U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/21/1.1-P
AD 0103

Office of the Executive Associate Commissioner
425 I Street NW
Washington, DC 20536

OCT 17, 2002

MEMORANDUM FOR REGIONAL DIRECTORS
DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER
IMMIGRATION SERVICES DIVISION
DIRECTOR
OFFICE OF INTERNATIONAL AFFAIRS

FROM: /s/ Johnny N. Williams
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Medical Examinations, Vaccination Requirements, Waivers of Medical Grounds of Inadmissibility, and Designation of Civil Surgeons and Revocation of Such Designation (AD 01-03)

This memorandum:

- Addresses the vaccination requirements under section 212(a)(1)(A)(ii) of the Immigration and Nationality Act (Act), and consolidates into one document all guidance issued to date by the Immigration and Naturalization Service (Service).

- Seeks to clarify the requirements for waivers under section 212(g)(2)(C) of the Act based on religious or moral objections to vaccinations. This memorandum does not change the three requirements described in the September 29, 1997, memorandum signed by the Acting Executive Associate Commissioner for Programs; rather it provides additional clarification on how to ascertain the applicant's opposition to vaccinations, distinguish between strong religious/moral objections and mere preference, and ascertain the sincerity of the claimed religious or moral objections.

- Addresses refugees whose application for adjustment of status under section 209 of the Act was denied because of an improper signature by the health department on the vaccination supplement. Affected applicants may file a Motion to Reopen (without fee), with the corrected vaccination supplement in an envelope sealed by the local or state health department.

- Clarifies waiver procedures and requirements for medical waivers under section 212(g) of the Act, including the amendments made to section 212(g)(1) of the Act by section 1505(d) of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386, for self-petitioning battered spouses and children (including derivative children).

- Clarifies the procedures for designating certain events deemed to be in the public interest, which in turn, streamlines the waiver process under section 212(d)(3) of the Act for HIV-infected nonimmigrants seeking admission to the United States to attend the event.

- Clarifies the medical exam requirements for nonimmigrant and immigrant visa applicants and adjustment of status applicants, including nonimmigrants applying for visas under section 101(a)(15)(K) of the Act and 101(a)(15)(V) of the Act, pursuant to the Legal Immigration Family Equity Act (LIFE Act) and LIFE Act amendments.

- Clarifies the review of Form I-693, *Medical Examination of Aliens Seeking Adjustment of Status*, to ensure that all the required tests were performed and that the results were reported per the applicable regulations of the Department of Health and Human Services (HHS) and the technical guidance published by the Centers for Disease Control and Prevention (CDC).

- Clarifies the validity of medical exam reports for adjustment of status applicants.

- Clarifies the procedures for the designation of civil surgeons under section 232(b) of the Act and the revocation of a physician's civil surgeon designation. Note that the existing requirements/protocols have not changed. The clarification provided in this guidance is merely intended to ensure that uniform and consistent procedures are followed pending publication of the revised civil surgeon regulations and implementation of the final rule.

Direct any further questions relating to operational issues, through supervisory channels, to Kathy Dominguez in Field Services Operations at 202-616-1050 or Danielle Lee in Service Center Operations at 202-305-8010. Direct any questions relating to policy issues, through supervisory channels, to Sophia Cox in Adjudications at 202-514-4754.

Accordingly, the Adjudicator's Field Manual is hereby revised:

☞ 1. By adding Chapter 23.3 to read as follows:

23.3 Medical grounds of inadmissibility and medical examinations.

(a) Medical Grounds of Inadmissibility Defined. Section 212(a)(1)(A) of the Act designates four categories that render an applicant for a visa, admission, or adjustment

of status inadmissible on medical grounds. The medical grounds are determined according to the regulations published by the Department of Health and Human Services (HHS) at 42 CFR part 34. The required medical exam, discussed in Chapter 23.3(b), below, must be performed according to the specific guidelines published by the Centers for Disease Control and Prevention (CDC). These are the *Technical Instructions for the Medical Examination of Aliens in the United States*, used by civil surgeons in the United States, and the *Technical Instructions for the Medical Examination of Aliens*, used by panel physicians abroad. (*Technical Instructions)*. The Technical Instructions have the force of a regulation. See 42 CFR 34.3(f). They can be accessed online at: www.cdc.gov/ncidod/dq/technica.htm. If the medical condition found by the panel physician or civil surgeon falls under any of the four categories described below, the civil surgeon or panel physician must certify it as Class A in order for the applicant to be inadmissible on medical grounds. Class B medical conditions are defined at 42 CFR § 34.2(e) as physical or mental abnormalities, diseases, or disabilities serious in degree or permanent in nature amounting to a substantial departure from normal well-being; however, they do not render the applicant inadmissible on medical grounds. Waivers are discussed in Chapter 41.3.

(1) Section 212(a)(1)(A)(i) of the Act. This ground of inadmissibility covers individuals who are found to have a communicable disease of public health significance, including, ". . . infection with the etiologic agent for acquired immune deficiency syndrome." The HHS regulations that define a communicable disease of public health significance are found at 42 CFR § 34.2(b). The following eight conditions are listed: chancroid; gonorrhea; granuloma inguinale; acquired immune deficiency syndrome (HIV/AIDS); Hansen's disease (infectious leprosy); lymphogranuloma venereum; infectious state syphilis; and infectious tuberculosis (TB). Note that, for TB, only Class A TB renders the applicant inadmissible under section 212(a)(1)(A)(i) of the Act. Under current CDC guidelines, Class A TB means tuberculosis that is clinically active and infectious (communicable).

(2) Section 212(a)(1)(A)(ii) of the Act. This ground covers only immigrant visa and adjustment of applicants who have not received all of the required vaccinations. See Chapter 23.3(g) further below.

(3) Section 212(a)(1)(A)(iii) of the Act. This ground covers individuals who have a physical or mental disorder or harmful behavior associated with that disorder. It is further divided into two subcategories:

(I) Current physical or mental disorders, with harmful behavior associated with that disorder; and

(II) Past physical or mental disorders, with associated harmful behavior that is likely to recur or lead to other harmful behavior.

Note 1: Harmful behavior is defined under section 212(a)(1)(A)(iii) of the Act as behavior that ". . . may pose, or has posed, a threat to the property, safety, or welfare of the alien or others . . . ."

Note 2: Mental retardation no longer renders an applicant inadmissible on medical grounds, unless the civil surgeon or panel physician determines that the applicant is also exhibiting or has exhibited in the past, associated harmful behavior, as described in Note 1.

(4) Section 212(a)(1)(A)(iv) of the Act. This ground of inadmissibility covers individuals who are found to be drug abusers or drug addicts. The *Technical Instructions* published by the CDC refer to the nonmedical use of a psychoactive substance, and make an exception for experimentation. The CDC has instructed civil surgeons and panel physicians to use their clinical judgement and/or seek a consultation when facing a situation where the applicant's medical history indicates past nonmedical use of a psychoactive substance or when there is a clinical question as to whether the use was experimental or part of a pattern of abuse. If you have valid reasons to question the completeness or accuracy of the medical exam report, you may direct the applicant to return to the civil surgeon or panel physician for a reexamination or ask the CDC to review the medical report.

(b) Aliens Required to Have a Medical Examination. Because section 212(a)(1)(A) of the Act states that all medical-related grounds of inadmissibility are determined ". . . in accordance with regulations prescribed by the Secretary of Health and Human Services," the applicant's own admission is not sufficient to uphold a finding of inadmissibility on medical grounds. A medical examination performed by panel physician designated by the Department of State or a civil surgeon designated by the district director is required. Hill v. INS, 714 F 2d. 1470 (9th Cir. 1983). The following requirements apply with respect to medical examinations.

(1) Immigrant Visa Applicants. Per section 221(d) of the Act, all individuals applying for an immigrant visa must submit to a medical examination before the visa is issued.

(2) Refugees Applying for Admission under Section 207 of the Act. Per section 207(c)(1) of the Act, all individuals applying for admission as refugees must, among other requirements, establish that they are admissible to the United States, or establish eligibility for a waiver as provided under section 207(c)(3) of the Act.

Because the medical grounds of inadmissibility under section 212(a)(1)(A) of the Act apply, a medical exam is required. For a discussion of the vaccination requirements specifically as they apply to refugees, refer to Chapter 23.3(g)(4)(C).

(3) Adjustment of Status Applicants. Per section 245(a)(2) of the Act, an individual applying for adjustment of status to that of a permanent resident must be "eligible to receive an immigrant visa and [be] admissible to the United States for permanent residence. . . ." Thus, to comply with the visa issuance requirements of sections 221(d) and 245(a)(2) of the Act, and the medical grounds of inadmissibility under section 212(a)(1)(A) of the Act, all individuals applying for adjustment of status under section 245 of the Act are required to have as part of their applications for adjustment of status:

- A valid medical examination (Form I-693, *Medical Examination of Aliens Seeking Adjustment of Status*), properly endorsed by a physician authorized to conduct medical examinations for this purpose; and

- A certificate establishing compliance with the vaccination requirements described in section 212(a)(1)(A)(ii) of the Act, unless otherwise exempt. For ease of reading, the vaccination supplement to Form I-693 is referred to in this guidance as the "vaccination sign-off."

(4) Presumption of Lawful Admission Cases, Section 249 Registry Cases, and Section 289 Indian Cases. A medical examination is not required.

(5) Nonimmigrants.

(A) General. Per section 221(d) of the Act, a consular officer may, prior to the issuance of a nonimmigrant visa, require the applicant to submit to a physical or mental examination or both, if considered necessary to determine whether the applicant is eligible to receive the visa. Similarly, INS officers at ports-of-entry may require a nonimmigrant (arriving with or without a visa) to submit to a medical examination if necessary to determine whether a medical ground of inadmissibility under section 212(a)(1)(A) of the Act applies.

(B) Nonimmigrants under Section 101(a)(15)(K) or (V) of the Act. Individuals outside the United States applying for nonimmigrant visas under any provision of section 101(a)(15)(K) or (V) of the Act must undergo a medical exam by a panel physician as part of the visa application process. Individuals in the United States applying for change of status to that of a "V" nonimmigrant pursuant to section 214(o) of the Act must submit with their application a medical exam report (Form

I-693) completed by a designated civil surgeon. The vaccination requirements of section 212(a)(1)(A)(ii) of the Act do not apply at this stage of the process. See also Chapter 23.3(g)(4)(J).

(c) Authorized Civil Surgeons. If Form I-693 and the accompanying vaccination supplement have been endorsed by anyone other than a designated civil surgeon, they must be returned to the applicant for corrective action. To verify whether the physician that performed the medical exam is a civil surgeon, go to the INS intranet site. The list of designated civil surgeons is found at the end of each individual office profile. Select the office and check the civil surgeon list maintained in the local office profile for the INS district where the medical exam was performed. If you cannot access this information from the INS intranet, refer to Appendix 23-1 of this field manual from the latest version of INSERTS. The civil surgeon listing found in Appendix 23-1 is divided into three parts (23-1A, 23-1B, and 23-1C) representing the Eastern, Central, and Western regions, respectively. Note, however, that the civil surgeon list maintained on the intranet is updated daily. Therefore, try to clarify any discrepancies through your district/sub-office and/or your regional point of contact (POC), before you return the case for evidence (RFE the case). If you have reason to doubt the authenticity of the endorsement by a civil surgeon within your district, refer to the file maintained in your district office. If you have doubts about the authenticity of an endorsement by a civil surgeon located in another district, consult informally (i.e., by telephone and fax machine) with the Adjudications section of that district office. If informal consultation does not clear up all doubts, refer the matter formally through a request for an auxiliary investigation (see AFM Chapter 10.14). See AFM Chapter 83 for the procedures to be followed for certifying, reviewing, and decertifying civil surgeons.

