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DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration

7500 SECURITY BOULEVARD
BALTIMORE MD 21244-1850

MAY 2 1997

Dear State Medicaid Director

NATURALIZATION PROCESS AND MEDICAID

We are writing to provide you information about the impact of the INS naturalization regulations that will provide a method for certain disabled noncitizens, who may be at risk of losing their Medicaid eligibility, to become citizens.

Most applicants for naturalization must pass examinations demonstrating proficiency in ordinary English and knowledge of U.S. history and government. However, in the past certain noncitizens with disabilities have had difficulty meeting these requirements of the naturalization process. To address this problem, Congress amended the Immigration and Nationality Act to permit INS to grant disabled individuals a waiver of the English language proficiency and knowledge of U.S. history and government examinations. Such individuals must still be able to assent to the oath of allegiance. On March 19, 1997, the Immigration and Naturalization Service published a final rule with request for comments to implement the waiver provisions.

To obtain an exemption, the applicant for naturalization must request and file an application for a disability exemption (Form N-648), with their applications for naturalization (Form N-400), accompanied by the appropriate fees for both forms. The Form N-648, Medical Certification for Disability Exceptions, must be completed by a licensed physician or psychologist, as specified under the regulation, who has examined the applicant and determined that, based on the individual's medically determinable physical or mental impairment or combination of impairments, the applicant is incapable of meeting the English language and U.S. government and history requirements under the INA. States are permitted to pay for the costs associated with the physician's or psychologist's examination or completion by the provider of the waiver application form for a Medicaid beneficiary.

We encourage you to assist Medicaid beneficiaries who may be eligible for this exemption by authorizing reimbursement under Medicaid to providers who perform the certification specified in 8 CFR part 312. We have attached a copy of the regulation, an INS Fact Sheet, and the required medical certification form for ease of reference.

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A copy of this letter is also being sent to the Mental Retardation and Developmental Disability Directors in your State.

Thank you for your continued cooperation in the implementation of the many new immigrant-related changes in the Medicaid program.

Sincerely,



Judith D. Moore
Acting Director
Medicaid Bureau

Attachments

cc:

All Regional Administrators

All Associate Regional Administrators
Division of Medicaid

Eligibility TAG Members

Jennifer Baxendall
National Governors Association

Lee Partridge
American Public Welfare Association

Joy Wilson
National Conference of State Legislators

State Mental Retardation and
Developmental Disability Directors

Lloyd Bishop
Office of Legislative and Inter-Governmental Affairs, HCFA

FACT SHEET

3/19/97

Final INS Rule:

Exceptions from English and Civics Testing Requirements For Naturalization Applicants With Disabilities

On March 19, 1997, the Immigration and Naturalization Service (INS) will publish a final rule in the *Federal Register* that implements Congressionally-mandated exceptions from the English and civics (U.S. history and government) requirements for naturalization for persons with disabilities that prevent them from meeting such requirements. This final rule makes changes to the proposed rule published in August, 1996. The INS invites public comments for 60 days on certain new proposals contained in this final rule concerning quality control, the appeals process and training for adjudicators.

BACKGROUND

- On October 25, 1994, Congress passed the Immigration and Nationality Technical Corrections Act of 1994. Section 108(a)(4) of this Act amended Section 312 of the Immigration and Nationality Act (INA) to provide exceptions to the English proficiency and history and government knowledge requirements for naturalization for persons with "physical or developmental disabilities" or "mental impairments."
 - While the proposed rule was under development, INS provided policy guidance to its field offices with preliminary instructions for adjudication of naturalization applications based on the exceptions provided under the 1994 Technical Corrections Act. The Service also provided preliminary definitions of the terms concerning disability and mental impairment in the Act.
 - The INS has consulted extensively with the Department of Health and Human Services (HHS), the Social Security Administration (SSA), and other government health agencies for guidance in developing the regulatory language contained in this final rule.
 - The INS published a proposed rule to implement this legislative change on August 28, 1996. INS has carefully considered 228 comments on the proposed rule which were submitted by a wide range of immigrant assistance groups, health professionals, organizations that assist persons with disabilities, and individuals. The final rule addresses these comments and makes substantial modifications.
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THE FINAL RULE

Definitions

- The Service has modified the definitions of qualifying disabilities contained in the proposed rule in response to many public comments that the definitions were too narrow and inconsistent with existing definitions in other federal statutes.
- The rule now provides that an exception shall be granted to any person “who is unable because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language...” or who is unable for any of the same reasons “to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States.”
- “The term medically determinable means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language, as required by [Section 312], or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency...” The definition of “medically determinable” is the same with regards to the exception from the civics knowledge requirement. Loss of cognitive abilities based on the direct effect of the illegal use of drugs is not covered as a disability.
- This interpretation of the disability and mental impairment terms in the Technical Corrections Act comports more closely with existing federal policies (such as Social Security Administration definitions) and regulations for implementing the nondiscrimination requirements of Section 504 of the Rehabilitation Act of 1973.

Procedures for Obtaining the Exceptions

- In order to base its adjudication of requests for the disability exceptions on solid medical evidence, the INS requires all persons seeking an exception to submit a new Form N-648, Medical Certification for Disability Exceptions, to be completed by a licensed medical doctor (which includes psychiatrists) or a licensed clinical psychologist. These certifying professionals must be licensed to practice in the United States (including the U.S. territories of Guam, Puerto Rico or the Virgin Islands). They must also be experienced in diagnosing persons with physical disabilities or mental impairments. They must attest to the origin, nature, and extent of the medical condition as it relates to the exceptions for English and civics. A person who qualifies as disabled for other government benefit programs is not necessarily unable to demonstrate the level of English proficiency or civics knowledge required for naturalization.

- The categories of health professionals who may certify an applicant's disability were expanded and clarified in response to comments that the proposed rule was too narrow in its near-exclusive dependence on civil surgeons. Civil surgeons who meet the current requirements may still certify an applicant's disability.
- The medical certification form may be submitted in support of requests for both the English proficiency and civics knowledge exceptions. Form N-648 may be photocopied. Forms may be obtained from local INS district offices, by calling the INS Forms Center at 1-800-870-3676, or by ordering it through the Internet at <http://www.usdoj.gov/ins>. By the end of March, applicants may also call 1-800-755-0777 or TDD: 1-800-767-1TDD, for information about the disability exceptions.
- Under penalty of perjury, both the applicant and the medical professional must attest that all information submitted is accurate. A legal guardian may sign the N-648 authorizing the release of additional medical records to the Service.
- The Service reserves the right to request an applicant to submit additional supporting evidence or a second certification from another qualified professional in cases where the Service has credible doubts about the veracity of a medical certification that has been initially presented.
- Persons with disabilities who are not seeking exceptions to the English and civics requirements do not need to submit Form N-648.
- In conformance with Section 504 of the Rehabilitation Act of 1973, INS will continue to provide reasonable modifications in its testing procedures to enable naturalization applicants who have disabilities to participate in the process. Examples of such modifications may include providing sign language interpreters, wheelchair-accessible test sites, or modifications in test format or administration procedures, among others.

Other Naturalization Requirements

- The disability exceptions are not blanket exemptions from all naturalization requirements. Congress did not authorize the Service to waive any of the other naturalization requirements outlined in the INA for applicants with disabilities.
- Applicants must, for example, be able to demonstrate their good moral character, have the necessary residency as a permanent resident (five years, or three years if married to a U.S. citizen), and have the ability to take the statutorily prescribed oath of allegiance. INS will continue to make reasonable accommodations to enable persons with disabilities to demonstrate that they can meet these requirements.

- When necessary, INS will accommodate applicants with disabilities by modifying procedures used to determine whether an applicant meets the requirements for naturalization, including those related to administration of the oath of allegiance. The Service believes that many applicants with disabilities, while excepted from the English and civics requirements, will be able to have a limited but sufficient understanding of the concepts of the oath.
- Each applicant's capabilities regarding the oath requirement will be assessed on a case-by-case basis. Although a disabled applicant need not understand every word of the oath at the interview, the INS officer must conclude that an applicant has an understanding of the nature of the oath. The Service will explain the oath in simplified terms to individuals who, because of their disability, have difficulty understanding it. If the officer concludes that an applicant does understand the nature of the oath, the oath can be administered. For example, an inquiry by an officer at the interview might include an attempt to determine whether the applicant understands that he or she is becoming a U.S. citizen, is forswearing allegiance to his or her other country of nationality, and personally and voluntarily agrees to this change of status. No requirements will be imposed on applicants with disabilities that are not required of other naturalization applicants.
- INS officers will also accept a wide variety of signals from an applicant with a disability that indicate that the applicant understands the nature of the oath, including, but not limited to, a simple head nod, eye blinking, or other signals specific to the individual that mean "yes" or "no".

INSTRUCTIONS FOR FORM N-648 MEDICAL CERTIFICATION FOR DISABILITY EXCEPTIONS

Purpose of This Form.

The Immigration and Naturalization Service's (INS) regulations require that applicants seeking an exception from the English and U.S. history and government (civics) requirements for naturalization based on physical or developmental disability or mental impairment submit this certification form, completed by a licensed medical doctor or a licensed clinical psychologist, along with a completed application for naturalization (Form N-400). This certification form will be used by the INS to determine whether applicants for naturalization are entitled to an exception to the requirements.

In accordance with the Rehabilitation Act of 1973, INS makes reasonable modifications and/or accommodations to allow individuals with disabilities to participate in testing required for naturalization. Reasonable modifications and/or accommodations may include but are not limited to: Braille test forms, sign language interpreters, or off-site testing. Applicants should be advised that if reasonable modifications and/or accommodations will allow them to demonstrate knowledge of basic English and U.S. history and civics, this medical certification form is not required.

