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Memorandum

TO: EXECUTIVE LEADERSHIP

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SUBJECT: **Changes to the Vaccination Requirements for Purposes of Adjustment of Status and the Completion of Form I-693, Report of Medical Examination and Vaccination Record**

1. Purpose

This memorandum advises USCIS officers of the revised vaccination requirements for health-related admissibility under section 212(a)(1)(A)(ii) of the Immigration and Nationality Act (the Act). Effective December 14, 2009, vaccinations against the Human Papillomavirus (HPV) and herpes zoster (zoster) will no longer be required. These changes are applicable to any admissibility determination made under section 212(a)(1)(A)(ii) of the Act on or after December 14, 2009.

2. Background

Under section 212(a)(1)(A)(ii) of the Act, an individual who seeks to enter the United States as an immigrant or who seeks to adjust status to permanent residence in the United States must show proof of having received vaccinations against vaccine-preventable diseases, as listed in the statute and as recommended by the U.S. Advisory Committee of Immunization Practices (ACIP). The ACIP is an

advisory committee to the Department of Health and Human Services (HHS)/Centers for Disease Control and Prevention (CDC) that makes the recommendations on immunizations.

On November 13, 2009, HHS/CDC published a Federal register notice changing the criteria that govern the vaccination requirements for U.S. immigration purposes. 74 FR 58634.[1] Starting December 14, 2009, whenever the ACIP recommends new vaccines for the general U.S. population, CDC will also assess whether these newly recommended vaccines should be required for immigration purposes using the new criteria. Thus, the new criteria provided in the Federal Register notice will be applied only to the ACIP-recommended vaccines that are not specifically named in the Act.

3. Guidance

Beginning December 14, 2009, all applicants seeking adjustment of status or another immigration benefit that requires admissibility under section 212(a)(1)(A)(ii) of the Act must show proof of having received the following vaccines: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza, hepatitis B, haemophilius influenza type B, varicella, pneumococcal, rotavirus, hepatitis A, and meningococcal. HPV and zoster will no longer be required.

A. Adjudication of Cases Pending between November 13, 2009 until December 14, 2009.

Admissibility is determined based on the law in effect at the time of the final decision. *Matter of Alarcon,* 20 I&N Dec. 557 (BIA 1992). Therefore, through December 13, 2009, receipt of the zoster vaccine (for individuals 60 years or older)[2] or the HPV vaccine (for females 11-26 years of age) was required for final adjudication of adjustment of status applications or any immigration benefit application requiring the applicant to establish admissibility under section 212(a)(1)(A)(ii) of the Act. On November 13, 2009, interim guidance was provided to officers, instructing officers to hold in abeyance cases which met the following criteria:

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[1] As of December 14, 2009, the following criteria govern CDC's determination which vaccines are required for individuals seeking to immigrate to the United States permanently:

1. The vaccine must be an age-appropriate vaccine as recommended by the ACIP for the general U.S. population, AND
2. At least one of the following apply:

a) The vaccine must protect against a disease that has the potential to cause an outbreak; OR

b) The vaccine must protect against a disease that has been eliminated in the United States, or is in the process of elimination in the United States.

[2] Zoster has been listed on USCIS' website at www.uscis.gov as a shortage vaccination in the United States since the inception of the requirement for the zoster vaccine for adjustment of status purposes in August 2008. Therefore, if individuals are unable to obtain the zoster vaccine in the United States because their physician cannot obtain the vaccine, Form I-693 may be accepted even though the zoster vaccine is missing provided the civil surgeon annotates their forms.

- Any immigration benefits application that was deniable solely based on the failure to receive or to document receipt of either the HPV vaccine or the zoster vaccine, if the individual was required to have either vaccine under the law in effect prior to December 14, 2009; and

- Any waiver application that was filed to overcome inadmissibility under section 212(a)(1)(A)(ii) of the Act because the individual is required under current law to have received the HPV or zoster vaccine, but has not done so.

Officers were advised to continue to adjudicate cases in which the alien had received all required vaccines, as well as any pending waiver applications that were approvable.