(d) Submission of the Medical Examination Report. According to Form I-485, *Application to Register Permanent Residence or Adjust Status*, which was last revised on February 27, 2000, the following instructions apply:

- Applications Filed at a Service Center: Individuals applying through an INS Service Center (including asylees adjusting under section 209 of the Act), must submit the medical examination report with the adjustment of status application. Note that refugees need only submit the vaccination supplement to Form I-693 (not the entire Form I-693) if there were no medical grounds of inadmissibility that arose during the initial medical exam performed overseas. See 8 CFR § 209.1(c).

- Applications Filed at a District Office: Individuals applying for adjustment of status through a district or sub-office do not submit Form I-693 with the initial filing. Rather, they should be provided instructions about the medical examination in conjunction with the notice of their in-person interview. See Chapter 23.3(g) for information about

the specific situations applicable to K and V nonimmigrants.

(e) Validity of Medical Certifications.

(1) General. Form I-693 is normally valid for a period of 1 year from the date it was endorsed by the civil surgeon. In accordance with the agreements reached between the Service and the CDC, if the adjustment of status application has been pending for over 1 year and Form I-693 was included with the initial filing, the adjudicating officer may accept a medical exam report that is more than 1 year old because of the pending adjustment of status application, **IF** there was no Class A or B medical condition noted. This agreement is in effect until January 1, 2003.

(2) K and V nonimmigrants. A new medical exam is not required in order to apply for adjustment of status to that of a lawful permanent resident, if one of the following scenarios exists:

- The applicant is a K or V nonimmigrant and the medical exam did not reveal any Class A or B medical condition, and the application for adjustment of status was filed within 1 year of the date of the original medical exam. If these requirements are met, the medical exam remains valid until the date the Service adjudicates the adjustment of status application; or

- The applicant is a K or V nonimmigrant who received a conditional waiver under section 212(g) of the Act in conjunction with the K or V nonimmigrant visa or the change of status to V. The section 245 adjustment of status application must be filed with the Service within 1 year of the date of the original medical exam, and the applicant must submit evidence of compliance with the specific terms and conditions imposed on the waiver. The medical exam remains valid until the date the Service adjudicates the adjustment of status application. If these requirements have not been met, a new medical examination is required. And, if that new medical examination reveals a Class A medical condition, a new waiver application will also be required. In such cases, determine whether the applicant complied with the terms and conditions of the first waiver. That determination should be given considerable weight in the adjudication of a subsequent waiver application.

Note: Although there may be cases where a new medical exam is not required, compliance with the vaccination requirements is still required, as the vaccination sign-off was not included as part of the original medical exam report. See Chapter 23.3(g)(4)(J).

(f) Review of Form I-693. For those applicants required to undergo a complete medical exam, review Form I-693 to ensure compliance with the following requirements:

(1) Form I-693 Must Be Signed by a Designated Civil Surgeon. To verify whether the physician who performed the medical exam is a designated civil surgeon, refer to the instructions in Chapter 23.3(b).

(2) Form I-693 Must Be Completed Legibly in English and Must Be in a Sealed Envelope. The results must be typed or printed legibly and placed in an envelope sealed by the civil surgeon. If Form I-693 has not been dated and signed by the civil surgeon, has not been completed legibly in English, or if the envelope was not sealed by the civil surgeon or there is evidence of tampering with the sealed envelope, return a copy of the I-693 to the applicant for corrective action.

(3) Form I-693 Must Clearly Indicate That All Required Tests Were Performed and the Results. The medical examination must include all evaluations/assessments/tests necessary to determine whether the applicant is inadmissible on medical grounds under section 212(a)(1)(A) of the Act. Findings of physical and mental disorders and drug abuse must be indicated in the "Remarks" section of Form I-693. If an applicant has been referred for further evaluation for a communicable disease of public health significance, physical or mental disorders with associated harmful behavior, psychoactive substance abuse or other physical or mental abnormalities, diseases or disabilities, the medical report must be accompanied by a definitive diagnosis (or a short list of likely diagnoses) and a statement as to whether the presence or absence of a Class A or Class B medical condition has been established. If the findings have not been clearly stated, return a copy of Form I-693 to the applicant for corrective action.

(4) Form I-693 Must Be Accompanied by a Properly Completed Vaccination Supplement, Unless the Applicant Is Applying for “Adjustment” of Status to V. For a complete discussion of the vaccination requirements and review of the vaccination supplement, refer to Chapter 23.3(g). For a discussion of waiver issues related to the vaccination requirements, see Chapter 41.3(b).

(5) Required Testing. All applicants must undergo a general physical examination and a mental status evaluation. In addition, other tests may be required depending on the applicant’s age and/or possible exposure to a particular disease. If all required tests/evaluations have not been performed, return a copy Form I-693 to the applicant for corrective action.

- Tuberculin (TB) Skin Test: All applicants 2 years of age and older must have a tuberculin skin test (TST). Civil surgeons may require an applicant who is less

than 2 years of age to have a TST if he or she has a history of contact with a known TB case, or if there is any other reason to suspect TB disease. If the applicant's reaction to the TST is 4 millimeters or less, no further testing is required. A chest X-ray is required only when the reaction to the TST is 5 millimeters or more. If the civil surgeon has performed a chest x-ray for TB, but not a TST, the INS office that granted the civil surgeon designation should advise the civil surgeon in writing of the deficiency and of the need to comply with CDC's *Technical Instructions*. Forward a copy of the letter and Form I-693 to CDC at the following address:

Chief, Migration Health Assessment Section
Division of Global Migration and Quarantine (E03)
Centers for Disease Control and Prevention (CDC)
Atlanta, Georgia 30333.

If the same civil surgeon receives two such letters of corrective action, the District Director may take appropriate steps to revoke the civil surgeon designation. See Chapter 83.4(c).

- Serologic (blood) tests. All applicants 15 years of age and older must undergo serologic (blood) testing for syphilis and human immunodeficiency virus (HIV) infection. Applicants under the age of 15 must undergo serologic testing if there is reason for the civil surgeon or for INS to suspect infection.

(g) Vaccinations. Section 212(a)(1)(A)(ii) of the Act requires all immigrant visa and adjustment of status applicants to establish that they have been vaccinated against certain vaccine-preventable diseases. Section 212(g)(2) of the Act authorizes waivers in certain instances. To implement the vaccination requirements and the corresponding waiver provisions, the Service developed streamlined procedures whereby certain individuals may be granted a waiver without the need to file a form or pay a fee. Furthermore, those applicants who are not covered under the streamlined procedures may apply for a waiver on an individual basis. Refer to Chapter 41.3(b) for additional information about these procedures.

(1) Vaccination Requirements Defined. Section 341 of the Illegal Immigration and Immigrant Responsibility Act (IIRIRA) created an additional medical ground of inadmissibility under section 212(a)(1)(A)(ii) of the Act relating to vaccinations. Individuals who are subject to the vaccination requirements who have not complied (or who are unable to submit acceptable proof of compliance) are inadmissible under section 212(a)(1)(A)(ii) of the Act, unless they are fully vaccinated or receive a waiver.

(2) Effective Date. The vaccination requirements became effective on the IIRIRA enactment date, September 30, 1996, and apply with respect to all immigrant visa and adjustment of status applications filed on or after that date.

(3) Required Vaccinations. Section 212(a)(1)(A)(ii) of the Act specifies the following vaccinations: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenzae* type b, and hepatitis B. Section 212(a)(1)(A)(ii) of the Act states that the applicant is also required to have any other vaccinations recommended by the Advisory Committee on Immunization Practices (ACIP). The ACIP provides guidelines on appropriate doses of vaccines at specific intervals for specific age groups. The varicella, influenza, and pneumococcal vaccines are also required, because they are currently recommended by the ACIP.

(4) Applicability. Section 212(a)(1)(A)(ii) of the Act states that the vaccination requirements apply with respect to anyone who ". . . seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence . . . ." Thus, the applicability of the vaccination requirements depends on the specific immigration benefit the applicant is seeking. The following list clarifies these distinctions for purposes of section 212(a)(1)(A)(ii) of the Act:

(A) Adjustment of Status and Immigrant Visa Applicants. All adjustment of status and immigrant visa applications filed on or after September 30, 1996, must be sufficient to establish compliance with the vaccination requirements under section 212(a)(1)(A)(ii) of the Act or eligibility for a waiver. The waiver provisions and application procedures are addressed in Chapter 41.3 of this field manual.

(B) Refugees Making an Initial Application for Admission under Section 207 of the Act. The Service has determined that the vaccination requirements do not apply to individuals seeking admission to the United States as refugees under section 207 of the Act, because there is no application for an immigrant visa or for adjustment of status at this stage of the process. Therefore, the results of a medical examination performed abroad for a refugee seeking admission to the United States under section 207 of the Act need not include the results of a vaccination assessment. Service officers at ports-of-entry should not refuse admission to refugees solely because they have not yet complied with the vaccination requirements.

(C) Refugees Applying for Adjustment of Status under Section 209 of the Act. Refugees must satisfy the vaccination requirements under section

212(a)(1)(A)(ii) of the Act when they apply for adjustment of status under section 209 of the Act, 1 year following their admission under section 207 of the Act.

The Service's regulations at 8 CFR § 209.1(c) state that "[u]nless there were medical grounds for exclusion at the time of arrival, a United States Public Health Service medical examination is not required." The term “medical ground for exclusion” means only Class A medical conditions. Therefore, a refugee who received a medical exam in conjunction with the initial application for admission under section 207 of the Act generally does not need to repeat the entire medical exam. He or she does, however, need the vaccination sign-off from the civil surgeon when adjusting under section 209 of the Act 1 year later. Consequently, Service officers should not require refugees to repeat the entire medical exam if it did not reveal a Class A medical condition. A refugee who was found to have any Class B medical condition that would result in any medical ineligibility under section 212(a)(1)(A) of the Act, without proper medical care or follow up, must submit evidence establishing compliance with any follow up examinations or treatment, as may have been required as a condition of the original admission.

Although a new medical examination may not be required, the refugee must nevertheless establish compliance with the vaccination requirements of section 212(a)(1)(A)(ii) of the Act at the time of adjustment under section 209 of the Act, by submitting a vaccination supplement completed by a designated civil surgeon or in certain cases, by a state or local health department official. For information about the designation of state and local health departments as civil surgeons for refugees adjusting under section 209 of the Act who need only the vaccination sign-off, refer to Chapter 83.4(b) of this field manual.

(D) Asylees Making an Initial Application for Asylum under Section 208 of the Act. Individuals applying for asylum under section 208 of the Act are not subject to the vaccination requirements under section 212(a)(1)(A)(ii) of the Act. They are not required to undergo a medical exam.

(E) Asylees Applying for Adjustment under Section 209 of the Act. If the asylum application is approved and the individual applies for adjustment of status under section 209 of the Act and 8 CFR § 209.2 at least 1 year later, a complete medical exam is required, including a vaccination assessment, as required under section 212(a)(1)(A)(ii) of the Act. See 8 CFR § 209.2(d).

Note: Regarding Kurdish asylees paroled under Operation Pacific Haven, the Service determined, in consultation with the Centers for Disease Control and Prevention (CDC), that medical examinations performed under Operation Pacific

Haven for Kurdish asylees either before arrival or while on Guam are acceptable for purposes of adjustment of status under section 209 of the Act and 8 CFR § 209.2. Kurdish asylees were given copies of these medical reports and should include them with the adjustment application. If the Kurdish asylee no longer has a copy of the medical report, a new medical exam must be performed by a designated civil surgeon, including the vaccination assessment. In all cases, the adjustment application under 8 CFR § 209.2 submitted by a Kurdish asylee must also include the vaccination sign-off.