Part I of the form must be completed and signed by the applicant. The form also contains an acknowledged release by the applicant of his or her medical records to include both physical and mental health. Part II of the form must be completed and signed by the licensed medical doctor or licensed clinical psychologist performing the assessment of the applicant. The licensed medical doctor or licensed clinical psychologist is required to attest to the truthfulness of his or her certification under penalty of perjury and agree to release his or her medical records relating to the applicant upon request by the INS.

General Instructions.

Please answer all questions by typing or printing clearly in black ink. Indicate that an item is not applicable with "N/A". If an answer is "none," write "none". If you need extra space to answer any item, attach a sheet of paper with the name of the applicant, and the alien registration number (A #), and your complete name including first name, middle name and last name, with appropriate title. Also, indicate the number of the item to which the answer refers.

Additional medical reports may be submitted but they must be limited to not more than two pages, and have the name of the applicant, alien registration number (A #), and your signature on each page of the attachments. Additional medical records may be submitted but will not be accepted as a substitute for complete responses to questions asked on the certification form.

1. You are requested to provide an accurate assessment of the applicant's disability or impairment so the INS can determine whether to grant an exception to the English language and history and civics requirements for naturalization.
2. The INS requires that the licensed medical doctor or licensed clinical psychologist completing the form for the applicant be experienced in the area of the applicant's disability, and able to diagnose the applicant's disability and/or impairments. A certification must be made as to whether the applicant has the ability to learn English and civics sufficient to pass the INS' citizenship test. The tests require an ability to speak and write basic English and the ability to answer basic questions about the history and civics of the United States.

**INSTRUCTIONS FOR FORM N-648 MEDICAL
CERTIFICATION FOR DISABILITY EXCEPTIONS**

3. All licensed medical doctors or licensed clinical psychologists completing this form must be licensed practitioners in the State where they practice. Medical attestations will be accepted only from the following: licensed medical doctors (MDs) and licensed clinical psychologists.

4. All forms must be signed, certified, and dated by the licensed medical doctor or licensed clinical psychologist. The certification must be filed within 6 months of its completion and signature.

Penalties.

Both the applicant and the licensed medical doctor or licensed clinical psychologist are required to complete and sign the form under penalty of perjury. All statements contained in response to questions in this certification are declared to be true and correct under penalty of perjury.

Title 18, United States Code, Section 1546, provides in part:

Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement - shall be fined in accordance with this title or imprisoned not more than ten years or both.

If either the applicant or the licensed medical doctor or licensed clinical psychologist includes in this certification form any material information that the party knows to be false, the applicant and/or licensed medical doctor or licensed clinical psychologist may be liable for criminal prosecution under the laws of the United States.

The knowing placement of false information on the application may subject the applicant and the licensed medical doctor or psychologist to criminal penalties under Title 18 of the United States Code and to civil penalties under Section 274C of the Immigration and Nationality Act, 8 U.S.C. 1324c.

Privacy Act Notice: Authority for the collection of the information requested on this form is contained in 8 U.S.C. 1182(a)(15), 1183A, 1184(a), and 1258. The information will be used principally by the Service to whom it may be furnished to support an individual's application for naturalization under the Immigration and Nationality Act. Submission of the information is voluntary. It may also, as a matter of routine use, be disclosed to other federal, state, local and foreign law enforcement and regulatory agencies. Failure to provide the necessary information may result in the denial of the applicant's request for an exception to the English language and U.S. history and civics requirement in the applicant's naturalization application.

Reporting Burden: A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: 1) learning about the form, 30 minutes; 2) completing the form, 60 minutes; and 3) assembling and filing the application, 30 minutes, for an estimated average of 120 minutes per response. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service, 425 I Street, N.W., Room 5307, Washington, D.C. 20536. **Do not mail your completed application to this address.**

Part I. THIS SECTION TO BE COMPLETED BY THE APPLICANT *(Please print or type information)*

Last Name	First Name	Middle Name	Social Security Number
Address			Alien Number
City		State	Zip Code
Telephone Number	Date of Birth		Sex

I, _____ authorize _____
(Applicant's Name) *(Licensed medical doctor or licensed clinical psychologist)*

to release all relevant physical and mental health information related to my medical status to the INS for the purpose of applying for an exception from the English language and U.S. civics testing requirements for naturalization. I certify under penalty of perjury pursuant to Title 28 U.S.C. Section 1746, that the information on the form and any evidence submitted with it is all true and correct. I am aware that the knowing placement of false information on the Form N-648 and related documents may also subject me to civil penalties under 8 U.S.C. Section 1324c.

Signature _____ Date _____

Part II. THIS SECTION TO BE COMPLETED BY A LICENSED MEDICAL DOCTOR OR LICENSED CLINICAL PSYCHOLOGIST *(see instructions)*

The individual named above is applying for an exception from the English language and U. S. history and civics tests required of applicants for naturalization. The Immigration and Naturalization Service's regulations require that applicants for an exception based on disability submit this certification form, completed by a licensed medical doctor or licensed clinical psychologist, along with a completed application for naturalization (Form N-400).

Please answer the following questions as clearly and completely as possible, using common terminology and complete words and phrases.

1. Date of your most recent examination of the applicant. _____ 19 _____

2. Is this your first examination of the individual? Yes _____ No _____

If yes, who is the regular attending physician? _____

3. Based on your examination, describe any findings of a physical or mental disability or impairment which, in your professional medical opinion, would prevent this applicant from demonstrating knowledge of basic English language and/or U.S. history and civics. Describe in detail. If applicant has a mental disability or impairment, please provide DSM diagnosis.

4. Did the applicant's disability or impairment result from the illegal use of drugs? If the applicant is developmentally disabled, did this condition first manifest itself before age 22? Please explain.

5. What is the duration of the applicant's disability or impairment? Is it temporary (less than 12 months) or permanent? Explain.

6. Please provide your medical speciality. If you are not specialized, provide your medical experience and other qualifications that permit you to make this assessment.

I certify under penalty of perjury under the laws of the United States of America, that the information on the form and any evidence submitted with it is all true and correct. I agree to release this applicant's relevant medical records upon request from the U.S. Immigration and Naturalization Service. I am aware that the knowing placement of false information on the Form N-648 and related documents may also subject me to civil penalties under 8 U.S.C. Section 1324c.

Signature _____ Date _____

Please Type or Print

Last Name	First Name	Middle Name
Business Address	City, State, ZIP Code	Telephone
License Number	Licensing State	



425 I Street NW.
Washington, DC 20536

QUESTIONS & ANSWERS
PREPARED BY THE U.S. IMMIGRATION AND NATURALIZATION SERVICE

FINAL RULE ON EXCEPTIONS FROM ENGLISH AND CIVICS TESTING
REQUIREMENTS FOR NATURALIZATION FOR APPLICANTS WITH
DISABILITIES

- Q:** Which types of disabilities qualify for the new exceptions to the Section 312 requirements for naturalization regarding English proficiency and knowledge of United States history and government?
- A:** Three broad categories of disabilities were identified by Congress. They are "developmental disabilities," "mental impairments," and "physical disabilities." The Technical Corrections Act of 1994 did not specifically define these terms. The final rule published by the INS on March 19, 1997 in the *Federal Register* defines these disability groups as "medically determinable physical or mental impairments or combination of impairments." This definition comports with existing federal policies (such as those of the Social Security Administration) and regulations implementing the nondiscrimination requirements of Section 504 of the Rehabilitation Act of 1973. Disabilities and mental impairments do not include conditions that are temporary (a duration of less than 12 months) or that have resulted from an individual's illegal use of drugs.
- Q:** What are the principal changes made by INS to the proposed rule on the Section 312 disability exceptions issued in August, 1996?
- A:** The Service carefully considered 228 comments to the proposed rule and has made substantial changes to address those many thoughtful comments. The primary changes include:
- The definitions of disabilities and mental impairments now comport more closely with similar definitions in existing federal programs.
 - The categories of professionals who may certify an applicant's disability or mental impairment have been expanded and clarified to include licensed medical doctors (which includes medical doctors with specialties such as board certified psychiatrists) and licensed clinical psychologists, who are experienced in diagnosing disabilities. These professionals must be licensed to practice in the United States (including the U.S. territories of Guam, Puerto Rico, and the Virgin Islands). The proposed rule contained a near-exclusive dependence on civil surgeons. Civil surgeons who meet the current requirements may still certify an applicant's disability.

- Promulgation of a new, standardized Form N-648, Medical Certification for Disability Exceptions, to be completed by an appropriate medical professional. The Form may be submitted in support of requests for one or both of the exceptions from the English and civics requirements.

- Reservation of the Service's right to require additional supporting documentation or to require the applicant to submit a second disability certification when the Service either requires the additional information to make an accurate decision on the request for the exception or has credible doubts about the veracity of the initial medical certification submitted.

Q. What about people with disabilities who could probably take the tests if some sort of accommodations were made for them?

A. Where a reasonable accommodation or modification to the testing procedures would enable a naturalization applicant with a disability to participate in the process, the Service will provide such accommodation, as required by the Rehabilitation Act. This has been the Service's long-standing practice. There is no need for a medical certification in such a case. For example, modifications may include sign language interpreters, wheelchair-accessible interview sites, on-site interviewing and testing, or an extension of the time for the civics test to allow an applicant with a learning disability to complete the test. The disability exceptions implemented by this new regulation apply only to individuals whose disabilities are so significant that the applicants are unable to meet the English and civics requirements even with reasonable accommodations.