Now that the revised vaccination requirements have taken effect, officers are to complete the adjudication of any cases that had been held in abeyance according to the guidance in part 3B of this Memorandum.

B. Adjudication of Cases Pending on or after December 14, 2009

Beginning December 14, 2009, USCIS officers should adjudicate cases held in abeyance in accordance with the revised vaccination requirements. On or after December 14, 2009, officers should administratively close any pending waiver applications solely filed for lack of receipt of either the HPV or zoster vaccine, because these applicants are no longer inadmissible under section 212(a)(1)(A)(ii) of the Act.

In addition, officers should disregard any annotation of HPV or zoster vaccine, or the lack thereof, on any Form I-693 or DS-3025 when determining whether the vaccination requirements of section 212(a)(1)(A)(ii) of the Act are met. It is irrelevant on what date the Form I-693 or the DS-3025 was completed by the civil surgeon, blanket designated health-department, or the panel physician (abroad).

> **Example:** The vaccination assessment was completed on Form I-693 on May 5, 2009, for a female 22 years of age. On May 5, 2009, the civil surgeon was required either to evaluate written proof presented by the individual that she had received the HPV vaccine, or to administer the HPV vaccine. The female was unable to provide written proof, and refused the administration of the vaccine, which was annotated on Form I-693. The applicant submitted the Form I-693 in the sealed envelope without having obtained the HPV vaccine on July 10, 2009.
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> On or after December 14, 2009, an officer adjudicates the adjustment application when receipt of the HPV vaccine is no longer required and any annotation regarding the HPV or the lack thereof should be disregarded.

The officer should follow the vaccination chart provided in the AFM update below to determine vaccination requirements in effect on or after December 14, 2009.

CDC is updating its Vaccination Component of the Technical Instructions, accordingly.

4. Adjudicator's Field Manual (AFM) Update

The *Adjudicator's Field Manual* (AFM) is updated accordingly, and the following subchapters of the AFM are revised:

1. Subchapter 40.1(e) of the AFM is revised to read as follows:

40.1 HEALTH-RELATED GROUNDS OF INADMISSIBILITY AND MEDICAL EXAMINATION

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(e) Review of Form I-693

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(4) Vaccinations

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(B) Required Vaccinations. Section 212(a)(1)(A)(ii) of the Act specifies the following vaccinations:

- mumps, measles, rubella
- polio
- tetanus and diphtheria toxoids
- pertussis
- haemophilius influenzae type b
- hepatitis b

Beginning on December 14, 2009, additional vaccine requirements are determined by CDC according to the following criteria:

1) The vaccine must be age-appropriate as recommended by the ACIP for the general U.S. population; AND
2) The vaccine must either protect against a disease that has the potential to cause an outbreak, OR the vaccine must protect against a disease that has been eliminated in the United States or is in the process of elimination in the United States.

The following additional vaccines are required for immigration purposes on or after December 14, 2009:

- varicella
- influenza

- pneumococcal
- rotavirus
- hepatitis A
- meningococcal

The officer should refer to the vaccination chart below and follow the guidelines provided in this section when reviewing the vaccination record to determine whether an applicant is inadmissible because the applicant has not received a particular vaccine. If an applicant is inadmissible, the officer should determine whether the inadmissibility may be waived because receipt of the vaccine is "not medically appropriate." The term "not medically appropriate" applies to vaccinations that are not age appropriate, where there is a medical contraindication, where there is an insufficient time interval, or when it is not the flu season.

If the civil surgeon checks that all vaccination requirements have been met but information is missing from the vaccination record in that the officer is unable determine admissibility, the officer should return the Form I-693 to the applicant for corrective action.

Applicants who have completed the initial DTP/DTaP/DT or Td/Tdap series should receive a Td/Tdap booster shot every 10 years. If the last dose was received more than 10 years ago, the applicant is required to have the booster shot before Form I-693 can be approved.

Contraindication because of pregnancy. The following vaccines are, in general, not medically appropriate (marked as contraindicated on Form I-693) during pregnancy:

- Tdap (Td can be given)
- OPV/IPV (OPV not available in the U.S.)
- MMR
- Meningococcal conjugate vaccine
- Varicella
- Influenza (Live/intranasal preparation)

The officer should note, however, that the civil surgeon may judge that the applicant has a contraindication that is based on pregnancy or a condition other than pregnancy, in which case, the vaccine would also be marked as a contraindicated.