(F) Registry Applicants under Section 249 of the Act. Aliens applying for the creation of a record of admission for permanent residence are not required to undergo a medical examination or comply with the vaccination requirements. This is because section 212(a)(1) of the Act is not among the grounds of inadmissibility or ineligibility specified in section 249 of the Act.

(G) North American Indians. American Indians born in Canada who meet the requirements described in the Service's regulations at 8 CFR §§ 289.1 and 289.2 may be regarded as having been lawfully admitted for lawful permanent residence. Because such lawful admission is recorded on Form I-181, and neither an immigrant visa nor an adjustment of status application is required, the applicant is not required to establish compliance with the vaccination requirements. Therefore, Service officers at ports-of-entry should not consider the vaccination requirements in determining the eligibility of North American Indians seeking benefits under section 289 of the Act and 8 CFR part 289.

(H) Children of Returning Residents (XA and NA Babies). This group covers children born abroad either subsequent to the issuance of an immigrant visa to a parent applying for admission while the visa remains valid, or during the temporary visit abroad of a mother who is a national or permanent resident of the United States. Until further notice, continue admitting these two groups of children under the procedures in effect prior to the implementation of IIRIRA (i.e., with no medical or vaccination requirement).

(I) Nonimmigrants. Except as provided in paragraphs (J) and (K), individuals applying for a nonimmigrant visa under any provision of section 101(a)(15) of the Act or for admission to the United States as a nonimmigrant, are not required to comply with section 212(a)(1)(A)(ii) of the Act relating to vaccinations.

(J) Special Considerations for K and V Nonimmigrants. The plain language in section 212(a)(1)(A)(ii) of the Act regarding the vaccination requirements refers to applicants for immigrant visas and for adjustment of status. Applicants for

visas under section 101(a)(15)(K) or (V) of the Act are not applicants for immigrant visas at this stage of the process. DOS and the Service have agreed that the required medical examination for K and V nonimmigrants outside of the United States will include the vaccination assessment described in section 212(a)(1)(A)(ii) of the Act. The vaccination assessment will be performed in anticipation of the adjustment of status application, to give the applicants the opportunity to retrieve the records for those vaccinations they have already received, while they are still abroad. Individuals in the United States applying for change of status to V will not be required to undergo a vaccination assessment in conjunction with their medical exam, but civil surgeons are not precluded from advising them about the vaccination requirements in anticipation of their adjustment of status application.

While some panel physicians may elect to indicate the vaccinations already received on the vaccination supplement, consular officers will not refuse the K or V visa and INS officers will not refuse admission to a K or V nonimmigrant, solely because all of the vaccination requirements have not been met. When the panel physician's report indicates that the applicant lacks certain required vaccines, consular officers will attach a single-page addendum to Form DS-2053 (Formerly Form OF-157), *Medical Examination for Immigrant or Refugee Applicant*, and the accompanying worksheets, advising the applicant of the need to comply with the vaccination requirements upon the application for adjustment of status in the United States.

(K) Vaccination Requirements for K and V Nonimmigrants Adjusting Status to That of Lawful Permanent Resident under Section 245 of the Act. In certain instances, K and V nonimmigrants are not required to repeat the original medical examination that was performed to obtain that nonimmigrant classification. See Chapter 23.3(d)(2). When this is the case, only the vaccination sign-off is required. The vaccination sign-off must have been done by a designated civil surgeon. If the applicant obtained a K or V nonimmigrant visa overseas, the medical exam report completed by the panel physician overseas, Form DS-2053 and accompanying worksheets, should already be in the alien’s A-File, if it was surrendered at the port-of-entry with the visa packet. Note that, in completing the vaccination sign-off, the designated civil surgeon may accept the vaccination supplement to Form DS-2053 completed by the panel physician overseas and proof of additional vaccines received following the applicant's admission to the United States. If the applicant was granted a change of status to V in the United States under section 214(o) of the Act, the medical exam report completed by the civil surgeon should be in the A-file created at the time that the change of status was initially granted. The applicant will need to return to the civil surgeon for the

vaccination sign-off. If, however, the requirements of Chapter 23.3(d)(2) have not been met, a new medical examination is required, including the vaccination assessment specified under section 212(a)(1)(A)(ii) of the Act.

(L) Exceptions for Orphans. On November 12, 1997, the President signed into law Pub. L. 105-73. This bill amended section 212(a)(1)(A)(ii) of the Act by creating section 212(a)(1)(A)(ii)(C) to provide exceptions to the vaccination requirements for internationally adopted children 10 years of age or younger. This exception covers children 10 years of age or younger classified as orphans under section 101(b)(1)(F) who are applying for immigrant visas as immediate relatives under section 201(b) of the Act (IR-3 and-4 visas). In order for the child to benefit from the exception, the adopting parent(s) must sign an affidavit prior to visa issuance. The adopting parent(s) must affirm that the child will receive the required vaccination within 30 days of admission to the United States or at the earliest time that it is medically appropriate. However, noncompliance with the vaccination requirements following the child's admission to the United States is not a ground for removal under section 237 of the Act.

DOS has developed a standard affidavit form to ensure that adopting parents are aware of the possibility of an exception from the vaccination requirements provided under section 212(a)(1)(A)(ii)(C) of the Act, and of their obligation to ensure that the child is vaccinated following admission. The affidavit must be made under oath or affirmation in the presence of either the consular officer or a notary public, and the completed form must be included with Form OF 157.

When the adoptive or prospective adoptive parent cannot sign the affidavit in good faith because of religious or moral objections to vaccinations, the child will require a waiver under section 212(g)(2)(C) of the Act. The requirements for this waiver are described in Chapter 41.3(b) of this field manual.

☞ 2. By amending Chapter 41.3 to read as follows:

Chapter 41.3 Waiver of Medical Grounds of Inadmissibility.

(a) Waivers under Section 212(g)(1) of the Act.

(1) General. Section 212(g)(1) of the Act authorizes the Attorney General to exercise discretion in deciding whether to waive the grounds of inadmissibility under section

212(a)(1)(A)(i) of the Act relating to a communicable disease of public health significance. Section 1505(d) of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386, signed on October 28, 2000, amended section 212(g)(1) of the Act to make specific provisions for battered immigrants. To be eligible to apply for the waiver, the applicant must be:

- The spouse or unmarried son or daughter of:
  - a U.S. citizen,
  - an alien lawfully admitted for permanent residence, or
  - an alien who has been issued an immigrant visa;

- The minor unmarried lawfully adopted child of a U.S. citizen (an "IR-3" immigrant);

  Note: An orphan is not eligible to apply for a waiver under section 212(g)(1)(A) of the Act as a lawfully adopted child if the adoptive parents do not have a full and final adoption, as defined under section 101(b)(1)(F) of the Act and 8 CFR § 204.3(f)(2).

- The parent of a son or daughter who is a U.S. citizen, lawful permanent resident, or an alien who has been issued an immigrant visa; or

- Eligible for classification as a self-petitioning spouse or child under section 204(a)(1)(A)(iii) or (iv) of the Act or section 204(a)(1)(B)(ii) or (iii) of the Act, including derivative children of the alien. (This includes self-petitioning spouses and children eligible for classification under section 204(a)(1)(A)(v) or 204(a)(1)(B)(iv) of the Act.)

Refer to Chapters 41.3(a)(2) through (a)(6) for additional waiver requirements under section 212(g)(1) of the Act, according to the specific medical condition that makes the applicant inadmissible under section 212(a)(1)(A)(i) of the

Act. If the applicant is a refugee or asylee, you should also refer to Chapter 41.6. If the applicant is a K or V nonimmigrant, assess waiver eligibility under the appropriate provision of section 212(g) of the Act and approve the waiver if all requirements have been met. Note that, if the applicant is a fiancé, you may grant a conditional approval of the waiver application if the applicant establishes that he or she would be eligible in all respects upon marriage to the U.S. citizen petitioner.

(2) HIV.

(A) Background. The Service's basic position on the statutory inadmissibility of aliens infected with the HIV virus was first stated in a Central Office telegram dated July 6, 1987, and was restated in several subsequent telegrams implementing the Immigration Act of 1990 (IMMACT), which became effective on June 1, 1991. Decisions on waiver applications remain discretionary, and must be adjudicated only after a careful review of all positive and negative factors.

Section 212(a)(1)(A)(i) of the Act renders inadmissible any alien who has been determined, in accordance with regulations prescribed by the Secretary of Health and Human Services, to have a communicable disease of public health significance. In accordance with 42 CFR § 34.2(b), the Public Health Service (PHS) is responsible for defining communicable diseases of public health significance (formerly designated as dangerous contagious diseases prior to the implementation of IMMACT). PHS first amended its list of dangerous contagious diseases in 1987 to include infection with HIV, in response to its own proposed rule and a clear statutory directive from Congress. While HHS later issued a proposed rulemaking to remove HIV from the list, after receiving public comments, that proposal was not implemented because of strong opposition. Subsequently, the National Institutes of Health Revitalization Act of 1993,

which became effective on July 10, 1993, amended section 212(a)(1)(A)(i) of the Act to mandate that a communicable disease of public health significance now includes "infection with the etiologic agent for acquired immune deficiency syndrome." Accordingly, aliens infected with the HIV virus continue to be inadmissible unless they are eligible for a waiver of inadmissibility. Note that, in addition to section 212(g)(1) of the Act, the refugee, legalization, and Special Agricultural Worker (SAW) programs authorize waivers for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(B) Public Charge. Applicants found inadmissible under section 212(a)(1)(A)(i) of the Act as having HIV, a communicable disease of public health significance, also are potentially inadmissible under section 212(a)(4) of the Act. Section 212(a)(4)(A) of the Act renders inadmissible any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge. Section 212(a)(4)(B)(i) of the Act specifically lists the factors to be taken into account when making a public charge determination. These factors include the alien's age, health, family status, assets, resources, and financial status, and his or her education and skills.

On May 26, 1999, the Service published a comprehensive field memo in the Federal Register providing guidance on public charge (64 FR 28689-28693). A proposed rule was also published on that same date (64 FR 28676-28688). The public charge guidance in the field memo is effective pending publication of the final rule.

Although section 212(a)(4) of the Act cannot be waived, there are certain individuals to whom public charge does not apply, including but not limited to, refugees seeking

admission under section 207 of the Act, special immigrant juveniles, and applicants for adjustment of status under section 209 of the Act or section 202 of NACARA or section 902 of HRIFA.

The legalization and SAW programs provide special rules for determining public charge. For legalization applicants, refer to the guidelines in 8 CFR 245a.2(k)(4) and policy wires issued in conjunction with that section. For applicants for adjustment from temporary to permanent resident status, refer to 8 CFR 245a.3(g)(4). For SAW applicants, refer to 8 CFR 210.3(e)(4) and policy wires in conjunction with that section. The guidance provided in the Service's May 26, 1999, memorandum should be viewed in tandem with the legalization and SAW policies.

Section 212(a)(4) of the Act provides that consular officers are responsible for determining public charge when an individual applies for a visa abroad. Therefore, immigration officers outside the United States should limit their adjudication strictly to the applicant's eligibility for a waiver of inadmissibility under section 212(g)(1) of the Act. Refer to paragraph (8) of this section for further guidance on the written decision.

(C) Certification. From 1987 until 1995, Service regulations required that all decisions involving HIV waivers under sections 207(c)(3), 209(c), 210(c)(2)(B)(i), 212(g)(1), and 245A(d)(2)(B)(i) of the Act should be certified to the Associate Commissioner for Examinations. The requirement for such automatic certification was terminated on September 6, 1995. (It had been terminated at an earlier date with regard to nonimmigrant waiver cases under section 212(d)(3)(A) and (B) of the Act.) By removing the automatic certification requirement on decisions involving immigrant waivers, the Service sought to streamline the waiver process by eliminating unnecessary levels of review. Service officers should, however, continue to certify novel or unusually

complex cases.