Q. Is it necessary for a person with one, or more, of these disabilities to document the existence of the disability?

A. Yes, but only if the individual is seeking an exception to the Section 312 requirements for English and/or civics based on his or her disability. Such applicants must submit the new Form N-648 (Medical Certification for Disability Exceptions). Applicants with disabilities who can take the tests, with reasonable accommodations if necessary, do not need to submit the Form N-648.

Q. What is the new form like?

A. The Form N-648, Medical Certification for Disability Exceptions, is two pages, accompanied by two pages of instructions. It provides space for the certifying professional to indicate his or her expertise in diagnosing disabilities. It requires the certifying professional to summarize his or her assessment of the applicant's disability and to attest that, in his or her professional opinion, the disability prevents the applicant from demonstrating the required level of English understanding and/or civics knowledge for naturalization. The form must be completed by the professional under penalty of perjury. The form also incorporates a release of any relevant

medical records which the INS may require to evaluate the certification. The release may be signed by the applicant or the applicant's legal guardian.

Q. Who fills out the form?

A. In addition to the applicant, the form must be completed by a qualified licensed medical doctor or licensed clinical psychologist. The professional must have expertise in diagnosing the type of physical or mental impairment which he or she is certifying.

Q. What kind of health professionals are eligible to prepare and sign the Medical Certification Form?

A. The categories of professionals who may certify an applicant's disability have been expanded and clarified from the proposed rule (issued in August 1996) to include licensed medical doctors (which includes medical doctors with specialties such as board certified psychiatrists) and licensed clinical psychologists, who are experienced in diagnosing disabilities. These professionals must be licensed to practice in the United States (including the U.S. territories of Guam, Puerto Rico, and the Virgin Islands). The proposed rule contained a near-exclusive dependence on civil surgeons. Civil surgeons who meet the current requirements may still certify an applicant's disability.

Q. When should the applicant submit the Form N-648, Medical Certification for Disability Exceptions?

A. The applicant should submit the medical certification form (Form N-648) as an attachment to his Form N-400, Application for Naturalization at the time of filing. Submission of the medical certification form at the time of filing the naturalization application will provide advance notice to INS of an individual's request for the English and civics exceptions, thereby enabling the Service to be better prepared to provide appropriate service and accommodations, as needed, for the applicant. (See also answer below on pending cases).

Q. Does a person who has an application for naturalization pending with the Service need to submit the new Form N-648, Medical Certification for Disability Exceptions?

A. If the person with a pending application has not previously submitted any medical documentation to support a request for the disability exceptions, he or she should obtain a medical certification form (N-648), have it completed by an authorized medical professional, and bring it to the interview. If, however, the applicant has provided supporting medical documentation in the past, as requested by INS, the INS officer will first consider that documentation to determine whether it contains the necessary information and is sufficient to grant the request for the exceptions based on the standards described in the final rule and in the N-648. If the information is not sufficient, the officer will request that the applicant submit an N-648 providing additional supporting information from an authorized medical

professional. For all other applicants who submit N-400 applications on or after publication of the final rule, the N-648 should be submitted with the N-400. This procedure for pending cases balances the Service's desire not to burden unduly applicants who have previously submitted sufficient medical documentation, albeit not on an N-648, with the Service's responsibility to adjudicate cases fairly based on the standards set forth in the final rule.

Q: May a person with a disability obtain a certification from his or her regular doctor?

A: Yes, if his or her doctor has expertise in diagnosing disabilities and meets the requirements as noted in the regulation and on the N-648. The doctor or clinical psychologist will have to certify the person's disability, under penalty of perjury.

Q: Why is a certification necessary at all if a person's disability is clearly visible?

A: INS Adjudication Officers are not doctors or psychologists, and should not be put in the position of making a medical determination for any type of benefit. Having the certification from a qualified professional provides the Service with the best documentation regarding the medical condition of the disabled naturalization applicant. Also, a standard form increases consistency in the adjudication of applications for the exceptions.

Q: Under what circumstances will INS require more information or a second certification?

A: The Service reserves the right to require the applicant to submit additional information in support of the original certification, or to submit a second certification form from another qualified professional. By obtaining an additional doctor's or psychologist's assessment, the Service is also better able to base its ultimate decision on eligibility for the disability exception on solid medical and/or psychological evidence. Adjudicators have been instructed to use restraint in such situations, and first to follow a set of steps designed to obtain any needed information or resolve unanswered questions regarding the legitimacy or sufficiency of the original certification. Officers who have a question about a certification or the certifying professional's credentials will consult with their supervisor, and may then contact the doctor or psychologist by telephone if deemed appropriate. In order to require a second certification form, the officer must document a legitimate basis for this determination in the applicant's file, and must receive approval from the supervisor. Officers are also encouraged to consult with another relevant federal or state agency, if that agency has determined the applicant's disability for its own purposes, before requiring a second certification. However, the fact that a person qualifies as disabled under another agency's rules does not automatically entitle the person to the English and civics exceptions for naturalization. When a second certification is required, the applicant should be given a new N-648. INS will not refer applicants to any specific doctor or psychologist. The Service may provide applicants with the name and telephone numbers of local medical societies and other appropriate referral sources.

Q: Who pays for the second medical certification?

- A. It is the responsibility of the applicant to pay for the second certification if the INS requires such additional documentation. Taking this burden on the applicant into account, INS officers have been instructed to use restraint in exercising this option, and should only exercise it when there is an unanswered question as to the disability determination rendered by the professional and when other attempts to obtain the needed information are unsuccessful. In addition, supervisory approval is necessary before an INS officer may request the second certification.
- Q. Why is INS reserving the right to require a second medical certification in instances where the Service has questions about the first certification?
- A. INS officers are not doctors or psychologists and should not place themselves in the position of making medical determinations for which they are not qualified. The procedures for requiring a second medical certification for questionable cases will help ensure that this does not occur. Reservation of this right also helps ensure that INS has all the information necessary to make an accurate and well documented decision on the request for a disability exception.
- Q. Will the INS keep an applicant's medical and mental health records confidential, if they are requested?
- A. As with other agencies, INS is required to protect applicants' personal, confidential records in accordance with the Privacy Act. The Service has long-standing procedures and practices for applicant records that ensure compliance with the Privacy Act's provisions, including procedures that protect medical records already required by law to be submitted when applicants apply for other immigration benefits. Applicants should take note of the Privacy Act Notice contained in the medical certification form which informs them that the principal use of the information submitted is to support an individual's application for naturalization. The Notice further informs the individual that submission of the information is voluntary and that it may, as a matter of routine use, be disclosed to other law enforcement entities. As with other applicant records, INS will make every effort to protect the confidentiality of the applicant's records within the requirements of the law.
- Q. How will INS protect against fraudulent efforts to get people naturalized through this disability regulation?
- A. The INS will use all the procedures currently in place to guard against fraud. Local Service officers have standard methods for ensuring the integrity of the naturalization process, including investigation of suspected unauthorized signatures on medical and other forms submitted in support of applications for immigration benefits. With regard to the disability determinations, the doctor's certification on the form, made under penalty of perjury, helps ensure the accuracy of the information being submitted. If an INS officer has reason to doubt

that the person signing the medical certification form is not a licensed medical professional as required by the regulation, the officer may verify the physician's status with state medical and psychological licensing boards or agencies. In addition, INS is conducting on-going outreach and education for members of the immigrant assistance and medical communities to inform them of the requirements of this new regulation.

Q: In making an assessment of an individual's disability or mental impairment, how will the medical professional know what level of English and civics knowledge the applicant will be expected to demonstrate during the naturalization interview?

A: INS fully recognizes that this will require an extensive and on-going effort to educate the many doctors and clinical psychologists who may be asked by applicants to complete medical certification forms. As part of its outreach efforts on this new regulation, INS will provide doctors and psychologists information on the naturalization requirements and process so that these professionals are better able to apply their medical knowledge of disabilities to the specific circumstances that will be faced by applicants for naturalization. The Service will continue to work with the Department of Health and Human Services, professional associations, immigrant assistance groups, and other organizations that work with people with mental and physical disabilities to develop methods of broadly disseminating this information.

Q: On August 28, 1996, INS issued a proposed rule regarding these disability-related exceptions. Since the final rule included substantial changes, is the public still able to comment?

A: INS received 228 comments on the proposed rule. After the comments were considered, it was clear that considerable changes would be made to the proposed rule. While the rule being issued is final, the INS is seeking additional comments on areas such as appeals of a denied naturalization case and various methods to ensure quality control.

Q: If naturalization applicants with disabilities are granted an exception to the civics knowledge provisions of Section 312, isn't it a double standard to hold these applicants responsible for taking and understanding the oath of allegiance required by section 337 of the INA?

A: This issue is of particular concern to the Service. INS is doing its utmost to interpret and administer Section 312 of the INA, and the subsequent technical amendment, in a sensitive and compassionate manner. We have sought assistance from the American public, as well as numerous governmental entities, including guidance from the Department of Justice's Office of Legal Counsel (OLC). We also carefully considered each of the comments on the oath and other issues that were submitted to INS during the comment period on the proposed rule. Following INS' request for legal guidance, OLC determined that INS does not have the authority to waive the requirement to take the statutorily prescribed oath of allegiance. INS will make reasonable accommodations for applicants with disabilities throughout the entire naturalization process pursuant to our mandate under the Rehabilitation Act of 1973. (See

answer below for INS accommodations to assist persons to meet naturalization requirements, including administration of the oath of allegiance).

Q. Will INS provide accommodations for persons with disabilities to enable them to meet the oath and other requirements for citizenship?

