DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 104

[INS No. 1902–98; AG Order No. 2170–98]

RIN 1115–AE99

Verification of Eligibility for Public Benefits

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (''Service'') regulations by establishing a new part requiring certain entities that provide Federal public benefits (with certain exceptions) to verify, by examining alien applicants' evidence of alien registration and by using a Service automated verification system that the applicants are eligible for the benefits under welfare reform legislation. The rule also sets forth procedures by which a State or local government can verify whether an alien applying for a State or local public benefit is a qualified alien, a nonimmigrant, or an alien paroled into the United States for less than 1 year, for purposes of determining whether the alien is eligible for the benefit. In addition, the rule establishes procedures for verifying the U.S. nationality of individuals applying for benefits in a fair and nondiscriminatory manner.

DATES: Written comments must be submitted on or before October 5, 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. 1902–98 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: John E. Nahan, Director, SAVE Branch, Immigration and Naturalization Service, 425 I Street NW., ULLICO Building, 4th Floor, Washington, DC 20536, telephone (202) 514–2317.

SUPPLEMENTARY INFORMATION:

Statutory Authority

Section 432 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (''PRWORA''), Pub. L. 104–193, as amended by section 504 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA''), Pub. L. 104–208, and by section 5572 of the Balanced Budget Act of 1997, Pub. L. 105–33, 8 U.S.C. 1642, requires the Attorney General to promulgate regulations requiring verification that a person applying for a Federal public benefit (subject to certain exceptions) is a qualified alien and is eligible to receive the benefit. The same statutory provision requires the Attorney General to promulgate regulations that set forth the procedures by which a State or local government can verify whether an alien applying for a State or local public benefit is a qualified alien, a nonimmigrant under the Immigration and Nationality Act, 8 U.S.C. 11001 *et seq.* (the ''Act''), or an alien paroled into the United States for less than 1 year, for purposes of determining whether the alien is eligible for the benefit. In addition, 8 U.S.C. 1642(a)(2) requires the Attorney General to establish procedures for a person applying for a Federal public benefit to provide proof of citizenship in a fair and nondiscriminatory manner.

Background

Section 121 of the Immigration Reform and Control Act of 1986 (''IRCA''), Pub. L. 99–603, codified at 42 U.S.C. 1320b–7 and elsewhere, required the Service to offer, and certain agencies determining eligibility for a number of specified Federal public benefits to use, an automated or other system to verify the immigration status of alien applicants. Before the passage of IRCA, the Service had developed and tested through pilot programs an automated verification system entitled Systematic Alien Verification for Entitlements (''SAVE''). In response to IRCA, the Service has further refined and operated SAVE on a large scale for nearly 10 years.

The PRWORA requires further expansion of Service verification programs to all agencies administering Federal public benefits that are affected by PRWORA's new limitations on alien eligibility on a mandatory basis, and to agencies administering affected State and local public benefits on a voluntary basis. To the extent feasible, the regulations implementing PRWORA's verification provision must adopt the SAVE approach. The PRWORA, as amended in August 1997 by the Balanced Budget Act of 1997, Pub. L. 105–33, also required the Attorney General to issue interim guidance for the use of benefit granting agencies. On November 17, 1997, the Attorney General complied with that directive by issuing a Notice entitled *Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, 62 FR 61344 (the ''Interim Guidance'').

Congress directed in 8 U.S.C. 1642 that the Attorney General, by February 22, 1998 and after consultation with the Secretary of Health and Human Services, promulgate regulations requiring verification that a person applying for a Federal public benefit is a qualified alien and is eligible to receive the benefit. The same deadline applies to the establishment of fair and nondiscriminatory procedures for a person to provide proof of citizenship. The statutory deadline for regulations setting forth the procedures by which a State or local government can verify whether an alien applying for a State or local public benefit is eligible under PRWORA was November 3, 1997. Meeting these deadlines was not possible, particularly due to the need for extensive interagency consultation. In order to bring itself into compliance with these obligations, it is necessary for the Service to limit the public comment period for this rule to 60 days.

Analysis of the Rule

The rule is designed to provide effective, flexible, efficient, fair, nondiscriminatory, and user-friendly methods by which government agencies and their contractors, agents, or designees (other than nonprofit charitable organizations) that provide public benefits (''benefit granting agencies'') may carry out their responsibilities to ensure that those benefits are provided only to those persons eligible to receive them under Federal law. As 8 U.S.C. 1642 requires, the verification system is closely based upon the preexisting SAVE program operated by the Service. The rule provides, to the extent possible, procedures for verification of U.S. nationality that are similar to those for verification of alien status, although with some major differences, such as the unavailability of SAVE or any similar automated system for verifying U.S. nationality.

There are four subparts to the rule. Subpart A provides general information and requirements such as applicable definitions, the scope of verification obligations, and the interrelationship of the rule with other statutes and rules governing benefit programs. Subpart B provides for the execution of a written declaration of status by a public benefit applicant, followed by the examination of an alien registration document, or documentary evidence of U.S. nationality, presented by an alien applicant. Once the identity and

registration of an alien applicant are confirmed by examining documentation, a benefit granting agency will verify the applicant's immigration status through the automated SAVE system, as set forth in Subpart C. Benefit granting agencies will rely upon the documentary evidence, or other evidence of U.S. nationality as provided in Subpart B, to verify U.S. nationality, and will not use Subpart C procedures for this purpose. Finally, subpart D provides verification information and procedures for factors relevant to certain aliens' public benefit eligibility under PRWORA, such as veteran status, that do not relate to the aliens' immigration status under the Act and are consequently not verifiable through Service records.

Benefit granting agencies providing Federal public benefits must be in full compliance with the verification requirements within 2 years of promulgation of the rule unless otherwise exempted. Benefit granting agencies providing State or local benefits have the option whether to avail themselves of these verification procedures entirely or in part. The subdivision of the rule into four subparts is designed, in part, to enhance their flexibility in determining which verification methods suit their needs, and to provide appropriate dividing points to avoid potentially unfair or inconsistent verification. This aspect of the rule is discussed further in the following section-by-section discussion of the entire rule. The section-by-section discussion does not exhaustively address every aspect of the rule; rather, it highlights particular issues and points that are likely to be of special interest to benefit granting agencies and the public. Note that as section numbers have been reserved for later use at the end of each subpart, numbering is not consecutive between subparts.

The Service also emphasizes the continued importance and applicability of the Interim Guidance. Although the essential purposes of this rule and the Interim Guidance are the same—to comply with statutory mandates assigned by PRWORA to the Department of Justice and to assist benefit granting agencies in complying with PRWORA—the specific functions of the two documents are quite different. This rule is primarily limited to specific procedures for benefit granting agencies to obtain access to Service or other information that they need in order to carry out their responsibilities under PRWORA. In contrast, the function of the Interim Guidance was to provide to benefit granting agencies with a broader range of relevant information on U.S. citizenship, Service documents, civil rights, appropriate treatment of alien victims of domestic violence, application of PRWORA provisions relating to Federal means-tested public benefits, and other important topics, as well as specific, interim procedures for verification (particularly for agencies that are not participants in SAVE)

For this reason, the Service has not included within this rule some of the information provided in the Interim Guidance—not because the information is irrelevant or unimportant, but because it is not essential to a regulation requiring verification through the SAVE system. For example, the detailed information on Service documents included in the Interim Guidance, designed for use by benefit granting agencies without access to the SAVE system, is not necessary in a rule that relies on the registration document requirement coupled with an automated inquiry to the Service to provide relevant information on an alien applicant's immigration status. However, the Interim Guidance may still be consulted and used as a source of relevant information on the documents with which benefit granting agencies may come into contact. Similarly, the Interim Guidance provides extensive information and guidance on processing applicants who may be victims of domestic violence, while the rule is limited to requirements and means for obtaining relevant Service information. The two documents should be used in tandem—the rule as the applicable legal verification requirement, and the Interim Guidance as a how-to guide on appropriate handling of these applications.

In short, the only parts of the Interim Guidance that should be viewed as superseded and replaced by this rule are those portions of the Interim Guidance that discuss specific verification options or procedures, and any conflict between the Interim Guidance and the rule should be resolved in favor of this rule. For example, upon the effective date of the regulatory verification requirement, a Federal benefit granting agency must not rely solely upon its examination of an alien applicant's documentation, except as may be specifically authorized pursuant to the rule. To the extent the Interim Guidance generally allows a benefit granting agency to rely solely upon its examination of alien documentation, it will no longer be applicable. However, the Interim Guidance remains an important source of valuable information and guidance for benefit granting agencies as a supplement to this rule, particularly during the 2-year period provided for Federal benefit granting agencies to bring themselves into full compliance with the rule, but during which they are not required to use the SAVE system. The Interim Guidance also remains a useful tool for benefit granting agencies administering State or local public benefits, which have the option whether to use the procedures in this rule in whole or in part.

The Service has made the rule as simple and flexible as possible in order to give benefit granting agencies the maximum freedom of action to administer their own programs in a way that is consistent with the statutory mandate to the Department of Justice to promulgate regulations on verification. To the extent possible, the Service has also attempted to promulgate a rule that will not require frequent amendment as benefit eligibility criteria, or technical details of Service or other documentation or of the SAVE system, change over time.

Subpart A—General

Section 104.1 Definitions

In an effort to provide procedures that are as clearly, briefly, and simply drafted as possible, the rule makes substantial use of regulatory definitions. Some of these definitions are discussed further below, where applicable.

Section 104.2 Requirement To Verify Eligibility for Federal Public Benefit

This section implements the statutory directive in 8 U.S.C. 1642 to require verification of eligibility for Federal public benefits. Benefit granting agencies determining eligibility for Federal public benefits must be in full compliance with all four subsections of the rule within 2 years of promulgation unless otherwise exempted. The 2-year time frame for compliance is statutory, but PRWORA specifically refers only to states. In order to provide consistent application of the rule, the rule uses the same 2-year deadline for all Federal public benefit granting agencies, whether or not they are states. Federal agencies that provide Federal public benefits directly are expected to lead the way in implementing this rule by making all reasonable efforts to bring their programs into compliance earlier than the two-year deadline. Nothing prevents any other Federal benefit granting agency, including any state, from coming into compliance sooner than 2 years from promulgation.

This section does not affect any preexisting legal obligation under IRCA or any other statute to verify alien eligibility for certain Federal public

benefits using SAVE. Benefit granting agencies that are required by IRCA to use SAVE must continue to do so. To the extent the rule differs from current SAVE procedures, however, the 2-year time frame for implementation and compliance applies to the new procedures. Although the rule is based on the current SAVE system to the extent possible, there are a number of necessary new features, such as time limits applicable to the submission of SAVE verification requests. The Service will work with current SAVE users to help ensure their smooth and timely implementation of these new aspects of the program.

The PRWORA, and consequently this rule, affect programs previously covered by IRCA's provisions relating to SAVE, but PRWORA did not expressly supersede or repeal IRCA. Those provisions of IRCA that are not inconsistent with PRWORA—such as the requirement that certain programs verify alien eligibility through SAVE—have continued effect. The IRCA provisions that are inconsistent with section 432 or other sections of PRWORA, such as section 121(c)(4)(B) of IRCA's grant of authority to certain secretaries of Federal departments to exempt covered programs from SAVE, are superseded by the later enactment. Existing waivers under authority of section 121(c)(4)(B) must expire no later than the date that is 24 months after promulgation of this rule.

Note that the exception of nonprofit charitable organizations from verification requirements derives from the definition of ''benefit granting agency'' in § 104.1 that excludes such organizations. Section 1642(d) of title 8, United States Code, states that a, nonprofit charitable organization is not required under Title IV of PRWORA to determine, verify, or otherwise require proof of eligibility of any applicant for Federal or State or local public benefits based on the applicant's status as a national of the United States or qualified alien, subject to such verification regulations as the Attorney General may subsequently promulgate. Absent further regulatory action by the Attorney General, nonprofit charitable organizations are therefore not required, under PRWORA and this rule, to verify an applicant's immigration or citizenship status before providing Federal, State, or local public benefits. Moreover, State and local governments may not impose any verification requirements upon nonprofit charitable organizations pursuant to Title IV of PRWORA for Federal, State, or local public benefits.

In addition to their exclusion from the definition of ''benefit granting agency,'' a nonprofit charitable organization (or a benefit granting agency) may be exempt from any verification requirement in many cases for the separate and independent reason that the benefit(s) it provides are ''community programs necessary for protection of life or safety,'' or are otherwise exempt from PRWORA's substantive limitations on alien eligibility.

In addition to who must verify, this section (using § 104.1's definitions) also addresses what benefits are subject to the verification requirement. According to the statutory structure of PRWORA, there are three different levels of possible exemption of a program from mandatory verification. The first is if the program does not provide a Federal public benefit. The definition of ''Federal public benefit'' in § 104.1(i) identifies a number of programs that are not Federal public benefits. This definition is the same as the statutory one at 8 U.S.C. 1611(c), except for the addition of one exception further described in the following paragraph. Second, even if a benefit is a Federal public benefit, it may be one to which PRWORA's limitations on alien eligibility—and therefore the need to verify—do not apply under 8 U.S.C. 1611(b). The rule uses the term ''exempt Federal public benefit'' to refer to such benefits, and defines it in § 104.1. Third, miscellaneous provisions of PRWORA exclude certain programs entirely, such as foreign assistance or a basic public education, without clearly stating whether these programs constitute ''public benefits.'' Section 104.9 identifies these programs.

The Service anticipates that applying the regulatory definition of Federal public benefit at § 104.1 (which parallels the statutory definition) and its exceptions to determine whether or not a benefit granting agency is subject to the verification requirements imposed by this regulation will be a matter of particular interest and (in some cases) difficulty for benefit granting agencies. The Service will give all appropriate deference to benefit granting agencies' applications of the definition to the programs they administer, or to applications provided by another Federal agency that oversees or administers a Federal benefit program even if the Federal agency does not itself determine the eligibility of individual applicants. The statutory and regulatory definition is: ''(1) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; or (2) any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.'' The definition further specifies a number of programs, or types of program, that are not Federal public benefits. Note in particular the exception for ''police, fire, ambulance, transportation (including paratransit), sanitation, or other regular, widely available public services or accommodations.'' This exception, is intended to identify and summarize certain types of government programs that are not ''similar benefit[s]'' under part (2) of the definition, and therefore are not Federal public benefits. The fact that a program is not identified in this exception should not be interpreted to mean that it necessarily is a ''similar benefit'' to the benefits specifically enumerated in part (2) of the definition.

In determining whether a program provides a Federal public benefit, a benefit granting agency should first consider whether the program provides one of the benefits expressly enumerated in either part (1) or (2) of the definition. In all cases, this analysis should be made in light of the specific programs also identified as not being Federal public benefits; if a program is covered by one or more of these exceptions, it is not a Federal public benefit even if it meets the more general definition is enumerated in part (1) or (2). Under part (1), if the program provides a grant, contract, loan, professional license, or commercial license to an individual, either through a Federal agency or with federally appropriated funds, then it provides a Federal public benefit. If the program is not of the type enumerated in part (1), a benefit granting agency should go on to consider whether it provides a benefit covered by part (2).

To fall within part (2), the benefit must be one of the types of benefits described (retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit, or any other similar benefit), it must be provided by a Federal agency or by federally appropriated funds, and it must be provided to one of the enumerated categories of recipients (an individual, household, or family eligibility unit). Thus, for example, if an agency provides an unemployment benefit to an individual using federally appropriated funds, the definition is

satisfied. If the program provides payments or assistance to an individual, household, or family eligibility unit through a Federal agency or with federally appropriated funds, but the benefits are not expressly enumerated above, the agency must consider whether the benefits are ''similar'' to one of the benefits enumerated in part 2 of the definition (b). Benefit granting agencies subject to Federal agency oversight or administration should consult with the appropriate Federal agency.