(D) Forms Used. Until further notice, the following forms are used to apply for the waiver:

- Section 212(g)(1) of the Act. Adjustment of status applicants and immigrant visa applicants use Form I-601, Application for Waiver of Grounds of Inadmissibility. They must pay the required fee.

- Sections 207(c)(3) and 209(c) of the Act. Applicants for admission as refugees under section 207 of the Act and refugees and asylees applying for adjustment of status under section 209 of the Act use Form I-602, Application by Refugee for Waiver of Grounds of Inadmissibility, but do not pay a fee.

- Sections 210(c)(2)(B)(i) and 245A(d)(2)(B)(i) of the Act. Legalization applicants under section 245A of the Act and SAW applicants under section 210 of the Act use Form I-690, Application for Waiver of Grounds of Excludability under Sections 245A or 210 of the Immigration and Nationality Act, accompanied by the required fee.

(E) Guidelines for Adjudicating waiver Applications for Adjustment of Status Applicants, Including Those Applying Under NACARA and HRIFA. If an adjustment of status applicant is found inadmissible under section 212(a)(1)(A)(i) of the Act on account of HIV infection and he or she submits a waiver application and documentation establishing the threshold waiver requirements of section 212(g)(1) of the Act, the adjudicating officer should consider the additional requirements developed by the Service, before adjudicating the waiver. Consistent with established policy, the applicant must also submit evidence establishing that: (1) the danger to the public health of the United States created by his or her admission is minimal; (2) the possibility of the spread of the infection created by his or her admission

to the United States is minimal; and (3) there will be no cost incurred by any level of government agency of the United States without the prior consent of that agency.

Examples of the evidence considered sufficient to meet the first two requirements include, but are not limited to: (a) evidence that the applicant has arranged for medical treatment in the United States; (b) the applicant's awareness of the nature and severity of his or her medical condition; (c) evidence of counseling; (d) the applicant's willingness to attend educational seminars and counseling sessions; and (e) the applicant's knowledge of the modes of transmission of the disease.

As for the third requirement, adjustment applicants (including those seeking adjustment under NACARA and HRIFA) may submit evidence of private insurance, personal financial resources, proof that a hospital, research organization or other type of facility will provide care at no cost to the government, or any other evidence establishing the ability to cover the cost of medical treatment for HIV/AIDS.

Adjudicating officers should note that publicly-funded medical treatment for HIV does not automatically mean that the alien has not met the third waiver requirement for HIV. Aliens who are participating in a government-funded study must submit a letter from the agency conducting the study confirming their participation and the extent of medical coverage provided. Aliens whose medical treatment will be funded by any government agency (local, state, or federal) must submit a letter of consent from that agency or his or her designee.

With respect to a Haitian national who was paroled into the United States for the purpose of receiving treatment of an HIV condition, and who is applying for adjustment of status under the provisions of HRIFA, the fact that the alien was paroled into the United States for HIV treatment and the

alien's eligibility to receive government-funded treatment based on his or her parole status may be considered sufficient to satisfy the third HIV waiver requirement.

(F) HIV Waivers for Refugees, Legalization Applicants, and SAW Applicants. Section 212(a)(1)(A)(i) of the Act relating to a communicable disease of public health significance applies to all applicants for adjustment of status under section 245A (legalization), section 210 (SAWs), section 207 (refugees), and section 209 (refugee and asylee adjustment applicants). Each of the above programs authorizes a waiver for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest; however, the same three additional waiver requirements discussed in paragraph (E) of this section also apply here. Note that, for refugees, a memorandum was issued on June 16, 1999 (see Appendix 41-1), to the effect that aliens applying for admission as refugees under section 207 of the Act are not required to submit individualized proof of ability to cover costs in order to satisfy the third HIV waiver requirement. The Service's Office of International Affairs issued that memorandum based on the assurances provided to the Service by the Surgeon General that an individual's status as a refugee renders him or her eligible for a variety of federally funded treatment programs, and that sufficient networks are in place.

Effective June 16, 1999, District Directors/Officers in Charge shall consider a refugee's eligibility for federally-funded programs such as Medicaid, Refugee Medical Assistance, and the variety of services provided under the Ryan White CARE Act as sufficient to meet the third requirement. No documentation of individual eligibility for HIV treatment or health care coverage in the United States is required to supplement Form I-602. Waiver requests must, however, continue to be documented to show that the refugee has been counseled to ensure that he or she understands how HIV is transmitted and is aware of the precautions which

must be taken to prevent its spread.

Until further notice, refugees and asylees adjusting under section 209 of the Act must submit evidence of individual eligibility for HIV treatment or health care coverage in the United States.

(G) Referral of Cases to the Centers for Disease Control and Prevention (CDC). The Attorney General may grant the waiver in accordance with the terms, conditions, and controls considered necessary after consulting with the Secretary of Health and Human Services (HHS). Before the Service makes a final determination on the waiver application, CDC must first issue an endorsement of review. Note that CDC's endorsement of review does not constitute waiver approval. Rather, the purpose of the endorsement is for CDC to verify that the applicant (or person assuming responsibility on his or her behalf) has identified a suitable health care provider in the United States. This health care provider is required to submit to CDC, within 30 days of the date the applicant is admitted on an immigrant visa or granted adjustment of status, the results of a comprehensive medical evaluation. In addition, the applicant (or person assuming responsibility on his or her behalf) must formally agree to submit to all further examinations or treatment as may be required. There are some variations to the procedures for working through CDC, depending on whether the individual is applying for admission as a refugee, for an immigrant visa, or for adjustment of status in the United States:

- Adjustment of Status Applicants. CDC has created an HIV supplement to be used for immigrant visa and adjustment of status applicants. This supplement is attached as Appendix 41.2 and may be downloaded and printed to obtain the necessary endorsement from CDC. This endorsement is required for all adjustment of status applicants, including refugees and asylees adjusting under section 209 of the Act. Give a copy of the HIV supplement to the

applicant or the person assuming responsibility for the applicant to complete. The health care provider must also complete the supplement and sign where indicated. Once this has been done, send copies of the following documents to the CDC:

- The HIV supplement with all required signatures;

- Form I-601, I-602, or I-690, as applicable, with all required signatures, but not the supporting documents, i.e., evidence of the family relationship when required, or of compliance with the three HIV waiver criteria;

- Form I-693; and

- All other medical reports, laboratory results, and evaluations .

The address at the CDC to which the documents must be sent is:

Chief, Migration Health Assessment Section
Division of Global Migration and Quarantine [E03]
Centers for Disease Control and Prevention
Atlanta, Georgia 30333
ATTN: Visa Medical

In emergent cases, you may send these documents to CDC via facsimile at 404-498-1633. CDC will then review the case, issue a letter indicating endorsement of review, and send the documents with the endorsement back to the Service. Once you receive the HIV supplement back from CDC with the endorsement, you may then proceed with adjudicating the waiver application.

· Immigrant Visa Applicants. The State Department consular officer should have already sent the HIV supplement to

CDC and obtained the endorsement of review before forwarding the waiver application and supporting documents to the onward Service office for adjudication. If, however, you receive a waiver application from DOS that does not contain a letter from CDC indicating endorsement of review, follow the steps outlined in paragraph (A) of this section.

- Refugees Seeking Admission under Section 207 of the Act. Following publication of the Service's June 16, 1999, memorandum, the Department of State issued a companion cable on February 24, 2000 (State 033614), describing the specific procedures consular posts must follow in cooperation with the voluntary agencies and the International Organization for Migration (IOM).

(H) Decision. Separate findings must be made on the waiver application with respect to HIV (212(g)(1), 207(c)(3), 209(c), 210(c)(2)(B)(i), 245A(d)(2)(B)(i)) and with respect to a public charge determination under section 212(a)(4) of the Act where applicable (see paragraph (2)(B) above.) As stated in paragraph (2)(B), Service officers do not make public charge findings with respect to applicants who are physically outside of the United States. When making a finding on the waiver application for HIV and a finding on public charge, both findings may be contained in the same decision, but should be written up as separate and distinct adjudications to show that each ground of inadmissibility was reviewed and considered on its own merits.

(3) Infectious Tuberculosis. [Reserved].

(4) Infectious Hansen's Disease. [Reserved].

(5) Infectious Syphilis. [Reserved]

(6) Other Communicable Disease Listed in 42 CFR § 34.2(b). [Reserved].

(b) HIV Waiver Policies for Nonimmigrants. Over the years, two specific waiver policies have been developed and implemented for nonimmigrants who are inadmissible due to HIV infection. These two policies are summarized below.

- The Service's Routine HIV Waiver Policy. Nonimmigrants may enter the United States for brief periods (30 days or less) to attend conferences, receive medical treatment, visit close family members, or conduct business, all of which are considered humanitarian reasons. To receive a waiver under the routine HIV policy, the alien must demonstrate that: he or she is not currently afflicted with symptoms of the disease; the proposed visit to the United States is for 30 days or less; there are sufficient assets, such as insurance, that would cover any medical care that might be required in the event of illness while in the United States; and that the visit will not pose a danger to public health in the United States. See Appendix 41-3.

- The Service's "10-Day Waiver" or "Designated Event" Policy. This case-by-case policy has existed since 1990, and has been put in place for certain "designated events." To initiate the process, the event organizers must write to HHS. HHS reviews the request and, if it determines that the event is in the public interest, it writes a letter to the Department of State. The Department of State then asks the Attorney General to exercise favorable discretion under section 212(d)(3) of the Act to authorize admission for the specific event. The Service then cables instructions to the field that, in effect, enable consular officers to adjudicate the waiver applications, without seeking the concurrence normally required under section 212(d)(3)(A) of the Act. While prior requests have been reviewed by the Attorney General, the Attorney General has delegated the authority to act on these requests back to the Service, but may wish to continue consulting with the Service in unusual or sensitive cases. In cooperation with Headquarters Office of Adjudications,

Headquarters Office of Field Operations generally issues the implementing memos for each event as it arises. Questions about whether an upcoming event has been or will be designated may be referred to Headquarters Office of Adjudications, through supervisory channels.

(c) Participants in HIV Vaccination Trials Sponsored by the National Institutes of Health. See IFM Chapter 17.9(d).

(d) Waivers Under Section 212(g)(2) of the Act Relating to the Vaccination Requirements.

(1) General. Section 341(b) of IIRIRA created section 212(g)(2) of the Act to provide three waivers for adjustment of status and immigrant visa applicants who lack the required vaccinations. [In addition, the broad exercise of discretion under section 209 of the Act remains unchanged for refugee and asylee adjustment applicants. Although refugees adjusting under section 209 of the Act are eligible for the broader exercise of discretion, it is nevertheless important, from the public health perspective and for the refugee's own safety, to know whether he or she has already been vaccinated, and if not, whether receiving the vaccination(s) would be medically appropriate. See chapter 41.6(b).] These three waiver provisions are:

- Section 212(g)(2)(A) of the Act which authorizes the Attorney General to grant a waiver to those applicants who received the vaccinations for which documents were missing when they initially applied for adjustment of status or for an immigrant visa;

- Section 212(g)(2)(B) of the Act which authorizes the Attorney General to grant a waiver when the civil surgeon certifies, according to HHS regulations, that it is not medically appropriate for the applicant to have one or more of the required vaccinations; and

- Section 212(g)(2)(C) of the Act which authorizes the Attorney General to grant a waiver for individuals who establish that compliance with the vaccination requirements would be contrary to their religious beliefs or moral convictions.