A. Yes. INS has and will continue to make reasonable accommodations and modifications for persons with disabilities that will enable them to participate in the naturalization process. Where necessary, such accommodation will include modifications to procedures officers use to determine whether an applicant has an understanding of the nature of the oath of allegiance. Each interview will be unique and each applicant's capabilities regarding the oath requirement will be assessed on a case-by-case basis. A family member or legal guardian, at the discretion of the Service, can in some instances assist with the interview by being allowed, in appropriate circumstances, to accompany an applicant with disabilities during the interview or by acting as the approved English language interpreter for those applicants whose disability prevents them from fulfilling the English language requirements of Section 312. The family member or guardian may only serve as the interpreter for the applicant, not as the proxy or surrogate for the applicant. Although an applicant with a disability need not understand every word of the oath at the interview, the adjudicating officer must conclude that the applicant has an understanding of the nature of the oath. INS officers will explain the oath in simplified terms to individuals who, because of their disability, have difficulty understanding it. In determining whether an applicant understands the oath, an INS officer may, for example, attempt to determine whether the applicant understands that he/she is becoming a United States citizen, is forswearing allegiance to his or her other country of nationality, and personally and voluntarily agrees to this change of his/her status. Officers can accept a wide variety of signals from an applicant that he/she understands the nature of the oath, including but not limited to a simple head nod, eye blinking, or other signals specific to the individual that clearly mean "yes" or "no." If the officer concludes that an applicant does understand the nature of the oath, the oath can be administered and similar signals of assent accepted. INS has instructed its field offices that accommodating applicants with disabilities in this manner should not be interpreted as imposing requirements on such applicants that are not required of other naturalization applicants. In addition, the Service currently expedites administration of the oath under the provisions of 8 CFR 337.3 which waives the statutory requirement of participation in a public oath ceremony for certain applicants with disabilities.

Q: Do these Section 312 exceptions constitute a blanket exemption for all the requirements for naturalization for persons with disabilities?

A: No. As described above, Congress did not authorize the Service to waive any of the other naturalization requirements outlined in the Immigration and Nationality Act (INA.) Applicants must, for example, be able to demonstrate their good moral character pursuant to the requirements of Section 316 of the INA, must meet the necessary residency requirements as a permanent resident (five years, or three years if married to a U.S. citizen), and must have

the ability to take the statutorily prescribed oath of allegiance (Section 337 of the INA). INS will continue to make reasonable accommodations, as described in the preceding answer, to enable persons with disabilities to demonstrate that they can meet these requirements, including administration of the oath.

Q. May a legal guardian take the oath on behalf of an applicant with disabilities if the applicant is not able to understand the nature of the oath?

A. No. The Department of Justice's Office of Legal Counsel has advised INS that current law does not permit a legal guardian to serve as a proxy for the applicant for purposes of taking the oath of allegiance.

Q: If a person who qualifies for the disability exception is unable to meet the requirement of taking the oath of allegiance, even with reasonable accommodations, will INS be immediately denying these cases?

A: INS recognizes that these cases will be sensitive. In order to ensure that these cases have been decided fairly and consistently, INS offices will temporarily hold these cases pending supervisory review and further guidance from Headquarters.

Q: Will INS afford naturalization applicants with disabilities a special appeal procedure should their naturalization application be denied over a question of the existence of the disability?

A: The determination of a request for an exception to the English and/or civics requirements for naturalization is part of the overall naturalization adjudication. All naturalization applicants may take advantage of the re-hearing provisions of the INA if a naturalization application is denied for any reason. (See section 336 of the INA and 8 CFR Part 336.) Independent medical evidence may be presented by the disabled applicant at the time of the re-hearing to support the claim of eligibility for a disability-based exception. The public is welcome to comment for 60 days on appeal procedures.

Q. Why did the INS take two years to issue a proposed rule implementing the Technical Corrections Act of 1994?

A. INS issued preliminary policy guidance to its field offices on disability waivers prior to the publication of the proposed rule. These guidelines included definitions of the three categories of disabilities based on the Congressional guidance provided in the House Report. These guidelines were in effect while the proposed rule was under development. In developing the proposed and final rules, INS consulted extensively with other federal agencies with expertise in disabilities and civil rights law (notably the Social Security Administration and the Department of Health and Human Services) and other Department of Justice divisions, including the Civil Rights Division. Numerous complex and difficult issues were raised during this process, as reflected in the preamble to the final rule. Sufficient time for this consultation

and consideration of the public's comments was needed to ensure that the final rule accurately and fairly implements the statute.

Q. Is this regulation being proposed now in response to the Welfare Reform Bill recently signed into law?

A. No. The regulation has been under development since the Technical Corrections Act was signed in 1994. Publication of the rule is in fulfillment of the Service's responsibility to implement the law. The President did reiterate his commitment to naturalization when he signed the welfare legislation. Promulgation of the final rule reinforces that commitment.

Q. Does the public have an opportunity to comment on the changes noted in the final rule?

A. The public is welcome to comment on particular points discussed in the "Discussion of Comments" portion of the final rule. In particular, the Service desires further comments on possible appeal procedures and quality control methods. Anyone may submit comments during a 60-day period. All comments should be addressed to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, D.C. 20536. Comments should reference INS number 1702-96 on your correspondence.

Q. How will INS conduct quality control and assurance for these disability exception determinations?

A. INS is committed to complete quality control and assurance for the entire naturalization program. Quality control and assurance is mandatory for all local INS offices. With regard to the disability determinations under this new regulation, the Service is implementing the action items described below that all offices must follow. These required actions are in addition to existing naturalization quality control measures substantially strengthened by the Service in recent months.

- Centralized training at INS Headquarters for officers who will be initially responsible for adjudicating disability exception requests in the field;
- Requirement that these HQ-trained officers handle all disability determinations after publication of the final rule until remaining adjudicators in their offices are trained;
- Requirements for supervisory consultation and approval before an adjudicator may seek additional documentation from an applicant, a second medical certification, and before other steps in the determination process on the request for the exception(s);
- Requirements for adjudicators to document carefully and fully in the applicant's alien file the reasons for requesting second certifications, and for the denials of any request

for a disability exception.

- Review of disability exception determinations as part of the existing audit process conducted on random samplings of all naturalization cases. As stated in the Supplementary Information in the regulation, INS will soon augment this overall naturalization audit process with supplemental random samplings of cases where the applicant has requested a disability-based exception. As indicated in the supplementary section to the regulation, the Service is also investigating the possibility of entering into a contract with a private entity to perform these random samplings.

The adjudicator's naturalization processing checklist for each case will also incorporate the disability regulation determination (where applicable). The regulation invites the public to comment for 60 days on these measures and additional quality control measures for disability cases.

BILLING CODE: 4410-10

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 299, 312, and 499

[INS No. 1702-96]

RIN 1115-AE02

**Exceptions to the Educational Requirements for Naturalization
for Certain Applicants**

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule with request for comments.

SUMMARY: This final rule amends the Immigration and Naturalization Service (the Service) regulations relating to the educational requirements for naturalization of eligible applicants under section 312 of the Immigration and Nationality Act (the Act), as amended by the Technical Corrections Act of 1994. This amendment provides an exception from the requirements of demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage, and of demonstrating a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States, for certain applicants who are unable to comply with both requirements because they possess a "physical or developmental disability" or a "mental impairment." The final rule establishes an administrative process whereby the Service will adjudicate requests for these exceptions while providing the public with an opportunity to comment on portions of the adjudicative process which the Service is altering in response to public comments from the previously published proposed rule.

DATES: This final rule is effective [Insert date of publication in the FEDERAL REGISTER].

Written comments must be submitted on or before [Insert date 60 days from the date of publication in the FEDERAL REGISTER].

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 number 1702-96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Craig S. Howie or Jody Marten, Adjudications and Nationality Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION:

Background

On October 25, 1994, Congress enacted the Immigration and Naturalization Technical Corrections Act of 1994. Section 108(a)(4) of the Technical Corrections Act amended section 312 of the Act to provide an exemption to the United States history and government ("civics") requirements for persons with "physical or developmental disabilities" or "mental impairments" applying to become naturalized United States citizens. This exception complemented an existing exception for persons with disabilities with regard to the English language requirements for naturalization. Enactment of this amendment marked the first time Congress authorized an exception from the civics requirements for any individual applying to naturalize.

The Technical Corrections Act did not specifically define the terms developmental disability, mental impairment, or physical disability. Congress did, however, provide limited guidance for

defining these terms in the Report of the House of Representatives Committee on the Judiciary, H. Rep. 103-387, dated November 20, 1993. Based in part on the language of this report, the Service provided preliminary guidance to field offices on November 21, 1995, defining the three categories of disabilities and requiring disabled persons seeking an exception from the section 312 requirements to obtain an attestation verifying the existence of the disability from a designated civil surgeon.

On August 28, 1996, the Service published a proposed rule at 61 FR 44227-44230 proposing to amend 8 CFR part 312 to provide for exceptions from the section 312 requirements for persons with physical or developmental disabilities or mental impairments. In the preamble to the proposed rule, the Service noted that these exceptions were not blanket waivers or exemptions for persons with disabilities. Creation of blanket waivers would be contrary to the requirements of section 504 of the Rehabilitation Act, which provides for equal (with modifications/accommodations) but not special treatment for disabled persons in the administration of Justice Department programs. The proposed rule provided that an exception would only be granted to those individuals with disabilities who, because of the nature of their disability, could not demonstrate the required understanding of the English language and knowledge of United States civics, even with reasonable modifications or accommodations.

The Service proposed that all disability eligibility determinations be based on medical evidence in the form of individual, one-page assessments by civil surgeons or qualified individuals or entities designated by the Attorney General, attesting to the existence of the applicant's disability. As is the case with virtually all Service adjudications for benefits, it was noted that it is the responsibility of the disabled person applying for naturalization to provide the documentation necessary to substantiate the claim for a disability-based exception.