Benefit granting agencies should also consider who is actually receiving the benefits. Although PRWORA prohibits certain aliens from receiving non-exempted Federal public benefits, it does not prohibit governmental or private entities from receiving Federal public benefits that they might then use to provide assistance to aliens, as long as the benefit ultimately provided to the non-qualified aliens does not itself constitute a Federal public benefit. Thus, if a local agency were to receive a Federal ''grant,'' which is expressly identified as a Federal public benefit, but the agency uses it to provide police services, fire protection, libraries, parks, or other benefits that are not themselves Federal public benefits, the prohibition would not apply. In contrast, if the agency uses the grant to provide a Federal public benefit, such as a loan or welfare payments to an individual, the prohibition would apply and non-qualified aliens would be ineligible for the Federal public benefit.

Benefit granting agencies must keep in mind that, due to PRWORA's statutory structure, there are three lists of programs exempt from verification requirements. One is contained within the regulatory definition of ''Federal public benefit''; programs specifically excepted in the definition there are not Federal public benefits in the first instance. The second list is of programs that—although they are Federal public benefits—are exempt from PRWORA's verification requirements. This list of programs is found in the regulatory definition of ''exempt Federal public benefit.'' Both definitions must be consulted in order to determine whether a benefit is a Federal public benefit for which verification of PRWORA eligibility is required. With respect to the definition of exempt Federal public benefits, note in particular the inclusion of ''a community program necessary for protection of life or safety'' as a program that is not a Federal public benefit subject to verification requirements. A community program necessary for protection of life or safety is itself a term that is defined in the rule. This definition incorporates and promulgates for purposes of the rule the designations made by *Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation*, 61 FR 45985 (Aug. 30, 1996). The third list of exempt programs is found in § 104.9; these are programs that PRWORA does not specifically identify as Federal public benefits (or as not Federal public benefits) but that are excluded from the PRWORA's limitations on alien eligibility.

Some public benefits have more than one funding source. Note that the definition of ''State or local public benefit'' in § 104.1 excludes Federal public benefits, consistent with 8 U.S.C. 1621(c)(3). In other words, a benefit granting agency should first consider whether a benefit is a Federal public benefit. If it is, then § 104.2 applies. A Federal public benefit cannot also be a State or local public benefit. If the benefit is not a Federal public benefit, then the agency should consider whether it is a State or local public benefit. If so, then § 104.3 applies.

In general, this section requires careful application of the defined terms ''benefit granting agency,'' ''Federal public benefit,'' ''exempt Federal public benefit,'' ''applicant,'' and ''eligible qualified alien'' in order to determine conclusively whether verification is required.

Section 104.3 Option To Verify Eligibility for State or Local Public Benefit

The major distinction between this section and § 104.2 (apart from the substitution of defined terms relating to State or local rather than Federal public benefits) is the substitution of ''may'' for ''shall.'' Consistent with the differences between 8 U.S.C. 1642(a)(1) and (a)(3), verification of immigration status for the purpose of State or local public benefits is a service that is available to those benefit granting agencies, rather than a requirement of Federal law. State or local benefit granting agencies may choose, or not, to use the document examination procedures provided by subpart B. If they choose to use those procedures they may rely solely on them, or they may also take advantage of the Service verification procedures provided through the SAVE program as discussed in subpart C. However, because document examination is an integral part of SAVE that both ensures that the information provided to the benefit granting agency by the Service relates to the applicant, and is the means of obtaining and confirming the information necessary to make the automated SAVE inquiry, a State or local benefit granting agency may not use SAVE with respect to a State or local public benefit unless it complies with subpart B for all applicants for the benefit. Similarly, as subpart D is for the most part pointless without a determination of qualified alien status, use of subpart D procedures also requires compliance with subpart B as a precondition.

The PRWORA did not specifically address the establishment of procedures for verifying the U.S. nationality of applicants for State or local public benefits. However, especially in light of 8 U.S.C. § 1625's general authorization to states to require applicants to provide proof of eligibility, there is no reason why the fair and nondiscriminatory procedures established for providers of Federal public benefits should not also be available to providers of State or local public benefits that wish to use them.

The PRWORA's requirements relating to State or local public benefits (such as 8 U.S.C. 1621(a), which limits the eligibility of certain aliens for such benefits) are an exercise of the Federal immigration power. However, PRWORA gives extensive discretion to the states to adapt or modify these requirements to meet their own needs, consistent with its overall focus on giving the states substantial latitude and authority in the area of welfare reform. For example, a state may reinstate the eligibility of aliens not lawfully present in the United States for State and local public benefits for which they are ineligible under PRWORA by enacting a State law to that effect after August 22, 1996. This may result in substantial differences in alien eligibility for State and local public benefits among the several states, and therefore in different verification needs.

Therefore, this rule does not mandate SAVE participation, or any other specific requirements for verification of State or local public benefit eligibility, except that to the extent states choose to take advantage of SAVE they must comply with its requirements. States may establish their own independent verification procedures, which may include imposing verification requirements on persons or entities (other than requirements imposed under PRWORA on nonprofitable charitable organizations) that which provide State or local public benefits.

Section 104.4 Verification in Order T Determine Nature of Benefit

The rule recognizes the fact that certain programs are not Federal or State or local public benefits, or are exempt public benefits, with regard to certain alien applicants—and are therefore not

subject to a verification obligation—for reasons that relate to the applicants' immigration status. A benefit granting agency cannot determine with confidence whether the exception applies if it does not determine that status. Therefore, in order to determine that verification is not necessary, it may be necessary to determine an applicant's immigration status. For example, a ''Federal public benefit'' does not include any contract or license ''for a nonimmigrant whose visa for entry is related to such employment in the United States.'' Obviously, a benefit granting agency cannot determine whether this exception applies to an application for a contract or license without knowing the applicant's immigration status. This section allows the verification procedures to be used to the extent necessary to determine whether a particular program is a benefit subject to a verification requirement. If so, verification of the applicant's eligibility should proceed. If not, further verification should not be conducted regarding the applicant's eligibility under PRWORA once that determination has been made.

Section 104.5 Determination Made by Benefit Granting Agency

The underlying philosophy of the Service's SAVE program has been that the Service provides information relevant to the benefit eligibility determination, but that the responsibility for determining eligibility for the benefit should remain with the benefit granting agency. That philosophy is maintained in this rule. Depending on what type of public benefit they provide, benefit granting agencies are either required to, or have the option to, or in some cases (such as exempt public benefits) may not, verify applicants' eligibility for the benefit under PRWORA. The procedures are designed to ensure that benefit granting agencies obtain the information they need regarding applicants' immigration status, or other factors relevant to eligibility under PRWORA, and that the information is accurate. However, benefit granting agencies are in the best position to apply this information to public benefit eligibility determinations regarding the public benefits they administer. Eligibility under PRWORA is simply one additional set of eligibility criteria for benefit granting agencies to apply, just as they need to determine income levels, residency, age or disability, or any other criteria that may be applicable to public benefits. Just as it is with those criteria, benefit eligibility determination under PRWORA, whether interim or final, is best left to the benefit granting agency.

Of course, benefit granting agencies must apply any other source of legal authority that governs eligibility determinations for their particular program. For example, IRCA's statutory provisions regarding Medicaid, unemployment compensation, and other pre-PRWORA SAVE-mandated Federal benefits generally prohibit benefit granting agencies that determine eligibility for those benefits from delaying, denying, reducing, or terminating benefits pending Service verification. *E.g.*, 42 U.S.C. 1320b–7(d)(4).

Section 104.6 Contesting an Adverse Determination

The general intention of this rule is to modify as little as possible established procedures already in existence for benefit granting agencies to consider claims of erroneous benefit denials. However, the rule does include, in the interest of accuracy and fairness to applicants, certain minimum requirements for public benefit denials based upon information provided by the Service. If a public benefit is denied on the basis of such information, the benefit granting agency must provide adequate written notice to the applicant explaining the basis of the denial, how to contact the Service to seek correction if the applicant believes the information to be erroneous, and (at the discretion of the benefit granting agency) other appropriate information on appeal rights and procedures.

The Service will provide to benefit granting agencies appropriate contact information (an address and/or telephone number) to which applicants may direct inquiries regarding denials of benefits based on Service information. The rule, in the interest of flexibility, does not specify the precise method of contacting the Service when there is a dispute over the accuracy of a Service record a benefit granting agency has relied upon, but that information will be provided through SAVE user manuals or by other means to benefit granting agencies. An applicant choosing to contact the Service in this manner must provide sufficient identifying information to allow the Service to access his or her record, and to contact the benefit granting agency regarding the case. The Service will review the information provided that was the basis of the denial, taking into account any information provided by the applicant regarding possible error by the Service, and will respond to the applicant within 10 business days of receiving the request and supporting information. If the Service determines that information previously provided to the benefit granting agency regarding the applicant was incorrect, the Service will provide corrected information to the benefit granting agency.

This service is intended to assist in quickly and efficiently resolving questions relating to possible error in the information provided to the benefit granting agency about the applicant's present immigration status with the Service (for example, possible delay in updating a Service database with a change of status that has been granted). It is not meant in any way to provide any avenue of application, petition, relief, or appeal with respect to any change of status, removal proceeding, or any other matter relating to any person that has or may in future come before the Service or any other component of the Department of Justice pursuant to the Act and title 8 of the Code of Federal Regulations. In other words, the relevant question for the purpose of this section (and, indeed, for public benefit verification generally) is what the applicant's status is, not what the applicant's status should be.

If the applicant contests the denial in a timely manner through the benefit granting agency's appeal procedures on the grounds that the Service information is incorrect, the benefit granting agency must seek assistance from the Service to resolve the situation. The reference to a claim that Service information is incorrect is meant to exclude from this requirement a situation in which the applicant does not contest his or her status as indicated by Service records, but disputes whether that status makes him or her ineligible for the benefit. In that case, there is no requirement to contact the Service for further assistance. The benefit granting agency must provide to the Service any new information in its possession regarding the claim of error. The Service will respond within 10 business days.

The benefit granting agency may not make a final determination of the appeal until the Service has provided its full response to its request for further information, and shall take into account any correction of Service information to the extent that it is relevant to the applicant's eligibility. Except as specifically provided, this section does not supplant or modify benefit granting agencies' normal procedures, including any requirements, rights, or procedures regarding notice in a language other than English. It is not meant to provide a right of appeal if the benefit granting agency does not grant that right, but to require appeals using benefit granting agencies' procedures that put at issue

the accuracy of Service information to include confirmation of that information. Providing means for an applicant to contact the Service directly does not extend or toll any deadline for filing an agency appeal regarding a benefit denial. This section is not meant to imply in any way that benefit granting agencies may not contact the Service with questions or concerns regarding a verification unless the applicant has filed a formal appeal of a benefit denial.

Section 104.7 Nonexclusivity of Procedures

The rule reiterates (in § 104.20) the provision in section 121(c) of IRCA that verification should be conducted without regard to the sex, color, race, religion, or nationality of the applicant (with the addition of disability). Rights and remedies regarding discrimination and privacy with respect to governmental programs already exist and are enforced with regard to public benefits under a multitude of other laws. Section 104.7 emphasizes that nothing in the rule is meant to interfere with those rights and remedies. Similarly, the rule does not displace any other provisions of law or policy relating to the provision of public benefits, including any requirements or procedures for verification of eligibility, except that the rule preempts any directly inconsistent Federal regulation or policy or provision of State law. As stated in 8 U.S.C. 1643, PRWORA (and therefore this rule) does not create any entitlement to any public benefit; nor does it affect the application of any eligibility criterion under law other than alienage.

Section 104.8 Enforcement

There are no specific enforcement procedures for this rule. This does not mean, however, that failure to comply will not have negative consequences for a benefit granting agency. For example, pursuant to the general authority of the Attorney General to enforce Federal law, the United States could when necessary and propriate seek equitable relief in a district court to enforce compliance with PRWORA and this rule by a benefit granting agency. A benefit granting agency could potentially also be subject to enforcement procedures or other consequences of noncompliance as provided by a Federal agency administering a Federal public benefit program.

Section 104.9 Inapplicability to Certain Programs

Various sections of PRWORA exclude certain programs from the statutory limitations on alien eligibility without specifying whether the programs are, or are not Federal, State, or local ''public benefits.'' 8 U.S.C. 1615(a), 1643. Rather than attempt unnecessarily to answer that question for the purpose of placing these programs into either § 104.1's list of programs that by definition are not ''Federal public benefits,'' or § 104.1's list of ''exempt Federal public benefits'' (or the equivalent definitions for State or local public benefits), the Service has instead placed those programs in this section. No PRWORA verification requirement applies to them, regardless whether they are Federal, State, or local public benefits. The exemption of ''a basic public education'' from the rule is intended to implement, with regard to verification obligations, the statutory directive in 8 U.S.C. 1643(a)(2) that nothing in PRWORA ''may be construed as addressing alien eligibility for a basic public education as determined by the Supreme Court of the United States under *Plyler* v. *Doe*, (457 U.S. 202) (1982).'' Benefit granting agencies that need to determine whether a Federal program related to education constitutes a ''Federal public benefit'' should obtain guidance from the U.S. Department of Education for its programs, or from another Federal agency administering an education program with respect to such program.

Section 104.10 Verification Requirement for Certain Nutrition Programs

Section 840 of PRWORA, 7 U.S.C. 2020(p), amended the Food Stamp Act of 1977 to release state agencies from IRCA's preexisting requirement that they use the SAVE system to verify alien eligibility for Food Stamps. This section of the rule reconciles section 840 with the statutory verification requirement by stating that benefit granting agencies providing Food Stamps are not required to use Subpart C procedures, although they may do so. They are, however, subject to those other subparts of the rule that do not pertain to the SAVE system.

The PRWORA also gave states the option whether to provide the nutrition benefits identified in 8 U.S.C. 1615(b) to individuals other than nationals of the United States or qualified aliens. For this reason, the rule treats these Federal programs in the same manner as State or local public benefits. Benefit granting agencies providing these benefits may, but are not required to, use the verification procedures to the extent that U.S. nationality or qualified alien status is relevant to an eligibility determination in any state. Treatment of these programs in the same manner as State or local public benefits is not meant in any way to suggest that they are State or local public benefits rather than Federal public benefits, but only that because of their special situation under PRWORA the rules pertaining to the former rather than the latter best suit them.

Subpart B—Declaration of Applicant and Examination of Documents

Section 104.20 Scope of Verification Obligation

A benefit granting agency's responsibility and authority to verify eligibility under this rule is limited to verification that is relevant to eligibility for the public benefit under PRWORA. Under PRWORA (with certain limited exceptions), U.S. nationality or eligible qualified alien status is relevant to Federal public benefit eligibility unless and until some other ground of ineligibility exists. This section gives benefit granting agencies maximum flexibility with regard to verifying eligibility under PRWORA as compared to determining other eligibility criteria, as long as that flexibility is exercised in a nondiscriminatory manner. For example, a benefit granting agency may choose to verify whether all applicants for a Federal disability benefit are nationals of the United States or eligible qualified aliens before undertaking the potentially more burdensome and intrusive determinations as to disability, or it may choose to determine whether the applicants meet specific program requirements before verifying U.S. nationality or alien status, but the agency may not vary its procedures depending on whether the applicant looks or sounds foreign, or on other improper criteria. Benefit granting agencies must verify PRWORA eligibility without regard to sex, color, race, religion, national origin (except to the extent Cuban, Haitian, or Canadian nationality may be relevant in certain cases as specifically provided by PRWORA and this rule, *see* §§ 104.1 (definitions of ''Cuban and Haitian entrant'' and ''qualified alien''), 104.62), or disability.