(2) Use of the Civil Surgeon's Report as the Basis for Determining Compliance and Waiver Eligibility. The medical examination report, Form I-693, and the vaccination supplement created by the CDC in Atlanta, Georgia, must be properly endorsed by the civil surgeon. Only designated civil surgeons may complete Form I-693 and the vaccination sign-off. CDC has issued an addendum to the civil surgeon guidelines entitled Technical Instructions for the Medical Examination of Aliens in the United States (Technical Instructions.) This addendum provides detailed instructions to the civil surgeons on:

- Reviewing the applicant's vaccination history; and

- Determining whether a particular vaccination is not medically appropriate.

Adjustment of status applicants need not be concerned about obtaining the vaccination supplement. The vaccination supplement form is included in the technical instructions provided to the civil surgeons. Civil surgeons can photocopy this form and fill it out on behalf of each applicant. CDC's Technical Instructions are available at: www.cdc.gov/ncidod/dq/technica.htm. The civil surgeon will use the vaccination supplement to Form I-693 to record the applicant's vaccination history, and the Service will use the signed vaccination supplement to determine which waiver the applicant will require. In reviewing the vaccination supplement, pay particular attention to parts 2 and 3 of the form:

- Part 2, "Immunization Record". Part 2 of the vaccination supplement is entitled "Immunization Record." There are four

blocks within Part 2, which are as follows:

- Vaccine History Transferred from a Written Record. The first block is the "Vaccine History Transferred from a Written Record." The four columns under this "Vaccine History" section will be used by the civil surgeon to record the applicant's vaccination history. Civil surgeons have been instructed by CDC to record the date the vaccinations and supplemental boosters (if required) were received, based on the documents supplied by the applicant. Note that, based on the specific guidance provided by CDC to the civil surgeons, written vaccination records or laboratory proof of immunity is required to establish receipt of all required vaccinations, except for the varicella vaccine. Civil surgeons have been instructed by CDC that compliance with the varicella vaccination may be established through oral history.

- "Vaccine Given". The second block in item Part 2 of the vaccination supplement is the "Vaccine Given" block. When the applicant lacks one of the required vaccinations, the civil surgeon may administer that vaccination, or the applicant may receive that vaccination from his or her own private physician. Civil surgeons will complete the "Vaccine Given" block to indicate the date they administered the missing vaccine. If the applicant chose to obtain the missing vaccination from his or her own private physician, then the civil surgeon will complete the required information in the first block of Part 2, "Vaccine History Transferred From a Written Record."

- "Completed Series or Fully Immune". The third block in Part 2 is "Completed Series or Fully Immune (Check if YES or write date of lab test if immune)." Not every line will require an entry. For example, there are three lines for measles, mumps, and rubella. Sometimes one vaccination is given for measles and rubella together, or

each vaccination may be given separately. When one vaccination is given for several vaccinations together (i.e., measles, mumps, and rubella), then one entry may be made for the combined vaccinations.

- "Waivers to be Requested from INS". The fourth block in Part 2 to the vaccination supplement is "Waivers to be Requested from INS" section, which is entitled "Blanket/Not Medically Appropriate." There are four separate columns within this block: "Not appropriate age," "Contraindication," "Insufficient time interval," and "Not fall (flu) season." If any of these four columns are checked by the civil surgeon, you may grant the applicant a waiver for the applicable vaccination under section 212(g)(2)(B) of the Act, pursuant to the streamlined procedures described in paragraph (3)(A) of this chapter. Note that the civil surgeon will also check the appropriate box in the "Results" section in Part 3 of the vaccination supplement.

· Part 3 "Results". Part 3 contains three blocks summarizing the results of the vaccination assessment:

- Applicant Is in Compliance. If the first box, "Vaccine history complete for each vaccine, all requirements met" box is checked, then the applicant is in compliance with section 212(a)(1)(A)(ii) of the Act and no waiver is required. You are not likely to process many waivers under section 212(g)(2)(A) of the Act. This is because the civil surgeon will have already endorsed the vaccination supplement to reflect that all vaccination records have been reviewed, that any missing vaccinations have been received (provided they are not deemed medically inappropriate or otherwise medically contraindicated), and that the applicant is in compliance. And, this will have been done before the applicant submits Form I-693 to the Service. One example of a case where a section 212(g)(2)(A) waiver might be

needed is an adjustment of status application that includes the medical exam results on Form I-693, but not the vaccination supplement. In that case, you would have to refer the I-693 back to the applicant for further evidence (RFE). Once the applicant returns Form I-693 with the completed vaccination supplement, then you may grant a waiver under section 212(g)(2)(A) of the Act per the streamlined waiver procedures. Depending on the results of the vaccination assessment, it may also be necessary to grant a waiver under section 212(g)(2)(B) or (C) of the Act. The majority of waivers will tend to fall under section 212(g)(2)(B) of the Act, on the ground that the vaccination is not recommended by the ACIP for the applicant's age, as discussed in paragraph (3)(A) of this chapter.

- Vaccination Is Not Medically Appropriate. If the second box, "May be eligible for blanket waiver(s) as indicated above" box is checked, then you may grant a waiver under section 212(g)(2)(B) of the Act under the streamlined procedures described in paragraph (3)(A) of this chapter. Note that if the civil surgeon failed to check one of the "results" boxes in Part 3, but has checked all applicable "Not medically appropriate" boxes in Part 2, then you may grant the waiver under section 212(g)(2)(B) of the Act under the streamlined procedures, without the need to RFE the vaccination supplement.

- Applicant Is Not in Compliance, but Further Questioning May Be Necessary to Determine Availability of Waiver. If the third box, "Does not meet immunization requirements" is checked, then the applicant is not in compliance and further questioning may be required to determine the availability of a waiver.

- Applicant Has Religious/Moral Objections to Vaccinations. If the fourth box, "Will request waiver for religious or moral objections" is checked, you may grant a waiver

under section 212(g)(2)(C) of the Act, if the criteria described in paragraph (3)(C) of this chapter have been met.

(3) Waiver Procedures and Requirements.

(A) Streamlined Waiver Procedures Based on the Civil Surgeon's Certification. Pursuant to the streamlined procedures established by the Service, you may grant a waiver under section 212(g)(2)(A) or (B) of the Act without form or fee from the applicant. A separate waiver application is not required. Use the civil surgeon's certification provided on the vaccination sign-off to determine whether the applicant may benefit from a waiver under these streamlined procedures. These streamlined procedures apply in cases where: the applicant received the vaccinations that were initially missing, or the civil surgeon certifies that it would not be medically appropriate for the applicant to have one or more of the required vaccinations:

- Vaccination Not Medically Appropriate. CDC has determined that a particular vaccination would not be medically appropriate in the following four scenarios: the vaccine is not recommended by the ACIP for the alien's specific age group; the vaccine is medically contraindicated (e.g., allergies to eggs or yeast, hypersensitivity to prior vaccines, and pregnancy, among other medical reasons); the alien has taken the initial vaccines, but is unable to complete the entire series within a reasonable period of time (e.g., the recommended series of hepatitis vaccines may take as long as 6 months to complete); and the medical examination is not being performed during the fall (flu) season. Note that for immigrant visa applicants abroad, there is a fifth scenario -- the vaccination is not available. This fifth scenario generally does not apply to adjustment of status applicants, as the required vaccines are considered to be

available in the United States, absent any unusual circumstances, as described in paragraph (B) of this section.

- "Waivers to Be Requested from INS". To facilitate the streamlined waiver procedures under section 212(g)(2)(A) and (B) of the Act, the fourth block in item #2 of the vaccination supplement to Form I-693 is the "Waivers to be Requested from INS" section, which is entitled "Blanket/Not Medically Appropriate." There are four separate columns in this block: "Not appropriate age," "Contraindication," "Insufficient time interval," and "Not fall (flu) season." If any of these four columns are checked by the civil surgeon, you may grant the applicant a waiver for the applicable vaccination under section 212(g)(2)(B) of the Act. Note that the civil surgeon will also check the appropriate box in the "Results" section in Part 3 of the vaccination supplement to Form I-693.

(B) Automatic Waiver Authorization under Section 212(g)(2)(B) of the Act Due to Widespread Unavailability of Certain Vaccines. As stated in paragraph (A) of this section, all vaccinations are generally considered to be available in the United States. However, due to various difficulties encountered in the production of certain vaccines, an insufficient volume was distributed to communities to meet total demand. Per the agreements the Service reached with CDC, shortages of the following vaccines should be handled in the manner described below. Continue granting the waiver under section 212(g)(2)(B) of the Act per the streamlined procedures, if the civil surgeon certifies that the vaccination is not medically (age) appropriate or is medically contraindicated, or, in the case of the flu vaccine, the vaccination assessment was not performed during the fall (flu) season.

A copy of the instructions provided by the CDC to the civil surgeons is attached as Appendix 41-4. Check the CDC website

for any subsequent updates.

- Flu: An automatic waiver is authorized for applicants required to have the flu vaccine (age 65 and older) with respect to all medical examinations which were performed in the United States between the dates of September 1, 2000, and March 30, 2001, inclusive.

- Tetanus: An automatic waiver for the tetanus vaccine is authorized in those cases where the vaccine was not available and the medical examination was performed by the civil surgeon beginning on February 1, 2001, through October 31, 2002. Because the vaccinations against tetanus are routinely administered in combination with other vaccines, this automatic waiver for tetanus includes the following combinations: Td (Tetanus/Diphtheria, which is the adult dose); and DT, DTP, and DtaP (Diphtheria/Tetanus, Diphtheria/Tetanus/Pertussis, and Diphtheria/Tetanus/acellular Pertussis, which are the pediatric doses). Note that, based on information received from the CDC, this automatic waiver will not be extended for medical exams performed after October 31, 2002, as supplies become sufficient to permit the resumption of the routine use of the tetanus vaccine.

- Mumps, Measles, Rubella (MMR): This vaccine is generally administered in 2 doses. For applicants required to have the MMR vaccine (e.g., the vaccination is recommended by the ACIP and there are no medical contraindications), CDC does not recommend a waiver of the first dose based on vaccine shortages. CDC has instructed civil surgeons who are unable to obtain sufficient quantities of the first dose of the MMR vaccine to refer the applicant to the local health department. If the local health department does not have sufficient quantities, the applicant must wait until the vaccine becomes available. In these cases, the civil surgeon may not sign the vaccination supplement

until the applicant has received the first dose. If the vaccine is not available, civil surgeons have been instructed to perform antibody testing to determine immunity to measles, mumps, and rubella.

If the applicant is a refugee applying for adjustment of status under section 209 of the Act and the vaccination assessment has been performed by a state or local health department under the terms of the special civil surgeon designation described in Chapter 83.4(b), the health department may not sign the vaccination supplement until the applicant has received the first dose.

Grant all adjustment of status applicants who have already received the first dose, a waiver for the second dose. [section 212(g)(2)(B) or 209(c) of the Act, as applicable.] Note, however, that the civil surgeon is less likely to encounter applicants that have already received the first dose. This waiver of the second dose based on shortages applies to medical examinations which were performed between the dates of January 1, 2002, and May 31, 2002, inclusive.

- Varicella: Note that, per the guidance received from CDC, varicella is the only vaccine that can be verified by means of an oral history. All other vaccinations must be verified either through the submission of certificates verifying the date the vaccine was administered, or by undergoing a laboratory test for immunity.

  For applicants required to have the varicella vaccine (e.g. the vaccination is recommended by the ACIP for the applicant's age group and there are no medical contraindications), CDC has instructed civil surgeons to prioritize its use in the manner described below. This prioritization of the varicella vaccine is in the order of the highest to lowest priority.

- Applicants 13 years of age and older;

- Children 5 to 12 years of age, with emphasis on children entering school and adolescents between the ages of 11 and 12;
- Children 2 to 4 years of age who attend a childcare center;

- Children 2 to 4 years of age who do not attend a childcare center.

