

Presidential Documents

Title 3—

The President

Proclamation 6594 of September 21, 1993

National Historically Black Colleges and Universities Week, 1993

By the President of the United States of America

A Proclamation

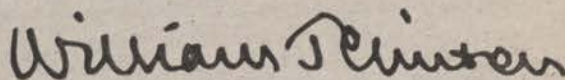
Our Nation's historically Black colleges and universities have long been a beacon of hope, a door to advancement, and a source of pride for African Americans. Founded upon a commitment to equal opportunity and academic excellence, these distinguished institutions have enabled thousands of people to receive a quality education and to pursue distinguished careers in fields such as education, law, medicine, business, the arts, engineering, and the military.

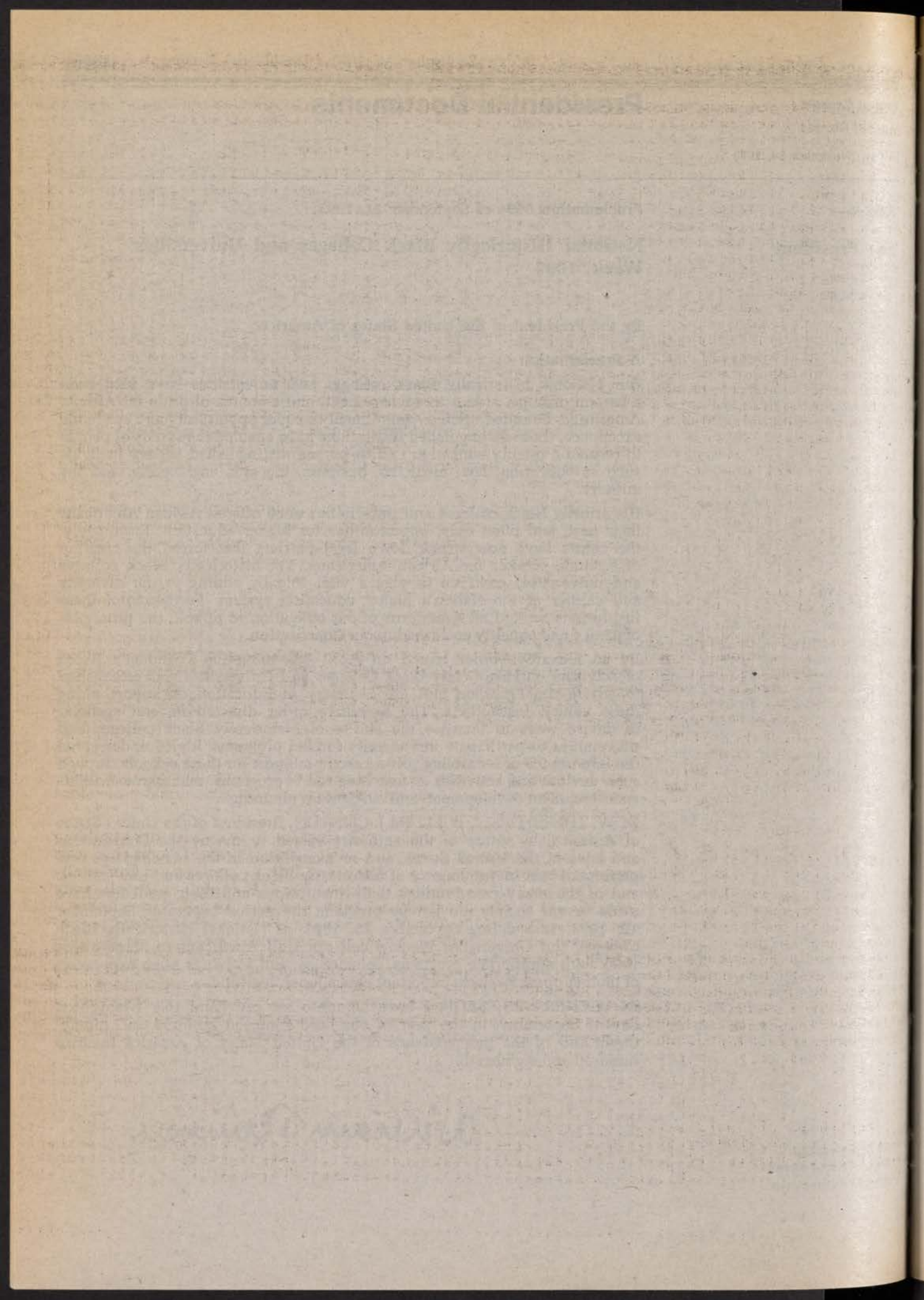
Historically Black colleges and universities once offered African Americans their best, and often only, opportunities for higher education. Fortunately, the courts have now struck down legal barriers that forced the creation of separate schools for African Americans. Yet historically Black colleges and universities continue to play a vital role by adding to the diversity and caliber of the Nation's higher education system. Furthermore, these institutions remind all Americans of our obligation to uphold the principles of justice and equality enshrined in our Constitution.

By an Executive order issued on April 28, 1989, the President's Board of Advisors on Historically Black Colleges and Universities was established to advise the President and the Secretary of Education on strengthening these valued institutions. The Executive order directed Federal agencies to devise ways to increase the ability of historically Black colleges and universities to participate in Federally funded programs. It also underscored the importance of increasing private sector support for these schools through such devices and activities as matching funds programs, management assistance, technical development, and curriculum planning.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, and in recognition of the rich heritage and prominent role in our country of historically Black colleges and universities, and of the many contributions these institutions and their graduates have made to our society, do hereby proclaim the period beginning September 19, 1993, and ending September 25, 1993, as National Historically Black Colleges and Universities Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities as an expression of their support for these important educational institutions.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of September, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.





Presidential Documents

Proclamation 6595 of September 21, 1993

National Farm Safety and Health Week, 1993

By the President of the United States of America

A Proclamation

The men and women who toil in America's agricultural sector endure many challenges and hardships in bringing to market their diverse and high quality foods and grains. This dedication to efficient production contributes significantly to the competitiveness of our Nation. Because we benefit from the bountiful harvests of these farmers and ranchers, it is fitting and appropriate that we observe National Farm Safety and Health Week to promote public awareness of the need for and the importance of agricultural worker health and safety.

For decades, much has been accomplished through initiatives aimed at providing a safer environment for farmers, ranchers, and farm workers. Significant engineering advances have provided guards, shields, and protective equipment, which reduce the hazards and risks associated with agriculture. Educators and concerned organizations have increased knowledge and changed attitudes and behaviors relating to safe work practices in the agricultural sector. However, there is still much to be accomplished.

The arena of agricultural worker health presents many challenges. Long hours, the pressures associated with growing crops and raising livestock, and the vagaries of weather contribute to the creation of stressful situations to both body and mind. For example, agricultural workers have been shown to be particularly susceptible to skin problems, most notably skin cancer, due to exposure to the sun. Prolonged periods of loud noise are contributing to higher than normal levels of permanent hearing loss among farmers and ranchers. Constant exposure to hazardous chemicals may also predispose workers to health problems. While farming and ranching offer their practitioners many great returns, it should be recognized that agricultural professions are among the most dangerous.

The next generation of farmers and ranchers is at special risk. Children are routinely exposed to powerful, complex farm equipment. Some chemicals and some work hazards such as dusts and flowing grain may detrimentally affect the health and safety of children. Their maturity and development must always be considered with regard to agricultural work. During National Farm Safety and Health Week, all of our Nation's citizens should resolve to make health and safety initiatives an integral part of America's great farming traditions.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of September 19-25, 1993, as "National Farm Safety and Health Week." I urge all citizens of our great Nation to make the enhancement of farmer, rancher and farm worker health of utmost priority. I call upon the agencies, organizations and businesses which serve production agriculture to strengthen their commitment to agricultural safety and health programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of September, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-23637

Filed 9-22-93; 2:50 pm]

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Rules and Regulations

Federal Register

Vol. 58, No. 184

Friday, September 24, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

Revision of grounds for deportation; conforming regulations

CFR Correction

In Title 8 of the Code of Federal Regulations, revised as of January 1, 1993, make the following correction:

On page 183, in § 214.2, in paragraph (a)(10), in the last sentence, the reference to section 241(a)(9)(A) should be corrected to read "section 241(a)(1)(C)(i)".

[FR Doc. 93-99999 Filed 9-23-93; 8:45am]

BILLING CODE 1505-01-D

8 CFR Parts 292, 299, 310, 312, 313, 316, 322, 329, 334, 335, 336, 337, 338, 339, 343b, and 499

[INS No. 1435-92; AG Order No. 1791-93]

RIN 1115-AC58

Administrative Naturalization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Immigration and Naturalization Service (the Service) published an interim rule in the Federal Register to implement title IV of the Immigration Act of 1990 (IMMACT). Title IV of IMMACT conferred upon the Attorney General, as of October 1, 1991, the exclusive responsibility for making final determinations on applications for naturalization. On December 12, 1991, the President signed additional legislation entitled the "Miscellaneous and Technical Immigration and Naturalization Amendments of 1991" (the technical amendments). These

amendments significantly alter the IMMACT provisions governing the role of the judiciary in the conduct of the administrative naturalization process.