Section 104.21 Written Declaration of Applicant

The first step in verification is requiring a written declaration under penalty of law stating whether the applicant is a national of the United States. The rule provides for declarations on behalf of minors and legally incompetent adults. As any person who is not a national of the United States is an alien, this section does not require a declaration as to alien

status. If the applicant does not declare that he or she is a national of the United States, his or her eligibility as an alien must be verified. This section does not preclude additional requests for declarations or information relating to alien status, such as a declaration of eligible qualified alien status, to the extent they may be relevant to determining eligibility (*see* § 104.276)—indeed, they may be necessary in many cases—but they are not a general requirement applicable to all applicants for all public benefits subject to PRWORA verification.

The possible legal consequences of a false declaration as to U.S. nationality may vary depending on the benefit, but are uniformly serious. Section 1015(e) of title 18 of the United States Code punishes as a felony any knowing false statement that one is a citizen or a national of the United States with the intent to obtain any Federal or State benefit or service. In addition, with respect to Federal public benefits, 18 U.S.C. 1001 provides that it is a felony to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of any branch of the Federal Government. State laws may provide penalties for false declarations with respect to State or local public benefits. There also may be civil consequences to a false declaration. Sections 212(a)(6)(C) and 237(a)(3)(D) of the Act render any alien who has made any false claim to U.S. citizenship for any purpose or benefit under Federal or State law removable from the United States. Civil penalties may also apply to false statements relating to particular benefits. *See, e.g.,* 42 U.S.C. 1320a–8 (Social Security benefits).

Because of the different specific provisions that may apply to false statements relating to different public benefits, and to give maximum flexibility to benefit granting agencies, the rule does not prescribe specific wording for the declaration. The declaration form should reasonably convey to the applicant the fact that serious legal consequences—whether criminal, civil, or both—may result from a false declaration. The rule does not require that a declaration be made under penalty of perjury, although benefit granting agencies may include that feature in the declaration if desired.

The rule uses the term ''national of the United States'' rather than ''U.S. citizen'' because ''national of the United States'' is a term specifically defined in the Act as ''(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.'' 8 U.S.C. 1101(a)(22). Category (B), noncitizen U.S. nationals, is at the present time essentially limited to American Samoans. All terms defined in 8 U.S.C. 1101 have that meaning in this rule, by operation of 8 CFR 1.1(a). The Service does not construe 8 U.S.C. § 1642(a)(2)'s reference to ''proof of citizenship'' as reflecting any legislative intention to distinguish between U.S. citizens and noncitizen U.S. nationals in terms of either substantive benefit eligibility or verification requirements. However, the documents or other evidence of nationality available to U.S. citizens are not necessarily the same as those available to noncitizen U.S. nationals, and these differences are reflected in the substance of the rule when appropriate.

The statutory definition is the simplest and most inclusive to use in the rule. To do otherwise (for example, to state ''citizen or noncitizen U.S. national'' each time a reference is needed) would be more cumbersome, and would not be consistent with the statutory definition already provided for use in Service regulations. The Service is aware that this statutory definition, however, may in some cases contribute to confusion. The distinction between U.S. citizens and noncitizen U.S. nationals is not well known among the public. Among those to whom it is known, the term ''national'' tends to be used to refer to noncitizen nationals, rather than in the statutorily correct sense of including both citizens and noncitizen nationals. For this reason, the Service is explaining its terminology at some length. As noted above, the Service has not specified in this rule the exact format of the written declaration. Benefit granting agencies should use the format that in the exercise of their best discretion suits their forms and conveys to their particular clientele the matter at issue: a declaration as to U.S. nationality. The declaration may do this in a manner that uses acceptable common parlance and understanding rather than the strict definitional structure of the Act used in the rule. For example, the Service's Form I–9, Employment Eligibility Verification, uses the phrase ''I attest under penalty of perjury, that I am a citizen or national of the United States.''

Section 104.22 Evidence of Alien Registration

A necessary step in a verification system is the presentation of documentary evidence that the applicant is who he or she claims to be. Section 262 of the Act requires every alien 14 years of age or older who remains in the United States for 30 days or longer to apply for registration with the Service. Most aliens (with certain exceptions, notably Canadian visitors for short-term business or pleasure) are in fact registered upon their entry into the United States and issued a registration document (such as a Service Form I–94 Arrival-Departure Record) at that time. Section 264(e) of the Act requires any alien over 18 who has been issued an alien registration document to carry it in his or her personal possession at all times. Service regulations at 8 CFR 264.1(b) identify registration documents.

This rule uses these preexisting requirements as the basic foundation of subpart B. As all aliens likely to be applying for public benefits (other than minors under the age of 14) are subject to the registration requirement or will have been registered upon entry into the United States, they will have registration documents for presentation and examination. If they do not, they must contact the Service to register and obtain them. The rule makes allowances for temporary acceptance of receipts for applications for evidence of registration pending issuance of Service documentation in such cases (format of receipts may vary among Service offices). Benefit granting agencies may waive the document requirement for applicants under the age of 14 who are not already registered with the Service.

In most cases, the most recent evidence of alien registration will indicate an alien's immigration status under the Act, which in turn often will relate on its face directly to whether or not the alien is a qualified alien under PRWORA (for example, a valid Form I–551 Alien Registration Receipt Card or Permanent Resident Card, commonly referred to as a ''green card,'' demonstrates status as an alien lawfully admitted for permanent residence). This is not true in all cases, however. Relevant PRWORA criteria for purposes of determining qualified alien status are not necessarily directly linked to an alien's present status under the Act. This is particularly true of aliens who have been battered or subjected to extreme cruelty in the United States, and of Cuban and or Haitian entrants. As discussed in the Interim Guidance, sometimes Service codes found on Service documents will provide the necessary further information, and sometimes they will not. The availability of routine Service verification of immigration status through SAVE will substantially reduce the need for benefit granting agencies to become experts in construing the complexities of Service documentation,

although benefit granting agencies are of course encouraged to learn as much as they can about this subject and to continue to consult the Interim Guidance for this purpose.

For these reasons, the rule does not require an alien applicant to produce documentation that on its face shows the alien is an eligible qualified alien, because the applicant will not always have it. Rather, alien applicants need only present the evidence of alien registration that they already are legally required to have on their persons. This procedure will provide the basic initial information that the alien applicant is known to the Service, will provide the information necessary to make a further verification inquiry to the Service, and (in conjunction with § section 104.24) will link the applicant to the status information the Service will provide through SAVE. The further verification procedures will establish whether or not the applicant is an eligible qualified alien.

Section 104.23 Evidence of U.S. Nationality

This section implements the statutory requirement that the Attorney General establish fair and nondiscriminatory procedures for applicants to provide proof of citizenship. This requirement presents particular challenges that do not apply to alien status verification. Unlike aliens, there is no central registry of information on nationals of the United States. There is no requirement that nationals of the United States register with the Service or carry any document. Many nationals of the United States have not traveled outside North America, and therefore have never needed to obtain the standard internationally accepted evidence of U.S. nationality, a U.S. passport. The records of the Service contain relevant information only on those nationals of the United States who have had some reason to come within its jurisdiction, such as naturalizing or seeking a determination as to derivative citizenship. The SAVE system is not suitable for verifying U.S. nationality. Although the Service in cooperation with the Social Security Administration (''SSA'') is testing on a pilot program basis an automated method of verifying the work eligibility of both nationals of the United States and aliens through SSA and/or Service records, no system is available at this time (or is likely to be available anytime soon) for broad-based automated verification of claims to U.S. nationality by applicants for public benefits.

Therefore, the rule's procedures for verifying U.S. nationality rely on the examination of documents. And, since the Act's provisions regarding nationality are complex and the variety of documents that applicants may possess or be able to obtain is large, the Service has attempted to provide as comprehensive a list as possible. The list is closely based on the one provided in the Interim Guidance. It is not meant to exclude any reasonable evidence of U.S. nationality. Section 104.23(b)(6) is a ''catch-all'' category intended to cover such reasonable documentary evidence if it is not specified elsewhere in the section. A benefit granting agency should first ask for a document identified as primary evidence of U.S. nationality. If the applicant does not have primary evidence, the benefit granting agency should examine secondary evidence.

Paragraphs (c), (d), and (e) of section 104.23 provide other options for a benefit granting agency to use at its discretion. It may consult its own records containing information on nationality, or those of a Federal agency administering a public benefit program. A benefit granting agency may, accept a declaration under penalty of law from a third party indicating a reasonable basis for personal knowledge that an applicant who cannot present evidence of U.S. nationality is a national of the United States. A benefit granting agency may accept a receipt for an application for evidence of U.S. nationality (but may not accept receipts for a Service N–400, Application for Naturalization, or a Service N–600, Application for Certificate of Citizenship) on a temporary basis pending presentation of the actual documentary evidence.

The procedures provided by this section meet the statutory requirement that they be fair and nondiscriminatory because (1) they must be applied equitably and consistently to all applicants for a Federal public benefit who claim U.S. nationality; (2) they provide the broadest possible latitude in terms of the scope of possible documentary evidence that may be presented; and (3) they give the broadest discretion possible to benefit granting agencies to administer their programs in a manner that is consistent with establishing a generally applicable procedure for verifying U.S. nationality. To the extent the rule permits waivers or variations in procedures to accommodate agencies' particular needs, they must be applied equitably to all applicants for the benefit (see, for example, §§ sections 104.23(d), (e),and 104.28). In addition, of course, the general requirements of § section 104.20, or of other applicable law, relating to nondiscrimination apply to verification of U.S. nationality as much as to verification of alien status.

Section 104.24 Proof of Identity

As some alien registration documents or evidence of U.S. nationality do not contain a photograph or sufficient identifying information ensuring that the document relates to the applicant, this section requires the benefit granting agency to examine an additional identification document in those cases. The rule adopts the broad definition of identification document found at 18 U.S.C. § 1028(d)(1).

Section 104.25 Standard for Accepting Documents

The rule adopts the standard for document acceptance of section 274A of the Act (employer sanctions). This section also provides direction to benefit granting agencies on what to do when applicants present documents that do not meet that standard. This direction may initially appear more complicated than it really is. It is driven by two fundamental principles. First, automated verification procedures such as SAVE cannot effectively verify identity—that is, that the applicant is who he or she claims to be. Only the benefit granting agency can do that. If an applicant assumes the identity of another alien, a ''verification'' of the applicant's eligibility through SAVE may merely reinforce the false claim. Furthermore, the ''verification,'' by leading to the provision of public benefits to a false claimant, could potentially negatively affect the alien whose identity has been misappropriated. Therefore, the rule prohibits any further verification through SAVE until the benefit granting agency has received documentation that reasonably appears to relate to the applicant.

The second principle is that automated Service verification procedures such as SAVE are designed to reduce the need for benefit granting agencies to make judgment calls about the authenticity of Service-issued evidence of alien registration. False Service documents should be detected through the additional verification process. For this reason, this section distinguishes between the two prongs of the document acceptance standard. As opposed to documentation that does not reasonably relate to the applicant, documentation that does relate to the applicant but does not reasonably appear to be genuine should not be rejected, but instead subjected to further verification. The Service may provide special verification procedures in such

cases, however, as authorized by § 104.47.

A complication is presented by the fact that some benefit granting agencies providing State or local public benefits might use the subpart B document examination procedures, but not the subpart C SAVE procedures. Those agencies will need to verify the authenticity of a document that does not reasonably appear to be genuine by seeking available assistance from the Service or other issuer of the document (or from another qualified source, such as a forensic document laboratory). The same principle applies to documentary evidence of U.S. nationality that does not reasonably appear to be genuine.

This section refers to ''documentation'' provided in compliance with sections §§ 104.22–24, rather than ''any document,'' to accommodate the fact that evidence of alien registration that does not adequately identify the applicant already requires presentation of an additional document under § 104.24. Therefore, the ''documentation'' referred to in this section means the entire package submitted, whether it is one document evidencing both alien registration and identity, or an alien registration document with an additional identification document.

Whether a document reasonably appears to be genuine and to relate to the person presenting it is a case-by-case determination that depends on all the relevant facts. Benefit granting agencies should keep in mind, however, that documentation should not be rejected solely on the basis of a minor discrepancy from other information provided, as long as there is a reasonable explanation for the discrepancy. These situations may include, for example, photographs taken several years earlier that may no longer be a precise likeness, documents showing a maiden name or a minor misspelling, or documentation reflecting culturally diverse naming practices (for instance, there may be differences with Hispanic and some Asian names in terms of which names are considered the ''last,'' ''middle,'' and ''first'').

Section 104.26 Retention of Information

Benefit granting agencies must retain photocopies of documents submitted by the applicant for as long as they may be relevant and necessary for purposes of public benefit eligibility determination, or retain the relevant information in an accessible electronic alternative to a paper file.

Certificates of naturalization and citizenship state on their face: ''It is punishable by U.S. law to copy, print or photograph this certificate.'' This statement derives from 18 U.S.C. 1426(h), which provides a criminal penalty for anyone who ''without lawful authority, prints, photographs, makes or executes any print or impression in the likeness of a certificate of arrival, declaration of intention to become a citizen, or certificate of naturalization or citizenship, or any part thereof.'' This proposed rule provides lawful authority for a benefit granting agency to photocopy, as provided by § 104.26, any document presented by an applicant pursuant to the rule, including certificates of citizenship or naturalization. The making and retention of photocopies by a benefit granting agency or original documentation presented for verification by an applicant serves the goals of PRWORA, and is not the evil to which section 1426(h) is directed. The lawful authority is expressly limited to that situation and to that means of copying the document, and the photocopy may be used only for verification purposes as provided by this rule.

Section 104.27 Other Relevant Information

A wide array of information regarding an alien applicant may be relevant to determining eligibility for a public benefit under PRWORA. This information will not in all cases be found by examining evidence of alien registration, which does not necessarily relate directly to qualified alien status. It is impossible to specify in a rule of general application what information will be relevant to each case. It is the responsibility of the benefit granting agency to determine what additional information it requires from the applicant in order to verify eligibility, and to obtain it. The Interim Guidance provides substantial guidance that benefit granting agencies may consult in making these determinations, and the Service will assist agencies to the extent possible.

Section 104.28 Reliance Upon Attestation as Temporary Evidence of U.S. Nationality

The rule allows a benefit granting agency to rely on an applicant's attestation of U.S. nationality as an interim basis upon which to grant a public benefit temporarily until an applicant is able to present evidence satisfying §§ 104.23 and 104.24. A benefit granting agency that chooses to use this procedure must apply it equitably to all applicants for the public benefit.

Section 104.29 Reliance Upon Alternative Procedures for Determining U.S. Nationality

The Service recognizes that many Federal public benefit granting agencies already have regulations in place governing their verification of U.S. nationality. This rule is intended to provide flexibility to benefit granting agencies and avoid disruption. Benefit granting agencies may continue to use existing Federal regulations that are fair and nondiscriminatory instead of this part upon request to, and approval by, the Attorney General. Such requests should be made in writing to the Service by the Federal agency that promulgated the regulations. In the interest of uniformity and to avoid piecemeal review, the request must be made by the promulgating Federal agency rather than by state agencies or other Federal benefit granting agencies that are subject to Federal regulations but are not themselves the promulgating Federal agency. Consideration of requests to use alternative regulatory procedures will include review by the Civil Rights Division of the Department of Justice as to whether the procedures are fair and nondiscriminatory. If a Federal agency requests to continue to use its existing regulatory procedures for verifying U.S. nationality, nothing in this section shall be construed to affect their continued validity, unless the Attorney General declines the request in writing and provides reasons for the denial.