Civil surgeons who do not have adequate supplies of the varicella vaccine for the age groups listed above should refer these applicants to the local health department. If the local health department does not have sufficient supplies of the varicella vaccine, civil surgeons have been instructed to make a notation on the vaccination supplement to the effect that the applicant was referred to the local health department, but the vaccine is unavailable. When the vaccination assessment is being performed by a participating health department for a refugee adjusting under section 209 of the Act, this notation will be made by the health department if it is signing the vaccination supplement per the terms of the special civil surgeon designation. See Chapter 41.6(b)(2).

An automatic waiver of the varicella vaccine requirement is authorized under section 212(g)(2)(B) of the Act: in those cases where the applicant is over age 2 and has been referred to the local health department, but the vaccine is unavailable; and for children under age 2 (no need for referral to the health department). The varicella vaccine is waived in these instances for medical exams which were performed between the dates of January 1, 2002, and May 31, 2002, inclusive.

(C) Individual Waivers under Section 212(g)(2)(C) of the Act

Based on Religious Beliefs or Moral Objections. Section 212(g)(2)(C) of the Act authorizes the Attorney General to grant a waiver of inadmissibility when the applicant establishes that compliance with the vaccination requirements would be contrary to his or her religious beliefs or moral convictions. (Continue accepting Form I-601 for this purpose, pending approval of the revised forms.) The plain statutory language refers to the alien's "religious beliefs or moral convictions" whereas the language in the accompanying Conference Report is more restrictive and refers to "an active member of a religious faith . . . ." The Service has taken particular caution to avoid any perceived infringement on personal beliefs and First Amendment rights to free speech and religion. To this end, the Service has reviewed court decisions on conscientious objection to the military draft, and challenges to State-mandated vaccinations for public school students, and has established the following three requirements:

- The applicant must be opposed to vaccinations in any form. The fact that the applicant has received certain vaccinations but not others is not automatic grounds for denial, depending on the reasons provided for having received them. For example, the applicant's religious or moral beliefs have changed substantially since the date the particular vaccinations were administered, or the applicant is a child who may have already received certain vaccinations under the routine practices of an orphanage. These examples do not limit your authority to consider all credible circumstances and accompanying evidence.

- The objection must be based on religious beliefs or moral convictions. This second requirement should be handled with sensitivity. On the one hand, case law notes that the individual's religious beliefs must be balanced against the benefit of society as a whole. On the other

hand, these same cases also note the importance of being mindful that vaccinations offend certain individuals' religious beliefs.

Note 1: It is not necessary for the applicant to be a member of a recognized or mainstream religion. It is not necessary for the applicant to be a member of a specific religion or attend a specific house of worship. By imposing such a requirement, the Government could potentially be perceived as putting a "stamp of approval" on some religions or religious beliefs but not others. Note also that the plain language of the statute refers to religious beliefs or moral convictions.

Note 2: It is necessary to distinguish between strong religious/moral objections and mere preference. The analysis of exactly what constitutes a religious or moral objection, as found in cases involving challenges to State-mandated vaccinations for public school students, reveals that a touchstone of a religion is present where a believer will categorically disregard elementary self-interest rather than transgress religious tenets. Consequently, the applicant has the burden of establishing a strong objection to vaccinations that is based on religious or moral beliefs, as opposed to a mere preference against vaccinations. By means of a sworn statement, the applicant should state exactly what those religious beliefs or moral objections are and establish how such beliefs would be violated or compromised by complying with the vaccination requirements.

- The religious or moral beliefs must be sincere. To protect only those beliefs that are held as a matter of conscience, sincerity analysis seeks to determine the subjective good faith of an adherent. Even if these beliefs accurately reflect the applicant's ultimate conclusions about vaccinations, they must stem from religious/moral convictions, and must not have been

framed in terms of a particular belief so as to gain the legal remedy desired, i.e., a waiver under section 212(g)(2)(C) of the Act. While an individual may ascribe his or her opposition to vaccinations to a particular religious belief or moral conviction that is inherently opposed to vaccinations, the question then turns to whether that claimed belief or moral conviction is truly held, i.e., whether it is applied consistently. This may be established through the sworn statement submitted by the applicant. Additional corroborating evidence, if available and credible, may also be considered.

(4) Waiver notations.

(A) Immigrant visa applicants. If the applicant is otherwise admissible, the consular officer will stamp the waiver field in the upper right-hand corner of the immigrant visa, Form OF 155A, with the notation "212(g)(2)(A), (B), or (C)," as applicable. Note that the Attorney General has delegated to the Department of State the authority to grant waivers under section 212(g)(2)(A) and (B) of the Act, based on the panel physician's certification on the vaccination supplement to Form OF 157.

(B) Adjustment of Status Applications. If you approve the adjustment application based on the approval of a waiver under sections 212(g)(2)(A), (B), or (C), or 209(c) of the Act, place the appropriate waiver notation on Form I-181, Memorandum of Creation of Record for Lawful Permanent Residence.

(d) Waivers under Section 212(g)(3) of the Act for Immigrants Found to Have a Physical or Mental Disorders With Associated Harmful Behavior. [Reserved]

(e) Drug Abuse and Drug Addiction.

(1) Adjustment of Status and Immigrant Visa Applicants.

Adjustment of status and immigrant visa applicants who are found inadmissible under section 212(a)(1)(A)(iv) of the Act because of drug abuse or drug addiction are not eligible to apply for any waiver.

(2) Refugees and Asylees. Refer to Chapter 41.6.

(3) Nonimmigrants. [Reserved].

(4) Remission. An individual who has been found inadmissible under section 212(a)(1)(A)(iv) of the Act due to drug abuse or drug addiction is not precluded from undergoing a reexamination at a later date at his or her own cost. If, upon reexamination, the civil surgeon or panel physician certifies, per the applicable HHS regulations and CDC's Technical Instructions, that the individual is in remission, the ground of inadmissibility under section 212(a)(1)(A)(iv) of the Act no longer applies.

☞ 3. By adding Chapter 41.6 to read as follows:

Chapter 41.6 Waivers of inadmissibility for refugees and asylees.

(a) General.

(1) Legal Authority. Sections 207(c)(3) and 209(c) of the Act authorize the Attorney General to waive most grounds of inadmissibility "for humanitarian reasons, to assure family unity, or when it is otherwise in the public interest." Form I-602, *Application by Refugee for Waiver of Grounds of Inadmissibility*, is used, but a fee is not required, as provided in 8 CFR § 103.7(b). The grounds of inadmissibility that cannot be waived under any circumstance are:

- Section 212(a)(2)(C) of the Act relating to drug trafficking;
- Section 212(a)(3)(A) of the Act relating to security grounds;
- Section 212(a)(3)(B) of the Act relating to terrorism;
- Section 212(a)(3)(C) of the Act relating to foreign policy considerations;

· Section 212(a)(3)(E) of the Act relating to Nazi persecution and genocide.

(2) Approval. If the waiver is approved under section 207(c)(3) of the Act for an individual seeking admission as a refugee under section 207 of the Act, place a copy of Form I-602 in the file. If the waiver is approved under section 209(c) of the Act for a refugee or asylee applying for adjustment of status under section 209 of the Act, place the waiver notation on Form I-181. In addition, place the waiver notation on Form I-602 and retain it in the A-file, unless the waiver was processed without one per Chapter 41.6(b)(2).

(3) Denial.

(A) Section 207(c)(3) of the Act. Per 8 CFR § 207.3(b), there is no appeal from a decision to deny a waiver application filed under section 207(c)(3) of the Act.

(B) Section 209(c) of the Act. If the waiver application is denied, the adjustment of status application must also be denied. The denial of the waiver may not be appealed; however, it may be renewed in proceedings. Refer to 8 CFR § 209.1(e) for further information about the denial of an adjustment of status application submitted by a refugee and the applicant's right to review that denial. Refer to 8 CFR § 209.2(f) for further information about the denial of an adjustment of status application by an asylee and the applicant's right to review that denial.

(b) Medical Waivers for Refugees and Asylees. A refugee or asylee who is inadmissible on medical grounds may be granted a waiver per the general provisions described in Chapter 41.6(a). However, depending on the medical ground of inadmissibility that has been found, additional steps and/or documentation may be required.

(1) HIV. For additional filing requirements relating to HIV, refer to Chapter 41.3(a)(2).

(2) Waivers of Vaccination Requirements for Refugees and Asylees. The vaccination requirements under section 212(a)(1)(A)(ii) of the Act are generally discussed in Chapter 23.3 of this field manual. The special designation of state and local health departments for refugees adjusting under section 209 of the Act is generally discussed in Chapter 83.4 of this field manual. The following are examples of situations that would be considered "humanitarian" reasons for granting a waiver of this requirement under section 209(c) of the Act to a refugee or asylee adjustment applicant:

· The refugee or asylee adjustment applicant receives the missing vaccinations or

the civil surgeon certifies that the missing vaccination is not medically appropriate. When the civil surgeon certifies that a refugee or asylee adjustment applicant has received the vaccinations that were missing upon the initial application or that the missing vaccination is not medically appropriate, neither Form I-602 nor a fee is required. Streamlined procedures should be used to grant a waiver under section 209(c) of the Act, similar to the streamlined procedures used to grant a waiver under section 212(g)(2)(A) or (B) of the Act discussed in Chapter 41.3.

- Objection to vaccinations because of religious beliefs or moral convictions or establishment of other reasons that would merit a waiver under section 209(c) of the Act. A refugee or asylee adjustment applicant who states that compliance with the vaccination requirements would be contrary to his or her religious beliefs or moral convictions, may also benefit from a waiver under section 209(c) of the Act for "humanitarian" reasons. In these cases, however, Form I-602 is required. Form I-602 is also required when the applicant expresses other reasons for the waiver that would be considered humanitarian, assure family unity, or otherwise be in the public interest. In either of these two cases, no fee is required with Form I-602. You should also refer to Chapter 41.3.

  NOTE: The same general considerations for granting an automatic waiver under section 212(g)(2)(B) of the Act due to vaccination shortages (described in Chapter 41.3(d)(3)(B)), also apply to waivers under section 209(C) of the Act to a refugee or asylee adjustment applicant.

☞ 4. By adding Chapter 83.4 to read as follows:

Chapter 83.4 Designation and Revocation of Civil Surgeons.

(a) General Certification Procedures for Private Physicians Seeking Civil Surgeon Designation.

(1) Legal Authority. The statutory authority relating to the designation of civil surgeons is found at section 232(b) of the Act. Refer to 8 CFR § 232.2(b) for further information about the selection of civil surgeons.

(2) Legal Requirements for Civil Surgeon Designation. HHS regulations at 42 CFR § 34.2(c) define a civil surgeon as “[a] physician, with not less than 4 years’ professional experience, selected by the District Director of INS to conduct medical

examinations of aliens in the United States . . . ."

(A) Licensed physicians. The Service's implementing regulations at 8 CFR § 232.2(b) state that "[e]ach civil surgeon selected shall be a licensed physician with no less than 4 years' professional experience." (Emphasis added.) Thus, only licensed physicians may be designated as civil surgeons for medical examinations under section 232(b) of the Act. M.D.s (medical doctors) and D.O.s (Doctors of Osteopathy) are eligible to apply for civil surgeon designation, provided they are licensed to practice medicine in the state where they render medical services and have the requisite professional experience. Similarly, registered nurses, medical technicians, physical therapists, physician's assistants, medical technicians, and other healthcare workers who are not licensed physicians may not be designated as civil surgeons. To resolve any doubts you may have about whether an applicant is in fact a licensed physician eligible for civil surgeon designation, you may call CDC, Division of Global Migration and Quarantine, at 404-498-1600. For information about the special designation of state and local health departments as civil surgeons for refugees seeking adjustment of status under section 209 of the Act and 8 CFR § 209.1, refer to Chapter 83.4(b).

