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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 292, 299, 310, 312, 313, 315, 316, 316a, 319, 322, 324, 325, 327, 328, 329, 330, 331, 332, 332a, 332b, 332c, 332d, 333, 334, 334a, 335, 335a, 335c, 336, 337, 338, 339, 340, 343b, 344, and 499

[INS No. 1435-92; AG Order No. 1946-95]

RIN 1115-AC58

Administrative Naturalization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule establishes procedures implementing an administrative naturalization process as provided for by recent changes in the immigration laws. The rule streamlines the administrative naturalization process since the courts are now removed from routing decisions approving applicants for naturalization. As a result of this rule, applications for naturalization will be processed to completion within the immigration and Naturalization Service (the Service), with the role of the courts limited to administration of the oath of allegiance in some circumstances, and judicial review of administrative denials.

EFFECTIVE DATE: February 3, 1995.

FOR FURTHER INFORMATION CONTACT: William Tollifson, Adjudications Officer, Naturalization and Special Projects Branch, Adjudications Division, Immigration and Naturalization Service, room 3214, 425 I Street, NW., Washington, DC 20536, telephone: (202) 514-5014.

SUPPLEMENTARY INFORMATION: This rule finalizes two previous interim rules published by the Immigration and Naturalization Service to implement procedures for administrative

naturalization. Title IV of the Immigration Act of 1990 (Pub. L. 101-649) (IMMACT), effective October 1, 1991, transferred jurisdiction over naturalization from the judiciary to the Attorney General, subject to judicial review, and redefined the naturalization process as an administrative proceeding. On October 7, 1991, the Service published in the **Federal Register** an interim rule to implement the procedures governing administrative naturalization. 56 FR 50475. Before a final rule could be drafted, however, Congress enacted the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Pub. L. 102-232) (Technical Amendments), effective January 11, 1992, which significantly changed several statutory provisions relating to administrative naturalization. The Service then published a second interim rule in the **Federal Register** on September 24, 1993, at 58 FR 49905, to implement the changes brought about by the Technical Amendments. That second interim rule also incorporated changes based on public comments received on the first interim rule. This rule adopts as final both the first interim rule (October 7, 1991) and the subsequent changes in the second interim rule (September 24, 1993). This final rule also includes changes based on public comment, and some minor changes resulting from the Service's experience in working with the two interim rules.

As noted above in the two previous interim rules, IMMACT amended the naturalization process so that the judiciary no longer holds exclusive jurisdiction over naturalization applications. It is now the responsibility of the Service not only to receive applications for naturalization and to conduct examinations to determine statutory eligibility for citizenship, but also to render formal determinations on applications for naturalization, to provide for administrative review of such determinations, and to issue naturalization certificates. The judiciary's participation in the naturalization process is limited to administering the oath of allegiance and renunciation for persons whom the Service determines to be admissible to citizenship and to reviewing administrative denials.

The Technical Amendments clarified and revised some changes made by IMMACT in several areas relating to the administrative naturalization process. Most notably, a federal or state court now may elect to exercise exclusive jurisdiction to administer the oath of allegiance to applicants for naturalization under certain circumstances. Also added by the Technical Amendments is the requirement that the Attorney General rather than a court, promptly prepare a naturalization certificate for each person to be administered the oath of allegiance by a court, and then transmit that certificate to the court having jurisdiction to administer the oath. This process reduces administrative costs to the courts while maintaining naturalization as a source of court revenue and also ensures that a certificate of naturalization prepared by the Service can be delivered to the applicant at the time of the administration of the oath, regardless of whether the oath administration ceremony is judicial or administrative. The Technical Amendments also provide a means by which an applicant facing special circumstances may participate in an oath administration ceremony without having to wait until the date of the next public ceremony. The court now has discretion to consider special circumstances in determining whether to administer the oath immediately in a private judicial ceremony, or to refer the person to the Attorney General for immediate administrative naturalization.

Comments on the Interim Rule Published on September 24, 1993

The Service received six comments from the public in response to the September 24, 1993, interim rule. These comments covered 14 specific areas. Only one of the comments addressed issues arising under the Technical Amendments provisions for exclusive jurisdiction of the courts in administering the oath of allegiance. The remaining comments related to issues addressed in both interim rules. The discussion that follows summarizes the issues raised in the comments, provides the Service's position on these issues, and explains the revisions adopted.

Two of the commenters focused on standardized testing of knowledge of the