Contraindication because of a immunocompromised condition, such as HIV positive: The following vaccines are not medically appropriate (marked as contraindicated) for applicants who have an immunocompromised condition:

- Varicella
- Influenza (Live/intranasal preparation)
- OPV (not available in the United States)
- Rotavirus

C) Steps to determine the necessary vaccinations

1) First determine which vaccinations were required for the applicant as of the date the medical exam was conducted.

2) Verify that the vaccinations required as of the date of the medical exam had been received by the applicant or that the vaccinations required as of that date were marked as "not medically appropriate."

Form I-693 is acceptable if the applicant has received each of the required vaccinations, or if the civil surgeon has noted that the vaccination was "not medically appropriate" at the time of the examination.

3) If the required vaccinations were not received or not marked as "not medically appropriate" as of the date the medical exam was conducted, determine whether the missing vaccinations would still be required as of the date of adjudication.

4) If the missing vaccinations are no longer required, the vaccination requirements have been met. This is, for example, the case when the applicant has aged out, or it is not the flu season, or a vaccine is no longer required by law.

5) If the missing vaccinations would still be required, the officer should RFE for those vaccinations.

Blanket Waiver determination: If a vaccine is not required, the applicant does not need a blanket waiver under section 212(g)(2)(B) of the Act. For example, a person born before 1957 need not obtain an individual waiver of the MMR vaccine, since it is not required for someone born before 1957.

If the vaccine is required but receiving the vaccine is not medically appropriate, the applicant does require a blanket waiver under section 209(c) or 212(g)(2)(B) of the Act. As indicated in chapter 41.3(d)(3)(A) of this AFM, a separate waiver application is not required in order for an adjudicator to grant a waiver of the vaccination requirement as "not medically appropriate."

Vaccination Chart

CDC's most updated vaccination chart for civil surgeons can be located on the following link: http://www.cdc.gov/ncidod/dq/civil_ti_vacc.htm). A summary of the vaccinations required for adjustment of status applicants is also provided in Table 1, "Requirements for routine vaccination of adjustment of status applicants who are not fully vaccinated or lack documentation" in the revised Vaccination Component of the *Technical Instructions*.

Officers should pay special attention to the following developments:

Human Papillomavirus (HPV) Vaccination: From August 1, 2008 through December 13, 2009, HPV vaccination was required for female individuals ages 11 years through 26 years. The requirement was eliminated on December 14, 2009 and affects any admissibility determination under section 212(a)(1)(A)(ii) of the Act on that date or thereafter. Therefore, for adjudications taking place on or after December 14, 2009, the annotation of the HPV vaccine on Form I-693 vaccination assessment, or the lack thereof, is irrelevant for purposes of admissibility under section 212(a)(1)(A)(ii) of the Act.

Zoster vaccination: From August 1, 2008 through December 13, 2009, the zoster vaccination was required for individuals ages 60 years or older unless the applicant had received the varicella vaccine (either the zoster or the varicella vaccine, but not both). However, the zoster vaccine was not available in the United States due to a nationwide shortage from the time it became mandatory. Therefore, even though the vaccine was missing, the Form I-693 could be accepted if the physician was unable to obtain the vaccine. On December 14, 2009 the zoster vaccine was removed from the list of required vaccines for immigration purposes; the change affects any admissibility determination under section 212(a)(1)(A)(ii) of the Act made on that date or thereafter. Therefore, for adjudications taking place on or after December 14, 2009, the officers should disregard any annotation of the zoster vaccine, or the lack thereof, on any Form I-693 or DS-3025 when determining whether the vaccination requirements of section 212(a)(1)(A)(ii) of the Act are met.

Influenza vaccine: For assessments completed prior to April 1, 2009, the influenza vaccine was only required for individuals 6 months to 59 months of age and for adults ages 50 years and older. For vaccination assessments completed on or after April 1, 2009, individuals ages 6 months through 18 years are required to get the flu vaccine during the flu season (October 1 through March 31), and adults ages 50 years and older.