This interim rule implements the changes required by the technical amendments as well as those made in response to the public comments on the October 7, 1991, interim rule. This rule is necessary to provide for administration of the oath of allegiance to applicants for naturalization, thereby completing the naturalization process.

DATES: This interim rule is effective September 24, 1993. Written comments must be submitted no later than November 8, 1993.

ADDRESSES: Please submit written comments in triplicate to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, room 5307, 425 I Street NW., Washington, DC 20536. Please include INS Number 1435-92 on your correspondence to ensure proper handling.

FOR FURTHER INFORMATION CONTACT: Stella Jarina, Chief, Naturalization and Special Projects Branch, Adjudications Division, Immigration and Naturalization Service, room 7228, 425 I Street NW., Washington, DC 20536, telephone: (202) 514-5014.

SUPPLEMENTARY INFORMATION: This modification to the interim rule on administrative naturalization published on October 7, 1991, at 56 FR 50475 is being published as an interim rule in order to implement the changes required by the enactment of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Pub. L. 102-232) as those amendments were effective January 11, 1992. In addition, the Immigration and Naturalization Service is implementing those changes brought about as a result of the public comments on the previously published interim rule. Comments are solicited and will be considered for possible modification of this rule.

Changes Required by New Legislation

The amendments of Public Law 102-232 address three areas which have an impact on the administrative naturalization procedure. First, the amendments provide that a federal or state court exercising naturalization jurisdiction may elect to exercise

exclusive jurisdiction to administer the oath of allegiance in oath administration ceremonies to applicants for naturalization under certain circumstances. During the 45-day period commencing on the date on which the Service certifies to a qualified federal district court that an applicant for naturalization residing in that district is eligible for naturalization, the court has exclusive authority to administer the oath of allegiance. If the court is unable to provide for the administration of the oath of allegiance in that time period, the applicant has the choice of whether to complete the naturalization process with the Service in an administrative ceremony, or whether to have the oath administered in a judicial ceremony.

In order to accommodate these changes, 8 CFR 310.3 has been revised to provide a mechanism whereby a court will notify the Service of the court's election to exercise exclusive jurisdiction and will routinely advise the Service of available court ceremonies. In view of the statutory requirement that the Service be able to schedule applicants for ceremonies up to 45 days from certification, a minimum of 60 days advance notification of ceremony dates by the court is provided so that the Service may adequately administer the scheduling process. Paragraphs (a) and (b) of the revised section are essentially unchanged from the previously published rule, except it is reformatted to include the clarification of when an applicant may elect the manner in which the oath is administered. A new § 337.7 has been added to provide that prompt and proper advice will be given to the applicant regarding his or her options as to the administration of the oath of allegiance. Section 337.8 has been revised in its entirety to provide a means for the Service to make a timely certification to the court of an applicant's eligibility to take the oath of allegiance.

The second important issue clarified by the amendments concerns the preparation and delivery of the certificate of naturalization. A Judicial Conference resolution adopted in September, 1991, provided that any person seeking United States citizenship who elects a federal court as the site of the administration of the oath of allegiance should be provided with a certificate of naturalization at the time

of oath-taking. The amendments require the Attorney General to promptly prepare a certificate of naturalization for each applicant approved for citizenship, and to transmit that certificate promptly to the court which has jurisdiction to administer the oath. The amendments further provide that the clerk of court shall deliver the certificate of naturalization to each person administered the oath of allegiance by the court at the time the oath is administered. The amendments thus create a statutory requirement that the certificate of naturalization be delivered to the applicant at the time of the administration of the oath, whether it be an administrative or a judicial ceremony. In conjunction with this statutory requirement, the amendments strike from the language of the 1990 Act that section that required the clerk of court to issue a separate document evidencing the administration of the oath in a judicial ceremony (section 339(a)(1); 8 U.S.C. 1450). The basis for this requirement was that the 1990 Act did not require the Attorney General to provide a court with naturalization certificates at the time of the ceremony; therefore, documentary evidence that the oath, in fact, was administered had to be created. By requiring the delivery of the certificate at the time of the ceremony, the rationale for this separate document is nullified and duplicate paperwork is eliminated.

The revisions to § 338.1 provide for the transmission of the certificate of naturalization to the court prior to the oath ceremony, and issuance of the certificates at the hearing by the court. In addition, those revisions strike any reference to the "document evidencing the oath of allegiance." The revisions to §§ 339.1 and 339.2 likewise strike any reference to the court's responsibility to prepare the document. The amended § 339.2 also provides a mechanism for the court to account for the certificates of naturalization issued to the new citizens and the return of voided certificates to the Service.

The third issue addressed in the amendments concerns the means by which an applicant facing exigent circumstances can be administered the oath of allegiance without having to wait until the date of the next public ceremony. The new language allows the court the discretion to consider special circumstances in determining whether to administer the oath immediately in a private judicial ceremony, or to refer the individual to the Attorney General for immediate administrative naturalization. Section 337.3 was revised to accommodate this provision, providing a mechanism for the

applicant to request such expedition through the Service and a means for the court to have the facts available when reaching a decision. This section also provides a means for the court to transmit to the Service its decision in those cases requiring Service action.

The technical amendments also include amendments in two other areas that are not being addressed in the current rule. The first, dealing with fiscal provisions, provides for certain reimbursements to the courts for costs associated with the administration of the oath of allegiance. It has been determined that formal rule making is not necessary to implement this provision.

The second amendment to section 408(a)(2)(B) of IMMACT involved the provision through which a petitioner under the prior statute could withdraw his or her petition and be treated under the new administrative provisions. However, the amendment did not accomplish what was intended. The amendment allowed for a petition still pending on January 1, 1992, to be withdrawn without first obtaining individual authorization from the Attorney General, provided that the petition is withdrawn no later than 3 months after the effective date of the administrative naturalization amendments, October 1, 1991. As a result, petitioners could take advantage of this statutory provision only on January 1, 1992. As the time allowed for withdrawal has already passed, no provision is being made in the current rule.

Comments on the Interim Rule Published on October 7, 1991

In response to the request for comments contained in the interim rule published on October 7, 1991, the Service received comments from 33 individuals, members of the bar, voluntary organizations, and state agencies. These comments covered 47 specific areas of the rule. The discussion that follows summarizes the issues raised in the comments, provides the Service's position on these issues, and explains the revisions adopted.

Most of the commenters focused on the educational requirements for naturalization in 8 CFR part 312. Numerous commenters noted that there was an incorrect citation in § 312.2(b)(1)(ii). This citation has been corrected to refer to § 312.1(a). One commenter desired clarification that the Service would administer the government and history test orally, as it has been done in the past, rather than in writing. This clarification is now contained in § 312.2(b)(1).

Many of the commenters stated that § 312.3(a) as it relates to the Service's ability to reject an applicant's passage of a standardized citizenship test was too vague, as it only required the Service to "believe" the test results were obtained by fraud. This has been changed to require "reasonable cause to believe," a more specific standard. Commenters also requested that it be stipulated that the applicant be given written notice of the rejection of test results. The section has been amended to include a requirement that the officer document the reason for rejection. However, it is not necessary to include here a requirement that the applicant be given written notice of the reasons for rejection, as has been requested by some commenters, as a requirement of written notice of continuance of the application is contained in the revision to § 335.3(b). One commenter requested clarification of when the evidence of passage of the test must be submitted and of what that evidence will consist. These issues have been clarified in new § 312.3(a)(2). However, the exact nature of the evidence will depend upon the test provider. Another commenter suggested that § 312.3 be made clearer as it relates to a person who fails a standardized test. While it was stated in the original rule as part of the reorganization of § 312.3(a) that an applicant is not prejudiced by the failure of a test, a new paragraph (a)(4) has been set out to clearly state this fact. It should also be noted that the test provider, as provided in the Notice of Program relating to the approval of standardized tests published on June 28, 1991, at 56 FR 29714, will not provide the Service with the identity of any person failing a standardized test.

Many commenters requested that § 312.4, regarding the selection and use of interpreters, be expanded to provide that if the Service should disqualify an interpreter, the Service, in addition to providing its own interpreter, would do so in a timely manner and would provide the applicant with reasons in writing for the disqualification. This has been provided for in an amendment to § 312.4, which now requires that the new interpreter be provided in a timely manner so as not to delay unduly the adjudication of the application. In addition, the Service must make a written record of the reason for disqualification. It is unnecessary to provide a separate requirement for notice to the applicant, as this is addressed in § 335.3(b), as noted above.

Many of the commenters expressed concern that it was not clear in the regulation that the reexamination on the educational and literacy requirements

pursuant to § 312.5 would be without additional fee. Section 312.5(a) has been revised to indicate that the reexamination would take place during the pendency of the application. Since the fee is for the adjudication of the application, and not for individual steps, this should clarify that there is no additional fee for the second examination. The commenters also suggested that the applicant be afforded another opportunity to take the examination if the applicant can demonstrate good cause for failure to appear for the second examination or for failure to notify the Service that he or she would be unable to appear. Paragraph (b) of § 312.5 has been amended to reflect this suggestion.

