility for a waiver under (9)(B)(v) for an immigrant applicant if the Attorney General finds that the refusal of admission would result in extreme hardship to the United States citizen (or lawful permanent resident) spouse or parent of such alien.

INA 212(a)(9)(B) does not contain a provision comparable to that in INA 212(a)(9)(A) for the Attorney General to consent to the alien's reapplying prior to the expiration of the time frames described therein. There are, however, exceptions to the provisions of INA 212(a)(9)(B)(i) for minors, asylees, the beneficiaries of family unity protection, and battered spouses and children who can establish there was a substantial

connection between their status violation and the abuse.

The definition of ''unlawfully present'' under INA 212(a)(9)(B)(ii) includes both remaining in the United States beyond the period of authorized stay and having entered the United States without being admitted or paroled.

22 CFR 40.93—Aliens Unlawfully Present After Previous Immigration Violation

INA subparagraph 212(a)(9)(C)(i)(I) renders inadmissible any alien who has been in the United States unlawfully for an aggregate period of more than 1 year and who subsequently enters or attempts to enter without being admitted (i.e., without lawfully entering after inspection and authorization [see INA 101(a)(13)]). INA 212(a)(9)(C)(i)(II) renders inadmissible any alien who has been ordered removed under INA 235(b)(1), 240, or any other provision of law, and who enters or attempts to enter the United States without being admitted. INA 212(a)(9)(C)(ii) grants an exception to the (otherwise) permanent inadmissibility for an alien who, at least ten years after departure and prior to embarking for the United States, obtains the Attorney General's consent to reapply for admission. A new regulation is established at 22 CFR 40.93 pertaining to aliens removed as a result of unlawful entry (or attempted entry) following such prior immigration violation or removal order.

The amendments to INA 212(a)(6)(A) and (B) and 212(a)(9) described above went into effect on April 1, 1997.

22 CFR 40.104—Unlawful Voters

Section 347 of IIRIRA created a new ground of visa ineligibility (INA 212(a)(10)(D)) for any alien who has voted in violation of any Federal, State or local constitutional provision, statute, ordinance, or regulation. It applies to aliens voting before, on, or after September 30, 1996. The Department is providing new regulations at 22 CFR 40.104 to comport with this addition.

22 CFR 40.105—Former Citizens Who Renounced Citizenship To Avoid Taxation

Section 352(a) of IIRIRA amended the INA to add a new ground of ineligibility at INA 212(a)(10)(E), which renders ineligible for a visa any alien who has been determined by the Attorney General to have renounced United States citizenship to avoid taxation by the United States. This is effective for renunciations on or after September 30, 1996, the effective date of IIRIRA. New regulations are added at 22 CFR 40.105.

Interim rule

This rule modifies 22 CFR, Subchapter E, Subparts B, C, F, G and J, to reflect changes made by Division ''C'' of Pub. L. 104–208, the illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based upon the ''good cause'' exception found at 5 U.S.C. 553(b)(B) and 553(d)(3) because it implements statutory provisions already in effect. Some of the provisions of IIRIRA implemented by this rule became effective on the date of enactment, September 30, 1996. Another became effective on November 30, 1996. Still others became effective on April 1, 1997. Therefore, the provisions of this interim rule were effective on September 30, 1996, except that § 40.67 became effective November 30, 1996 and §§ 40.61, 40.62, 40.91, 40.92, and 40.93 were effective on April 1, 1997, to coincide with the dates mandated by Congress.

Pursuant to § 605(b) of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities because it merely implements statutory requirements already in effect. This rule imposes no reporting or record-keeping action on the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act. This rule has been reviewed as required by E.O. 12988 and is certified to meet the applicable regulatory standards it describes. Although exempted from E.O. 12866, this rule has been reviewed to ensure consistency with it.

List of Subjects in 22 CFR Part 40

Aliens, Immigrants, Immigration, Nonimmigrants, Passports and visas.

In view of the foregoing, 22 CFR is amended as follows:

PART 40—[AMENDED]

1. The authority citation for Part 40 is amended to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 104–208, 110 Stat. 3009; 22 U.S.C. 26512.

2. Section 40.11 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 40.11 Medical grounds of ineligibility.

* * * * *

(b) *Waiver of ineligibility—INA 212(g).* If an immigrant visa applicant is inadmissible under INA 212(a)(1)(A)(i), (ii), or (iii) but is qualified to seek the benefits of INA 212(g)(1)(A) or (B), 212(g)(2)(C), or 212(g)(3), the consular officer shall inform the alien of the procedure for applying to INS for relief under the applicable provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(g), unless the consular officer has been delegated authority by the Attorney General to grant the particular waiver under INA 212(g).

(c) *Waiver authority—INA 212(g)(2)(A) and (B).* The consular officer may waive section 212(a)(1)(A)(ii) visa ineligibility if the alien qualifies for such waiver under the provisions of INA 212(g)(2)(A) or (B).

§ 40.22 Multiple criminal convictions.

3. Section 40.22 is revised by removing paragraph (b) and redesignating paragraphs (c), (d), (e) and (f) as (b), (c), (d) and (e), respectively.

§ 40.52 Unqualified physicians.

4. Section 40.52 is amended by revising ''203(a)(2) or (3)'' to read ''203(b)(2) or (3).''

5. Section 40.61 is revised to read as follows:

§ 40.61 Aliens present without admission or parole.

INA 212(a)(6)(A)(i) does not apply at the time of visa issuance.

6. Section 40.62 is revised to read as follows:

§ 40.62 Failure to attend removal proceedings.

An alien who without reasonable cause failed to attend, or to remain in attendance at, a hearing initiated on or after April 1, 1997, under INA 240 to determine inadmissibility or deportability shall be ineligible for a visa under INA 212(a)(6)(B) for five years following the alien's subsequent departure or removal from the United States.