The Service noted that it would comply with section 504 of the Rehabilitation Act of 1973 by providing reasonable modifications and/or accommodations to its testing procedures for applicants with disabilities. In addition, the Service noted that an applicant would be deemed unable to participate in the testing procedures only in those situations where there are no reasonable modifications that would enable the applicant to participate.

After the Service completed digesting the comments received from the public and after meeting with other federal benefit-granting agencies with extensive experience in administering disability related programs, it became clear that considerable changes would be made to the proposed rule. As such, the Service is implementing the policies contained in this rule while also seeking additional comments from the public addressing our changes.

Discussion of Comments

The Service received 228 comments from a variety of sources, including federal and state governmental agencies, disability rights and advocacy organizations, and private individuals. While the Service has identified 11 specific comment areas that warrant discussion, the majority of comments address three specific areas relating to the proposed rule, in particular, the definitions of the disabilities proposed by the Service at §§ 312.1(b)(3)(i) and 312.2(b)(1)(i), the use of the civil surgeons as the medical professionals making the disability determinations at § 312.2(b)(2), and the other statutory requirements for naturalization. The Service also notes that of the 228 comments, 46 were in the form of two separate “form memoranda” which the Service speculates were circulated among commenters. Some commenters attached these memoranda to a cover letter, while others placed the form memorandum onto their own letterhead. An additional 12 form letters, all from the same social services agency yet signed by various staff, were also received.

The Service appreciates the overall in-depth comments that were received, especially from other federal agencies and various disability advocacy organizations. All these comments have assisted the Service in understanding matters of concern to the disabled community, a constituent group that until now the Service has only interacted with on a limited basis. The following is a summarized discussion of the comments, opening with an issue statement, followed by a summary of the public comments, and concluding with the Service response. The discussions are listed in order according to the volume of comments received for each topic.

Definitions of the Disabilities

Issue. Should the Service change the definitions noted in the proposed rule to comport with existing federal statutes and regulations? The Service proposed to amend §§ 312.1(b)(3)(i) and 312.2(b)(1)(i) of 8 CFR with definitions of physical disability, developmental disability, and mental impairment based upon the language of the legislative history as noted in H.R. No. 103-387. These definitions included provisions which excluded disabilities that were temporary in nature, that were not the result of a physical or organic disorder, or that had resulted from an individual's illegal use of drugs. H.R. No. 103-387 did not clarify whether the Congress was referring to the abuse of illegal drugs or legal drugs. Each definition included language which specified that the disability must render the individual unable to fulfill either the requirements for English proficiency or to participate in the civics testing procedures even with reasonable modifications.

Summary of public comments. The disability definitions received 138 comments, the largest number of specifically referenced comments. The majority of commenters noted that while it was appreciated that the Service was attempting to follow the intent of Congress, as based on the limited legislative history, it was the obligation of the Service to use definitions already in existence and that

comport with existing federal statutes. In particular, 62 comments directly referenced the position that the Service is required to use existing definitions that comport with other federal statutes, such as definitions found in the Americans With Disabilities Act and the Developmental Disability, Services, and Bill of Rights Act of 1978. These commenters also expressed particular concern over the proposed definition of developmental disability. They noted how there is disagreement within the medical community as to whether certain disabilities, such as mental retardation, are indeed developmental in nature as opposed to being a mental impairment.

As noted previously, the Service, in following the legislative history, excluded disabilities in the proposed definitions that were acquired (to exclude persons whose disability was the result of the illegal use of drugs) or disabilities non-organic or temporary in nature. Of the comments addressing the definitions, 39 specifically admonished the Service to revisit this decision. According to these commenters, by adopting the definitions as listed in the proposed rule, the Service would be excluding a large number of disabled naturalization applicants. For example, individuals suffering from Post Traumatic Stress Disorder or individuals whose disability resulted from an accident would not be covered by the definitions as proposed by the Service, in that both these disabilities are acquired. An additional 18 commenters noted that the definitions proposed by the Service were too narrowly drawn. They repeated the argument that by enacting such narrowly drawn definitions the Service would potentially exclude large numbers of disabled individuals who might qualify for these Congressionally mandated exceptions.

Eight commenters noted that the Service had not included specific references to particular disabilities in the proposed rule. It was therefore suggested that the Service modify its definitions to include particular disabilities such as mental retardation and deafness and particular diseases such as

Alzheimers to the language of the final rule. One commentator noted that the seriously ill should be considered physically disabled for the purposes of gaining an exception to the section 312 requirements.

Ten separate commenters noted that the proposed language of the disability definitions would not take into consideration persons with combination disabilities. It was cited that while an individual with combination disabilities might not meet the criteria for an exception in a single category, the individual's combination of disabilities might prevent them from being able to meet the requirements of section 312, even with reasonable modifications. An example given noted that an individual with mild dementia who also suffers from hearing loss or blindness may not be able to learn the required English and civics information. Taken singularly, these disabilities might not automatically warrant an exception for the individual. However when combined, the commenters agreed on the likelihood of the individual being unable to satisfy the requirements of section 312 increase, and thus may warrant the granting of an exception.

Response. The Service has devoted considerable time in evaluating the comments addressing the disability definitions, and has consulted with other federal agencies whose experience in developing and implementing disability-related benefit programs is much more extensive than that of the Service (notably the Department of Health and Human Services and the Social Security Administration). The Service has also revisited the exact language of the Act at section 312 as well as the legislative history.

As noted, the Service has consulted with the Social Security Administration (SSA) since the publication of the proposed rule in order to gain a better understanding of disability-related programs in general. While the criteria upon which the SSA renders an individual disabled for an SSA financial

benefit (the focus being on an individual's inability to support themselves financially) is wholly different from the Service adjudication process for an Immigration and Nationality Act benefit, the Service finds no compelling reason why the definitions upon which these adjudications are based should not be standard between the two agencies.

Therefore, the Service is modifying the proposed rule with regard to the definitions of the disabilities as found at § 312.1(b)(3)(i) and § 312.2(b)(1)(i). The Service is electing to use language that for the most part comports with the regulatory language utilized by the SSA. In the revised language, the three categories of disabilities as noted in the Act are not specifically mentioned but are referenced as medically determinable physical or mental impairment(s), thereby using accepted medical and regulatory language already enacted and found within the SSA regulations. Modifications have been made to SSA's suggested language in order to maintain the Congressional intent that individuals whose disabilities are the result of the illegal use of drugs not be eligible for an exception to the section 312 requirements.

Also included in the regulatory language are provisions to recognize combination impairments, as suggested by commenters and in keeping with the standards used by the SSA. However, the Service has elected not to include specific references to particular disabilities within the regulatory text found in §§ 312.1(b)(3) and 312.2(b)(1). The Service believes that inclusion of particular named disabilities could have the possible effect of limiting the scope of the proposed exceptions. In other words, some disabled applicants, not seeing their particular disability noted in the text of 8 CFR part 312 might not believe they are covered by the potential exception and thus might not attempt to gain an exception even though they might be fully eligible.

By adopting these changes, the Service is addressing the public's concern regarding the

proposed regulation's consistency with existing federal regulations and statutes. We are also ensuring that the particular concerns that Congress elected to include in the legislative record are observed, while acknowledging that adopting a broad definition of disability is mandated by the Act. However, the burden will still be on the applicant, via the medical certification, to demonstrate to the satisfaction of the Service how the disability prevents the applicant from learning the information required by section 312 of the Act. The Service believes that it is possible to create a humane process without creating a blanket exception policy within the regulatory language and within the administration of this program. As previously noted, creation of a blanket exception would have the tacit effect of perpetuating the stereotype that persons with disabilities are unable to participate fully in mainstream activities and would thus be contrary to the provisions of section 504 of the Rehabilitation Act of 1973.

Disability Determinations: Use of the Civil Surgeons and Creation of a Form

Issue. Should disabled applicants be required to be examined by a civil surgeon in order to obtain a disability certification? In the proposed rule at 8 CFR 312.2(b)(2), the Service noted that disabled applicants desiring a disability exception to the requirements of English proficiency and civics must submit medical certification attesting to the presence of the disability, executed by a designated civil surgeon or qualified individuals or entities designated by the Attorney General. The Service did not define the terms qualified individuals or entities, but did specifically request public comments on the requirements of the medical certification process and in particular on the circumstances under which the Service should consider the use of qualified individuals or entities other than civil surgeons.

Summary of public comments. The public responded with 125 comments directly addressing this aspect of the proposed rule. The majority of commenters had concerns over the use of civil

surgeons. It was noted by 101 commenters, including HHS (the controlling federal agency for civil surgeons), that the majority of civil surgeons are in general family practice and thus not experienced in making complex disability determinations. In addition, it was noted that civil surgeons currently base the majority of their examinations for the Service on matters relating to the admissibility of immigrating aliens and communicable diseases. This diagnosis of communicable diseases does not relate to the disability determination process, according to these commenters.

Many commenters, acknowledging the Service's need to maintain integrity in the medical determination process, noted that it would be imposing a great burden on the disabled applicant to limit the attestation process to only civil surgeons and the unknown "qualified individuals or entities." Forty-seven commenters therefore directly requested the Service to allow disabled applicants to use the medical services of the person's attending physician, medical specialist, or clinical case worker rather than mandating an examination by a civil surgeon. Several of these commenters also noted that the Service must consider the stress potentially placed on persons with mental impairments if forced to undergo an examination by someone other than their own physician.

In addition to the above noted reasons offered for not limiting the medical certification process to the civil surgeons, 25 commenters stated that the pool of civil surgeons was too small to adequately serve all disabled applicants who might attempt to avail themselves of the disability exceptions. The small pool of civil surgeons could potentially result in disabled applicants having to wait months for appointments.