Several commenters questioned the appropriateness and legality of the bar to subversives and members or affiliates of subversive organizations under § 313.2(d). The commenters stated that the definition of "subversive" under § 313.1 is legally improper because it incorporates grounds not set forth in section 313 of the Immigration and Nationality Act of 1952 (Act), namely, the advocacy, teaching, or engaging in terrorist activities as defined in section 212(a)(3)(B) (ii) and (iii) of the Act. The Service has amended the definition of "subversive" to include the sixth ground, relating to terrorist activities. However, the Service disagrees with the further suggestion of these comments that it is improper to employ the term "subversive" to define a category of persons prohibited from naturalization. As these comments acknowledged, the definition of subversive in the interim rule, apart from the terrorist ground, merely incorporated statutory grounds set forth in sections 313(a) (4) and (5) of the Act.

One commenter suggested that 8 CFR part 316 did not clearly state the requirements that an applicant's residence in the United States be continuous. As originally written, the rule referred in places to the abandonment of residence for naturalization purposes. The commenter stated that this language could be confused with the concept of abandonment of lawful permanent residence status for immigration purposes. He suggested that the phrase "disruption of the continuity of the residence" be used instead. The Service has revised § 316.5(c)(1)(i) to adopt that change.

One commenter questioned why, in § 316.10, a separate provision was listed to bar murderers from naturalization when the definition of a person lacking good moral character at section 101(f) of the Act was changed to IMMACT from

a convicted murderer to a person convicted of an aggravated felony. The separate provision for a person convicted of murder has been maintained, since a conviction for murder at any time is a bar, but a conviction for any other aggravated felony is a bar only if the conviction takes place on or after November 29, 1990. The specific date requirement had not been placed in the original regulation, as it has been anticipated that the technical amendments might alter the dates involved. However, this alteration did not take place. Instead, the conviction cut-off date provision was clarified in the technical amendments, and § 316.10(b)(1) has been amended to indicate that a conviction for an aggravated felony is only a permanent bar if the conviction, other than for murder, takes place on or after November 29, 1990. It should be noted as well that a conviction for an aggravated felony within the statutory period would generally bring about the bar of § 316.10(b)(2).

One commenter stated that in 8 CFR part 322, regarding the naturalization of a child of a United States citizen parent, the regulation did not include the exemption for a child from the physical presence requirements. While § 322.2(a)(4)(i) provides that a child is exempt from the physical presence requirements of § 316.2(a)(4), it does not speak to the exemption from § 316.2(a)(5) regarding three months' residence within the state or Service district. Therefore, § 322.2(a)(4)(i) has been amended to include that exemption.

Many commenters said they were confused regarding when the oath or affirmation of the application as provided in § 334.3 would be executed. Since this oath or affirmation, in fact, takes place at the time of the examination on the application, this section has been removed and the information contained in it is now placed in revised § 335.2(d), relating to the conduct of the examination.

Many commenters requested that § 334.4 be amended to require that an alternative site be designated once it is determined that the applicant is unable to appear. The third sentence of that section has been amended to require the district director to designate an alternative site. In addition, the section has been amended to remove any reference to the oath ceremony and appearance in court as these issues are now covered in § 337.3. The commenters also requested that a provision be added to specify that the same appeal rights apply to persons interviewed outside the Service offices

as to those interviewed at the Service offices. This provision has been determined to be unnecessary as this section only addresses where an interview may take place. It does not permit any other deviation from what must be addressed in the interview or the decision to be reached as a result of that interview.

One commenter requested changes in § 335.2(a) regarding representation by attorneys or other representatives during the examination on the application. The commenter questioned how an attorney could assist his or her client to examine witnesses or challenge prejudicial evidence if the attorney is only able to observe the examination. The Service did not intend to limit the rights of the applicant. The differing rules of representation were a holdover from the prior statute where any applicant was subject to a preliminary investigation, where limited representation was allowed, and to a preliminary examination and final hearing, where full representation was allowed. As an applicant is now only subject to one examination, the rights to representation have been expanded to be consistent with all other adjudications. This also resulted in a need to strike from 8 CFR part 292 any reference to differing rules for naturalization cases.

One commenter requested clarification in § 335.2(c) that the refusal of the examining officer to issue a subpoena at the request of the applicant must be documented in the record and that all witnesses must testify under oath or affirmation. The introductory text of § 335.2(c) has been amended to include the oath requirement and a new sentence added to paragraph (c)(1) to provide for the documentation of the refusal to issue a subpoena.

Many commenters requested that § 335.3(b) stipulate that the applicant must be informed in writing of the reason for continuance of an application. While it has been common practice for applicants to be given a written notice of evidence to be submitted, this procedure has been formalized by amending § 335.3(b) to include the requirement of a written notice to the applicant.

One commenter requested that § 335.5, regarding a Service motion to reopen an approved application prior to the administration of the oath of allegiance, be clarified. The commenter requested that the motion to reopen be in writing and cite the specific information received. While a Service motion to reopen must be served in writing, § 335.5 has been clarified to specify that the motion to reopen must

be served in writing and that it must cite the specific information to be overcome.

Regarding the transfer of application provisions in § 335.9(a), many commenters requested that the rule stipulate that an applicant be informed in writing within 15 days of a denial of the reason(s) for the denial of a transfer request. The Service cannot realistically guarantee the issuance of a written notice within 15 days of such denial and this time period is not included in the final rule. However, a new provision has been added that provides that the reason(s) for the denial of transfer will be addressed in any denial notice issued relative to the transfer application.

The 30-day time limitation for the filing of a request for a hearing on a denial (§ 336.2) was an item of concern for many commenters, who desired that there be a specific exemption for good cause for failure to file a timely submission. A new paragraph (c) has been added to § 336.2 to deal with the issue of untimely and improperly-filed requests for hearing. While not explicitly allowing for late filing, the provision, which mirrors the provision of § 103.3(a)(2) for cases appealable to the Administrative Appeals Unit, does provide that a late filing may be treated as a motion to reopen.

One commenter requested a clarification in § 336.2(b) that the reviewing officer would have the authority to accept any relevant testimony that the applicant seeks to provide. Section 336.2(b) has been reworded to include this clarification.

Many commenters requested a provision whereby an applicant who had elected to have the oath administered in a court conducted ceremony would be permitted to change his or her election. This issue is now addressed in § 337.8(f).

Many commenters requested that the regulations provide that all certificates of naturalization be issued at the time of the oath administration ceremony, regardless of whether the ceremony was conducted by a court or the Service. This was provided for in the technical amendments of Public Law 102-232 and is now clarified in § 338.1.

Regarding the fee provisions of § 103.7, commenters, though pleased that the fee on the N-400 had not been raised, stated that the fee on the review request, Form N-336, was too high. One commenter also felt that the fee on the application for a declaration of intent, Form N-300, was not sufficiently justified, stating that it was a new form. However, the \$110.00 fee on the N-336 review request is consistent with the fees for all other appeals from decisions rendered by the Service, whether the

appeal is heard by the Administrative Appeals Unit or the Board of Immigration Appeals. As naturalization decision review proceedings are similar to those processes, it is realistic to charge a similar fee. With respect to the comment on form N-300, the fee on that form is not a new fee. Rather, the fee was transferred from the previous Declaration of Intention, Form N-315, which is now obsolete. The Declaration of Intention is now part of the Application for a Declaration of Intention.

Many commenters requested that the Service include in § 310.4 a requirement that the Service notify all petitioners of the ability to withdraw the petition from judicial naturalization and be processed under administrative naturalization. While this may be a commendable idea, and is being done in some district offices under specific circumstances, it would not be an efficient use of Service resources to do so in every case. In most cases, the most expeditious manner of processing the older petitions is through the courts.

Many commenters stated that § 310.5 ("Judicial Review") requires the Service to make a determination at the interview and, if a decision is not made, to inform the applicant of the reason for the delay. This is not the intent of the regulation. The Service by statute is permitted up to 120 days to make a decision on the application. If further action is required by the applicant, he or she will be notified in writing of the required action (§ 335.3). There is no need for the Service to advise the applicant in writing of further required action by the Service and such a requirement would put an unnecessary burden on the Service, further delaying the adjudication of the application. The commenters also stated that § 310.5 should contain a requirement for the Service to take immediate action when a court remands a case to the Service. Such a requirement is unnecessary in the regulation as the Service is bound to obey the court's instruction.

One commenter questioned the ability of the courts under § 310.5 to conduct reviews of denials pursuant to section 310(c) of the Act, and reviews resulting from the speedy action provisions of 336(b) of the Act, without having subject matter jurisdiction to grant the application itself. Such authority was given to the courts by sections 401(a) and 407(d)(14), respectively, of IMMACT. In general, the courts will conduct a review of the case and then remand to the Service with appropriate instructions. The Service is not at liberty to speculate as to what those instructions would be. This commenter

also requested that the Service impose a requirement that all interviews be conducted within a specific time frame after submission of the application, similar to the time frame which exists for adjudication after the examination. The 120-day limit was imposed by the statute to ensure that once the Service began processing a case, it would be processed to conclusion as quickly as possible. The Service, due to resource limitations, is not in a position to also meet a deadline for interviews in all cases. The most the Service can assure is that all cases will be dealt with in chronological order based on date of receipt of the application.