Section 104.30 Eligibility of Household

Some benefit granting agencies receive applications or determine eligibility on the basis of a household. This section gives such agencies the option to permit an adult member of a household to execute the written declaration on behalf of other members of the household, as long as the option is equitably applied to all applicants in a nondiscriminatory manner. (Note that § 104.21 generally requires a qualified adult to execute the declaration on behalf of an unemancipated minor or an incompetent adult with respect to any public benefit; § 104.30 allows an agency to accept a declaration by one adult member of a household on behalf of any other adult or minor in the household.) In order to eliminate the necessity of all members of the household having to visit the benefit agency's office to show documentation, this section allows an adult member of a household to present the documentation pertaining to other members of the household. As § 104.24's requirement of additional

identity documentation under certain circumstances is pointless if the applicant is not present in person, this section may be waived. However, no person may present alien registration documentation on behalf of an alien 18 years of age or over. This is because section 264(e) of the Act does not permit an adult alien to separate himself or herself from his or her alien registration documentation.

Subpart C—Systematic Alien Verification for Entitlements (SAVE)

Section 104.40 SAVE System

In this section the Service undertakes to provide SAVE (as defined in Section 104.1) for the use of public benefit granting agencies. Agencies providing Federal public benefits must begin using SAVE within 2 years of promulgation of the rule, as required by Section 104.2. Agencies providing State or local public benefits may enroll in SAVE at any time, as provided by Section 104.3.

Section 104.41 When To Use SAVE

Benefit granting agencies may not use SAVE to verify an applicant's status until they have completed the document examination procedures provided in subpart B. Agencies that use SAVE must complete the SAVE process before making a final determination as to benefit eligibility under PRWORA, but they may make an interim or temporary determination pending completion.

Section 104.42 Enrollment

This section informs benefit granting agencies how to enroll in SAVE.

Section 104.43 Costs

SAVE users must pay for the verification services they receive.

Section 104.44 Limitation of Access to SAVE

The requirement to use SAVE or the option to enroll in it, does not create an entitlement to it. This section contains necessary protections and authority to protect the integrity of Service records and ensure that the Service is not required to offer SAVE to those who abuse it. The Service will exercise its authority to limit SAVE access only for good cause, but that decision will be made in the exercise of the Service's discretion and is unreviewable. Limitation of SAVE services at the discretion of the Service for good cause does not excuse a benefit granting agency from any obligation to verify the eligibility of applicants.

Section 104.45 Primary Verification

The initial SAVE inquiry is an automated query to the Service's Alien Status Verification Index (''ASVI'') data base. The benefit granting agency must make this inquiry within 3 days after completing the subpart B document examination procedures, unless an alternative verification or application time is provided by law. The general principle of SAVE is that all alien applicants will be verified through the automated system. However, a benefit granting agency does not need to make a verification inquiry if the evidence of alien registration presented by the applicant indicates on its face a status that renders the alien ineligible for the public benefit (for example, a Form I–94, Arrival-Departure Record, indicating entry as a B–1 or B–2 visitor presented to a benefit granting agency determining eligibility for a Federal public benefit), and the applicant does not contest that designation of status or claim to be eligible on some other basis under PRWORA (for example, ''battered alien'' or Native American tribal member). In case of any doubt as to status, of course, verification should proceed, but a benefit granting agency is not required to query the automated system with respect to an application that is incontestably frivolous.

The Service has 3 days in which to respond to a primary inquiry via the automated system with information on the immigration status of the applicant or an instruction to perform secondary verification, but normally the response takes only a few seconds. An instruction to perform secondary verification is not an indication that the applicant is not an eligible qualified alien or is someone other than who he or she claims to be. There are many legitimate reasons why a query regarding an eligible qualified alien may result in a referral to secondary verification.

Section 104.46 Secondary Verification

If the primary verification inquiry does not result in a verification, the benefit granting agency must make a secondary verification inquiry within 5 days of completing primary verification, unless an alternative verification or processing time is provided by law. Secondary verification may, depending on the circumstances, be either a second automated inquiry or the submission of a written request for information. Unlike primary verification, however, which is a direct query to an automated data base, secondary verification inquiries go to a Service status verifier who performs the necessary investigation of Service records. The Service will respond with additional information, normally within 10 business days, although in some cases more time may be required.

Section 104.47 Direct Resort to Secondary Verification

The rule permits flexibility in using primary and secondary verification, with the express prior approval of the Service, for either individual cases or for particular classes of applicants for public benefits. Installation and use of the primary verification system may not be cost-effective for very small-scale users. In individual cases of suspected document fraud, direct resort to secondary verification may be more appropriate. In certain cases, primary verification may not provide useful information. A specific example is victims of domestic violence, whose eligibility under PRWORA cannot be determined through primary verification at the present time. As discussed in the next section, direct resort to secondary verification is necessary in all ''battered alien'' cases.

Section 104.48 Victims of Domestic Violence

Eligibility as a ''battered alien'' under section 431(c) of PRWORA, 8 U.S.C. 1641(c), unlike other categories of qualified alien, does not directly relate to the applicant's status under the Act. As can be seen from Exhibit B to Attachment 5 of the Interim Guidance, 62 FR at 61366, verification of eligibility as a victim of domestic violence is a particularly complex task. At present, ASVI does not contain this information. Therefore, the rule provides specific and distinct verification procedures whenever a benefit granting agency needs to verify whether an applicant is a qualified alien by virtue of 8 U.S.C. 1641(c).

First, the rule modifies section 104.22's document requirements by allowing benefit granting agencies to examine, in lieu of or in addition to evidence of alien registration, other documentary evidence relating to whether the applicant has an approved or prima facie petition. In other words, the benefit granting agency should request both the evidence of alien registration and the additional evidence relating to the petition, but the verification may proceed if only the latter is produced. Section 104.24 regarding additional evidence of identity in certain cases applies to these applicants, but is modified to allow reasonable secondary evidence of identity, such as an additional document other than an identification document or a third-party attestation, to be presented by ''battered alien'' applicants.

Rather than conduct a primary verification inquiry through the SAVE

system, a benefit granting agency shall proceed, after completing the modified Subpart B procedures, directly to secondary verification procedures that require contacting either an appropriate immigration court or the Service's Vermont Service Center by facsimile. The Interim Guidance provides more detailed information, including the addresses of immigration courts and sample verification request forms, than it is possible to provide in a regulation.

Verification of status as provided by this rule relates to only one of the four elements required to establish that an applicant is a qualified alien under 8 U.S.C. 1641(c). In addition to verifying that the applicant has an approved or prima facie petition under one of several sections of the Act, the benefit granting agency must determine whether the applicant has satisfied three requirements: battery or extreme cruelty; substantial connection between the abuse and the need for benefits; and non-residence with the abuser. Subsection (e) recognizes that the benefit granting agency must also make these determinations, but does not mandate specific legal requirements for methods of doing so. Rather, it directs agencies to consider the guidance promulgated by the Attorney General pursuant to 8 U.S.C. 1641(c)'s statutory directive to do so. Exhibit B to Attachment 5 of the Interim Guidance provides, among other things, guidance concerning the meaning of the terms ''battery'' and ''extreme cruelty.'' The Notice entitled *Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits*, 62 FR 65285 (Dec. 11, 1997), also provides statutorily mandated guidance from the Attorney General relating to victims of domestic violence.

Section 104.49 Unauthorized Uses of SAVE

Use of SAVE for the purpose of verifying the information recorded on the Form I–9, Employment Eligibility Verification, by an employer and a newly hired employee in compliance with section 274A of the Act is prohibited. The SAVE system is not designed to verify an alien's work authorization under the Act, and different legal requirements pertain to employment eligibility verification than to public benefit eligibility verification. Employers interested in joining an employment verification pilot program may contact the Service's SAVE Branch. More information on available employment verification pilot programs, including an election form, is found in the Service's Notice entitled *Pilot Programs for Employment Eligibility Confirmation*, 62 FR 48309 (Sept. 15, 1997).

Note that the prohibition on using SAVE for employment eligibility verification does not apply to public benefit eligibility verification that may relate to an alien's employment, but that is not employment eligibility verification by or on behalf of an employer for section 274A purposes. An example is a professional license provided by a benefit granting agency that qualifies as a Federal or as a State or local public benefit; although the license may be a necessary prerequisite to obtaining certain employment, verifying an applicant's eligibility for the license under PRWORA is not employment eligibility verification, and the benefit granting agency may use SAVE for that purpose.

Section 104.50 Training

It is the responsibility of the Service to provide, and of the benefit granting agency to take full advantage of, sufficient training materials regarding the proper use of SAVE. Proper training is an essential element of an accurate and nondiscriminatory verification system. Appropriate training materials may, depending on the circumstances and the availability of resources, include manuals or other written materials, videotapes, or in-person training sessions. Content may vary depending on the particular needs of the benefit granting agency, but typically would include why verification is necessary, step-by-step guidance in SAVE procedures, the scope of and limitations on SAVE verification, antidiscrimination protections, and standards for accepting documentation.

Section 104.51 Use of Information by the Service

Section 121(c)(1) of IRCA stated that the system to be established by the Service for the verification of immigration status (SAVE) ''shall not be used by the Immigration and Naturalization Service for administrative (non-criminal) immigration enforcement purposes.'' Absent any amendment or repeal of this provision, and in order to comply with 8 U.S.C. 1642(a)'s directive to model the verification regulations on the preexisting SAVE system, the rule maintains this limitation. In other words, the Service will not use SAVE for the purpose of identifying, locating, and removing removable aliens. However, the system may be used for any other law enforcement or other appropriate purpose, including criminal law enforcement.

The limitation on use of the system for administrative enforcement applies to the information received by the Service from benefit granting agencies regarding aliens, not to the Service systems of records such as ASVI from which SAVE draws its verification information with which to respond to benefit granting agencies. Authorized use of Service record systems for proper purposes, such as the removal of unauthorized aliens, is unaffected by this limitation. In addition, this regulatory limitation on use of information does not waive any civil or criminal consequence of a false representation that may apply to any person. Nor does it affect any duty placed by Federal law on any Federal, State, or local entity to report to the Service aliens who are known to be present in the United States in violation of the Act, but those reports shall be made by means other than SAVE.

Section 104.52 Evaluation of SAVE

Benefit granting agencies that participate in SAVE must cooperate with evaluations of the program to ensure its continued accuracy and fairness by providing assistance and information necessary for that purpose.

Subpart D—Verification Requiring Non-Service Information

A benefit granting agency's determination whether an applicant is an eligible qualified alien may require information that is not contained in the records of the Service. This subpart provides verification procedures for those cases.

Section 104.60 Veteran and Active Duty Exception

Under 8 U.S.C. 1611, aliens who are not qualified aliens are not eligible for Federal public benefits. Under 8 U.S.C. § 1612(a)(1) and other sections of PRWORA, qualified aliens are not eligible for certain Federal public benefits, except as specifically provided. A similar (but not identical) statutory structure applies to State and local public benefits. The PRWORA specifically provides for the public benefit eligibility of certain qualified aliens, not otherwise eligible for the benefit, by virtue of past or present U.S. military service. This section provides procedures, in addition to the procedures normally applicable under this rule for verifying qualified alien status, for verifying whether the veteran and active duty exception applies to an applicant. The information in this section was provided by the Department

of Defense and was previously published in Exhibit B of Attachment 6 to the Interim Guidance.

Section 104.61 Credited Quarters of Qualifying Work

Certain aliens lawfully admitted for permanent residence, who are not otherwise eligible for certain public benefits, may be eligible qualified aliens by virtue of their work history in the United States. As discussed in Exhibit A to Attachment 6 to the Interim Guidance, the Social Security Administration (''SSA'') is the primary source of work history information and SSA has developed an automated system to assist in meeting the difficult challenge of verifying this criterion. This section does not attempt to provide specific procedures, but requires or authorizes (depending on whether the benefit is Federal) benefit granting agencies to use such means of verification as are available through SSA.

Section 104.62 Section 289 Exception

Section 289 of the Act allows certain American Indians born in Canada to enter the United States freely. Section 5303 of the Balanced Budget Act of 1997, Pub. L. 105–33, and section 505 of the Agricultural Research, Extension, and Education Reform Act of 1998 (''AREERA''), Pub. L. 105–185, signed into law by President Clinton on June 23, 1998, exempts those Indians from PRWORA's limitations on alien eligibility for certain Federal public benefits (Supplemental Security Income (''SSI''), Food Stamps, and Medicaid). 8 U.S.C. 1612(a)(2)(G)(i), (b)(2)(E). Section 104.62 of the rule provides verification methods for determining whether this exception applies to an alien applicant. Since section 289 aliens do not have to be qualified aliens for this exception to apply, and since they may or may not carry evidence of alien registration, the document examination requirements are somewhat different. If Service documentation is presented, it should be verified using SAVE, to the same extent the benefit granting agency uses SAVE for other applicants. Note that this section applies only to alien applicants for Federal public benefits to which section 289 status is relevant. If the application is for any other public benefit, whether an alien applicant is a section 289 Indian is irrelevant. The eligibility for any public benefit under PRWORA of an applicant attesting to U.S. nationality should be verified as provided in Subpart B.

Section 104.63 Members of Indian Tribes

A similar exception to the section 289 exception applies to members of federally recognized Indian tribes. Since qualified alien status is irrelevant to this exception, there is no need to examine or verify alien registration documentation. Instead, proof of tribal membership is the qualifying factor, and documentary evidence of that membership should be examined. . A list of Indian tribes, and a list of tribal government contacts, may be obtained upon request to the Office of Tribal Justice within the Department of Justice.

Note that as with the section 289 exception, the special procedures relating to Indians apply only to alien applicants for the Federal public benefits (SSI, Food Stamps, and Medicaid) to which Indian status is relevant to determining eligibility under PRWORA. If the application is for a different benefit, eligibility under PRWORA should be verified using normal procedures applicable to other alien applicants. The eligibility for any public benefit under PRWORA of an applicant attesting to U.S. nationality should be verified as provided in Subpart B.

Section 104.64 Lawful Residence

Eligibility for certain Federal public benefits requires lawful residence in the United States, either at the time of application or at some earlier date. For example, PRWORA's limitation of qualified alien eligibility for Food Stamp or SSI benefits, 8 U.S.C. 1612(a)(1), does not apply to blind or disabled qualified aliens who were lawfully residing in the United States on August 22, 1996, and who (for Food Stamp eligibility) are receiving benefits or assistance for disability as defined by the Food Stamp Act of 1977, 7 U.S.C. 2012(r). As amended effective November 1, 1998, by AREERA, PRWORA does not render ineligible for Food Stamps qualified aliens who were lawfully residing in the United States on August 22, 1996, and were 65 years of age or older, or qualified aliens who are children under 18 years of age and were lawfully residing in the United States on August 22, 1996. In addition, Hmong or Highland Laotians are eligible for Food Stamps; they must be lawfully residing in the United States, but do not need to be qualified aliens.

Although qualified aliens who are residing in the United States (with the exception of some aliens who are qualified aliens by virtue of being victims of domestic violence) are by virtue of their qualified alien status lawfully residing, the universe of qualified aliens does not include all aliens who may be lawful residents. Furthermore, the different dates that apply to PRWORA eligibility reduce the potential applicability of a qualified alien determination to lawful residence; for example, an alien could be lawfully residing but not a qualified alien on August 22, 1996, and could have adjusted status since then to a qualified alien status. Nor are all aliens who are lawfully present in the United States necessarily residing here (B–1/B–2 visitors, for example).

For this reason, § 104.1 defines an alien ''lawfully residing in the United States'' for verification purposes as an alien who on the date in question is lawfully present (also defined in § 104.1 by incorporating § 103.12) and who maintains his or her residence in the United States. Section 101(a)(33) of the Act, as incorporated in this rule by 8 CFR 1.1(a), provides the applicable definition of ''residence': ''the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact.''