Vaccination Requirements prior to August 1, 2008: The following vaccines were NOT required prior to August 1, 2008: hepatitis A, meningococcal, rotavirus, human papillomavirus (HPV), and zoster.

This chart is updated as of December 14, 2009. This chart is for USCIS officers to be used when determining inadmissibility under section 212(a)(1)(A)(ii) of the Act; the chart is *not* intended for the use of civil surgeons.

Age of Applicant	**Age Appropriate Vaccinations (and required for immigration purposes)**
Birth through 5 weeks	Hepatitis B
6 weeks through 7 weeks	Hepatitis B Rotavirus
2 months through 5 months	DT, DTaP, or DTP

	IPV or OPV (OPV not available in U.S.) Hib Hepatitis B Pneumococcal (PCV) Rotavirus
6 months through 7 months	DT, DTaP, or DTP Hib IPV or OPV (OPV not available in U.S.) Hepatitis B Pneumococcal (PCV) Influenza (during flu season only; October 1 through March 31) Rotavirus
8 months through 11 months	DT, DTaP, or DTP IPV or OPV (OPV not available in U.S.) Hib Hepatitis B Pneumococcal (PCV) Influenza (during flu season only; October 1 through March 31)
12 months through 23 months	DT, DTaP, or DTP IPV or OPV (OPV not available in U.S.) MMR Hib Hepatitis B Varicella Pneumococcal (PCV) Influenza (during flu season only; October 1 through March 31) Hepatitis A
2 through 4 years	DT, DTaP, or DTP IPV or OPV (OPV not available in U.S.) MMR Hib Hepatitis B Varicella Pneumococcal (PCV) Influenza (during flu season only; October 1 through March 31)
5 through 6 years	DT, DTaP, or DTP IPV or OPV (OPV not available in U.S.) MMR Hepatitis B Varicella

	Influenza (during flu season only; October 1 through March 31)
7 through 9 years	Td or Tdap (if DT, DTP, DTaP shown: okay to accept) IPV or OPV (OPV not available in U.S.) MMR Hepatitis B Varicella Influenza (during flu season only; October 1 through March 31)
10 years	Td or Tdap (if DT, DTP, DTaP shown: okay to accept) IPV or OPV (OPV not available in U.S.) MMR Hepatitis B Varicella Influenza (during flu season only; October 1 through March 31)
11 through 17 years	Td or Tdap (if DT, DTP, DTaP shown: okay to accept) IPV or OPV (OPV not available in U.S.) MMR Hepatitis B Varicella Meningococcal Influenza (during flu season only; October 1 through March 31)
18 years	Td or Tdap (if DT, DTP, DTaP shown: okay to accept) MMR Hepatitis B Varicella Meningococcal Influenza (during flu season only; October 1 through March 31)
19 through 26 years	Td or Tdap (if DT, DTP or DTaP shown: okay to accept) MMR Varicella
27 through 49 years	Td or Tdap (if DT, DTP or DTaP shown: okay to accept) MMR Varicella

50 through 59 years	Td or Tdap (if DT, DTP or DTaP shown: okay to accept) MMR (if born in 1957 or later) Varicella Influenza (during flu season only; October 1 through March 31)
60 through 64 years	Td or Tdap (if DT, DTP or DTaP shown: okay to accept) Varicella Influenza (during flu season only; October 1 through March 31)
65 and older	Td, or Tdap (if DT, DTaP or DTP shown: okay to accept) Varicella Pneumococcal (PPV) Influenza (during flu season only; October 1 through March 31)

5. **Use**

This memorandum is intended solely for the training and guidance of USCIS personnel in performing their duties relative to the adjudication of immigration benefits. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

6. Contact Information

Questions regarding this memorandum and USCIS policy regarding the medical examination of aliens may be directed through supervisory channels to OFO AOS and Legalization Mailbox, Rishiram Lekhram, Service Center Operations, Whitney Reitz, Chief of the International Operations Division Programs Branch, Pamela G. Williams, Policy and Regulation Management, or Roselyn Brown-Frei, Office of Policy & Strategy.