Many commenters requested that the Service provide more exemptions from the literacy and educational requirements of § 312.1(b). Specifically, the commenters requested that persons be exempted from literacy due to advanced age and developmental disabilities, as these persons were exempted from the literacy requirements of the Legalization program (section 245A of the Act). The requirements for and exemptions from the literacy and knowledge provisions of both section 312 of the Act and of the Legalization program are imposed by statute. IMMACT expanded the exemption from the literacy requirement to include persons over 55 years of age with 15 years of lawful permanent residence. It is clear, therefore, that Congress did not intend to expand the exemption further at this time, and the Service is not at liberty to create new exemptions.

One commenter apparently misunderstood § 312.2(b)(1)(ii) as it relates to the examination in the English language. The commenter was under the impression that this section required the use of technical or complex questions to determine if the applicant is capable of understanding English; when, in fact, the section permits the use of the applicant's native language when dealing with technical and complex issues if the applicant has met the ordinary usage standard.

Relative to the government and history examination of § 312.2(b)(2), many commenters wished to have the phrase "current officeholders" changed to "certain officeholders" and limited to major officeholders. While the Service understands the reasoning behind this request, "certain officeholders" would be even more ambiguous than "current officeholders", and the subsequent issue of what is a major officeholder could be a ground for even more contention. One commenter requested that the Service institute a standard list of questions from which each applicant would be

asked ten questions while other commenters wished an assurance that the Service only ask enough questions to establish rudimentary knowledge of the government and history of the United States. The requirement of a standard list of questions would prevent the Service from taking into account an applicant's overall background to assist the applicant in qualifying for naturalization, and would also allow the substitution of "test-taking" skills for even a rudimentary knowledge of government and history.

Many commenters requested a change in the length of validity of the standardized test offered by outside entities, some requesting that the validity period be lengthened to 2 years, some to 5 years. This is an issue that has been reviewed at length by the Service. In order to ensure that the applicant has a knowledge of history and government at the time of the naturalization, the Service has determined that 1 year prior to the submission of the application is the greatest length of time that can be considered, bearing in mind that anywhere from 3 to 12 months may pass before the applicant is examined on the application after the submission of the application. Two commenters asked that the Service ensure that there will be enough test providers to permit access to a test by everyone. While the Service is committed to approving as many test providers as may qualify, the Service is not in a position to mandate any private entity to provide this test. This is a program that must rely on the willingness of private or non-profit entities.

Many commenters felt that §§ 313.3(b)(5) and 313.3(d) are contradictory as they relate to the "essentials of living," in that in §§ 313.3(d)(1)(i) there is a more detailed listing of examples of essentials of living than in other paragraphs of § 313.3. The listing in § 313.3(d)(1)(i) is for clarification only and is not intended to be a comprehensive definition of the term.

Part 315 relates to persons who have been exempted from military service on the ground of alienage and who are thereby ineligible for naturalization. One commenter wished to have included in the exceptions to ineligibility persons who obtained an alienage exemption and then later enlisted in the armed forces. The commenter felt that it is unfair not to include an exception for such persons in § 315.2(b), especially since there is an exception for those who are inducted into the Armed Services after being granted an exemption. However, this is not an area where the Service has

discretion. The statute is specific as to who is barred from naturalization on these grounds, and the exceptions listed in § 315.2(b) are based either on a strict reading of the statute or upon the Supreme Court's ruling in *Astrup v. Immigration and Naturalization Service*, 402 U.S. 509 (1971).

One commenter suggested that § 316.2 be amended to incorporate the specific standard of proof upon an applicant for naturalization as established by judicial precedent, namely, preponderance of the evidence. The Service agrees and has changed that section accordingly.

One commenter stated that the bar to naturalization of § 316.10(b)(3)(ii) relating to an extramarital affair that destroys an existing marriage is "obviously anachronistic." The commenter felt that this act is not nearly as grievous as commercialized vice or serious criminal acts. The retention of the extramarital affair provision is not an arbitrary decision by the Service as this provision is based upon applicable judicial precedents and legislative history. *Wadman v. INS*, 329 F.2d 812 (9th Cir. 1964); H.R. Rep. No. 97-264, 97th Cong., 1st Sess., pt. 3, at 2577 (1981). It does not follow that for an action to be indicative of a lack of good moral character, the action must be comparable to commercialized vice or criminal acts. In fact, the definition governing the "good moral character" criterion, set forth at 8 U.S.C. 1101(f), has intentionally been left open-ended.

One commenter asserted that the provision of § 319.1(b)(2)(ii), which requires that an applicant who is applying for naturalization based upon marriage to a United States citizen establish that there has been no separation from the spouse during the 3 years preceding the application, is irrelevant, as the commenter states that the only issue that may be addressed is whether or not the applicant's marriage to the United States citizen was valid at its inception. There is a difference between the requirements for obtaining an immigrant visa based upon marriage to a citizen spouse and the requirements for naturalization under the special provisions of section 319 of the Act. The statute specifically requires marital union between the applicant and the citizen spouse for the full 3 years preceding the application and between the application and naturalization. Marital union, by court interpretation, has been held not to include persons who are separated for other than involuntary reasons as specified in § 319.1(b)(2)(ii)(C).

One commenter stated that the Service had erroneously included the period of service for the 1983 Grenada

Campaign in the provisions of § 329.2 for persons who may be naturalized based upon active service in the Armed Forces of the United States during periods of hostilities specified by the President. In *Matter of Reyes*, 910 F.2d 611 (9th Cir. 1990), the United States Court of Appeals for the Ninth Circuit held that Executive Order No. 12582, designating service in the Grenada Campaign as a basis for naturalization under 8 U.S.C. 1440(a), was invalid because it limited its coverage to individuals who had served in designated areas rather than covering all those who had served during the designated period. The Court further held that there was no basis for severing the provision of the Executive Order that contained the geographical limitations and therefore the Executive Order had to be invalidated in its entirety. In light of these considerations, the Service is removing the provisions of § 329.2(a)(5) that establish the eligibility for naturalization of those who served in designated areas during the Grenada Campaign.

One group of commenters requested that the Service provide instructional materials on United States government and history at all Service offices. The relevant Service textbooks are available to all persons for purchase through the Government Printing Office, and through adult education classes in certain public school systems. While the Service is endeavoring to provide various other instructional materials, the availability of those materials is not within the scope of the rule at issue.

Several commenters felt that § 334.11, relating to the application for a declaration of intention, was completely unnecessary. These commenters were under the impression that the only reason for a declaration of intention was for an alien to be able to file suit under the anti-discrimination provisions of the Immigration Reform and Control Act of 1986. These commenters are correct that the requirement that a declaration of intention be on file in order to initiate an anti-discrimination suit was repealed by IMMACT. However, the declaration of intention has existed since the 1800's. While at one time it was a required precursor to naturalization, it is now mainly used by lawful permanent residents to comply with various state laws related to professional licensure or purchase of real estate. It is quite clear that Congress intended to leave in place the provision for the declaration as this provision (section 334(g) of the Act) was amended by IMMACT.

One commenter requested a clarification of § 335.2(d) so that an applicant may object to a correction

made by the examiner on the application at the time of signing the jurat on the application. Such a provision is not required in the regulation because the jurat on the application specifically states that the corrections are made at the request of the applicant.

One commenter requested that § 336.1 be amended to require service of all notices on both the applicant and his or her legal representative. The Service feels that a separate stipulation in this section is unnecessary because the legal representative is appearing pursuant to 8 CFR part 292, which explicitly requires service on the legal representative where the applicant has such a representative.

Many commenters requested that § 336.9(b) be expanded to allow for an exemption to the 120-day deadline for filing a petition for review with the district court for "good cause." Failure to file a petition for review of a denial of an application does not prejudice the applicant in the filing of a new application for naturalization. In fact, an applicant may file as many applications as he or she desires.

Some commenters expressed a desire to comment on the content of the Model Plan for Service-conducted oath administration ceremonies. The Model Plan is not being included in the regulations as it does not affect an applicant's eligibility for naturalization but rather the internal operations of the Service.

Service-Initiated Changes

The Service's own review of the published regulation revealed several errors or areas that needed further clarification.

In § 322.2, an error was discovered in the definition of "child" that, if left as is, would have required that all adopted children be in the legal custody of the adopting parent(s) at the time of the adoption. This requirement is not consistent with either the statute or prior judicial decisions. Section 322.2 has been amended to require only that the child be adopted while the child is under the age of 16, and that the adopted child be in the legal and physical custody of the adoptive parents at the time of the application for naturalization and the naturalization.

In § 334.11, relative to the declaration of intention to become a citizen, it was noted that the regulation only provided for the approval of the application. While it is rare that a Form N-300 is denied, as the only grounds for denial are that the applicant is not a lawful permanent resident alien or is under 18 years of age, it does occur that an N-300

must be denied. Therefore, § 334.11 has been revised, with the existing section divided into two paragraphs: Paragraph (a) dealing with the submission of the application and paragraph (b) dealing with its approval. New material controlling the denial of an application has been placed in paragraph (c). This paragraph provides that the applicant shall be notified in writing of the reasons for the denial and that there shall be no appeal from the decision of the Service.