(B) Professional Experience. Based on consultations with CDC, the Service has determined that internships and residencies are not counted towards the 4 years of professional experience required under section 232(b) of the Act for civil surgeon designation. For purposes of civil surgeon designation under section 232(b) of the Act, professional experience means experience obtained not in relationship to training. Both internship and residency are part of the training of physicians, as required of medical officers of the U.S. Public Health Service.

(3) Technical Instructions. All designated civil surgeons must perform the medical exam according to the applicable HHS regulations at 42 CFR part 34 and the specific instructions published by the CDC entitled *Technical Instructions for the Medical Examination of Aliens in the United States* (*"Technical Instructions"*). See 42 CFR § 34.3(f). These *Technical Instructions* are binding on the civil surgeon, and they have the force of a regulation. The current *Technical Instructions*, along with important updates for civil surgeons, are available at CDC's website:

http://www.cdc.gov/ncidod/dq/technica.htm.

(4) Application Procedures. The current regulations do not specify an application process. The Service is in the process of revising the regulations for the designation of civil surgeons. Until these revisions become effective, all INS offices should adhere to the following guidelines.

- Written Request. Require all physicians seeking civil surgeon designation to submit a written request.

- Evidence. Each request for civil surgeon designation must include, at a minimum, copies of the physician's current medical license and curriculum vitae establishing 4 years of professional experience.

- Additional steps depending on time, staffing, and resources. Time and resources permitting, you may also call or visit the facility or physician before making a final decision on the request for civil surgeon designation. Under current regulations, you may also limit the number of civil surgeons designated for your district or sub-office; however, you must develop uniform standards for doing so and ensure that they are applied consistently throughout the entire district.

- Decision. Because the current regulations at 8 CFR § 232.2(b) state that the District Director may select as many civil surgeons as determined necessary to serve the needs of that district, you are not required to approve a request for civil surgeon designation if you have determined that the needs of the district are already met by the civil surgeons currently designated. If, however, a clinic or medical practice seeks to designate a new physician in place of another designated civil surgeon who has left, this need not be treated as a new request for civil surgeon designation. That physician must, however, meet the legal requirements for civil surgeon designation.

- Approval. Notify the physician in writing of the approval and forward a copy of your written notification to CDC at the following address:

  Chief, Migration Health Assessment Section
  Division of Global Migration and Quarantine (E03)
  Centers for Disease Control and Prevention (CDC)
  Atlanta, Georgia 30333.

Note that, while the current regulations state that district directors may also select clinics and local, county and state health departments, your approval and internal records should reflect only those individual physicians that have been designated on behalf of that clinic or practice. This is necessary to ensure that the legal requirements of section 232(b) of the Act, 8 CFR § 232.2(b), and 42 CFR § 34.2(b) relating to licensure and experience have been met.

- Updating the civil surgeon lists. Submit all civil surgeon deletions, additions, and

corrections for districts and sub-offices to the Headquarters Immigration Services Division (ISD), ATTN: Customer Service Branch, through appropriate channels, within 24 hours of the date the change occurred, so that the local office profile may be updated. The information provided to Headquarters to be entered into the system must include the physician's full name, name of medical practice, address, and telephone number. Specialty, subspecialty, and the date the license expires should also be included. In order to ensure the accuracy of the information in the database, it is critical to ensure that all the information entered into the local office profile is correct, especially the zip code and the civil surgeon's telephone number. Applicants may obtain information about civil surgeons designated in their area by calling the National Customer Service Center at: 1-800-375-5283.

- Files. Create a separate file for each civil surgeon designated in your district or sub-office. If more than one physician is designated for a particular clinic or medical practice, one file may be retained to cover all physicians designated. However, the files should be maintained in such a way as to facilitate retrieval or review of information relating to the specific civil surgeon. The file should be retained for as long as the civil surgeon is designated and should include all relevant correspondence. In addition, the file should be retained for 5 years after the date the physician's civil surgeon designation has been terminated (whether voluntarily or through the revocation process described in Chapter 83.4(c)).

- Denial. Notify the physician in writing of the denial. There is no appeal or review of a denied request for civil surgeon designation. However, if the request was denied because a sufficient number of civil surgeons is already designated, the physician is not precluded from reapplying at a later date.

(b) Special Designation of State and Local Health Departments as Civil Surgeons for Refugees Adjusting under Section 209 of the Act.

(1) Legal Authority. When medical officers of the U.S. Public Health Service (PHS) are not available to examine individuals seeking admission to the United States, the Attorney General is authorized, in accordance with section 232(b) of the Act, to designate private physicians to serve as civil surgeons for this purpose. The corresponding regulations at 8 CFR § 232.2(b) state in part: "The district director shall select as many civil surgeons, including clinics and local, county and state health departments employing qualified civil surgeons, as he determines to be necessary to serve the needs of the Service in a locality under his jurisdiction." Therefore, the Attorney General has the authority to designate civil surgeons individually or en masse, provided they meet the legal requirements specified under

section 232(b) of the Act, 8 CFR § 232.2(b), and 42 CFR § 34.2(b).

(2) Blanket Designation of Participating Health Departments. By way of a memorandum dated July 30, 1998; HQ 70/21.1.1, 96 Act 074, HQADN designated all state and local health departments as civil surgeons for refugees applying for adjustment of status under section 209 of the Act. This designation:

- Is in addition to, not instead of, the civil surgeon designation described at 8 CFR § 232.2.
- Eases the difficulties encountered by refugee adjustment applicants in their efforts to obtain the vaccination sign-off;
- Relieves district offices of the need to continually update their civil surgeon lists of health departments to reflect the current physicians on staff; and
- Does not require district offices to maintain lists of individual health departments and the names of individual physicians employed by these health departments.

Participation in this HQADN blanket civil surgeon designation is entirely voluntary and at the discretion of the individual health department. In the past, CDC has provided each health department the vaccination supplement to Form I-693 and all the necessary instructions. New health departments wishing to participate in the blanket designation can obtain the technical instructions for the vaccination requirements and the vaccination supplement to Form I-693 from the CDC website at the following address:

http://www.cdc.gov/ncidod/dq/technica.htm.

(3) Aliens Eligible to Benefit from the Blanket Designation. Pursuant to the understanding reached between the Service, CDC, and HHS, this HQADN blanket civil surgeon designation of state and local health departments covers only the vaccination sign-off for those refugees applying for adjustment of status under section 209 of the Act. The small percentage of refugees who require the entire medical exam, as provided in 8 CFR § 209.1(b), will need to visit a private physician or health care facility designated in accordance with the standard procedures described in 8 CFR § 232.2(b) and Chapter 83.4(a). This blanket designation does not cover asylees seeking to adjust under section 209 of the Act.

(4) Certification by Participating Health Departments. Health departments participating in the HQADN blanket civil surgeon designation will place either the

official stamp or raised seal (whichever is customarily used by that specific health department) on the vaccination supplement, and the attending health department physician must sign it. In accordance with the agreements reached with CDC, the signature on the vaccination supplement may be the physician's actual (original) or stamped signature. The health department nurse or other health care professional may, but is not required to, co-sign the vaccination supplement. A vaccination supplement that has been signed only by a registered nurse, physician's assistant, or other medical professional that is not a licensed physician is not sufficient to meet the requirements of section 232(b) of the Act as having been completed by a designated civil surgeon. The health department will place the signed vaccination supplement in a sealed envelope, according to the standard procedures all civil surgeons are required to follow.

If you encounter a vaccination supplement for a refugee that has been signed only by a medical professional employed by the health department (i.e., without an accompanying signature by a medical doctor), RFE the vaccination supplement to the applicant for corrective action. See also Chapter 83.4(b)(5), immediately below.

(5) Denied Applications Due to Improper Signature by the Health Department. You may accept a Motion to Reopen, without fee, from a refugee whose application for adjustment of status under section 209 of the Act was denied solely because of an improper signature on the vaccination supplement. The Motion must be accompanied by a corrected vaccination supplement in an envelope sealed by the State or local health department.

(c) Procedures for Revoking a Physician's Civil Surgeon Designation.
(1) Authority. Current regulations do not contain specific revocation provisions; however, the law does not preclude revocation, especially when the physician no longer qualifies for civil surgeon designation or his or her professional conduct is egregious to the extent that it endangers public health or safety, including lack of license.

(2) Initiating the intended revocation. The file should be well documented before you take any steps to revoke a physician's civil surgeon designation. When the intended revocation is based on allegations of misconduct reported by an adjustment of status applicant, sworn statements should be taken from those applicants to support the allegations contained in the notice. Retain any other evidence of the alleged misconduct. Pending implementation of the revised civil surgeon regulations, refer the case to district counsel, UNLESS the intended revocation is based on evidence that the civil surgeon is no longer a licensed physician. Referrals to district counsel should include the reasons for the intended revocation and copies of the supporting

evidence. Depending on the nature and severity of the allegations, it may also be necessary for you to consult with CDC and/or the local health department to obtain expert medical advice. Once the decision has been made to initiate the revocation, serve the physician with a notice of intent to revoke by Certified Mail/Return Receipt Requested. The notice must clearly state the exact reasons for the intended revocation. Allow 30 days from the date of the notice for the physician to respond with countervailing evidence. The physician may be represented by counsel at his or her own cost.

(3) Decision. Advise the physician in writing of the decision to uphold or reverse the notice of intent to revoke the civil surgeon designation. Update the local office profile, accordingly, and notify the regional POC, per the instructions in Chapter 83.4(a)(4).

☞ 5. By adding Appendix 41-1 to read as follows:

APPENDIX 41-1: Guidance Regarding Waivers for HIV+ Refugees

Editor's Note: The following is the text of a memorandum issued by the Deputy Director of the Office of International Affairs to all overseas offices on June 16, 1999:

This memorandum supplements the guidance you have already received regarding the filing and adjudication of waiver requests submitted by HIV+ approved refugee applicants who are inadmissible under section 212(a)(1)(A)(i). See attached memoranda issued on September 30, 1993 and April 6, 1994.

To file a waiver request, approved refugee applicants who test HIV+ must currently submit Form I-602, supported by documentation that establishes that:

(1) the danger to the public health of the United States created by his/her admission to the United States would be minimal;

(2) the possibility of the spread of the disease created by his/her admission to the United States would be minimal; and

(3) there would be no cost incurred by any level of government agency in the United States without the prior consent of that agency.

Effective as of this date, District Directors/Officers in Charge shall consider a refugee's

eligibility for federally-funded programs such as Medicaid, Refugee Medical Assistance, and the variety of services provided under the Ryan White CARE Act as sufficient to meet the third of these filing requirements -- i.e., proof that no cost will be incurred by any level of government agency in the United States without the prior consent of that agency. No documentation of individual eligibility for HIV+ treatment or health care coverage in the United States is required to supplement Form I-602. Waiver requests must, however, continue to be documented to show that the refugee has been counseled to ensure that he or she understands how HIV is transmitted and is aware of the precautions which must be taken to prevent its spread.

This change in the evidentiary requirements for HIV+ waiver requests made by refugees is based on a recent letter from the Surgeon General to Commissioner Meissner. In that letter, the Surgeon General states that the United States Government's provision of services to HIV+ individuals "provides adequate support for refugees who are HIV-positive upon their admission to the United States and during their transition to full participation in our society." The Service has determined that, with respect to refugees seeking a waiver, this commitment from the federal government to provide adequate support to HIV+ refugees meets the consent component of the waiver requirement.