It was noted by 10 commenters that the cost of going to a civil surgeon could be prohibitive for many persons with disabilities on fixed incomes or public assistance, especially if the civil surgeon is required to consult with medical professionals who specialize in disabilities prior to issuing a

certification. Commenters noted that the Service should take this factor into consideration prior to finalizing any policy that would require the predominant use of civil surgeons in the disability determination process. Six commenters noted that the Service should be obliged to provide disabled applicants with lists of bilingual physicians qualified to render the necessary disability certification, and one commenter requested that the Service compose lists of specialists, such as psychiatrists and clinical case workers, that disabled applicants could use in locating a medical professional qualified to make the disability certification.

Three commenters requested the Service to abandon the proposed certification process altogether and adopt a procedure similar to that currently utilized by the SSA in making disability determinations. Another commenter stated that the certification process should be changed, and suggested that disability determination authority be given to the district director in every local Service office. According to this writer, this policy would dissuade a large number of individuals who view the section 312 disability exceptions as a means of avoiding the English language statutory requirement.

Response. In determining a final policy for the disability determination process, the Service acknowledges that it must be responsive to the needs of the applicant base, especially the needs of persons with disabilities. However, it is also the obligation of the Service to balance these needs with the necessity of maintaining integrity in the disability determination process. Only one commenter addressed the fact that the Service will be faced with instances of fraud in the administration of this program and that the Service must be ever-vigilant when non-disabled applicants attempt to present themselves to the Service as disabled and therefore eligible for a disability exception. Having a structured process for the determination of a disability is critical to the Service's obligation to

maintain an adjudicative process with integrity.

The Service has concluded that the public is justified in its concern over the near exclusive dependence on the civil surgeons in the disability determination process. Therefore, the Service is proposing to eliminate all references to the use of the civil surgeons in the determination process. (However, any civil surgeon meeting the criteria outlined below will be able to make a disability determination, but based on the surgeon's expertise with a particular disability, not on the fact that he or she is a civil surgeon.)

The Service is proposing that only medical doctors licensed to practice medicine in the United States (including the United States territories of Guam, Puerto Rico, and the Virgin Islands), which includes medical doctors with specialties such as board certified psychiatrists, and clinical psychologists licensed to practice psychology in the United States (including the United States territories of Guam, Puerto Rico, and the Virgin Islands) who are experienced in diagnosing disabilities, make the determinations that will be used by the Service. This policy will address the concerns of the public regarding the use of civil surgeons, the perception that the available pool of civil surgeons is too small to meet the needs of the disabled community, and the possible high cost of medical visits to several doctors in order to verify the existence of a disability. This determination process will be effective upon publication of this rule while the Service also investigates other possible methods for having disabled applicants gain a disability certification from professionals within the medical community.

The selective list of licensed health care providers eligible to render a disability determination is critical to the Service obligation that fraud not corrupt this program or the adjudicative process. Further safeguards can be found in the proposal of the Service to require the medical professional

making the disability determination to (1) sign a statement that he or she has answered all the questions in a complete and truthful manner and agrees, with the applicant, to the release of all medical records relating to the applicant that may be requested by the Service, and (2) an attestation stating that any knowingly false or misleading statements may subject the medical professional to possible criminal penalties under Title 18, United States Code, Section 1546. Title 18, United States Code, Section 1546 provides in part:

...Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement - shall be fined in accordance with this title or imprisoned not more than ten years, or both.

In addition to the criminal penalties of Title 18 noted above, the applicant and licensed medical professional are subject to the civil penalties under section 274C of the Act, Penalties for Document Fraud, 8 U.S.C. 1324c.

The Service has many concerns over the preservation of integrity but cannot expect the public to wait for the implementation of a possible alternative determination process. Other federal agencies have advised the Service that their experience with accepting documentation from attending physicians has in some instances been negative. For this reason, the Service has elected to reserve the right to request additional medical records relating to the applicant's disability if the Service has reason to question the disability determination or certification.

The Service is also reserving the right to refer the applicant to another authorized licensed health care provider for a supplemental disability determination. This option will be invoked when the Service has credible doubts about the veracity of a medical certification that has been presented by an applicant. The Service will likely be faced with cases where non-disabled individuals, fully capable of meeting the functional English and United States civics requirements of section 312, will attempt to gain a disability exception. Therefore, the Service must be free to use reasonable means to prevent fraud in the disability determination process and to ensure that the integrity of United States citizenship is preserved.

The Service notes that it is not the responsibility of this agency to provide disabled applicants with lists of bilingual medical professionals, nor is it the responsibility of the Service to provide lists of licensed health care providers qualified to perform the disability determinations. The burden is on the applicant to provide the documentation deemed necessary for the Service to make a determination as to the qualifications of the applicant for any benefit requested under the Act.

The public must also note that the naturalization program is financed entirely by the fees paid by the naturalization applicant. No Congressionally appropriated funds are dedicated to the naturalization adjudicative process. The creation of any alternative determination process would need to be financed either by the user fees paid by applicants or by other as yet unidentified non-fee sources of funding. The Service desires to learn the public viewpoint on various alternative disability determination processes.

In its proposed rule, the Service specifically requested public comments on the requirements for the medical certification. Only two commenters made specific suggestions that the Service would better serve the public as well as its own interests by creating a new public use form. Initially, the

Service proposed that the medical professional making the certification issue a one-page document, attesting to the origin, nature, and extent of the applicant's condition as it relates to the disability exception. The certification was specified to be only one page in an attempt to keep applicants from submitting entire medical histories that the Service has no experience with or capacity to archive.

The Service has determined that the creation of a new public use form will be a benefit to both the Service and the public. In particular, creation of a form will take the burden off both the applicant and the licensed medical professionals with regard to information dissemination. The form's instructions will include complete explanations of the disability categories and define which licensed medical professionals can execute the certification. A new form will allow the licensed medical professionals to state simply, via reference to the instructional guidelines, how the applicant's disability prevents the applicant from learning the information needed to fulfill the requirements of section 312 of the Act. The form will also allow the licensed medical professionals an opportunity to comment on how their particular medical experience qualifies them to render complex disability assessments.

As previously noted, the Service also believes that a form will ensure the integrity of the disability determination process (a vital concern of the Service) by requiring the licensed medical professionals to sign and declare that the examination and certification is accurate under penalty of perjury. The new form will also allow for the submission of additional background medical documentation, upon request of the Service, which may reduce the likelihood of fraud. Lastly, Service offices will be advised, and the public should note, that the Service will accept photocopies of the new Form N-648, Medical Certification for Disability Exceptions, until the form becomes fully available to the public.

Other Naturalization Requirements

Issue. Must disabled naturalization applicants meet the other requirements for naturalization, including the ability to take an oath of renunciation and allegiance? In order for an applicant for naturalization to be approved, the Service must be satisfied that the applicant has met the requirements as stipulated in the Act. The 1994 Technical Corrections Act amended the Act regarding the requirements found in section 312, but did not amend the requirements found in section 316 (Requirements as to Residence, Good Moral Character, Attachment to the Principles of the Constitution, and Favorable Disposition to the United States). Neither did it amend section 337 (Oath of Renunciation and Allegiance). Therefore, the Service did not address any of the other requirements for naturalization in the proposed rule.

Summary of Public Comments. While the Service did not address the other requirements for naturalization, 92 commenters did make direct references to these requirements. The vast majority of these writers (89 of the 92) stated that it was incumbent upon the Service to waive the other naturalization requirements for applicants with disabilities, in particular the oath of allegiance. Commenters stated that the intent of Congress was to relieve the disabled from requirements they could not be expected to meet, to remove barriers in the naturalization process for the disabled applicant, and not to create an additional test whereby disabled applicants would in effect be tested on their ability or capacity to take the oath.

Writers stated that while Congress did not directly address the issue of the other requirements for naturalization, it was the obligation of the Service to comply with Congressional intent and waive the oath requirement. These commenters stated that by not waiving the oath, the Service would place the disabled applicant in a situation of being exempt from the civics requirements of section 312, but

required to have a working knowledge of civics in order to take and understand the oath of allegiance. Writers further stated that this situation of exempting certain requirements but holding the disabled applicant to other requirements would be a violation of the Rehabilitation Act of 1973 and the Department of Justice regulations. These regulations prohibit the government from utilizing "criteria or methods of administration the purpose or effect of which would...(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons." (28 CFR 39.130 (b)(3))

These writers noted it was not only the obligation of the Service to follow Congressional intent, but that the Service has the authority to waive the oath requirement for any applicant under the Service authority to naturalize applicants via the administrative naturalization process. This administrative naturalization authority was given to the Service by Congress as part of the Immigration Act of 1990. Twenty of these writers also suggested that the Service consider the alternative idea of allowing a family member, legal guardian, or court appointed trustee to stand in for the disabled applicant during the administration of the oath. This would in effect create an oath by proxy procedure, available to the disabled applicant when the disability prevents the applicant from understanding the language of the oath.

Two writers stated that the Rehabilitation Act of 1973 and companion disability-related statutes were enacted to ensure fairness to disabled persons with regard to employment and physical accessibility. Therefore, they do not relate to the naturalization process. These commenters stated that the other naturalization requirements, in particular the oath, are mandatory and should not be waived for any applicant, disabled or not. One additional writer suggested that the Service seek clarification from Congress on the issue of disabled applicants unable to meet all the requirements for

naturalization.

Response. The Service did not address the issue of the oath in the proposed rule since Congress did not amend section 337 of the Act in the 1994 Technical Amendment Act. However, the Service realizes the concern that exists within the disability community as to this naturalization requirement.