It was not an uncommon occurrence under the prior statute that persons who were scheduled to appear for final hearings on petitions for naturalization would fail to do so, even though the application was to be recommended to be granted. In the past, this was resolved by notifying the petitioner after repeated absences that the recommendation to the court would then be to deny if he or she failed to appear at the final hearing. However, under the current statute and regulations, there is no similar provision to dispose of the approved application if the applicant fails to appear for the oath administration ceremony. Therefore, the Service has added a new § 337.10, which enables the Service to reopen the application on its own motion and deny it for lack of prosecution.

In 8 CFR part 343b, Special Certificate of Naturalization for Recognition by a Foreign State, one reference to the obsolete Form N-577 was not changed to the revised Form N-565 in the published rule. This correction has now been made.

Finally, this rule amends the listing of forms contained in 8 CFR 299.5 and 499.1.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d)(3). The reasons and the necessity for the immediate implementation of this interim rule are as follows: Section 408(b) of IMMACT specifically authorizes the Attorney General to promulgate regulations on an interim basis to implement, in a timely manner, changes made to the Administrative Naturalization provisions of the Act by

title IV of IMMACT. The Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Pub. L. 102-232), which further amended the Administrative Naturalization provisions of IMMACT, were effective on January 11, 1992. Unless this regulation is issued as an interim rule, binding procedures to implement newly enacted naturalization provisions will be delayed and the Service will be forced to delay the administration of the oath of allegiance to qualified applicants, effectively depriving them of United States citizenship during the period of such delay. Accordingly, publication of this rulemaking on an interim basis is necessary in order to ensure efficient operation of the naturalization process.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 292

Administrative practice and procedure, Hearing and appeal Procedures, Immigration.

8 CFR Part 299

Citizenship and naturalization, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 310

Citizenship and naturalization, Courts.

8 CFR Part 312

Citizenship and naturalization, Education.

8 CFR Part 313

Citizenship and naturalization.

8 CFR Part 316

Citizenship and naturalization, International organizations, Reporting and recordkeeping requirements.

8 CFR Part 322

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

8 CFR Part 329

Citizenship and naturalization, Military personnel, Reporting and recordkeeping requirements, Veterans.

8 CFR Part 334

Administrative practice and procedure, Citizenship and

naturalization, Courts, Reporting and recordkeeping requirements.

8 CFR Part 335

Administrative practice and procedure, Authority delegations (Government agencies), Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 336

Citizenship and naturalization, Courts, Hearing and appeal procedures, Reporting and recordkeeping requirements.

8 CFR Part 337

Citizenship and naturalization.

8 CFR Part 338

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 339

Citizenship and naturalization, Courts, Reporting and recordkeeping requirements.

8 CFR Part 343b

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 499

Citizenship and naturalization, Reporting and recordkeeping requirements.

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

PART 292—REPRESENTATION AND APPEARANCES

1. The authority citation for part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1252b, 1362.

2. Section 292.5(b) is amended by revising the first sentence to read as follows:

§ 292.5 Service upon and action by attorney or representative of record.

* * *

(b) *Right to representation.* Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative who shall be permitted to examine or cross-examine such person and witnesses, to introduce evidence, to make objections which shall be stated succinctly and entered on the record, and to submit briefs.

* * *

PART 299—IMMIGRATION FORMS

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

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

§ 299.5 [Amended]

4. Section 299.5 is amended by revising the entry for Form N-565 to read as follows:

§ 299.5 Display of control numbers.

* * *

INS form No.	INS form title	Currently assigned OMB control No.
N-565	Application to Replace a Naturalization/Citizenship Certificate	1115-0015

PART 310—NATURALIZATION AUTHORITY

5. The authority citation for part 310 continues to read as follows:

Authority: 8 U.S.C. 1103, 1421, 1443, 1447, 1448; 8 CFR 2.1.

6. Section 310.3 is revised to read as follows:

§ 310.3 Administration of the oath of allegiance.

(a) An applicant for naturalization may elect, at the time of filing of, or at the examination on, the application, to have the oath of allegiance and renunciation under section 337(a) of the Act administered in a public ceremony conducted by the Service or by any court described in section 310(b) of the Act, subject to section 310(b)(1)(B) of the Act.

(b) The jurisdiction of all such courts specified to administer the oath of allegiance shall extend only to those persons who are resident within the respective jurisdictional limits of such courts, except as otherwise provided in section 316(f)(2) of the Act. Persons who

temporarily reside within the jurisdictional limits of a court in order to pursue an application properly filed pursuant to section 319(b), 322(c), 328(a), or 329 of the Act or section 405 of the Immigration Act of 1990 are not subject to the exclusive jurisdiction provisions of section 310(b)(1)(B) of the Act.

(c)(1) A court that wishes to exercise exclusive jurisdiction to administer the oath of allegiance for the 45-day period specified in section 310(b)(1)(B) of the Act shall notify, in writing, the district director of the Service office having jurisdiction over the place in which the court is located, of the court's intent to exercise such exclusive jurisdiction.

(2) At least 60 days prior to the holding of any oath administration ceremony referred to in § 337.8 of this chapter, the clerk of court shall give written notice to the appropriate district director of the time, date, and place of such ceremony and of the number of persons who may be accommodated.

(d) A court that has notified the Service pursuant to paragraph (c)(1) of

this section shall have exclusive authority to administer the oath of allegiance to persons residing within its jurisdiction for a period of 45 days beginning on the date that the Service notifies the clerk of court of the applicant's eligibility for naturalization. Such exclusive authority shall be effective only if on the date the Service notifies the clerk of court of the applicant's eligibility, the court has notified the Service of the day or days during such 45-day period on which the court has scheduled oath administration ceremonies available to the applicant. The Service must submit the notification of the applicant's eligibility to the clerk of court within 10 days of the approval of the application pursuant to § 337.8 of this chapter.

(e) *Waiver of exclusive authority.* A court exercising exclusive authority to administer the oath of allegiance pursuant to paragraph (c) of this section may waive such exclusive authority when it is determined by the court that the Service failed to notify the court within a reasonable time prior to a

scheduled oath ceremony of the applicant's eligibility such that it is impractical for the applicant to appear at that ceremony. The court shall notify the district director in writing of the waiver of exclusive authority as it relates to a specific applicant, and the Service shall promptly notify the applicant. The Service shall then arrange for the administration of the oath of allegiance pursuant to § 337.2 of this chapter.

PART 312—EDUCATIONAL REQUIREMENTS FOR NATURALIZATION

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

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

8. Section 312.2 is amended by:
a. Revising the introductory text of paragraph (b)(1); and
b. Revising the first sentence of paragraph (b)(1)(ii), to read as follows:

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

* * *

(b) * * *
(1) *Procedure.* The examination of an applicant's knowledge of the history and form of government of the United States shall be given orally by a designated examiner in the English language unless:

* * *
(ii) The applicant is required to satisfy and has satisfied the English literacy requirement under § 312.1(a), but the officer conducting the examination determines that an inaccurate or incomplete record of the examination would result if the examination on technical or complex issues were conducted in English. * * *

* * *
9. Section 312.3 is amended by revising paragraph (a) to read as follows:

§ 312.3 Standardized citizenship testing.

(a)(1) An applicant for naturalization may satisfy the reading and writing requirements of § 312.1 and the knowledge requirements of § 312.2 by passing, within one (1) year preceding the date on which he or she submits an application for naturalization, a standardized citizenship test given by an entity authorized by the Service to conduct such a test.

(2) The applicant must still demonstrate his or her ability to speak and understand English in accordance with § 312.1(c)(1). An applicant who passes a standardized citizenship test may submit evidence of passage of the test either with the submission of the

application, at the examination on the application, or at the time of the second examination provided in § 312.5(a). Any evidence of passage submitted by the applicant shall be subject to independent verification by the Service with the test provider.

(3) An applicant who passes a standardized citizenship test within one (1) year preceding the date on which he or she submits an application for naturalization shall not be reexamined at the Service naturalization interview on his or her ability to read and write English or on his or her knowledge of the history and form of government of the United States, unless the examining officer has reasonable cause to believe that the applicant's test results were obtained through fraud or misrepresentation. A written record of the officer's determination shall be made in the record of the application.

(4) An applicant who has failed a standardized citizenship test will not be prejudiced by that failure during an examination conducted by the Service under §§ 312.1 and 312.2, and may continue to pursue the application with the Service as if the applicant had never taken the standardized test.

* * *
10. Section 312.4 is amended by:
a. Revising the last sentence; and
b. Adding a new sentence at the end of the section, to read as follows:

§ 312.4 Selection of Interpreter.

* * * Where the Service disqualifies an interpreter, the Service must provide another interpreter for the applicant in a timely manner so as not to delay unduly the adjudication of the application. The officer who disqualifies an interpreter shall make a written record of the reason(s) for disqualification as part of the record of the application.

11. Section 312.5 is amended by:
a. Revising paragraph (a); and
b. Revising the first sentence of paragraph (b), to read as follows:

§ 312.5 Failure to meet educational and literacy requirements.

(a) An applicant for naturalization who fails the English literacy or history and government test at the first examination will be afforded a second opportunity to pass the test(s) within 90 days after the first examination during the pendency of the application.

(b) If an applicant who receives notice of the second scheduled examination date fails to appear without good cause for that second examination without prior notification to the Service, the applicant will be deemed to have failed this second examination. * * *

PART 313—MEMBERSHIP IN THE COMMUNIST PARTY OR ANY OTHER TOTALITARIAN ORGANIZATIONS

13. The heading of part 313 is revised as set forth above.

12. The authority citation for part 313 continues to read as follows:

Authority: 8 U.S.C. 1103, 1424, 1443.