7. Section 40.66 is revised to read as follows:

§ 40.66 Subject of civil penalty.

(a) *General.* An alien who is the subject of a final order imposing a civil penalty for a violation under INA 274C shall be ineligible for a visa under INA 212(a)(6)(F).

(b) *Waiver of ineligibility.* If an applicant is ineligible under paragraph (a) of this section but appears to the consular officer to meet the prerequisites for seeking the benefits of INA 212(d)(12), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from

INS of the approval of the alien's application under INA 212(d)(12).

8. Section 40.67 is added to read as follows:

§ 40.67 Student visa abusers.

An alien ineligible under the provisions of INA 212(a)(6)(G) shall not be issued a visa unless the alien has complied with the time limitation set forth therein.

9. Section 40.91 is revised to read as follows:

§ 40.91 Certain aliens previously removed.

(a) *5-year bar.* An alien who has been found inadmissible, whether as a result of a summary determination of inadmissibility at the port of entry under INA 235(b)(1) or of a finding of inadmissibility resulting from proceedings under INA 240 initiated upon the alien's arrival in the United States, shall be ineligible for a visa under INA 212(a)(9)(A)(i) for 5 years following removal from the United States if prior to the alien's reembarkation at a place outside the United States that is the alien's first such removal.

(b) *10-year bar.* An alien who has otherwise been removed from the United States under any provision of law, or who departed while an order of removal was in effect, is ineligible for a visa under INA 212(a)(9)(A)(ii) for 10 years following such removal or departure from the United States.

(c) *20-year bar.* An alien who has been removed from the United States two or more times shall be ineligible for a visa under INA 212(a)(9)(A)(i) or INA 212(a)(9)(A)(ii), as appropriate, for 20 years following the most recent such removal or departure.

(d) *Permanent bar.* If an alien who has been removed has also been convicted of an aggravated felony, the alien is permanently ineligible for a visa under INA 212(a)(9)(A)(i) or 212(a)(9)(A)(ii), as appropriate.

(e) *Exceptions.* An alien shall not be ineligible for a visa under INA 212(a)(9)(A)(i) or (ii) if the Attorney General has consented to the alien's application for admission.

10. Section 40.92 is revised to read as follows:

§ 40.92 Aliens unlawfully present.

(a) *3-year bar.* An alien described in INA 212(a)(9)(B)(i)(I) shall be ineligible for a visa for 3 years following departure from the United States.

(b) *10-year bar.* An alien described in INA 212(a)(9)(B)(i)(II) shall be ineligible for a visa for 10 years following departure from the United States.

(c) *Waiver.* If a visa applicant is inadmissible under paragraph (a) or (b) of this section but appears to the consular officer to meet the prerequisites for seeking the benefits of INA 212(a)(9)(B)(v), the alien shall be informed of the procedure for applying to INS for relief under that provision of law.

11. Section 40.93 is revised to read as follows:

§ 40.93 Aliens unlawfully present after previous immigration violation.

An alien described in INA 212(a)(9)(C)(i) is permanently ineligible for a visa unless the Attorney General consents to the alien's application for readmission not less than 10 years following the alien's last departure from the United States. Such application for readmission shall be made prior to the alien's reembarkation at a place outside the United States.

12. Section 40.104 is revised to read as follows:

§ 40.104 Unlawful voters.

An alien who at any time has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance or regulation is ineligible for a visa under INA 212(a)(10)(D).

13. Section 40.105 is revised to read as follows:

§ 40.105 Former citizens who renounced citizenship to avoid taxation.

An alien who is a former citizen of the United States, who on or after September 30, 1996, has officially renounced United States citizenship and who has been determined by the Attorney General to have renounced citizenship to avoid United States taxation, is ineligible for a visa under INA 212(a)(10)(E).

December 10, 1997.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 97–33257 Filed 12–24–97; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 40

[TD 8740]

RIN 1545–AV03

Deposits of Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the availability of the safe harbor deposit rule based on look-back quarter liability and affects persons required to make deposits of excise taxes. This document also contains temporary regulations relating to floor stocks taxes and affects persons liable for those taxes. The regulations implement certain changes made by the Small Business Job Protection Act of 1996 (the 1996 Act) and the Airport and Airway Trust Fund Tax Reinstatement Act of 1997 (the 1997 Act). The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective December 29, 1997. For dates of applicability, see §§ 40.6302(c)–1T and 40.6302(c)–2T.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman (202) 622–3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Excise Tax Procedural Regulations (26 CFR part 40) that implement certain changes made by the 1996 Act and the 1997 Act.

The aviation excise taxes that expired on December 31, 1995, were reinstated by the 1996 Act for the period from August 27 through December 31, 1996, by the 1997 Act for the period from March 7 through September 30, 1997, and were extended, with modifications, for the period from October 1, 1997, through September 30, 2007.

Deposit Safe Harbor Rules

Sections 40.6302(c)–1(c)(2) and 40.6302(c)–2(b)(2) (relating to deposit safe harbors) currently provide, generally, that a person can satisfy excise tax deposit obligations for a calendar quarter by depositing an amount equal to the person's excise tax liability reported on the return for the second preceding quarter (the look-back quarter). For this purpose, the tax liability for the look-back quarter must be modified to take into account any increase in rates in the current quarter, but the safe harbor does not specifically address the effect of the enactment of a new tax or the reinstatement of an expired tax. Notice 97–15, 1997–8 I.R.B. 23, and section 2(f) of the 1997 Act provide that the look-back safe harbor shall not apply with respect to any tax unless the tax was imposed throughout the look-back period.

The temporary regulations modify the look-back safe harbor rules to reflect this