The Service already makes reasonable accommodations in cases where individuals are unable, by reason of a disability, to take the oath of allegiance in the customary way. For example, it is the common practice of all Service offices to conduct naturalization interviews and to administer the oath of allegiance outside of the local Service office in instances where the applicant is either home-bound or confined to a medical facility. Such accommodations remain available for disabled individuals who signal their willingness to become United States citizens and to give up citizenship in other countries.

Acceptance of Disability Certifications from Other Government Agencies

Issue. Should the Service accept disability certifications issued by other government agencies? In the proposed rule at § 312.2(b)(2), the Service noted that it may consult with other federal agencies in determining whether an individual previously determined to be disabled by another federal agency has a disability as defined in the proposed rule language. This consultation could be used in lieu of the Service-required medical certification.

Summary of public comments. Thirty-eight commenters stated that the Service should be obligated to accept a certification of a disability from a federal or state governmental agency in lieu of having the disabled naturalization applicant seek an additional medical certification.

Response. The Service has consulted with other federal agencies regarding this matter. It was pointed out to the Service that with most agencies, the determination of a disability leads to

either a financial or medical benefit. The SSA noted that the criteria they review prior to granting an individual a disability benefit (in particular, can the person work and thus support themselves financially) is entirely different than the requirements that all applicants applying for naturalization must meet. In addition, a disability which might render an individual eligible for a financial or medical benefit from another federal or state agency may not in all cases render the same individual unable to learn the information required by section 312 of the Act.

After careful review, the Service has determined that it will not accept certifications from other government or state agencies as absolute evidence of a disability warranting an exception to the requirements of section 312. However, and as noted in the proposed rule, the Service reserves the right to consult with other federal agencies on cases where an applicant has been declared disabled. The Service notes that the unquestioned acceptance of another agency's disability determination would equate to a blanket waiver of the section 312 requirements for anyone with a disability that has been so recognized by another agency. Such a blanket waiver, based on stereotypical speculation that persons with disabilities are unable to participate in mainstream activities, is contrary to the provisions of section 504 of the Rehabilitation Act of 1973.

Appeal Language

Issue. Should a special appeal procedure be created for disabled naturalization applicants?

Summary of public comments. Twenty-six commenters noted that in the proposed rule, the Service failed to include any references to an appeal procedure for a disabled naturalization applicant who is denied naturalization based on the Service not accepting a medical certificate attesting to a disability. Six of these commenters stated that since Service officers were not medical professionals, they should be obliged to accept a medical certificate. These same commenters additionally stated

that any applicant's certificate that might be denied be afforded an immediate appeal to the local Service district director. Three commenters suggested that the Service be required to obtain independent medical evidence prior to denying any naturalization case, based on questions about the disability certification. Twelve commenters stated that the Service should be obligated to establish a separate appeal process for disabled applicants, also repeating the request that the appeal be forwarded immediately to the local Service district director.

Response. Many separate decisions comprise the overall adjudication of an individual's application for naturalization. One part of the overall adjudication will be acceptance or rejection of the applicant's N-648. This will not be a separate adjudication, entitled to its own set of appeal rights and procedures, but a part of the entire N-400 approval or denial process.

All applicants seeking to naturalize, including disabled applicants, may avail themselves of the hearing procedure already in place in the event the naturalization application is denied. Applicants may request a hearing on a denial under the provision of section 336 of the Act. The regulations governing these hearings are found at § 336.2. The review hearing will be with other than the officer who conducted the original examination and who is classified at a grade level equal to or higher than the grade of the original examining officer. Applicants may submit additional independent evidence as may be deemed relevant to the applicant's eligibility for naturalization. If the denial is sustained, the applicant may seek de novo reconsideration in federal court. With the additional training Service adjudication officers will receive regarding disabilities and the disability-based exception to the requirements of section 312, the Service is of the opinion that in the interim, the current hearing procedure for a denied naturalization application is sufficient.

In the interest of making an accommodation, the Service is considering a modification to the

current hearing procedure. The procedure under consideration contemplates using the current hearing process augmented with an independent medical opinion issued on the disability finding. This opinion could be issued by a medical professional that the applicant has been referred to by the Service, especially in instances where the Service officer questions the medical certification. An augmented hearing process would need to be financed through the user fees paid by the applicant or by other as yet unidentified non-fee sources of funding. As noted previously, the naturalization program is entirely funded by user fees, with no additional funding appropriated by the Congress. The Service welcomes additional public comments on this idea. However, such a procedure would necessitate a separate regulatory amendment to 8 CFR 336.2.

Reasonable Modifications/Accommodations, Special Training, and Quality Control

Issue. Should examples of reasonable modifications and accommodations to the naturalization testing procedure be included in the language of the regulation? Noted in the preamble to the proposed rule were statements that pursuant to section 504 of the Rehabilitation Act of 1973, the Service would make reasonable modifications and accommodations to its testing procedures to enable naturalization applicants with disabilities participation in the process.

Summary of public comments. Twenty-two commenters raised specific references to the modifications and accommodations. In particular, commenters felt that the Service should include in the text of the final rule examples of the modifications or accommodations which might be afforded the disabled applicant during the testing and interview process. Writers stressed that appropriate modifications depend upon the applicant's individual needs. One commenter stated that it would be more efficient for the Service to interview persons with disabilities off-site rather than modifying each officer's work station in each Service office for complete disability access.

Response. The Service is in full compliance with its obligations under section 504 of the Rehabilitation Act and provides accommodations and modifications to the testing procedures when required. The Service currently makes regular accommodations and modifications for disabled applicants for the full range of its services.

However, the Service has reservations about including language within the text of the regulation detailing specific accommodations or modifications. It is the opinion of the Service that the appropriate place for such language is in the accompanying field policy guidance and instructions that will be distributed to all Service offices upon publication of this final rule. Service offices are routinely reminded of the obligations section 504 places on all governmental agencies regarding accommodating persons with disabilities. The Service notes that it is current Service policy to conduct off-site testing, interviews, and where authorized, off-site swearing-in ceremonies in appropriate situations.

Four commenters suggested that the Service create special training directed at Service officers in all local Service offices. This training would remind officer staff of their responsibilities under section 504 of the Rehabilitation Act and offer staff examples of exact modifications and accommodation to the testing procedures. An example might be the officer taking into account the special testing needs of naturalization applicants with learning impairments. The Service agrees with this suggestion and will initiate special training for local district office adjudication officers. Program staff at Service Headquarters are currently working on the creation of this training module and plan to provide this special training as close to the publication of the final rule as possible. The Service asks the public for suggested training methods which may be of value to the adjudication officers responsible for hearing those cases where the applicant is requesting a disability-based exception to

the requirements of section 312.

In addition to the special training efforts that will be undertaken, the Service is committed to ensuring that substantial quality control mechanisms are followed regarding these disability-related naturalization adjudications. Currently, all Service offices responsible for processing naturalization cases must comply with mandatory quality control procedures. These procedures include regular supervisory review of every stage of the naturalization process, from clerical data entry and final decisions, to regular Form N-400 random samplings. These quality control procedures are not optional instructions that Service offices are encouraged to follow. These procedures are mandatory for every office. The Service is committed to ensuring that all naturalization cases are handled properly, administratively processed correctly, and adjudicated fairly.

The Service will supplement these current quality control procedures with additional procedures particularly directed at cases where applicants have requested an exception from the requirements of section 312. These procedures will include the previously referenced special training efforts for local Service adjudicators as well as supplemental random samplings of cases where the applicant has a disability and has requested an exception. The Service is currently investigating the possibility of entering into a contract with a private entity to perform these random samplings. Such an arrangement would ensure an unprecedented level of objectivity in reviewing disability-related cases. It would also allow the Service to gain independent medical viewpoints on these disability adjudications as well as opinions on medical certifications which may have been questioned by the local Service officer. The Service requests public comments on additional quality control methods which may assist the Service in ensuring that its disability related adjudications are fair and accurate.

Exemption of all section 312 Requirements for the Elderly

Issue. Should the Service grant a total exemption to the elderly for the requirements of section 312 of the Act?

Summary of public comments. While the proposed rule did not address the issue of applicants over the age of 65 being exempted from all requirements of section 312, 16 commenters urged the Service to adopt such a policy. Writers based their requests on the assumption that applicants over the age of 65 are inherently unable to learn a new language or information on United States civics due to their advanced age. Therefore, commenters suggested a new policy whereby elderly applicants would have the naturalization requirements found under section 312 waived. One additional writer asked that the Service waive the English requirements for any legal immigrant attempting to naturalize.

Response. Section 312 of the Act offers no blanket exemption to applicants over the age of 65 with respect to the English proficiency requirements. Congress has afforded naturalization applicants over the age of 50 with 20 years of permanent residence and applicants over the age of 55 with 15 years of permanent residence an exemption from the English language requirements. Congress has not, however, expanded these exemptions to other groups. Congress has also granted “special consideration” to applicants over the age of 65 with 20 years of permanent residence regarding the civics knowledge requirements. (The Service will address the section 312 “special consideration” provisions in the overall regulatory revision of 8 CFR part 312.)

The Service cannot create a new exemption category to the Act. Only the Congress has the authority to amend the Act. As such, the Service cannot act on this particular suggestion.

Treating Applicants with Disabilities with Compassion and Discretion

Issue and summary of public comments. The need for compassion and discretion in adjudicating disability naturalization cases. In the Service's preliminary guidance to field offices regarding section 312 disability naturalization cases, dated November 21, 1995, offices were reminded to use compassion and discretion in their dealings with disabled applicants. Fifteen commenters noted that this language was missing from the proposed rule and requested the Service to include said language in the text of the final rule.