Section 104.64 explains how to verify lawful residence when it is necessary to do so. The normal procedures for qualified alien status through attestation, document review, and SAVE inquiry will apply. Although qualified alien status and lawful residence are not the same, of course, they are close enough that for the purposes of efficient verification the rule does not require additional proof of lawful residence if the benefit granting agency verifies that the applicant is a qualified alien on the date when he or she also must be lawfully residing. The exception is victims of domestic violence; because that situation is not directly related to immigration status, an applicant who is a qualified alien as verified through the § 104.48 procedures, and not by reason of immigration status, must separately show lawful residence if lawful residence is a criterion of eligibility under PRWORA.

In some cases, eligibility may depend upon a determination of lawful residence that differs from the qualified alien determination (that is, if the alien applicant is a qualified alien by virtue of ''battered alien'' status, the applicant is a qualified alien as of the date of application but must have been lawfully residing on August 22, 1996 or some other relevant date, or the applicant is not a qualified alien but may still be eligible if he or she lawfully resides in the United States (for example, a Hmong or Highland Laotian applicant for Food Stamps who is not a qualified alien)). In such cases, the benefit granting agency

must verify lawful residence by (1) verifying lawful presence as of the relevant date through the normal alien verification process including, if necessary, additional inquiry to the Service; and (2) verifying residence as of the relevant date. The proposed rule cross-references and incorporates the list of acceptable evidence establishing proof of residence developed for the purpose of determining Temporary Protected Status and set forth at 8 CFR 244.9(a)(2). Note that, unlike Temporary Protected Status, the evidence of residence should show residence on the relevant date; the applicant does not need to demonstrate ''continuous residence.''

Section 104.65 Hmong or Highland Laotians

Section 508 of AREERA reestablishes (effective November 1, 1998) the eligibility of Hmong or Highland Laotians, and individuals with a qualifying familial relationship with a Hmong or Highland Laotian, for Food Stamps to the extent PRWORA had rendered any such individuals ineligible. This rule defines Hmong or Highland Laotian consistent with section 508 in § 104.1 and provides a verification procedure in § 104.65 for Food Stamp applicants claiming eligibility on this basis (U.S. citizens of Hmong or Highland Laotian ethnic origin should be verified in the same manner as any other U.S. citizen applicant). Note, however, that the definition of Hmong or Highland Laotian includes U.S. citizen Hmong or Highland Laotians, which could be relevant in the case of an alien applicant claiming eligibility by virtue of a familial relationship with a Hmong or Highland Laotian who is not himself or herself the applicant.

As alien Hmong or Highland Laotians do not have immigration statuses unique to them, providing a workable and efficient verification method is difficult. Section 104.65 is something of a ''place-holder'' that gives benefit granting agencies the flexibility and discretion to use what means they determine are reasonably calculated to verify that the applicant is a Hmong or Highland Laotian. If possible, the Service will provide additional guidance to benefit providers based on its further review of this category. Similarly, the rule leaves verification of qualifying familial relationships to the best discretion of the benefit granting agency.

This section reflects two statutory interpretations of AREERA that the Service has made for verification purposes after consultation with the U.S. Department of Agriculture. The first is that the benefit granting agency does not have to verify that a Hmong or Highland Laotian, or a qualifying family member, is a qualified alien. In light of section 509 of AREERA's amendment of 8 U.S.C. 1613(d) to provide that 8 U.S.C. 1611(a) does not apply to Hmong and Highland Laotian Food Stamp applicants, this rule does not require verification that the Hmong or Highland Laotian is a qualified alien (although a Hmong or Highland Laotian applicant must lawfully reside in the United States).

Second, section 508 of AREERA's extension of eligibility to the unremarried surviving spouse of ''such an individual who is deceased'' (*i.e.*, a Hmong or Highland Laotian individual) presents a complication because of the statutory criterion that the individual be ''lawfully residing in the United States.'' Obviously, deceased individuals cannot be said to be residing in the United States, whether lawfully or not. The question is whether the individual had to have been lawfully residing in the United States at any time before his or her death. In light of the remedial intention of AREERA, the Service has interpreted the statute for verification purposes not to require any such determination, and this interpretation is reflected in the second sentence of section 104.1's definition of Hmong or Highland Laotian. Section 104.65 requires the benefit granting agency to determine the existence of a qualifying familial relationship with a living or deceased Hmong or Highland Laotian, but it does not require a family member applicant claiming derivative eligibility for Food Stamps through a Hmong or Highland Laotian to show that the family member applicant is lawfully residing in the United States or is a qualified alien (of course, all non-PWORA Food Stamp eligibility criteria applicable to residence, income, or other factors continue to apply).

Regulatory Flexibility Act

The Attorney General has reviewed this rule in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. State or local public benefit granting agencies, including any that may be small entities, have the option not to use these verification procedures if they consider them to be economically burdensome. Economically significant Federal public benefits are normally administered by Federal or State government agencies, which are not small entities. Nonprofit charitable institutions are exempted from verification requirements under this rule. By providing effective means of detecting and deterring false claims to public benefits, the rule is designed to provide economic benefits to benefit granting agencies. No significant economic impact on a substantial number of small entities caused by any verification requirement relating to Federal public benefits has been identified.

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. In its analysis of intergovernmental mandates resulting from PRWORA, the Congressional Budget Office (''CBO'') questioned whether PRWORA's verification requirements are mandates at all, given the broad flexibility afforded states to offset any additional costs of verification. In any case, CBO stated that the estimated direct total cost of PRWORA's mandates is less than $50 million. H.R. Rep. No. 104–651, reprinted in 1996 U.S.C.C.A.N. 2183, 2598–99.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2). It is not possible at this time to quantify the annual economic effect of the rule with specificity. However, the Attorney General has no reasonable basis at this time to find that it is likely to result in an annual effect on the economy of $100 million or more. The rule will not result in major increases in costs or prices, or cause significant adverse economic effects as defined by 804(2).

Executive Order 12866 Regulatory Planning and Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), The Principles of Regulation. The Department of Justice has determined that this rule is a ''[s]ignificant regulatory action'' under Executive Order 12866, § 3(f). Accordingly, this rule has been reviewed by the Office of Management and Budget (''OMB'').

Executive Order 12612 Federalism

This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The rule will benefit the states by providing them with means of protecting their treasuries from the burden of providing public benefits to aliens who are not eligible to receive them. The burdens on the states under this rule are the requirements (a) to use the verification procedures provided to determine eligibility for Federal public benefits, including enrollment in the SAVE program, beginning no later than the date that is 24 months after the date of promulgation, and (b) if they choose to verify eligibility under Federal law for State and local public benefits, to do so using the verification procedures provided, either entirely or in part. These requirements simply incorporate and apply PRWORA's substantive statutory limitations on alien public benefit eligibility, which are an exercise of the authority to regulate immigration reserved exclusively to the Federal Government. In addition, states that determine eligibility for a number of major Federal public benefits, such as Food Stamps and Aid to Families with Dependent Children (now TANF), are already participants in, and familiar with the SAVE program under the verification obligations applicable to those programs under IRCA since 1986. The rule has been drafted so as to give the states the maximum flexibility of action consistent with the requirements of Federal law.

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act of 1995

The provisions contained in this rulemaking will have an information collection burden on the public. Specifically, §§ 104.2, 104.3, 104.4, 104.6, 104.10, 104.20, 104.21, 104.22, 104.23, 104.24, 104.26, 104.27, 104.30, 104.41, 104.45, 104.46, 104.47, 104.48, 104.52, 104.60, 104.61, 104.62, 104.63, 104.64, and 104.65 potentially impose a paperwork burden on benefit granting agencies. The Department of Justice is assuming a 1-hour reporting burden associated with this rule because the implementation of the information collections, as appropriate, under this rulemaking will be the responsibility of the benefit granting agency. Affected entities are provided the opportunity to submit to the Service comments that relate to any information collections that may result from the requirements and guidance contained in this rulemaking. Any information collections resulting from this rulemaking are subject to review by OMB under the Paperwork Reduction Act of 1995.

Accordingly, the agency solicits public comments on any information collection requirements in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Immigration and Naturalization Service.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Service has submitted a copy of this proposed rule to OMB for its review of the information collection requirements.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Service on the proposed regulation.

List of Subjects in 8 CFR Part 104

Administrative practice and procedure, Aliens, Disability benefits, Food assistance programs, Education, Grant programs, Housing, Immigration, Indians, Intergovernmental relations, Loan programs, Public assistance programs, Social security, Veterans.

Accordingly, part 104 of chapter I of title 8 of the Code of Federal Regulations is proposed to be added as follows:

PART 104—VERIFICATION OF ELIGIBILITY FOR PUBLIC BENEFITS

Subpart A—General

Subpart B—Declaration of applicant and examination of documents

Subpart C—Systematic Alien Verification for Entitlements (SAVE)

Subpart D—Verification requiring non-Service information

Authority: 8 U.S.C. 1103; 8 U.S.C. 1642.

Subpart A—General

§ 104.1 Definitions.

As used in this part, the term:

Amerasian immigrant means an alien who has been lawfully admitted for permanent residence pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in Pub. L. 100–202, as amended.

(1) This provision authorizes the lawful admission for permanent residence of a resident of Vietnam as of December 22, 1987 who establishes to the satisfaction of the Service that he or she is admissible under the Act as provided by section 584(a)(2), and that he or she:

(i) Was born in Vietnam after January 1, 1962, and before January 1, 1976, and was fathered by a citizen of the United States (this alien is referred to as the ''principal alien'');

(ii) Is the spouse or child of a principal alien who accompanies, or follows to join, the principal alien; or

(iii) Is the natural mother of a principal alien (or the spouse or child of such mother), or has acted in effect as the principal alien's mother, father, or next-of-kin (or is the spouse or child of such an alien), and is accompanying, or following to join, the principal alien, has a bona fide relationship with the principal alien similar to that which exists between close family members, and whose admission is necessary for humanitarian purposes or to assure family unity.

(2) As an alien lawfully admitted for permanent residence under the Act, an Amerasian immigrant from Vietnam is a qualified alien.

Applicant means any individual applying to receive or to continue to receive a public benefit, or and any individual subject to a reverification of eligibility for a public benefit that is required by applicable law or policy pertaining to the public benefit. The applicant to be verified is the individual who will receive the public benefit should the application be granted. A person applying for a public benefit on behalf of another, representing an individual seeking a public benefit, or seeking to facilitate an individual's application is not an applicant unless that person is seeking a public benefit for himself or herself.

ASVI means the Service system of records named the Alien Status Verification Index (Justice/INS–009).

Benefit granting agency means any Federal, State, or local government agency, or its contractor, agent, grantee, or designee (other than a nonprofit charitable organization), that provides the eligibility of applicants for any public benefit.

Community program necessary for protection of life or safety. (1) This term means a public benefit comprising a program, service, or assistance that:

(i) Delivers in-kind services at the community level, including through public or private nonprofit agencies;

(ii) Does not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(iii) Is necessary for the protection of life or safety.

(2) The term includes all public benefits, including but not limited to the following as long as they meet requirements in paragraphs (1)(i), (ii), and (iii) of this definition: crisis counseling and intervention programs, services, and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity, or treatment of mental illness or substance abuse; short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children; programs, services, or assistance to help individuals during periods of heat, cold, or other adverse weather conditions; soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance; medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability, or substance abuse assistance; and activities designed to protect the life and safety of workers, children and youths, or community residents.

Cuban and Haitian entrant means:

(1) Any alien who has ever been granted parole status as a Cuban/Haitian entrant (Status Pending) or who has ever been granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the status of the alien at the time the alien is an applicant; or

(2) Any alien who is a national of Cuba or Haiti and

(i) Was paroled into the United States and has not acquired any other status under the Act;

(ii) Is the subject of removal proceedings under the Act or has an application for asylum pending with the Service; and

(iii) With respect to whom a final order of removal has not been entered.

Eligible qualified alien means a qualified alien who is not ineligible under 8 U.S.C. section 1601 *et seq.*, for the public benefit sought.

Exempt Federal public benefit means the following Federal public benefits:

(1) Assistance for health care items and services that are necessary for the treatment of an emergency medical condition and are not related to an organ transplant procedure;

(2) Short-term, non-cash, in-kind emergency disaster relief;

(3) Public health assistance (not including any assistance under title XIX of the Social Security Act, 42 U.S.C. section 1396 *et seq.*), for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases (whether or not such symptoms are caused by a communicable disease);

(4) A community program necessary for protection of life or safety;

(5) Medical assistance under title XIX of the Social Security Act, 42 U.S.C. section 1396b(v)(3), or any successor program to such title, for care and services that are necessary for the treatment of an emergency medical condition (as defined in 42 U.S.C. section 1396b(v)(3)) of the alien involved and that are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the State plan approved under such title (other than the requirement of the receipt of aid or assistance under title IV of the Social Security Act, 42 U.S.C. section 601 *et seq.*, supplemental security income benefits under title XVI of the Social Security Act, 42 U.S.C. section 1381 *et seq.*, or a State supplementary payment);

(6) Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under title V of the Housing Act of 1949, 42 U.S.C. section 1471 *et seq.*, or any assistance under section 306C of the Consolidated Farm and Rural Development Act, 7 U.S.C. section 1926C, to the extent the alien was receiving such a benefit on August 22, 1996;

(7) Any benefit payable under Title II of the Social Security Act, 42 U.S.C. section 401 *et seq.*, to which entitlement is based on an application filed on or before November 30, 1996, or that is payable to an alien who is lawfully present in the United States;

(8) Any benefit the nonpayment of which would contravene an international agreement described in section 233 of the Social Security Act, 42 U.S.C. section 433 (an agreement

establishing totalization arrangements between the social security system of the United States and that of any foreign country that establishes entitlement to and the amount of old-age, survivors, disability, or derivative benefits based on an individual's coverage under both systems);

(9) Any benefit the nonpayment of which would be contrary to section 202 of the Social Security Act, 42 U.S.C. section 402(t);

(10) Any benefit payable under title XVIII of the Social Security Act (relating to the Medicare program) to an alien who is lawfully present in the United States, provided that with respect to any benefit payable under part A of such title, that the alien was authorized to be employed with respect to any wages attributable to employment that which are counted for purposes of eligibility for such benefits; or

(11) Any benefit payable under the Railroad Retirement Act of 1974 or the Railroad Unemployment Insurance Act to an alien who is lawfully present or to an alien residing outside the United States.

Exempt State or local public benefit means any State or local public benefit constituting:

(1) Assistance for health care items and services that are necessary for the treatment of an emergency medical condition and are not related to an organ transplant procedure;

(2) Short-term, non-cash, in-kind emergency disaster relief;

(3) Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases (whether or not such symptoms are caused by a communicable disease);

(4) A community program necessary for protection of life or safety; or

(5) Any benefit for which an alien who is not lawfully present in the United States is eligible through the enactment of a State law after August 22, 1996, affirmatively providing for such eligibility.

Federal public benefit. (1) This term means:

(i) Any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; or

(ii) Any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

(2) The term does not include:

(i) Any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or for a citizen of a freely associated state (the Republic of Palau, the Federated States of Micronesia, and or the Republic of the Marshall Islands) if section 141 of the applicable compact of free association approved in Public Laws 99–239 or 99–99–658 (or a successor provision) is in effect;

(ii) Any benefit for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Act qualified for such benefit and to whom the United States under a reciprocal treaty agreement is required to pay the benefit; or

(iii) Police, fire, ambulance, transportation (including paratransit), sanitation, or other regular, widely available public services or accommodations.