14. Section 313.1 is amended by revising the definition of "Subversive" to read as follows:

§ 313.1 Definitions.

* * *

Subversive is any individual who advocates or teaches:

- (1) Opposition to all organized government;
- (2) The overthrow, by force or violence or other unconstitutional means, of the Government of the United States or of all forms of law;
- (3) The duty, necessity, or propriety of the unlawful assaulting or killing, either individually or by position, of any officer or officers of the United States or of any other organized government, because of his, her, or their official character;
- (4) The unlawful damage, injury, or destruction of property; or
- (5) Sabotage.

* * *

PART 316—GENERAL REQUIREMENTS FOR NATURALIZATION

15. The authority citation for part 316 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1443, 1447; 8 CFR 2.1.

16. Section 316.2 is amended by revising paragraph (b) to read as follows:

§ 316.2 Eligibility.

* * *

(b) *Burden of proof.* The applicant shall bear the burden of establishing by a preponderance of the evidence that he or she meets all of the requirements for naturalization, including that the applicant was lawfully admitted as a permanent resident to the United States, in accordance with the immigration laws in effect at the time of the applicant's initial entry or any subsequent reentry.

17. Section 316.5 is amended by:
a. Revising the heading of paragraph (c);
b. Revising paragraph (c)(1)(i) introductory text;
c. Revising the first sentence of paragraph (c)(1)(ii); and
d. Revising paragraph (c)(3), to read as follows:

§ 316.5 Residence in the United States.

* * * * *

(c) Disruption of continuity of residence.**(1) * * ***

(i) *For continuous periods of between six (6) months and one (1) year.* Absences from the United States for continuous periods of between six (6) months and one (1) year during the periods for which continuous residence is required under § 316.2 (a)(3) and (a)(6) shall disrupt the continuity of such residence for purposes of this part unless the applicant can establish otherwise to the satisfaction of the Service. This finding remains valid even if the applicant did not apply for or otherwise request a nonresident classification for tax purposes, did not document an abandonment of lawful permanent resident status, and is still considered a lawful permanent resident under immigration laws. The types of documentation which may establish that the applicant did not disrupt the continuity of his or her residence in the United States during an extended absence include, but are not limited to, evidence that during the absence:

* * * * *

(ii) *For period in excess of one (1) year.* Unless an applicant applies for benefits in accordance with § 316.5(d), absences from the United States for a continuous period of one (1) year or more during the period for which continuous residence is required under § 316.2 (a)(3) and (a)(5) shall disrupt the continuity of the applicant's residence.

* * * * *

(3) *Deportation and return.* Any departure from the United States while under an order of deportation terminates the applicant's status as a lawful permanent resident and, therefore, disrupts the continuity of residence for purposes of this part.

* * * * *

18. Section 316.10 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 316.10 Good moral character.

* * * * *

(b) * * ***(1) * * ***

(i) Convicted of murder at any time; or

(ii) Convicted of an aggravated felony as defined in section 101(a)(43) of the Act on or after November 29, 1990.

* * * * *

PART 322—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: CHILDREN OF CITIZEN PARENT

19. The authority citation for part 322 continues to read as follows:

Authority: 8 U.S.C. 1103, 1433, 1443, 1448.

20. In § 322.2, paragraphs (a)(4)(i) and (b)(1)(iv) are revised to read as follows:

§ 322.2 Eligibility.**(a) * * *****(4) * * ***

(i) The child is not required to satisfy the residence requirements under § 316.2 (a)(3), (a)(4), (a)(5), or (a)(6) of this chapter; and,

* * * * *

(b) * * ***(1) * * ***

(iv) A child who is adopted before the child reaches age 16.

* * * * *

PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: NATURALIZATION BASED UPON ACTIVE DUTY SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES

21. The authority citation for part 329 continues to read as follows:

Authority: 8 U.S.C. 1103, 1440, 1443.

§ 329.2 [Amended]

22. In § 329.2, paragraph (a) is amended by:

- a. Adding in paragraph (a)(4) the word "or" immediately after the ";";
- b. Removing paragraph (a)(5); and
- c. Redesignating paragraph (a)(6) as paragraph (a)(5).

PART 334—APPLICATION FOR NATURALIZATION

23. The authority citation for part 334 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443.

§ 334.3 [Removed and Reserved]

24. Section 334.3 is removed and reserved.

25. Section 334.4 is revised to read as follows:

§ 334.4 Investigation and report if applicant is sick or disabled.

Whenever it appears that an applicant for naturalization may be unable, because of sickness or other disability, to appear for the initial examination on the application or for any subsequent interview, the district director shall cause an investigation to be conducted to determine the circumstances

surrounding the sickness or disability. The district director shall determine, based on available medical evidence, whether the sickness or disability is of a nature which so incapacitates the applicant as to prevent the applicant's appearance at a Service office having jurisdiction over the applicant's place of residence. If so, the district director shall designate another place where the applicant may appear for the requisite naturalization proceedings.

26. Section 334.11 is revised to read as follows:

§ 334.11 Declaration of intention.

(a) *Application.* Any person who is a lawful permanent resident over 18 years of age may file an application for a declaration of intention to become a citizen of the United States while present in the United States. Such application, with the requisite fee, shall be filed on Form N-300 with the Service office having jurisdiction over the applicant's place of residence in the United States.

(b) *Approval.* If approved, the application for the declaration of intention, page 1 of Form N-300, shall be retained and filed in the applicant's Service file. The original of the declaration of intention, page 2 of Form N-300, shall be filed in chronological order in the official files of the Service office where the application was filed. The duplicate of the declaration of intention, page 3 of Form N-300, shall be delivered to the applicant.

(c) *Denial.* If an application is denied, the applicant shall be notified in writing of the reasons for denial. No appeal shall lie from this decision.

PART 335—EXAMINATION ON APPLICATION FOR NATURALIZATION

27. The authority citation for part 335 continues to read as follows:

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

28. Section 353.2 is amended by:

- a. Revising paragraph (a);
- b. Revising the introductory text of paragraph (c);
- c. Adding at the end of paragraph (c)(1) a new sentence; and
- d. Adding after the second sentence of paragraph (d) a new sentence, to read as follows:

§ 335.2 Examination of applicant.

(a) *General.* Subsequent to the filing of an application for naturalization, each applicant shall appear in person before a Service officer designated to conduct examinations pursuant to § 332.1 of this chapter. The examination shall be uniform throughout the United States and shall encompass all factors relating

to the applicant's eligibility for naturalization. The applicant may request the presence of an attorney or representative who has filed an appearance in accordance with part 292 of this chapter.

(c) *Witnesses.* Witnesses, if called, shall be questioned under oath or affirmation to discover their own credibility and competency, as well as the extent of their personal knowledge of the applicant and his or her qualifications to become a naturalized citizen.

(1) *Issuance of subpoenas.* * * * The examining officer shall document in the record his or her refusal to issue a subpoena at the request of the applicant.

(d) *Record of examination.* * * * The affidavit shall be executed under the following oath (or affirmation): "I swear (affirm) and certify under penalty of perjury under the laws of the United States of America that I know that the contents of this application for naturalization subscribed by me, and the evidence submitted with it, are true and correct to the best of my knowledge and belief." * * *

29. In § 335.3, paragraph (b) is amended by revising the second sentence to read as follows:

§ 335.3 Determination on application; continuance of examination.

(b) * * * The officer must inform the applicant in writing of the grounds to be overcome or the evidence to be submitted. * * *

30. Section 335.5 is amended by revising the second sentence to read as follows:

§ 335.5 Receipt of derogatory information after grant.

* * * The Service shall notify the applicant in writing of the receipt of the specific derogatory information, with a motion to reopen the previously adjudicated application, giving the applicant 15 days to respond. * * *

31. New §§ 335.6 and 335.7 are added to read as follows:

§ 335.6 Failure to appear for examination.

(a) An applicant for naturalization shall be deemed to have abandoned his or her application if he or she fails to appear for the examination pursuant to § 335.3 and fails to notify the Service of the reason for non-appearance within 30 days of the scheduled examination. Such notification shall be in writing and contain a request for rescheduling of the examination. In the absence of a timely

notification, the Service may administratively close the application without making a decision on the merits.

(b) An applicant may reopen an administratively closed application by submitting a written request to the Service within one (1) year from the date the application was closed. Such reopening shall be without additional fee. The date of the request for reopening shall be the date of filing of the application for purposes of determining eligibility for naturalization.

§ 335.7 Failure to prosecute application after initial examination.

An applicant for naturalization who has appeared for the examination on his or her application as provided in § 335.2 shall be considered as failing to prosecute such application if he or she, without good cause being shown, either failed to excuse an absence from a subsequently required appearance, or fails to provide within a reasonable period of time such documents, information, or testimony deemed by the Service to be necessary to establish his or her eligibility for naturalization. The Service shall deliver notice of all such requests for appearance or supporting evidence, in writing, to the applicant either in person or to the applicant's last known address. In the event that the applicant fails to respond within 30 days of the date of notification, the Service shall deny the application on its merits pursuant to § 336.1 of this chapter.

