discrepancies sometimes exist in the level of difficulty of questions asked of applicants. Although we recognize the need to provide guidelines for adjudications officers, such guidelines are more properly provided in the Service's Operations Instructions.

That commenter also suggested that the Service amend § 335.6 to allow applicants to make verbal requests for rescheduling of missed interviews at the field office. For reasons of administrative efficiency, the Service must require that all requests be submitted in writing. However, the written request need not take any specific form, but rather may be a brief, informal notation for the adjudications officer to insert in the applicant's file.

One commenter questioned the portion of § 335.7 that allows the Service to deny applications on the merits where applicants fail to explain adequately absences from appearances required after their initial examinations or to provide the Service with additional requested evidence. The commenter suggested that dismissal is more appropriate than denial in cases where the Service does not have sufficient evidence upon which to make a determination. Section 335(e) of the Act provides that, where the applicant fails to prosecute an application, the Service may either decide the application on the merits or dismiss it for lack of prosecution. The Service agrees with the commenter that cases may be more appropriately ''dismissed'' than adjudicated on the merits where no record exists. The Service therefore has made a distinction between cases where the applicant has not appeared for the examination, provided for in § 335.6, and cases where the applicant has already appeared for an examination but the Service requires further testimony or documentary evidence to support the application, provided for in § 335.7. This rule further clarifies the Service's position that when the applicant fails to appear for the examination, leaving the Service without sufficient evidence upon which to render a determination, the case will be dismissed for lack of prosecution after the passage of one year from the date the application was closed. However, when the applicant appears for examination but the Service requests additional testimony or documentation, and the applicant then fails to prosecute the application, the Service will adjudicate the case on the merits, as sufficient evidence should exist to render a decision.

One commenter expressed concern over the process for reviewing completed Forms N–445 prior to the oath administration ceremony, provided for in § 337.2(c). The commenter requested assurance that when further questioning is warranted after review of the completed form, the applicant will be given the opportunity to respond to an officer's questions in a quiet, private setting so as to allow for a meaningful exchange with the officer. The Service believes that completion of the Form N–445 is a necessary part of the naturalization process. Although Service adjudications officers will be provided with guidance on the treatment of applicants whose answers warrant further investigation, such guidelines are provided more properly in the Services Operations Instructions.

That commenter also had concerns that the procedure for requesting expedited administration of the oath of allegiance set forth in § 337.3(c) may cause undue delay, because the Service would be required in some cases to first pass upon the merits of each request and then send a recommendation to the court. The Service has addressed this concern by revising § 337.3(c) to eliminate the recommendation process. The commenter also expressed concern over the requirement that requests for expedition be in writing, and suggested that the Service implement a more flexible approach. While the Service recognizes the need to provide the public with an efficient process, the Service is concerned that many applicants, especially those without legal representation, may have difficulty in communicating with judges or clerks of court to request expedited ceremonies. The Service, therefore, has revised § 337.3(c) to provide that applicants seeking expedited ceremonies may submit their requests to either the court or to the Service.

The same commenter also suggested that the Service attempt to reallocate its resources to rectify discrepancies in waiting times for adjudications. While this regulation is not the proper forum in which to address such concerns, the Service assures the commenter that it is working constantly to improve the efficiency of the administrative naturalization process.

Service Initiated Changes

As a result of working under the interim rules since 1991, the Service discovered some errors or areas where further clarification is needed.

At § 316.2(a)(3), which lists one of the requirements for naturalization, the rule stated only that the applicant must have resided continuously in the United States for 5 years after lawful admission. Section 316(a) of the Act, however, requires that the applicant has resided in the United States for 5 years after lawful admission for permanent residence. In order to bring the regulation into conformity with the statute, the Service has inserted the phrase ''for permanent residence'' at the end of § 316.2(a)(3).

At § 316.5(c)(2), the Service clarified language regarding relinquishment of permanent resident status by aliens who claim nonresident alien status for income tax purposes. The rebuttable presumption of relinquishment of lawful permanent resident status extends not only to persons who ''voluntarily'' claim nonresident alien status for income tax purposes, but also to persons who fail to file income tax returns based on their claims to nonresident alien status.

At § 329.4, the Service had referred erroneously to an inappropriate section of the regulations. This citation has been corrected in § 329.4(b), which formerly referred to ''§ 329.2(a), (c)(1), or (c)(2)'' and now reads ''§ 329.2 (a), (b), or (c)(2).''

At § 339.2, the Service added a provision to clarify the purpose of the courts' submission of monthly reports prepared on Form N–4. As approved in a notice published on October 25, 1993, at 58 FR 55084, 55085, Form N–4, in addition to serving its recordkeeping purpose, will be treated by the Service as a billing document submitted by the courts. Use of Form N–4 in this manner will enable the Service to process more efficiently requests for reimbursement from courts for performance of oath administration ceremonies. The added paragraph also explains that reimbursements for state courts will be determined under the same standards set for the Federal courts.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, § 1(b). The Attorney General has determined that this rule is not a significant regulatory action under Executive Order 12866, § 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the