United States government and history and English literacy, covered in 8 CFR part 312. These two commenters, **Educational Testing Services and** Comprehensive Adult Student Assessment System, felt that § 312.3(a)(1) as written did not clearly provide that a standardized test of knowledge of United States government and history and English literacy could be taken even after the submission of an application for naturalization, so long as the results were presented as part of the interview process. Both commenters provided suggested language. While the Service agrees that the original language needs clarification, the commenters' suggested language was not accepted because it effectively would restrict the taking of the test to the period before the applicant's first interview. Instead, the Service has modified § 312.3(a)(1) to reflect that the standardized test may be taken and passed up until the date of any examination on the application under 8 CFR part 335, including a retest on the §312 requirement. The wording in the first sentence also has been changed from "submits an application" to "files an application" to bring the language into conformity with all other references to receipt of applications by the Service.

One of these commenters also suggested that the Service include specific language in § 312.3(a)(3) to reflect that an applicant's inability to speak English will not be construed as evidence of fraud in the taking of the standardized test. In response to the first interim rule, the Service received a similar request to set forth the exact level of proof required to invalidate test results on the basis of fraud. In this rule, the Service has certified that the inability to speak English may not be used as the sole ground upon which to invalidate test results. However, it should be noted that an applicant's inability to speak English at the interview may provide the officer with a reason to scrutinize more closely the circumstances surrounding the administration of the test. Moreover, while the Service may not invalidate test results as fraudulent solely because an applicant is unable to speak English at the interview, the Service is not precluded from denying an application on the grounds that the applicant is unable to speak English.

The same commenter also requested inclusion of a specific provision stating that persons who have satisfied the educational requirements set forth in section 312 of the Immigration and Nationality Act (the Act) during the legalization program under section 245A of the Act have met the

requirements listed in 8 CFR 312.3. The Service points out that such a provision already exists in § 312.3(b). Under that provision, applicants must still demonstrate spoken English skills at the time of the naturalization interview.

One commenter requested clarification of the changes made by the second interim rule to § 312.4. Specifically, the commenter note the requirement that the Service provide an applicant with another interpreter in a timely manner when it disqualifies the applicant's own interpreter. The commenter was concerned that this language could be misconstrued as requiring the Service to obtain an interpreter on the same day as the disqualification. The commenter pointed out that such a requirement would generate a significant cost to the Service and also could lead to violations of the Service's contractual obligations with interpreter firms. The Service has clarified this section to reflect that an interview may be rescheduled within a reasonable time period so long as such rescheduling does not cause undue delay in the adjudication of the application.

The same commenter also noted the removal of the term "terrorist" from the definition of "subversive" found in § 313.1. As we explained when we published the second interim rule, terrorists are not specifically included among the classes of persons ineligible for naturalization under section 313 of the Act. We note, however, that although section 313 of the Act does not expressly prohibit the naturalization of persons who engage in terrorist activity as defined in section 212(a)(3)(B) of the Act, such persons will be closely scrutinized for lack of good morale character.

Also noted by that commenter were the changes made by the second interim rule in § 316.5(c)(1)(i) regarding the term used to describe the interruption of continuity of residence. The commenter took issue with the use of the phrase "continuity of residence," suggesting that "continuous residence" would be a more appropriate term, as the Service uses that term throughout its regulations and particularly in 8 CFR part 245a. It should be noted, however, that § 316.5(c)(l)(i) implements section 316(b) of the Act, which refers to residence as required for admission to citizenship, as opposed to residence in other immigration contexts. Moreover, section 316(b) of the Act uses the term "continuity of residence." Accordingly,  $\S 316.5(c)(1)(i)$  adheres to the design of the statute by using the Act's terminology and by distinguishing between residence for naturalization

purposes and residence as used in other Service regulations.

One commenter asserted that the provision in § 316.10 specifying that a conviction for an aggravated felony be a permanent bar to naturalization only if the conviction occurred after November 29, 1990, contradicts a General Counsel legal opinion dated February 22, 1991 (on file with the Office of General Counsel, INS). The legal opinion discusses when a conviction can be classified as an aggravated felony. However, as the legal opinion also discusses, section 509 of IMMACT, which replaces "murder" with 'aggravated felony' in section 101(f)(8) of the Act, is applicable only to convictions occurring on or after November 29, 1990. Accordingly, an applicant is permanently barred from showing good moral character, and hence from eligibility for naturalization, by a conviction for an aggravated felony only when the conviction occurred on or after that date. As noted in the supplementary information accompanying the second interim rule, however, nothing in the regulations prevents the Service from using a pre-November 29, 1990, aggravated felony conviction as an impediment to establishing good moral character under § 316.10(b) (2) or (3).

One commenter suggested that the provision in § 335.2(a) allowing for the presence of an applicant's attorney or representative at the examination should refer only to § 292.3, rather than to the filing of an appearance in accordance with part 292 generally. However, the broader reference to part 292 was designed to encompass § 292.3 as well as the other guidelines for representation before the Service listed in that part. That commenter also asserted that the Service seems to have expanded the legal representative's participation in the in the naturalization process. As explained in the supplementary information accompanying the second interim rule, prior to the change to administrative naturalization, all applicants were subject to a preliminary investigation, where limited representation was allowed, and to a preliminary examination and final hearing, where full representation was allowed. As applicants are now subject to only one examination, the rights to representation at that examination have been expanded to be consistent with all other adjudications before the Service.

One commenter requested that the Service provide further guidance in § 335.2 to adjudications officers concerning the conduct of naturalization examinations, as