Response. The Service understands the desire of the disabled advocacy community to have this language included in the final rule. However, the Service feels that such language is more appropriate for inclusion in the supplemental policy guidance that will be distributed to field offices upon publication of this rule. The special training previously mentioned that the Service will require for adjudication officers will also stress the need for compassion and discretion in dealings with all applicants for benefits under the Act.

A Single Test and Single Determination

Issue and summary of public comments. Should the Service use a single test and single determination process? Seven commenters noted that the proposed rule implies that there are two separate tests, due to the structure of the regulation which addresses English proficiency at § 312.1 and knowledge of United States civics at § 312.2. The Service was therefore urged to adopt a single test format. These commenters also suggest that the Service only require one determination for the medical certification process.

Response. The Service notes that while the current structure of the regulation features two distinct parts regarding English proficiency and knowledge of United States civics, current procedures

do, in effect, offer applicants a single test. During the mandatory naturalization interview, the applicant's verbal English proficiency is determined by the spoken interaction between the adjudication officer and the applicant. Most civics testing is also done orally, which provides the adjudication officer with additional evidence of the applicant's English proficiency. The public should also note that in the Request for Comments contained in the proposed rule, the Service emphasized that the entire regulatory structure of 8 CFR part 312 was under review. Commenters' suggestions about combining the requirements of §§ 312.1 and 312.2 into one consolidated section shall be considered during the redrafting of 8 CFR part 312.

With regard to the request for a single determination of the disability, the Service will require each applicant requesting an exception to the requirements found at section 312 to submit a single medical certification. The certification should note the existence of the disability, and the recommendation of the medical professional that the applicant be exempted from the requirements of section 312. This certification must address, however, both the English proficiency and United States civics knowledge requirement and the applicant's inability to meet either one or both of the requirements. This is necessary since both requirements must be met in order for the individual to be naturalized, absent a waiver.

Expedited Processing for Applicants with Disabilities

Issue and summary of public comments. Should persons with disabilities be afforded expedited processing of their naturalization applications? Four commenters addressed the issue of expedited processing of naturalization applications for persons with disabilities. Three writers stated it was the obligation of the Service to expedite these naturalization cases, in that the applicant's status with other government agencies regarding eligibility for social service benefits could be affected by

the applicant's not being a United States citizen. One of these commenters suggested that the Service institute a 30-day processing window for disabled applicants, to ensure that the Service could grant the applicant any reasonable modification necessary to possibly take part in the normal testing procedure. One writer noted that the disabled should not be granted expedited processing in that such an accommodation would be inconsistent with current Service policy.

Response. The policy of the Service, found in the Operating Instructions at §103.2(q), is to process all applications in chronological order by date of receipt. This procedure ensures fairness and equity for all applicants. The Service shall continue to observe this procedure with regard to naturalization applications from persons with disabilities. The public should note, however, that any applicant able to show evidence of an emergent circumstance may request an exception to this policy from the local district director. It is within the discretion of the district director to either grant or deny a request for expedited processing of any Service adjudication.

Miscellaneous Comments

Ten commenters implored the Service to take into consideration their particular personal circumstances surrounding disability naturalization cases currently or about to be submitted to the Service. While the Service has empathy for these writers, the proposed rule for which comments were solicited addressed procedural issues, not particular cases. The Service is confident that each of these individual cases will be adjudicated equitably when presented to an adjudications officer for review.

One writer expressed dismay that the Service was considering an exception to the section 312 requirements for certain disabled aliens attempting to naturalize. This writer stated that disabled aliens should be required to return to their native countries and that the United States should focus

its attention on assisting native-born disabled citizens. The Service would note that the 1994 Technical Corrections Act mandates this change to the Services' regulations. The Service is obligated to follow the direction of the Congress when Congress so amends the Act.

One commenter suggested that the Service embark upon a media campaign in order to notify disabled persons about the provisions of this legislative change. The writer speculated that there is no method in existence by which the Service can notify the disabled community of this possible exception. Based on the number of comments received from various disabled rights advocacy groups, the Service is of the opinion that the vast majority of individuals who might benefit from this exception will have a means of being informed about the provisions of the exceptions. The Service would also note that it is working with the SSA on informational materials for all alien SSA beneficiaries who may wish to apply for naturalization.

One writer noted that the current application for naturalization, Form N-400, should be amended to include references to the disability related exceptions. The Service recognizes this problem and notes that the N-400 is currently under revision. Any revision will include information regarding the disability exceptions to the section 312 requirements and will be submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act.

Another commenter requested that the Service be flexible in adjudicating naturalization applicants from disabled persons. The Service has every intention of being flexible in these adjudications to the extent allowable under the law. The special training effort that will be instituted should assist the Service in meeting the goals of being flexible and fair in the adjudication of these naturalization applications.

Request for comments

The Service is seeking public comments regarding the final rule. In particular, the Service is seeking comments regarding the modifications made to the proposed rule, published at 61 FR 44227. It should again be noted that the Service is engaged in an additional revision of 8 CFR part 312. That additional revision will be issued as a proposed rule, also with a request for public comments.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605 (b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule has been drafted in a way to minimize the economic impact that it has on small business while meeting its intended objectives.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Under Executive Order 12866, section 6(a)(3)(B)-(D), this proposed rule has been submitted to the Office of Management and Budget for review. This rule is mandated by the 1994 Technical Corrections Act in order to afford certain disabled naturalization applicants an exemption from the educational requirements outlined in section 312 of the Immigration and Nationality Act.

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities

among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

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

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one 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.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR part 299.5, Display of control numbers.

List of Subjects

8 CFR Part 299

Immigration, reporting, and record keeping requirements.

8 CFR Part 312

Citizenship and naturalization, Education.

8 CFR Part 499

Citizenship and naturalization.

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

PART 299--IMMIGRATION FORMS

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

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

2. Section 299.5 is amended by adding the entry for Form "N-648", to the listing of forms, in proper numerical sequence, to read as follows:

§ 299.5 Display of control numbers.

INS form No.	INS form title	Currently assigned OMB control No.
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N-648	Medical Certification for Disability Exceptions.	1115-0205
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PART 312—EDUCATIONAL REQUIREMENTS FOR NATURALIZATION

3. The authority citation for part 312 continues to read as follows:

Authority: 8 U.S.C. 1103, 1423, 1443, 1447, 1448.

4. In § 312.1, paragraph (b)(3) is revised to read as follows:

§ 312.1 Literacy requirements.

* * * * *

(b) * * *

(3) The requirements of paragraph (a) of this section shall not apply to any person who is unable, because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language as noted in paragraph (a) of this section. The loss of any cognitive abilities based on the direct effects of the illegal use of drugs will not be considered in determining whether a person is unable to demonstrate an understanding of the English language. For purposes of this paragraph, the term medically determinable means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency as outlined in paragraph (c) of this section.

* * * * *

5. Section 312.2 is amended by:
- a. Revising the last sentence of paragraph (a);
 - b. Redesignating paragraph (b) as paragraph (c) and by
 - c. Adding a new paragraph (b), to read as follows:

§ 312.2 Knowledge of history and government of the United States.

(a) * * * A person who is exempt from the literacy requirement under § 312.1(b)(1) and (2) must still satisfy this requirement.

(b) Exceptions. (1) The requirements of paragraph (a) of this section shall not apply to any person who is unable to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States because of a medically determinable physical or mental impairment, that already has or is expected to last at least 12 months. The loss of any cognitive skills based on the direct effects of the illegal use of drugs will not be considered in determining whether an individual may be exempted. For the purposes of this paragraph, the term medically determinable means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual to be unable to demonstrate the knowledge required by this section or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications.

(2) Medical certification. All persons applying for naturalization and seeking an exception from the requirements of § 312.1(a) and paragraph (a) of this section based on the disability exceptions must submit Form N-648, Medical Certification for Disability Exceptions, to be completed by a medical doctor licensed to practice medicine in the United States or a clinical psychologist

licensed to practice psychology in the United States (including the United States territories of Guam, Puerto Rico, and the Virgin Islands). Form N-648 must be submitted as an attachment to the applicant's Form N-400, Application for Naturalization. These medical professionals shall be experienced in diagnosing those with physical or mental medically determinable impairments and shall be able to attest to the origin, nature, and extent of the medical condition as it relates to the disability exceptions noted under § 312.1(b)(3) and paragraph (b)(1) of this section. In addition, the medical professionals making the disability determination must sign a statement on the Form N-648 that they have answered all the questions in a complete and truthful manner, that they (and the applicant) agree to the release of all medical records relating to the applicant that may be requested by the Service, and that they attest that any knowingly false or misleading statements may subject the medical professional to the penalties for perjury pursuant to Title 18, United States Code, Section 1546 and to civil penalties under section 274C of the Act. The Service also reserves the right to refer the applicant to another authorized medical source for a supplemental disability determination. This option shall be invoked when the Service has credible doubts about the veracity of a medical certification that has been presented by the applicant. An affidavit or attestation by the applicant, his or her relatives, or guardian on his or her medical condition is not a sufficient medical attestation for purposes of satisfying this requirement.

(Approved by the Office of Management and Budget under control number 1115-0208)

PART 499—NATIONALITY FORMS

6. The authority citation for part 499 continues to read as follows:

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

7. Section 499.1 is amended by adding the entry for the Form "N-648", in proper numerical sequence, to the listing of forms, to read as follows:

§ 499.1 Prescribed forms.

Form No.

Edition date

Title and description

N-648

1/23/97

Medical Certification for
Disability Exceptions.

3/2/97
Dated:



Doris Meissner,

Commissioner,

Immigration and Naturalization Service.

Note: The attached Medical
Certification for Disability Exceptions,
Form N-648, will not appear in the Code
of Federal Regulations.