32. Section 335.9 is amended by revising paragraph (b) to read as follows:

§ 335.9 Transfer of application.

(b) *Discretion to authorize transfer.* The district director may authorize the transfer of an application for naturalization after such application has been filed. In the event that the district director does not consent to the transfer of the application, the application shall be adjudicated on its merits by the Service office retaining jurisdiction. If upon such adjudication the application is denied, the written decision pursuant to § 336.1 of this chapter shall also address the reason(s) for the Service's decision not to consent to the transfer request.

PART 336—HEARINGS ON DENIALS OF APPLICATIONS FOR NATURALIZATION

33. The authority citation for part 336 continues to read as follows:

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

34. Section 336.2 is amended by:

- a. Revising the fifth sentence of paragraph (b); and
- b. Adding a new paragraph (c), to read as follows:

§ 336.2 Hearing before an Immigration officer.

(b) * * * He or she may receive new evidence or take such additional testimony as may be deemed relevant to the applicant's eligibility for naturalization or which the applicant seeks to provide. * * *

(c) *Improperly filed request for hearing—(1) Request for hearing filed by a person or entity not entitled to file.*

(i) *Rejection without refund of filing fee.* A request for hearing filed by a person or entity who is not entitled to file such a request must be rejected as improperly filed. In such a case, any filing fee that the Service has accepted will not be refunded.

(ii) *Request for hearing by attorney or representative without proper Form G-28.* If a request for hearing is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the request for hearing, the appeal will be considered as improperly filed. In such a case, any filing fee that the Service has accepted will not be refunded regardless of the action taken. The reviewing official shall ask the attorney or representative to submit Form G-28 to the official's office within 15 days of the request. If Form G-28 is not submitted within the time allowed, the official may, on his or her own motion, under § 103.5(a)(5)(i) of this chapter, make a new decision favorable to the affected party without notifying the attorney or representative. The request for hearing may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed Form G-28 entitling that person to file the request for hearing.

(2) *Untimely request for hearing.*

(i) *Rejection without refund of filing fee.* A request for hearing which is not filed within the time period allowed must be rejected as improperly filed. In such a case, any filing fee that the Service has accepted will not be refunded.

(ii) *Untimely request for hearing treated as motion.* If an untimely request for hearing meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this chapter or a motion to reconsider as described in § 103.5(a)(3) of this chapter, the request for hearing must be treated as a motion,

and a decision must be made on the merits of the case.

PART 337—OATH OF ALLEGIANCE

35. The authority citation for part 337 continues to read as follows:

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

36. Section 337.2 is amended by:

- a. Revising paragraph (a);
- b. Revising the first sentence of paragraph (b); and
- c. Adding a new paragraph (c), to read as follows:

§ 337.2 Oath administered by the Immigration and Naturalization Service.

(a) *Public ceremony.* An applicant for naturalization who has elected to have his or her oath of allegiance administered by the Service and is not subject to the exclusive oath administration authority of an eligible court pursuant to section 310(b) of the Act shall appear in person in a public ceremony, unless such appearance is specifically excused under the terms and conditions set forth in this part. Such ceremony shall be held at a time and place designated by the Service within the United States and within the jurisdiction where the application for naturalization was filed, or into which the application for naturalization was transferred pursuant to § 335.9 of this chapter. Such ceremonies shall be conducted at regular intervals as frequently as necessary to ensure timely naturalization, but in all events at least once monthly where it is required to minimize unreasonable delays. Such ceremonies shall be presented in such a manner as to preserve the dignity and significance of the occasion. District directors shall ensure that ceremonies conducted in their districts, inclusive of those held by suboffice managers, are in keeping with the Model Plan for Naturalization Ceremonies. Organizations traditionally involved in activities surrounding the ceremony should be encouraged to participate in Service-administered ceremonies by local arrangement.

(b) *Authority to administer oath of allegiance.* The authority of the Attorney General to administer the oath of allegiance shall be delegated to the following officers of the Service: The Commissioner; district directors; deputy district directors; officers-in-charge; assistant officers-in-charge; or persons acting in behalf of such officers due to their absence or because their positions are vacant. * * *

(c) *Execution of questionnaire.* Immediately prior to being administered the oath of allegiance, each applicant shall complete the questionnaire on

Form N-445. Each completed Form N-445 shall be reviewed by an officer of the Service who may question the applicant regarding the information thereon. If derogatory information is revealed, the applicant's name shall be removed from the list of eligible persons as provided in § 335.5 of this chapter and he or she shall not be administered the oath.

37. Section 337.3 is revised to read as follows:

§ 337.3 Expedited administration of oath of allegiance.

(a) An applicant may be granted an expedited oath administration ceremony by either the court or the Service upon demonstrating sufficient cause. In determining whether to grant an expedited oath administration ceremony, the court or the district director shall consider special circumstances of a compelling or humanitarian nature. Special circumstances may include but are not limited to:

(1) The serious illness of the applicant or a member of the applicant's family;

(2) Permanent disability of the applicant sufficiently incapacitating as to prevent the applicant's personal appearance at a scheduled ceremony;

(3) The developmental disability or advanced age of the applicant which would make appearance at a scheduled ceremony inappropriate; or

(4) Urgent or compelling circumstances relating to travel or employment determined by the court or the Service to be sufficiently meritorious to warrant special consideration.

(b) Courts exercising exclusive authority may either hold an expedited oath administration ceremony or refer the applicant to the Service for an immediate Service-conducted oath administration ceremony, if an expedited judicial oath administration ceremony is impractical. The court shall inform the district director in writing of its decision to grant the applicant an expedited oath administration ceremony and that the court has relinquished exclusive jurisdiction as to that applicant.

(c) All requests for expedited administration of the oath of allegiance shall be in writing to the district director and shall contain sufficient information to substantiate the claim of special circumstances to permit either the court or the district director to properly exercise the discretionary authority to grant the relief sought. The district director may conduct an investigation to verify the validity of the information provided in the request. If

the applicant is awaiting an oath administration ceremony by a court pursuant to § 337.8, the district director shall provide the court with a copy of the request and a recommendation to grant or deny the request, to assist the court in reaching a decision.

38. A new § 337.7 is revised to read as follows:

§ 337.7 Information and assignment of individuals under exclusive jurisdiction.

(a) No later than at the time of the examination on the application pursuant to § 335.2 of this chapter, an employee of the Service shall advise the applicant of his or her right to elect the site for the administration of the oath of allegiance, subject to the exclusive jurisdiction provision of § 310.2(d) of this chapter. In order to assist the applicant in making an informed decision, the Service shall advise the applicant of the upcoming Service-conducted and judicial ceremonies at which the applicant may appear, if found eligible for naturalization.

(b) An applicant whose application has been approved by the Service who is subject to the exclusive jurisdiction of a court pursuant to § 310.2(d) of this chapter, shall be advised of the next available court ceremony and provided with a written notice to appear at that ceremony. If the applicant is subject to the exclusive jurisdiction of more than one court exercising exclusive jurisdiction, the applicant will be informed of the upcoming ceremonies in each affected court. The applicant shall decide which court he or she wishes to administer the oath of allegiance.

39. Section 337.8 is revised to read as follows:

§ 337.8 Oath administered by the courts.

(a) *Notification of election.* An applicant for naturalization not subject to the exclusive jurisdiction of § 310.2(d) of this chapter shall notify the Service at the time of the filing of, or no later than at the examination on, the application of his or her election to have the oath of allegiance administered in an appropriate court having jurisdiction over the applicant's place of residence.

(b) *Certification of eligibility—(1) Exclusive jurisdiction.* In those instances falling within the exclusive jurisdiction provision of section 310(b)(1)(B) of the Act, the Service shall notify the court of the applicant's eligibility for admission to United States citizenship by submitting to the clerk of court Form N-646 within ten (10) days of the approval of the application.

(2) *Non-exclusive jurisdiction.* In those instances in which the applicant

has elected to have the oath administered in a court ceremony, the Service shall notify the clerk of court, in writing, using Form N-646, that the applicant has been determined by the Attorney General to be eligible for admission to United States citizenship upon taking the requisite oath of allegiance and renunciation in a public ceremony. If a scheduled hearing date is not available at the time of the notification, Form N-646 shall indicate that the applicant has not been scheduled for a ceremony and the applicant shall be informed in writing that the application has been approved but no ceremony date is yet available.

(c) *Preparation of lists.* (1) At or prior to the oath administration ceremony the representative attending the ceremony shall submit to the court on Form N-647, in duplicate, lists of persons to be administered the oath of allegiance and renunciation. After the ceremony, and after any required amendments and notations have been made therein, the clerk of court shall sign the lists.

(2) The originals of all court lists specified in this section shall be filed permanently in the court, and the duplicates returned by the clerk of court to the appropriate Service office for retention by such office. The same disposition shall be made of any list presented to, but not approved by, the court.

(d) *Personal representation of the government at oath administration ceremonies.* An oath administration ceremony shall be attended by a representative of the Service, who shall review each applicant's completed questionnaire Form N-445. If necessary, the Service representative shall question the applicant regarding the information thereon. If the questioning reveals derogatory information, the applicant's name shall be removed from the list of eligible persons as provided in § 335.5 of this chapter and the court shall not administer the oath to such applicant.