Hmong or Highland Laotian means any individual who is lawfully residing in the United States, and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era (as defined by 38 U.S.C. 101). A deceased Hmong or Highland Laotian is any deceased individual who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era (as defined by 38 U.S.C. 101).

Identification document means a document made or issued by or under the authority of the United States Government, a state, political subdivision of a state, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization that which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

Indian tribe means a federally recognized Indian tribe, band, nation, or other organized group or community, as defined by 25 U.S.C. 450b(e).

Lawfully present in the United States has the meaning provided by § 103.12 of this chapter.

Lawfully residing in the United States means lawfully present in the United States with residence in the United States.

Nonprofit charitable organization means an organization that is organized and operated:

(1) For purposes other than making gains or profits for the organization, its members or shareholders, and is precluded from distributing any gains or profits to its members, or shareholders; and

(2) For charitable purposes, including relief of the poor and distressed or of the underprivileged, advancement of religion, or advancement of education.

Primary verification means automated access by a benefit granting agency to ASVI for the purpose of verifying an alien applicant's immigration status to determine eligibility for a public benefit.

Public benefit means either a Federal public benefit or a State or local public benefit.

Qualified alien means an alien who, at the time the alien applies for, receives, or attempts to receive a public benefit, is:

(1) An alien lawfully admitted for permanent residence under the Act;

(2) An alien granted asylum under section 208 of the Act;

(3) A refugee admitted to the United States under section 207 of the Act;

(4) An alien paroled into the United States under section 212(d)(5) of the Act for a period of at least 1 year;

(5) An alien whose deportation is being withheld under section 243(h) of the Act as in effect prior to April 1, 1997, or whose removal is being withheld under section 241(b)(3) of the Act;

(6) An alien granted conditional entry under section 203(a)(7) of the Act as in effect prior to April 1, 1980;

(7) An alien who is a Cuban and Haitian entrant; or

(8) An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

SAVE means the Service's Systematic Alien Verification for Entitlements program. SAVE is an intergovernmental information-sharing initiative designed to aid a benefit granting agency in determining an alien applicant's immigration status. SAVE includes primary verification and secondary verification. SAVE may be offered by the Service to users, other than those required or authorized to use SAVE by this part, to the extent the Service is authorized or required to do so by other applicable law.

Secondary verification means verification services offered by the Service as part of SAVE, other than

primary verification. Secondary verification is performed after primary verification, if the information received by the benefit granting agency through primary verification is insufficient for it to determine that an alien applicant is eligible for a public benefit. As authorized by the Service pursuant to § 104.47 of this part, in some cases secondary verification may be performed without prior completion of primary verification. Secondary verification may include either automated queries to the Service that do not involve direct access by the benefit granting agency to ASVI, or the submission to the Service of written requests for information that may be accompanied by copies of relevant documents presented by the applicant.

State or local public benefit.

(1) This term means:

(i) Any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; or

(ii) Any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

(2) The term does not include:

(i) Any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or for a citizen of a freely associated state (the Republic of Palau, the Federated States of Micronesia, or the Republic of the Marshall Islands) if section 141 of the applicable compact of free association approved in Public Laws 99–239 or 99–658 (or a successor provision) is in effect;

(ii) Any benefit for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Act qualified for such benefit and to whom the State or local government is required to pay the benefit under a reciprocal treaty agreement of the United States;

(iii) Any Federal public benefit; or

(iv) Police, fire, ambulance, transportation (including paratransit), sanitation, or other regular, widely available public services or accommodations.

§ 104.2 Requirement to verify eligibility for Federal public benefit.

Except as otherwise specifically provided by this part 104.10, a benefit granting agency providing a Federal public benefit (other than an exempt Federal public benefit) shall verify that an applicant in the United States is a national of the United State or eligible qualified alien, using the procedures provided in subparts B, C, and D beginning no later than the date that is 24 months after the date of promulgation of this part. A Federal agency providing a Federal public benefit shall make all reasonable efforts to comply with this part beginning on the earliest possible date prior to the 24-month deadline.

§ 104.3 Option to verify eligibility for State or local public benefit.

A benefit granting agency determining eligibility for a State or local public benefit, other than an exempt State or local public benefit, may verify using the procedures provided in subpart B that an applicant in the United States is a national of the United States, an eligible qualified alien, or is a nonimmigrant or an alien paroled into the United States under section 212(d)(5) of the Act for less than 1 year who is eligible to receive the State or local public benefit. A benefit granting agency that uses the procedures provided in subpart B for all alien applicants for a State or local public benefit may use the verification procedures provided in subpart C for all alien applicants for that benefit, and may use the procedures provided in subpart D to the extent they are necessary to determine the eligibility of any alien applicant.

§ 104.4 Verification in order to determine nature of benefit.

A benefit granting agency may use the procedures provided in subpart B to determine whether, as regards an applicant, a benefit is a public benefit, or whether a public benefit is an exempt Federal public benefit or an exempt State or local public benefit, to the extent those determinations depend upon the status of the applicant. A benefit granting agency that uses the procedures provided in subpart B to make such a determination regarding an applicant may use the verification procedures provided in subpart C for that applicant.

§ 104.5 Determination made by benefit granting agency.

All determinations as to eligibility of an applicant for a public benefit, whether interim or final, shall be made by the benefit granting agency. The role of the Service in determining the eligibility of the applicant for the public benefit shall be limited to providing relevant information from the records of the Service to the benefit granting agency for its use in determining eligibility.

§ 104.6 Contesting an adverse determination.

(a) *Written notice of denial.* If a benefit granting agency denies a public benefit to an applicant on the basis of information provided by the Service under this part, the benefit granting agency shall provide written notice to the applicant. The notice shall inform the applicant that the denial was based upon the applicant's immigration status and shall provide information to the applicant on how to contact the Service to provide additional oral or written information if the applicant believes the information provided by the Service to be erroneous. The notice shall also include sufficient information regarding the benefit granting agency and the benefit at issue, including a contact address and telephone number, to enable the applicant to fulfill the requirement of paragraph (b) of this section regarding notification to the Service of the identity of the benefit granting agency and of the public benefit denied. The notice shall also provide information on rights and procedures regarding appeal of the denial through the benefit granting agency to the extent the benefit granting agency deems appropriate pursuant to applicable law governing the public benefit at issue.

(b) *Response to applicant queries.* The Service shall provide a telephone number or other appropriate means by which an applicant may contact the Service with questions regarding a denial of benefits based upon Service information. If the applicant contacts the Service, the applicant must inform the Service of the identity of the benefit granting agency and of the public benefit denied, provide sufficient identifying information (including name, date of birth, and alien registration number (if applicable)) to enable the Service to contact the benefit granting agency regarding the applicant's case, and may provide other oral or written information that the applicant believes relevant to verification of the applicant's present immigration status according to Service records. Upon request of an applicant who has been denied a public benefit based upon information provided by the Service, the Service will review the accuracy of the information provided to the benefit granting agency and will respond to the applicant within 10 business days after receiving the request and any supporting information supplied by the applicant with either

the result of the review or, if more time is needed to research the case, a message to that effect including, if possible, an estimate of the time needed to complete the review. If the Service determines that information previously provided to the benefit granting agency regarding the applicant was erroneous, the Service shall provide corrected information.

(c) *Service role in agency review.* If the applicant contests in a timely manner a denial of a public benefit on the ground that Service information relied on by the benefit granting agency is erroneous, using appeal procedures provided by the benefit granting agency, the benefit granting agency shall contact the Service and provide to the Service any information provided by the applicant or otherwise known to the benefit granting agency that is relevant to the claim of Service error. The Service will review the information provided to the benefit granting agency regarding an applicant and will respond to the benefit granting agency within 10 business days after receiving the contact and any relevant additional information with either the result of the review or, if more time is needed to research the case, a message to that effect including, if possible, an estimate of the time needed to complete the review. The benefit granting agency shall not make a final determination as to the applicant's appeal until it has received the response of the Service. Upon receipt of information from the Service indicating that Service information previously relied upon was erroneous, the benefit granting agency shall take into account the correction to the extent it is relevant to the applicant's eligibility for the benefit.

(d) *Nonexclusivity of procedures.* Nothing in this section shall be construed to deny, abridge, limit, or adversely affect any right to notice and hearing regarding a denial of a public benefit that may be provided under applicable law by a benefit granting agency, or, except as specifically provided herein, otherwise to amend or modify any rights, remedies, procedures, or time limits applicable to review, reconsideration, or appeal of a benefit granting agency's denial of a public benefit, including but not limited to any procedures regarding notice in a language other than English. Nothing in this section shall be construed to deny, abridge, limit, or otherwise adversely affect the right of any benefit granting agency or any person at any time to contact the Service to seek information or assistance regarding Service documents or any other matter within the jurisdiction of the Service, or the ability of the Service to respond to such requests as may be authorized or required under applicable law by providing available information or assistance.

§ 104.7 Nonexclusivity of procedures.

Nothing in this part shall be construed to deny, abridge, limit, or adversely affect any right or privilege of any person under the Constitution or laws of the United States or of any State, including but not limited to any right under the Privacy Act, 5 U.S.C. § 552a, or the Freedom of Information Act, 5 U.S.C. § 552, or any right not to be discriminated against on the basis of race, color, national origin, sex, religion, age, or disability. This part is intended to provide minimum requirements for verifying eligibility for public benefits under 8 U.S.C. 1601 *et seq.* It is not intended to supplant any provision of law or policy regarding eligibility for or the administration of any public benefit, including any provision for additional or supplemental procedures for the verification of eligibility, except that to the extent any Federal regulation or policy, or any provision of State law is directly inconsistent with this part, this part shall control. This part implements verification requirements relating to limitations on alien eligibility for public benefits, and exceptions to those limitations. Nothing in this part shall be construed as an entitlement or a determination of an applicant's eligibility or fulfillment of the requisite requirements for any public benefit (for example, age, residence, disability, income).

§ 104.8 Enforcement.

This part provides no specific penalties for any failure by a benefit granting agency to comply with its provisions. Nothing in this part, however, shall be construed to deny or limit any right of:

(a) The Attorney General to enforce 8 U.S.C. 1601 *et seq.* and this part by means of a civil action;

(b) Any person to take any action otherwise authorized by law against any benefit granting agency;

(c) The Service to report to an appropriate Federal or State governmental body any failure of a benefit granting agency to comply with this part; or

(d) The Service to limit or deny verification services to a benefit granting agency pursuant to § 104.44.

§ 104.9 Inapplicability to certain programs.

The requirements of this part do not apply to the following programs:

(a) Any program of foreign assistance;

(b) A basic public education;

(c) Benefits provided under the school lunch program under the National School Lunch Act, 42 U.S.C. 1751 *et seq.*, or the school breakfast program under section 4 of the Child Nutrition Act of 1966, 42 U.S.C. 1773, to any individual who is eligible to receive free public education benefits under stateState or local law;

(d) Wages, pensions, annuities, and other earned payments to which an alien is entitled resulting from employment by, or on behalf of, a Federal, State, or local government agency that was not prohibited under the Act during the period of such employment or service, provided that the alien is not residing or present in the United States; or

(e) Benefits provided to an alien under laws administered by the Secretary of Veterans Affairs, provided that the alien is not residing or present in the United States.

§ 104.10 Verification requirement for certain nutrition programs.

A benefit granting agency providing Food Stamps shall comply with § 104.2 of this subpart, except that the benefit granting agency shall not be required to use the procedures provided in subpart C. A benefit granting agency providing any public benefit identified in 8 U.S.C. § 1615(b)(2) shall comply with § 104.3 rather than § 104.2.

§§ 104.11–104.19 [Reserved].

Subpart B—Declaration of applicant and examination of documents.

§ 104.20 Scope of verification obligation.

A benefit granting agency may verify whether an applicant for a public benefit is a national of the United States, an eligible qualified alien, a nonimmigrant, or an alien paroled into the United States under section 212(d)(5) of the Act for less than one 1 year only to the extent that determination is relevant to the applicant's eligibility for the public benefit. Determining whether an applicant for a Federal public benefit, other than an exempted Federal public benefit, is a national of the United States or an eligible qualified alien is relevant to the applicant's eligibility for the Federal public benefit (except as specifically provided by this part) unless and until the benefit granting agency determines that the applicant is ineligible for the Federal public benefit for some other reason. In determining eligibility for a public benefit, the benefit granting agency may use its own discretion as to the sequence or timing of verification under this part, as

compared to other steps in determining eligibility, so as to minimize the burden on the agency and the applicant, as long as the discretion is exercised in a nondiscriminatory manner. A benefit granting agency shall verify an applicant's eligibility for a public benefit under this part without regard to the sex, color, race, religion, national origin (except to the extent specifically authorized by Sections 104.1 or 104.62), or disability of the applicant.

§ 104.21 Written declaration of applicant.

A benefit granting agency shall require from an applicant for a public benefit (other than an exempted Federal public benefit or an exempted State or local public benefit) a declaration in writing, under penalty of law, stating whether the applicant is a national of the United States. If the applicant is an unemancipated minor under 18 years of age or an adult who is not competent to execute the declaration, the written declaration as to the applicant's nationality shall be executed by a parent, legal guardian, or other person legally qualified to act on behalf of the applicant.

§ 104.22 Evidence of alien registration.

Except as specifically provided by this part, an applicant who has not attested to being a U.S. national of the United States must present to the benefit granting agency the applicant's most recent evidence of alien registration issued by the Service, as listed in Section 264.1(b) of this chapter. An applicant over the age of 14 who has not registered with the Service, or any applicant whose evidence of registration has been lost, mutilated, or destroyed, must contact the Service for the purpose of immediately applying for new evidence of registration pursuant to Section 264.1(c) of this chapter. In that case, the benefit granting agency may accept as temporary evidence of alien registration a Service receipt indicating an application for evidence of registration, as long as the benefit granting agency requires the alien to present the actual evidence of registration when it is received from the Service. In the case of an applicant under the age of 14 who has not registered with the Service, the benefit granting agency may waive the requirement to present evidence of alien registration.

§ 104.23 Evidence of U.S. nationality.

Except as specifically provided by this part, a benefit granting agency may not make a final determination that an applicant who has attested to being a national of the United States is a national of the United States until the applicant has presented to the benefit granting agency acceptable evidence of U.S. nationality. This section must be applied equitably and in a nondiscriminatory manner to all applicants. Evidence of U.S. nationality that satisfies the requirement of this section includes the following:

(a) *Primary evidence:*

(1) A birth certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, or the Northern Mariana Islands (on or after November 4, 1986, Northern Mariana Islands local time) (unless the applicant was born to foreign diplomats residing in such a jurisdiction);

(2) United States passport;

(3) Report of birth abroad of a U.S. citizen (FS–240) (issued by the Department of State to U.S. citizens);

(4) Certificate of Birth (FS–545) (issued by a foreign service post) or Certification of Report of Birth (DS–1350), copies of which are available from the Department of State;

(5) Form N–550 or N–570, Certificate of Naturalization (issued by the Service through a Federal or State court, or through administrative naturalization after December 1990 to individuals who are individually naturalized; the N–570 is a replacement certificate issued when the N–550 has been lost or mutilated or the individual's name has changed);

(6) Form N–560 or N–561, Certificate of Citizenship (issued by the Service to individuals who derive U.S. citizenship through a parent; the N–561 is a replacement certificate issued when the N–560 has been lost or mutilated or the individual's name has changed);

(7) Form I–197, United States Citizen Identification Card (issued by the Service until April 7, 1983 to U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings) (formerly Form I–179, last issued in February 1974);

(8) Form I–873 (or prior versions), Northern Marianas Card (issued by the Service to a collectively naturalized U.S. citizen who was born in the Northern Mariana Islands before November 3, 1986);

(9) Statement provided by a U.S. consular official certifying that the individual is a U.S. citizen (given to an individual born outside the United States who derives citizenship through a parent but does not have an FS–240, FS–545, or DS–1350); or

(10) Form I–872 (or prior versions), American Indian Card with a classification code ''KIC'' and a statement on the back identifying the bearer as a U.S. citizen (issued by the Service to U.S. citizen members of the Texas Band of Kickapoos living near the U.S./Mexican border).