The preceding guidance applies only to refugee cases. For individuals seeking admission to the United States as immigrants, the third prong may still be supported by such documentation as: proof of health insurance coverage under a plan held by a family member, evidence of financial resources necessary to cover projected medical costs of HIV treatment, statements from specific private / government health care and research facilities assuming responsibility for treatment, and statements of consent from local or state health care officials. For those applicants who will receive publicly funded medical treatment for HIV/AIDS from any local, state or federal agency, the head of the agency (or his or her designee) must issue the formal consent.
If you require additional guidance on specific HIV+ waiver requests filed by approved refugee applicants, please contact the Refugee Division at 202-305-2662.

☞ 6. By adding Appendix 41-2 to read as follows:

APPENDIX 41-2: CDC FORM FOR APPLICANTS WITH HIV INFECTION

[SEE ATTACHMENT FOR FORM]

☞ 7. Please add Appendix 41-3 to read as follows:

APPENDIX 41-3: HEADQUARTERS PROGRAM RESPONSIBILITY FOR NONIMMIGRANT WAIVERS OF INADMISSIBILITY

Editor's Note: The following is the text of a memorandum issued by Acting Associate Commissioner, Examinations to all offices on August 19, 1993:

IN THE EXAMINATIONS PROGRAM, RESPONSIBILITIES FOR POLICY AND PROCEDURES FOR WAIVERS OF INADMISSIBILITY HAVE BEEN DIVIDED BETWEEN THE OFFICES OF ADJUDICATIONS AND INSPECTIONS. THE OFFICE OF INSPECTIONS HAS RESPONSIBILITY FOR ALL WAIVERS GRANTED UNDER § 212(d)(3)OF THE ACT, PERTAINING TO NONIMMIGRANTS; THE OFFICE OF ADJUDICATIONS HAS RESPONSIBILITY FOR ALL OTHER WAIVERS OF INADMISSIBILITY. QUESTIONS REGARDING 212(d)(3) WAIVERS MAY BE DIRECTED TO [THE] CHIEF INSPECTOR, TELEPHONE 202-514-3275 OR FAX 202-514-8345. QUESTIONS REGARDING ANY OTHER WAIVER MAY BE DIRECTED TO: SOPHIA COX, SENIOR IMMIGRATION EXAMINER, TELEPHONE 202-514-5014 OR FAX 202-514-0198.

PLEASE NOTE ONE GENERAL CHANGE IN PROCEDURE FOR 212(d)(3) WAIVERS, EFFECTIVE ON THE DATE OF THIS WIRE. PROCEDURES AND RULES FOR GRANTING OR CONCURRING IN 212(d)(3) WAIVERS ARE CONTAINED IN 8 CFR 212.4. AN EXCEPTION TO THESE PROCEDURES HAS BEEN IN EFFECT FOR GRANTING OR CONCURRING IN WAIVERS FOR NONIMMIGRANTS WITH HUMAN IMMUNODEFICIENCY VIRUS (HIV). THESE CASES WERE REFERRED TO HEADQUARTERS INSPECTIONS FOR A DECISION BECAUSE WHETHER HIV POSITIVE PERSONS WERE INADMISSIBLE DEPENDED ON THE POLITICAL DECISION OF WHETHER ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) WAS TO BE CONSIDERED A COMMUNICABLE DISEASE OF PUBLIC HEALTH SIGNIFICANCE, AND THE DECISION WAS SUBJECT TO CHANGE.

THIS UNCERTAINTY CEASED WHEN PUBLIC LAW 103-43 AMENDED 212 (a)(1)(A)(I) OF THE ACT AND INCLUDED HIV AS A DISEASE OF PUBLIC HEALTH SIGNIFICANCE, SO THAT ALL PERSONS WHO ARE HIV POSITIVE ARE STATUTORILY EXCLUDABLE. SINCE HIV POSITIVE PERSONS ARE CLEARLY

EXCLUDABLE, THEIR CASES FALL UNDER THE POLICIES AND PROCEDURES ALREADY IN PLACE FOR GRANTING 212 (d)(3) WAIVERS. AUTHORITY FOR GRANTING OR CONCURRING IN HIV WAIVERS WILL NOW RETURN TO THE APPROPRIATE DISTRICT OFFICES, AS SET OUT IN 8 CFR 212.4.

CHARACTERISTICS OF CASES IN WHICH THE OFFICE OF INSPECTIONS READILY CONCURRED IN AN HIV WAIVER ARE: THE PERSON IS NOT CURRENTLY AFFLICTED WITH SYMPTOMS OF THEIR DISEASE; HE OR SHE IS COMING TO THE UNITED STATES FOR A SHORT VISIT; HE OR SHE HAS INSURANCE OR ASSETS THAT WILL ENABLE THEM TO PAY FOR MEDICAL CARE SHOULD THEY BECOME ILL; AND THERE IS NO REASON TO BELIEVE THEIR VISIT WILL POSE A DANGER TO PUBLIC HEALTH IN THE UNITED STATES. THE OFFICE OF INSPECTIONS WILL BE HAPPY TO DISCUSS INDIVIDUAL CASES WITH DISTRICTS TO HELP RESOLVE ANY PROBLEMS THAT ARISE.

☞ 8. Please add Appendix 41-4 to read as follows:

APPENDIX 41-4: INSTRUCTIONS FROM CDC TO CIVIL SURGEONS ON WIDESPREAD UNAVAILABILITY OF CERTAIN VACCINES

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service
Centers for Disease Control and Prevention (CDC)

Update: Action To Be Taken by Civil Surgeons Due to the Measles-Mumps-Rubella (MMR) and Varicella Vaccine Shortages.

The Division of Global Migration and Quarantine (DQ) of the Centers for Disease Control and Prevention (CDC) has discussed the current measles-mumps-rubella (MMR) and varicella vaccine

shortages with the National Immunization Program at CDC and the U.S. Immigration and Naturalization Service (INS).

Applicants applying in the United States for adjustment of status or permanent resident status are required to have received vaccination against vaccine-preventable diseases, such as MMR and varicella, as recommended by the U.S. Advisory Committee on Immunization Practices (ACIP). MMR and varicella vaccines are in short supply at present, and the following recommendations are provided for civil surgeons.

For MMR

During this time of vaccine shortage, although there is no waiver for the first MMR vaccine, an automatic waiver may be granted for the second dose of MMR vaccine if vaccine supplies are insufficient to provide the second dose. If MMR vaccine is not available, applicants should be referred to the local health department.

If the health department does not have sufficient MMR vaccine for the first dose of vaccine, the civil surgeon must wait until the vaccine is available to medically clear the applicant. If the vaccine is not available, antibody testing to determine immunity to measles, mumps and rubella should be performed.

For varicella

In response to the current shortage of varicella vaccine, the following prioritization of vaccine use

are provided for civil surgeons who do not have adequate supplies to vaccinate all applicants who do not have a reliable written or oral history of varicella disease. Because of the increased severity of disease among adolescents and adults and the highest incidence of disease in elementary school-aged children recommendations for use (highest to lowest priority) of varicella vaccine for susceptible persons are:

1. Applicants 13 years of age and older
2. Children 5 to 12 years with focus on children entering school and adolescents 11 to 12 years.
3. Children 2 to 4 years who attend a childcare center.
4. Children 2 to 4 years who do not attend a childcare center

If varicella vaccine is not available, applicants should be referred to the local health department. Until adequate supplies of varicella vaccine are available, vaccination of children less than 2 years of age will receive an automatic waiver. If the health department does not have sufficient varicella vaccine for applicants 2 years of age or older, an automatic waiver for varicella vaccine will be allowed. Health providers should implement a call-back system when the vaccine becomes available so that unvaccinated applicants can be identified and recalled for vaccination. Because the Supplemental Form to I-693 (Adjustment of Status Applicant's Documentation of Immunization) does not have an "unavailable in country" box for vaccines, it is necessary for the civil surgeon to indicate in writing on the form, "referred to health department and vaccine unavailable." The automatic waiver for varicella vaccination and for the second dose of MMR vaccination is effective from January 1, 2002 through July 31, 2002. At the end of July 2002, the

situation will again be evaluated and, if the shortage continues, the time period could be extended.

☞ 9. Please make appropriate revisions to the AFM Table of Contents (including the table of appendices).

☞ 10. Please revise the *AFM* **Transmittal Memorandums** button by adding a new entry to read as follows:

AD 01-03 [INSERT SIGNATURE DATE OF THIS MEMO]	Chapter 23.3; Chapter 41.3; Chapter 41.6; Chapter 83.4; Appendix 41-1; Appendix 41-2; Appendix 41-3; and Appendix 41-4.	Adds guidance concerning medical examinations, vaccination requirements, waivers of medical grounds of inadmissibility, and designation of civil surgeons and revocation of such designation.

TO BE COMPLETED FOR APPLICANTS WITH
HUMAN IMMUNODEFICIENCY VIRUS (HIV) INFECTION

A. Statement by Applicant

Upon admission to the United States I will:

1. Go directly to the physician or health facility named in Section B;
2. Present copies of diagnostic tests used in the visa examination to substantiate diagnosis;
3. Submit to counseling and such examinations, treatment, and medical regimen as may be required; and
4. Remain under prescribed treatment or observation whether on inpatient or outpatient basis, until discharged.

_____
Signature of Applicant

_____
Date

_____

B. Statement by Physician or Health Facility

(May be executed by a private physician, health department, or other public or private facility or military hospital.)

I agree to supply counseling and any treatment or observation necessary for the proper management of the alien's HIV infection condition.

I agree to submit a copy of my evaluation of the alien's condition to the health officer named in Section D and to the Division of Quarantine (E03), Centers for Disease Control, Atlanta, Georgia 30333:

1. Within 30 days of the alien's reporting for care indicating plans for future care of the alien; or
2. A report that the alien has not reported within 30 days after receiving a notice from the Division of Quarantine, CDC.

Satisfactory financial arrangements have been made. (This statement does not relieve the alien from submitting evidence, as required by consul, to establish that the alien is not likely to become a public charge.)

I represent (enter an "X" in the appropriate box and give the complete name and address of the facility below:)

☐ 1. Local Health Department
☐ 2. Other Public or Private Facility
☐ 3. Private Practice
☐ 4. Military Hospital

_____
Name of Physician or Facility (Please type or print)

_____
Address (Number & Street)

_____
City, State, & Zip Code

_____
Signature of Physician *Date*

C. Applicant's Sponsor in the U.S.

Arrange for medical care of the applicant and have the physician or facility complete Section B.

If medical care will be provided by a physician who checked box 2 or 3, in Section B, have Section D completed by the local or State Health Officer who has jurisdiction in the area where the applicant plans to reside in the U.S.

If medical care will be provided by a physician who checked box 4, in Section B, forward this form directly to the military facility at the address provided in Section B.

Address where the alien plans to reside in the U.S.:

_____
Address (Number & Street) *(Apartment Number)*

_____
City, State, & Zip Code

_____

D. Endorsement of Local or State Health Officer

Endorsement signifies recognition of the physician or facility for the purpose of providing care for HIV infection. If the facility or physician who signed in Section B is not in your health jurisdiction and is not familiar to you, you may wish to contact the health officer responsible for the jurisdiction of the facility or physician prior to endorsing.

_____
Endorsed by: Signature of Health Officer

_____
Date

_____
Enter below the name and address of the Local Health Department to which the "Notice of Arrival of Alien with HIV infection Waiver" should be sent when the alien arrives in the U.S.

_____
Official Name of Department

_____
Address (Number & Street) *(Apartment Number)*

_____
City, State, & Zip Code

_____
–

Please read instructions with care.

If further assistance is needed, contact the office of the Immigration and Naturalization Service with jurisdiction over the intended place of U.S. residence of the applicant.

NOTE: If you are approved for a waiver and after admission to the U.S. you fail to comply with the terms, conditions, and controls that were imposed, you may be subject to removal under Section 237(a) of the Immigration and Nationality Act.