(e) *Written report in lieu of personal representation.* If it is impracticable for a Service representative to be present at a judicial oath administration ceremony, written notice of that fact shall be given by the Service to the court. The applicants to be administered the oath shall be listed on the appropriate forms prescribed in paragraph (d) of this section. The forms, memoranda, and certificates of naturalization shall be transmitted to the clerk of court, who shall submit the appropriate lists to the court.

(f) *Withdrawal from court.* An applicant for naturalization not subject to the exclusive jurisdiction of § 310.2(d) of this chapter, who has

elected to have the oath administered in a court ceremony, may, for good cause shown, request that his or her name be removed from the list of persons eligible to be administered the oath at a court oath ceremony, and request that the oath be administered at a Service-conducted ceremony. Such request shall be in writing to the Service office which granted the application and shall cite the reasons for the request. The district director or officer-in-charge shall consider the good cause shown and the best interests of the applicant in making a decision. If it is determined that the applicant shall be permitted to withdraw his or her name from the court ceremony, the Service shall give written notice to the court of the applicant's withdrawal, and the applicant shall be scheduled for the next available Service-conducted oath ceremony, as if he or she had never elected the court ceremony.

40. A new § 337.10 is added to read as follows:

§ 337.10 Failure to appear for oath administration ceremony.

An applicant who fails to appear without good cause for more than one oath administration ceremony for which he or she was duly notified shall be presumed to have abandoned his or her intent to be naturalized. Such presumption shall be regarded as the receipt of derogatory information, and the procedures contained in § 335.5 of this chapter shall be followed.

PART 338—CERTIFICATE OF NATURALIZATION

41. The authority citation for part 338 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443.

42. Section 338.1 is revised to read as follows:

§ 338.1 Execution and issuance of certificate.

(a) *Issuance.* When an applicant for naturalization has taken and subscribed to the oath of allegiance in accordance with §§ 337.1, 337.2 and 337.3 of this chapter, a Certificate of Naturalization, Form N-550, shall be issued by the Service at the conclusion of the oath administration ceremony. For each applicant appearing at a judicial oath administration ceremony pursuant to § 337.8, the Service shall prepare the Certificate of Naturalization and forward it to the clerk of court sufficiently in advance of the ceremony to ensure the timely delivery on the date the oath administration ceremony is conducted.

(b) *Execution of certificate.* The certificate shall be issued to the

applicant in his or her true, full, and correct name as it exists at the time of the administration of the oath of allegiance. The certificate shall show, under "former nationality," the name of the applicant's last country of citizenship, as shown in the application and Service records, even though the applicant may be stateless at the time of admission to citizenship. Photographs shall be affixed to the certificate in the manner provided in part 333 of this chapter. The certificate shall be signed by the applicant. The Commissioner's signature shall be affixed to the certificate.

PART 339—FUNCTIONS AND DUTIES OF CLERKS OF COURT REGARDING NATURALIZATION PROCEEDINGS

43. The authority citation for part 339 continues to read as follows:

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

44. Section 339.1 is revised to read as follows:

§ 339.1 Administration of the oath of allegiance to applicants for naturalization.

It shall be the duty of a judge of a court that administers an oath of allegiance to ensure that such oath is administered to each applicant for naturalization who has chosen to appear before the court. The clerk of court shall issue to each person to whom such oath is administered the Certificate of Naturalization provided by the Service pursuant to § 338.1 of this chapter. The clerk of court shall provide to each person whose name was changed as part of the naturalization proceedings, pursuant to section 336(e) of the Act, certified evidence of such name change.

45. Section 339.2 is amended by:

- a. Revising paragraph (a); and
- b. Adding a new paragraph (d), to read as follows:

§ 339.2 Monthly reports.

(a) *Oath administration ceremonies.* Clerks of court shall on the first day of each month submit to the Service office having administrative jurisdiction over the place in which the court is located a report on Form N-4, in duplicate, listing all oath administration ceremonies held and the total number of persons issued the oath at each ceremony, in accordance with the instructions contained in Form N-4. The report shall be accompanied by all duplicate lists of persons attending naturalization oath ceremonies during the month, certified copies of any court orders granting changes of name, an accounting of the certificates issued to them, and the original of all certificates of naturalization which were voided by

the clerk of court. In lieu of forwarding duplicate lists of naturalized persons to the Service with the report on Form N-4, the clerk may deliver the lists to the Service representative immediately after the oath ceremony. In such a case, the N-4 shall reflect that the duplicate list was so delivered.

(d) *Other proceedings and orders.* The clerk of court shall forward to the Service office having administrative jurisdiction over the place in which the court is located certified copies of the records of such other proceedings and other orders instituted on or issued by the court affecting or relating to the naturalization of any person as may be required from time to time by the Service.

PART 343b—SPECIAL CERTIFICATE OF NATURALIZATION FOR RECOGNITION BY A FOREIGN STATE

46. The authority citation for part 343b continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1454, 1455.

§ 343b.3 [Amended]

47. Section 343b.3 is amended by revising the reference to the form number "N-577" to read "N-565" wherever it appears in the section.

PART 499—NATIONALITY FORMS

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

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

49. Section 499.1 is amended by adding, in proper numerical sequence, the following forms:

§ 499.1 Prescribed forms.

Form No., Title and Description

N-335 (10-24-91)—Decision on Application for Naturalization.

N-646 (01-03-92)—Naturalization Applicants Eligible to be Administered Oath of Allegiance.

N-646A (01-03-92)—Naturalization Applicants Eligible to be Administered Oath of Allegiance (Continuation Sheet).

N-647 (01-06-92)—Oath of Allegiance and Certificate Accountability List.

N-647A (01-06-92)—Oath of Allegiance and Certificate Accountability List (Continuation Sheet).

50. In § 499.1, the entries for Forms M-302, M-303, M-304, N-300, N-336, N-400, N-445, N-565, N-644, and N-645 are revised to read as follows:

§ 499.1 Prescribed forms.

Form No., Title and Description

M-302 (3-16-89)—For the People . . . U.S. Citizenship Education and Naturalization Information.

M-303 (3-16-89)—By the People . . . U.S. Government Structure.

M-304 (3-16-89)—Of the People . . . U.S. History 1600-1988.

N-300 (10-01-91)—Application to File Declaration of Intention.

N-336 (10-24-91)—Request for Hearing on a Decision in Naturalization Proceedings under section 336 of the Act.

N-400 (7-17-91)—Application for Naturalization.

N-445 (1-8-92)—Notice of Naturalization Oath Administration Ceremony.

N-565 (7-10-91)—Application to Replace a Naturalization/Citizenship Certificate.

N-644 (5-30-91)—Application for Posthumous Citizenship.

N-645 (7-1-90)—Certificate of Citizenship.

Dated: September 15, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93-23357 Filed 9-23-93; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-CE-44-AD; Amendment 39-8697; AD 93-16-13]

Airworthiness Directives: Aerostar International, Inc., Models RX-6, RX-7, RX-8, RXS-8, S-40A, S-49A, S-50A, S-52A, S-55A, S-57A, S-57S, S-60S, S-60A, S-66A, S-71A, S-77A, 78C, 90C, QUBE-80, CTS, W100LB, 110P, and SP11 Balloons

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 93-16-13, which was sent previously to all known U.S. owners and operators of Aerostar International, Inc. (Aerostar),

balloons that are equipped with certain AEROQUIP fuel hoses. This AD requires testing the hose for fuel leakage and replacing immediately if fuel leakage is evident or, if no fuel leakage is evident, replacing within 10 hours time-in-service. A report of a leaking fuel hose on one of the affected balloons prompted the proposed action. The actions specified by this AD are intended to prevent an uncontained fire in the balloon basket caused by a leaking fuel hose.

DATES: Effective October 15, 1993, to all persons except those to whom it was made immediately effective by priority letter AD 93-16-13, issued August 18, 1993, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before November 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 93-CE-44-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Replacement parts and copies of the service bulletin referenced in this AD may be obtained from Aerostar International, Inc., 1812 E Avenue, P.O. Box 5057, Sioux Falls, South Dakota 57117-5057; Telephone (605) 331-3500. This information may also be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory J. Michalik, Manager, Airframe Branch, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; Telephone (708) 294-7135.

SUPPLEMENTARY INFORMATION: The FAA has received a report of a fuel hose leaking propane prior to the flight of an Aerostar balloon. Results of this investigation reveal a manufacturing deficiency on certain hose assemblies. The hoses included in these assemblies are susceptible to splitting, which results in fuel leakage.

If these hoses are not identified and replaced, the fuel leakage from a split hose could result in an uncontained fire in the balloon basket. The affected hoses are identified with one of the following printed on the side of the hose:

- AEROQUIP FC321-06 UL 5/16 LP-GAS HOSE 350 MAX. OPER. PSI 1Q92;
- AEROQUIP FC321-06 UL 5/16 LP-GAS HOSE 350 MAX. OPER. PSI 2Q92;
- AEROQUIP FC321-06 UL 5/16 LP-GAS HOSE 350 MAX. OPER. PSI 3Q92; or
- AEROQUIP FC321-06 UL 5/16 LP-GAS HOSE 350 MAX. OPER. PSI 4Q92.