(b) *Secondary Evidence* (if applicant cannot present primary evidence):

(1) Religious record recorded in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, or the Northern Mariana Islands (on or after November 4, 1986, Northern Mariana Islands local time) (unless the applicant was born to foreign diplomats residing in such a jurisdiction) within three 3 months after birth showing that the birth occurred in such jurisdiction and the date of birth or the individual's age at the time the record was made;

(2) Evidence of civil service employment by the U.S. government before June 1, 1976;

(3) Early school records (preferably from the first school) showing the date of admission to the school, the applicant's date and U.S. place of birth, and the name(s) and place(s) of birth of the applicant's parents(s);

(4) Census record showing name, U.S. nationality or a U.S. place of birth, and applicant's date of birth or age;

(5) Adoption finalization papers showing the applicant's name and place of birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, or the Northern Mariana Islands (on or after November 4, 1986, Northern Mariana Islands local time) (unless the applicant was born to foreign diplomats residing in such a jurisdiction), or, when the adoption is not finalized and the state or other U.S. jurisdiction listed above will not release a birth certificate prior to final adoption, a statement from a State- or jurisdiction-approved adoption agency showing the applicant's name and place of birth in one of such jurisdictions, and stating that the source of the information is an original birth certificate;

(6) Any other document that establishes a U.S. place of birth or otherwise indicates U.S. nationality (e.g., a contemporaneous hospital record of birth in that hospital in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, or the Northern Mariana Islands (on or after November 4, 1986, Northern Mariana Islands local time) (unless the applicant was born to foreign diplomats residing in such a jurisdiction);

(7) Evidence of birth in Puerto Rico on or after April 1, 1899 and the applicant's statement that he or she was residing in the United States, a U.S. possession, or Puerto Rico on January 13, 1941;

(8) Evidence that the applicant was a Puerto Rican citizen and the applicant's statement that he or she was residing in Puerto Rico on March 1, 1917 and that the applicant did not take an oath of allegiance to Spain;

(9) Evidence of birth in the U.S. Virgin Islands, and the applicant's statement of residence in the United States, a U.S. possession, or the U.S. Virgin Islands on February 25, 1927;

(10) The applicant's statement indicating residence in the U.S. Virgin Islands as a Danish citizen on January 17, 1917 and residence in the United States, a U.S. possession, or the U.S. Virgin Islands on February 27, 1927, and indicating that the applicant did not make a declaration to maintain Danish citizenship;

(11) Evidence of birth in the U.S. Virgin Islands and the applicant's statement indicating residence in the United States, a U.S. possession or territory, or the Canal Zone on June 28, 1932;

(12) Evidence of birth in the Northern Mariana Islands, Trust Territory of the Pacific Islands (''TTPI'') citizenship, and residence in the Northern Mariana Islands, the United States, or a U.S. territory or possession on November 3, 1986 (Northern Mariana Islands local time), and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (Northern Mariana Islands local time);

(13) Evidence of TTPI citizenship, continuous residence in the Northern Mariana Islands since before November 3, 1981 (Northern Mariana Islands local time), voter registration prior to January 1, 1975, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (Northern Mariana Islands local time);

(14) Evidence of continuous domicile in the Northern Mariana Islands since before January 1, 1974, and the applicant's statement that he or she did not enter the Northern Mariana Islands as a nonimmigrant and that he or she did not owe allegiance to a foreign state on November 4, 1986 (Northern Mariana Islands local time);

(15) Evidence of the U.S. citizenship of both the applicant's parents, of the relationship of the applicant to the parents, and evidence that at least one parent resided in the United States or an outlying possession prior to the applicant's birth abroad;

(16) Evidence that one parent is a U.S. citizen and the other is a U.S. non-citizen national, evidence of the relationship of the applicant to the U.S. citizen parent, and evidence that the U.S. citizen parent resided in the United States, a U.S. possession, or American Samoa for a period of at least one 1 year prior to the applicant's birth;

(17) Evidence of the U.S. citizenship of the mother of an applicant born abroad out of wedlock, evidence of the relationship to the applicant, and

(i) For births on or before December 24, 1952, evidence that the mother resided in the United States prior to the applicant's birth; or

(ii) For births after December 24, 1952, evidence that the mother had resided prior to the applicant's birth in the United States or a U.S. possession for a period of at least one 1 year;

(18) A birth certificate showing birth in the Republic of Panama on or after February 26, 1904 and before October 1, 1979, and evidence that at least one parent was a U.S. citizen and employed by the U.S. Government or the Panama Railroad Company or its successor in title; or

(19) Evidence of a female applicant's marriage to a U.S. citizen before September 22, 1922.

(c) *Option to consult agency records.* A benefit granting agency may, in lieu of requiring an applicant to present evidence of U.S. nationality under this section, rely upon records of verified nationality maintained by it, or by a Federal agency responsible for administering a Federal public benefit program, that reasonably establish the applicant's U.S. nationality. This authority includes, but is not limited to, verification of U.S. nationality conducted under an approved computer matching agreement in compliance with the Computer Matching and Privacy Protection Act of 1988, Pub. L. No. 100–503, 102 Stat. 2507.

(d) *Option to accept third party declaration.* A benefit granting agency may accept a written declaration made under penalty of law from one or more third parties indicating a reasonable basis for personal knowledge that an applicant who cannot produce evidence of U.S. nationality under this section is a U.S. national of the United States. The benefit granting agency may require the applicant to demonstrate why documentary evidence satisfying paragraphs (a) or (b) of this section does not exist or cannot readily be obtained.

(e) *Option to accept receipt.* A benefit granting agency may accept a receipt for an application for evidence of U.S. nationality (but not a Service receipt for filing a Form N–600 (Application for Certificate of Citizenship) or a Form N–400 (Application for Naturalization)) as temporary evidence of U.S. nationality, as long as the benefit granting agency requires the applicant to present the actual evidence of U.S. nationality before making a final determination that the applicant is a national of the United States.

§ 104.24 Proof of identity.

An applicant who presents evidence of U.S. nationality or alien registration that does not contain a photograph or other information describing the applicant (i.e., height, weight, age) that is sufficient to identify that the applicant is the individual to whom the evidence of U.S. nationality or alien registration relates must also present an identification document.

§ 104.25 Standard for accepting documents.

(a) Documents must be original and unexpired. Certified copies of documents evidencing U.S. nationality are acceptable. The benefit granting agency shall accept documentation presented in compliance with §§ 104.22, and 104.23, and 104.24 and this paragraph (a) that reasonably appears on its face to be genuine and to relate to the applicant.

(b) If the documentation does not reasonably appear on its face to be genuine and to relate to the applicant, the verification shall not proceed further unless and until documentation meeting that standard is produced. If the documentation reasonably appears on its face to be genuine but does not reasonably relate to the applicant, the verification shall not proceed further unless and until documentation meeting that standard is produced.

(c) If documentation that reasonably relates to an applicant who has attested to being a national of the United States but does not reasonably appear to be genuine is produced to a benefit granting agency, the benefit granting agency shall verify the authenticity of the documentation, using available verification assistance from the document issuer (or other qualified source), before accepting it.

(d) If documentation that reasonably relates to an alien applicant but does not reasonably appear on its face to be genuine is produced to a benefit granting agency determining eligibility for a Federal public benefit, or to a benefit granting agency determining eligibility for a State or local public benefit that uses the procedures provided in subpart C, the benefit granting agency shall proceed with the verification using the procedures provided in subpart C (including, as may be directed by the Service under

§ 104.47, any special procedures for suspected fraudulent documentation).

(e) If documentation that reasonably relates to an alien applicant but does not reasonably appear on its face to be genuine is produced to a benefit granting agency determining eligibility for a State or local public benefit that does not use the procedures provided in subpart C, the benefit granting agency shall verify the authenticity of the documentation, using available verification assistance from the document issuer (or other qualified source), before accepting it.

(f) Nothing in this section shall be construed to deny or limit any right of a benefit granting agency to contact the issuer of any document to resolve bona fide questions about its authenticity.

§ 104.26 Retention of information.

The benefit granting agency must retain a photocopy of the written declaration of the applicant and of all evidence of U.S. nationality or alien registration, and identity presented by the applicant, both front and back, until all verification procedures conducted under this part have been completed and a final decision made as to the applicant's eligibility (including any period of time allowed to appeal or contest the final decision), or for as long as the benefit granting agency retains other documents submitted by the applicant relating to the application for benefits, whichever is longer. A benefit granting agency is not required to retain photocopies if it instead maintains in an accessible electronic format the information relevant to its determination of eligibility for the length of time required by this section.

§ 104.27 Other relevant information.

The benefit granting agency shall be responsible for determining what information it needs from an alien applicant (in addition to evidence of alien registration and identity) in order to verify the applicant's eligibility for a public benefit under this part, and for requesting that information from the applicant. Depending upon the public benefit, and upon which basis the alien applicant claims to be eligible, that information may include: Full name; date of birth; alien registration number or admission number; social security account number (to the extent authorized by law); immigration status; date of admission or parole into the United States; reason for admission into the United States, if different from present immigration status (*i.e.*, refugee, Amerasian immigrant); date of obtaining present immigration status; immigration status and place of residence on August 22, 1996 or other relevant date; veteran or armed forces duty status; veteran or armed forces duty status of a family member; Native American status; work history in the United States; history of battery or extreme cruelty by or against a family member; whether any person has executed an affidavit of support relating to the applicant, and, if so, the income and resources of that person and of his or her spouse; blindness or disability; and history of receiving public benefits (for example, whether the applicant is receiving Supplemental Security Income on the basis of an application filed before January 1, 1979). Upon request, the Service will assist a benefit granting agency in determining which information will be necessary in order to determine alien applicants' eligibility for the public benefit(s) it administers.

§ 104.28 Reliance upon attestation as temporary evidence of U.S. nationality.

A benefit granting agency providing a Federal public benefit may rely upon an applicant's attestation in compliance with § 104.21 that the applicant is a national of the United States as an interim basis upon which to grant a pubic benefit temporarily until the applicant is able to satisfy the requirements of §§ 104.23 and 104.24. A benefit granting agency that relies upon attestations of U.S. nationality to make interim decisions with respect to a public benefit must apply that policy equitably with respect to all applicants for that public benefits making such attestations. A benefit granting agency may, before relying on an attestation as provided in this section, require the applicant to demonstrate why he or she is unable to present evidence satisfying §§ 104.23 and 104.24 at that time.

§ 104.29 Reliance upon alternative procedures for determining U.S. nationality.

A Federal agency that has promulgated regulations that provide fair and nondiscriminatory procedures for verifying the U.S. nationality of applicants for a Federal public benefit provided by that agency, or by another benefit granting agency subject to those regulations, may continue to use them instead of this part with respect to verification of U.S. nationality upon written request by the Federal agency to the Service, and approval of the request by the Attorney General. Nothing in this section shall be construed to deny, abridge, limit, or adversely affect the validity of any Federal regulation relating to verifying U.S. nationality of applicants for public benefits that a Federal agency has requested to continue to use, other than the Attorney General's written denial of the request, with reasons provided therefor.

§ 104.30 Eligibility of household.

A benefit granting agency that receives applications or determines the eligibility of an applicant for a public benefit on the basis of the applicant's household may modify the requirements of Subpart B with respect to that public benefit as follows, as long as the modification is equitably applied to all applicants in a nondiscriminatory manner:

(a) An applicant who is an adult member of a household may execute the written declaration required by § 104.21 on behalf of other members of the household;

(b) An applicant who is an adult member of a household may present the documentation identified in §§ 104.22 or 104.23 on behalf of other members of the household, except that a member of the household who is an alien 18 years of age or over must present his or her alien registration documentation in person; and

(c) the benefit granting agency may waive the requirements of § 104.24 (regarding additional proof of identity) with respect to members of a household whose documentation is presented by another adult member of the household.

§§ 104.31–104.39 [Reserved].

Subpart C—Systematic Alien Verification for Entitlements (SAVE)

§ 104.40 SAVE system.

The Service shall provide and maintain SAVE for the use of benefit granting agencies that are required or authorized to verify that applicants are eligible qualified aliens, nonimmigrants, or aliens paroled into the United States for less than 1 year. The Service may delegate to a contractor technical or other responsibilities for SAVE operation. Benefit granting agencies may use SAVE to the extent required or authorized by §§ 104.2, 104.3, and 104.4

§ 104.41 When to use SAVE.

A benefit granting agency may not use SAVE to verify an alien applicant's status until it has completed the procedures provided by subpart B with respect to that applicant. The benefit granting agency shall complete the procedures required by subpart C before making a final determination as to benefit eligibility based upon whether the applicant is an eligible qualified alien, or is a nonimmigrant or an alien paroled into the United States for less than 1 year who is eligible for a State or local public benefit. A benefit granting agency may make an interim or

temporary decision as to benefit eligibility pending the completion of SAVE procedures. A Federal agency verifying the eligibility of alien applicants through SAVE under an approved computer matching agreement with the Service in compliance with the Computer Matching and Privacy Protection Act of 1988, Pub. L. No. 100–503, 102 Stat. 2507, shall comply with the verification procedures provided by that agreement and by its applicable regulations in lieu of subpart B's provisions regarding alien applicants.

§ 104.42 Enrollment.

A benefit granting agency that is required to use SAVE, or that has the option to use SAVE to verify eligibility for State and local public benefits and wishes to do so, must submit a written request to be granted SAVE access to SAVE Branch, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, unless the benefit granting agency is already a SAVE user with respect to all public benefits for which such use is required or permitted. The Service will supply to the benefit granting agency the necessary codes, passwords, and other materials necessary for SAVE access upon its approval of the request. At its discretion the Service may condition access to SAVE upon the execution by the benefit granting agency of an appropriate memorandum of understanding stating the scope of the access and other appropriate terms and conditions.

§ 104.43 Costs.

A benefit granting agency that uses SAVE must pay the Service for the verification services provided. Cost information is available from the Service upon request.

§ 104.44 Limitation of access to SAVE.

The SAVE access is a privilege extended to benefit granting agencies that need it to perform their responsibilities under applicable law and that will use it properly. The Service will make the final decision as to whether SAVE access will be granted to or continued for a benefit granting agency. The Service may, in the exercise of its discretion, deny, terminate, suspend, or limit a benefit granting agency's SAVE access for good cause, including but not limited to: misuse of the system, including use for employment verification; use to attempt verification of U.S. nationality, commission of fraud, or other criminal or civil violations of law, illegal discrimination, failure to comply with a requirement of this part; violations of privacy rights; inadequate training or supervision of employees responsible for verification; nonpayment for services rendered; or budgetary or other constraints preventing the Service from providing SAVE to a benefit granting agency. Denial, termination, suspension, or limitation of SAVE access does not waive any legal obligation of a benefit granting agency to verify the eligibility of any applicant.

§ 104.45 Primary verification.

A benefit granting agency using SAVE procedures shall perform primary verification within 3 business days after it complies with subpart B with respect to an alien applicant, unless the documentation presented by the applicant indicates on its face an immigration status that renders the applicant ineligible for the public benefit, and the applicant does not claim a different status that would make the applicant eligible for the public benefit. The benefit granting agency shall provide through the automated system available information necessary to verify the applicant's status, including the applicant's alien registration number (if any). The Service will respond within 3 business days with relevant information on the status of the applicant, or with an instruction to perform secondary verification. As instruction to perform secondary verification is not a determination that an applicant is not an eligible qualified alien, and shall not be construed as such. A benefit granting agency that is subject to a statute or regulation that provides a different time period for verifying eligibility or processing applications for a public benefit may use that time period instead of the 3-day period provided by this rule for initiating primary verification, as long as the different time period is applied consistently to all alien applicants.

§ 104.46. Secondary verification

A benefit granting agency that has completed primary verification, but is unable to determine based upon the result of the primary verification that an applicant is an eligible qualified alien, or is a nonimmigrant or an alien paroled into the United States for less than 1 year who is eligible for a State or local public benefit, shall make a secondary verification inquiry within 5 business days after completing primary verification. A benefit granting agency that is subject to a statute or regulation that provides a different time period for verifying eligibility or processing applications for a public benefit may use that time period instead of the 5-day period provided by this rule for initiating secondary verification, as long as the different time period is applied consistently to all alien applicants.

§ 104.47. Direct resort to secondary verification

With the express prior approval of the Service (whether for individual cases or for classes of applicants or public benefits), a benefit granting agency may use secondary verification procedures directly, without first conducting primary verification. These situations will be determined by the Service and may include, for example, situations where a very small number of applicants for a public benefit makes installation of the primary verification system not cost-effective; where a benefit granting agency has bona fide reasons to believe that documents submitted by an applicant are fraudulent; or where for some other reason primary verification is not useful or cost-effective compared to direct secondary verification.

§ 104.48. Victims of domestic violence

A benefit granting agency that needs to determine whether an applicant is a qualified alien by reason of being an alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c) shall use the following procedures:

(a) The benefit granting agency shall examine documentation satisfying section 102.22, if the applicant possesses such documentation;

(b) Whether or not the applicant has produced documentation satisfying Section 104.22, the benefit granting agency shall require the applicant to produce (in lieu of or in addition to evidence of alien registration) any other documentation in the applicant's possession or control that relates to whether the applicant has been approved or has a petition pending which sets forth a prima facie case for a status, classification, or cancellation of removal provided for in 8 U.S.C. 1641(c)(1)(B).

(c) If the documentation presented under paragraphs (a) and (b) of this section does not satisfy the requirements of Section 104.24, the applicant shall present an identification document or, if the applicant does not have an identification document, other reasonable secondary evidence sufficient to satisfy the benefit granting agency that the applicant is the individual to whom the documentation presented under paragraphs (a) and (b) of this section relates, which may

include another document relating to the applicant or a written declaration under penalty of law from one or more third parties with personal knowledge of the applicant.

(d) In lieu of conducting primary verification, the benefit granting agency shall resort directly to the following secondary verification procedure: For applicants who present documentation or otherwise indicate that they sought relief from the Executive Office for Immigration Review (''EOIR'') through suspension of deportation under section 244(a)(3) of the Act (as in effect prior to April 1, 1997) or cancellation of removal under section 240A(b)(2) of the Act, the benefit granting agency shall fax a written request, and copies of any documentation provided, to the Court Administrator of the appropriate immigration court, and obtain the court's response. For all other applicants, the benefit granting agency shall fax a written request, and copies of documentation provided, to the Battered Alien Review Unit of the Service's Vermont Service Center at (802) 527–3252, or to such other number as the Service may direct, and obtain the Service's response. Any information a benefit granting agency receives from the Service or EOIR pursuant to this section regarding an applicant shall be used solely in making its determination whether the applicant is an eligible qualified alien;

(e) Contemporaneously with its verification whether the applicant meets the requirements of 8 U.S.C. 1641(c)(1)(B) as provided in paragraphs (a) through (d) of this section, the benefit granting agency shall determine by such means as it reasonably determines to be appropriate whether the applicant otherwise meets the requirements of 8 U.S.C. 1641(c), after considering the guidance promulgated by the Attorney General pursuant to 8 U.S.C. 1641(c) concerning the meaning of the terms ''battery'' and ''extreme cruelty'' (*see* Notice, *Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,* 62 FR 61344, 61366 (Exhibit B to Attachment 5) (Nov. 17, 1997)), and the standards and methods to be used for determining whether a substantial connection exists between battery or cruelty suffered and an individual's need for benefits under a specific Federal, State, or local program (*see* Notice, *Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits,* 62 FR 65285 (Dec. 11, 1997)).

§ 104.49 Unauthorized uses of SAVE.

SAVE is not designed for the purpose of verifying an alien's work authorization under section 274A of the Act, or for the purpose of verifying U.S. nationality. Use for either of these purposes is not authorized, and may result in termination of SAVE access.

§ 104.50 Training.

The Service shall provide training materials sufficient to instruct the benefit granting agency in the proper use of SAVE. The benefit granting agency shall devote sufficient personnel, resources, and training to its verification responsibilities to enable it to use SAVE properly and comply with this part.

§ 104.51 Use of information by the Service.

The Service will not use information provided to it through SAVE by a benefit granting agency for the purpose of administrative (noncriminal) enforcement of the Act. The Service may use such information for the purpose of enforcing any provision of criminal law. Nothing in this part shall be construed to waive or limit any civil or criminal penalty or consequence, including removal from the United States, that may be applicable under the Act or any other law to a false statement or any other act relating to an application for, or the receipt of any public benefit. Nor shall anything in this part be construed to waive, limit, or deny any right or duty of a benefit granting agency to report to the Service the presence, whereabouts, or activities of any alien not lawfully present in the United States, or any lawful use the Service may make of such a report, but any such report shall be made by means other than SAVE.

§ 104.52 Evaluation of SAVE.

The Department of Justice may conduct evaluations of SAVE. Benefit granting agencies that are participants in SAVE shall cooperate with such evaluations by providing such information and assistance as is necessary to evaluate the program, consistent with other applicable law.

§§ 104.53–104.59 [Reserved].

Subpart D—Verification Requiring Non-Service Information.

§ 104.60 Veteran and active duty exception.

(a) With respect to certain public benefits, an applicant is an eligible qualified alien by virtue of being a qualified alien lawfully residing in any state who is:

(1) A veteran, with a discharge characterized as an honorable discharge and not on account of alienage, who fulfills minimum active duty service requirements;

(2) On active duty (other than active duty for training) in the armed forces of the United States; or

(3) The spouse, unremarried surviving spouse, or unmarried dependent child of an individual described in paragraphs (a)(1) or (a)(2) of this section.

(b) If an applicant claims to be an eligible qualified alien because of the veteran and active duty exception, the benefit granting agency shall comply with paragraphs (c) and (d) of this section.

(c) *Verification of qualified alien status and lawful residence.* The benefit granting agency shall verify whether the applicant is a qualified alien using the procedures in subpart B, and the procedures in subpart C to the extent the benefit granting agency is required to use them to verify eligibility for a Federal pubic benefit, or has chosen to use them to verify eligibility for a State or local public benefit. The benefit granting agency shall verify that the alien is lawfully residing in the United States as provided in section 104.64.

(d) *Verification of veteran or active duty status.* (1) If the applicant claims to be an honorably discharged veteran who meets minimum active duty service requirements, the benefit granting agency shall require the applicant to present a discharge certificate, Form DD 214 or equivalent, that shows active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard and character of discharge. ''Honorable'' is accepteable to quaify for the veteran exception without further inquiry, unless the certificate appears to have been altered or is otherwise irregular. A discharge ''Under Honorable Conditions'' is not acceptable. A discharge certificate that shows ''Honorable'' and any other branch of service or any other type of duty (*e.g.,* ''Active Duty for Training'' or ''Inactive Duty for Training'') should be referred to the local Veterans Affairs (''VA'') regional office. If veteran status is claimed but the applicant has no papers showing service or discharge, the inquiry should be referred to the local VA regional office to determine veteran status. If a discharge certificate, DD Form 214, or equivalent shows an original enlistment in the Army, Navy, Air Force, Marine Corps, or Coast Guard before September 7, 1980, there is no minimum active duty service requirement. If the discharge certificate

shows two or more years of continous active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard, the applicant meets the minimum active duty service requirement. If such a discharge certificate is not available, or if it shows active duty service of less than 2 years with an original enlistment after September 7, 1980, the inquiry should be referred to the local VA regional office to determine satisfaction of the minimum active duty service requirement;

(2) If the applicant claims to be on active duty (other than active duty for training) in the U.S. Armed Forces, the benefit granting agency shall require the applicant to present a current Military Identification Card (DD) Form 2 (Active)). If the Military Identification Card will expire within 1 year from the date it is presented, the applicant must also present to the benefit granting agency a copy of the applicant's military orders. If the applicant is unable to present a copy of his or her military orders, the benefit granting agency must verify active duty status through the nearest RAPIDS (Real Time Automated Personnel Identification System), located at many military installations, or by contacting the following office in writing (which may be transmitted by facsimile): DEERS Support Office, Attn: Research and Analysis, 400 Gigling Road, Seaside, CA, 93955–6771, facsimile number (408) 655–8317. Active duty for training is temporary fulltime duty in the Armed Forces performed by members of the Reserves, Army National Guard, or Air National Guard (the ''Reserve Components'') for training purposes. The active duty exception does not apply to an applicant who is on active duty for training. A member of a Reserve Component who claims to be on active duty, other than active duty for training, must present a curret DD Form 2 (Reserve) and military active duty orders showing the applicant to be on active duty, but not on active duty for training;

(3) If the applicant claims to be the spouse, unremarried surviving spouse, or unmarried dependent child of an individual described in paragraphs (a)(1) or (a)(2) of this section, the benefit granting agency must verify both the qualifying familial relationship between the applicant and the veteran or active duty individual, and the veteran on active duty status of the individual. To verify the latter, the benefit granting agency must require the applicant to present evidence of the individual's veteran or active duty status sufficient to satisfy paragraphs (d)(1) or (d)(2) of this section. This subpart does not provide specific requirements for verifying the qualifying familial relationship. The benefit granting agency shall use such verification procedures (which may include execution of a written attestation or presentation of appropriate documentation) as in the exercise of the benefit granting agency's discretion are reasonably calculated to verify the existence of the relationship. With respect to an unremarried surviving spouse, the verification procedures shall take into account the fact that the qualifying relationship must satisfy one of the following conditions:

(i) The unremarried surviving spouse must have been married to the veteran or individual on active duty within 15 years after the termination of the period of service in which the injury or disease causing the death of the veteran or individual on active duty was incurred or aggravated;

(ii) The unremarried surviving spouse must have been married to the veteran or individual on active duty for 1 year or more; or

(iii) A child must have been born to the couple.

§ 104.61 Credited quarters of qualifying work.

With respect to certain public benefits, an applicant is an eligible qualified alien by virtue of being an alien who is lawfully admitted for permanent residence under the Act; and who has worked or can be credited with 40 qualifying quarters under the Social Security Act. If an alien claims to be an eligible qualified alien on this basis, the benefit granting agency shall verify whether the applicant is an alien lawfully admitted for permanent residence using the procedures in subpart B, and the procedures in subpart C to the extent the benefit granting agency is required to use them to verify eligibility for a Federal public benefit, or has chosen to use them to verify eligibility for a State or local public benefit. The benefit granting agency shall verify qualifying quarters with the Social Security Administration (''SSA'') using such guidance as may be available upon request to SSA.

§ 104.62 Section 289 exception.

(a) With respect to certain public benefits, an alien applicant may be eligible by virtue of being an American Indian born in Canada to whom the provisions of section 289 of the Act apply, regardless whether the applicant is a qualified alien. If an applicant claims to be eligible on this basis, the benefit granting agency shall use the procedures in subpart B, except as specifically provided by this section. An alien to whom section 289 of the Act applies may, or may not, possess evidence of alien registration issued by the Service. In lieu of the requirement in section 104.22 to present evidence of alien registration, the benefit granting agency shall require the applicant to present the following documentary evidence of section 289 status:

(1) An unexpired Form I–551 (Alien Registration Receipt Card or Permanent Resident Card) with the code S13;

(2) An unexpired temporary I–551 stamp in a Canadian passport or on Form I–94, Arrival-Departure Record, with the code S13; or

(3) A letter or other tribal document certifying at least 50 per centum Indian blood as required by section 289 of the Act, combined with a birth certificate or other satisfactory evidence of birth in Canada.

(b) If the applicant presents the documentary evidence referenced in paragraphs (a)(1) or (a)(2) of this section, the benefit granting agency shall use the procedures in subpart C to the extent the benefit granting agency is required to use them to verify eligibility for a Federal public benefit, or has chosen to use them to verify eligibility for a State or local public benefit.

§ 104.63 Members of Indian tribes.

(a) With respect to certain public benefits, an alien applicant may be eligible by virtue of being a member of an Indian tribe, regardless whether the applicant is a qualified alien. If an applicant claims to be eligible on this basis, the benefit granting agency shall use the procedures in subpart B, except as specifically provided by this section. In lieu of the requirement of section 104.22 to present evidence of alien registration, the benefit granting agency shall require the applicant to present a membership card or other tribal document demonstrating membership in an Indian tribe. If the applicant has no document evidencing tribal membership, the benefit granting agency should contact the Indian tribe for verification of membership. A benefit granting agency that verifies that an applicant is eligible by virtue of being a member of an Indian tribe shall not use subpart C verification procedures.

§ 104.64 Lawful residence.

(a) With respect to certain public benefits, an alien applicant may be an eligible qualified alien only if he or she is lawfully residing in the United States at the time of application, or that he or she was lawfully residing in the United States as of a specific prior date (such as August 22, 1996). The benefit granting agency shall use subpart B and

subpart C verification procedures with respect to such applicants. If those procedures verify that the applicant is or was a qualified alien (other than an alien who is a qualified alien because he or she is a victim of domestic violence) on the requisite date, the benefit granting agency need not perform further verification procedures with respect to lawful residence.

(b) If the subpart B and subpart C verification procedures do not confirm that the applicant is or was a qualified alien (other than an alien who is a qualified alien because he or she is a victim of domestic violence), on the requisite date and the applicant (if not a qualified alien because he or she is a victim of domestic violence) is not rendered ineligible because he or she is not a qualified alien, the benefit granting agency shall:

(1) Verify, through review of the information obtained through the subpart B and subpart C procedures and, if necessary, further inquiry to the Service, that the applicant is or was lawfully present on the requisite date; and

(2) Verify that the applicant's residence is or was in the United States on the requisite date by reviewing proof of residence described in section 244.9(a)(2) of this chapter.

§ 104.65 Hmong or Highland Laotians.

(a) With respect to certain public benefits effective November 1, 1998, an alien applicant may be eligible by virtue of being a Hmong or Highland Laotian, regardless whether the applicant is a qualified alien. If an applicant claims to be eligible on this basis, the benefit granting agency shall verify the applicant's lawful residence in the United States as set forth in section 104.64, and shall use such verification procedures (which may include attestation or presentation of appropriate documentation) as in the exercise of the benefit granting agency's discretion are reasonably calculated to verify that the applicant is a Hmong or Highland Laotian.

(b) An alien applicant may also be eligible by virtue of being the spouse or unmarried dependent child of a Hmong or Highland Laotian, or the unremarried surviving spouse of a deceased Hmong or Highland Laotian, regardless whether the applicant is a qualified alien or is lawfully residing in the United States. If an applicant claims to be eligible by virtue of a qualifying familial relationship with a living or deceased Hmong or Highland Laotian, the benefit granting agency shall not verify the applicant's immigration status as provided in subparts B and C. Instead, the benefit granting agency shall use such verification procedures (which may include attestation or presentation of appropriate documentation) as in the exercise of the benefit granting agency's discretion are reasonably calculated to verify the applicant's qualifying familial relationship with a Hmong or Highland Laotian.

§§ 104.66–104.69 [Reserved].

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Attorney General.

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