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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 340

[INS No. 1858-97]

RIN 1115-AF63

Revoking Grants of Naturalization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations relating to administrative revocation of naturalization by changing the burden of proof the Service must satisfy in order to administratively revoke a grant of naturalization and clarifying the 180-day period for the rendering of the district director's decision. This rule clarifies these issues in the final rule that was published in the **Federal Register** on October 28, 1996, at 61 FR 55550.

DATES: *Effective date:* This rule is effective March 31, 2000.

Comment date: Written comments must be submitted on or before May 30, 2000.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1858-97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Janice B. Podolny, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW,

Room 6100, Washington, DC 20536, telephone (202) 514-2895.

SUPPLEMENTARY INFORMATION: Section 310(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1421(a), gives the Attorney General the sole authority to grant a person naturalization as a United States citizen. As a concomitant to the authority under section 310(a), section 340(h) of the Act, 8 U.S.C. 1451(h), preserves the Attorney General's authority to "correct, reopen, alter, modify, or vacate an order naturalizing [a] person" as a United States citizen. On October 28, 1996, the Service published a final rule in the **Federal Register** at 61 FR 55550 promulgating regulations at 8 CFR 340.1, to provide a regulatory procedure for exercising this authority.

The Service's final rule provided that the Service could reopen a naturalization proceeding and revoke naturalization if the Service obtained "credible and probative evidence" that the individual's naturalization was subject to revocation. The regulation provided that after this initial showing by the Service, the burden of proof shifted to the individual whose naturalization was subject to revocation to establish that he or she was, in fact, eligible for naturalization. The Service, however, determined that it would adhere to the higher standard of proof applicable in judicial denaturalization proceedings, rather than the credible and probative standard. Accordingly, the Service has only initiated revocation proceedings where it has obtained clear, unequivocal, and convincing evidence and has revoked naturalization only in cases where the Service is able to sustain this burden throughout the administrative proceeding.

Consistent with this approach, the Service has made every effort, including review of all proposed revocation cases at the Headquarters level, to ensure that revocation of naturalization be pursued only if the evidence meets this higher standard. This interim rule changes the applicable burden of proof to conform with Service practice. This interim rule provides that the Service will only initiate revocation proceedings based on clear unequivocal, and convincing evidence with the burden of proof remaining with the Service throughout the administrative process. If it comes to the attention of the Service that in any case that became final before March 31,

2000, the Service relied on the lower standard of proof, the Service will, on its own motion, reconsider the decision under the clear, unequivocal, and convincing standard of proof.

In addition, this interim rule clarifies that the expiration of the 180-day period for the district director's decision does not preclude the district director from making a final decision on the merits. Consequently, this interim rule indicates that the Service should, where practicable, render a decision within 180 days of service of the notice of intent to reopen naturalization proceedings and to revoke naturalization. This ensures that the Service is able to carefully review all of the evidence in every administrative revocation case and render a correct decision without overly rigid and artificial time restrictions. Since this naturalized citizen continues to enjoy the rights of citizenship until the decision to reopen and revoke naturalization becomes administratively final, this amendment does not adversely affect the rights of the naturalized citizen.

Notice and Comment

Since this regulation simply restates the higher burden of proof that the Service has been applying in administrative revocation proceedings, this rule is a general statement of policy. The change to the 180-day period to render a decision is an interpretative rule of agency practice and procedure. The Service, therefore, has authority under 5 U.S.C. 553 to adopt this rule without prior notice and comment. The Commissioner, nevertheless, considers it appropriate to seek public comments on this rule, and has established a 60-day comment period.

Despite the comment period, this rule is an interim rule that will enter into force upon publication in the **Federal Register**. Because the current 8 CFR 340.1 places the burden of proof on the naturalized citizen, naturalized citizens may, in good faith, misunderstand the evidentiary standards and procedural requirements that the Service must satisfy in order to reopen and revoke a grant of naturalization. The Service has already ensured that each notice of intent to reopen naturalization proceedings and to revoke naturalization states the burden of proof as clear, unequivocal, and convincing

evidence. By clarifying the burden of proof that the Service has been adhering to in practice, this interim rule provides full protection of the naturalization citizen's rights. For this reason, the Commissioner finds that it would be contrary to the public interest for the Service to observe the 30-day delay that must ordinarily apply before a new regulation may enter into force. The Commissioner, therefore, also finds that good cause exists for making this rule effective upon publication in the **Federal Register**.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, 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. This rule proposes a procedure for the Service to revoke grants of naturalization. The affected parties are not small entities, and the impact of the regulation is not an economic one.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure, in the aggregate, of \$100 million of more in any 1 year, by State, local, and tribal government, or by the private sector, and the rule will not significantly or uniquely affect small government. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Office of Management and Budget to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the Service has submitted this regulation to the Office of Management and Budget for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 340

Citizenship and naturalization, Law enforcement.

Accordingly, part 340 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 340 continues to read as follows:

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

- 2. Section 340.1 is amended by:
 - a. Revising paragraph (a) introductory text;
 - b. Revising paragraph (b)(6); and by
 - c. Revising paragraph (d)(1), to read as follows:

§ 340.1 Reopening of a naturalization application by a district director pursuant to section 340(h) of the Act.

(a) *Reopening general.* On its own motion, the Service may reopen a naturalization proceeding and revoke naturalization in accordance with this section, if the Service obtains clear, convincing, and unequivocal evidence which:

- * * * * *
- (b) * * *

(6) *Burden of proof.* Upon service of a notice of intent to reopen naturalization proceedings and to revoke naturalization, the Service bears the burden of proof by clear, convincing, and unequivocal evidence that the grounds for reopening and revoking set forth in the notice have been met.

- * * * * *
- (d) * * *

(1) The district director shall render, where practicable, a written decision on the reopened naturalization application within 180 days of service of the notice of intent to reopen naturalization proceedings and to revoke naturalization. The decision shall consist of findings of fact, conclusions

of law, and a final determination on the naturalization application. Notice of decision shall be served on the applicant or his or her attorney or representative, if applicable.

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Dated: March 24, 2000.

Doris Meissner,
Commissioner, Immigration and Naturalization Service.

[FR Doc. 00-7963 Filed 3-30-00; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR part 424

[Docket No. 99-028N]

Food Additives for Use in Meat and Poultry Products: Sodium Diacetate, Sodium Acetate, Sodium Lactate and Potassium Lactate

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Affirmation of effective date for direct final rule.

SUMMARY: On January 20, 2000, the Food Safety and Inspection Service (FSIS) published a direct final rule "Food Additives for Use in Meat and Poultry Products: Sodium Diacetate, Sodium Acetate, Sodium Lactate and Potassium Lactate" in the **Federal Register**. This direct final rule notified the public of FSIS' intention to amend the Federal meat and poultry products inspection regulations to allow the use of these additives in meat and poultry products.

EFFECTIVE DATE: March 20, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Post, Director, Labeling and Additives Policy Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700; (202) 205-0279.

SUPPLEMENTARY INFORMATION:

Background

FSIS published a direct final rule, "Food Additives for Use in Meat and Poultry Products: Sodium Diacetate, Sodium Acetate, Sodium Lactate and Potassium Lactate" (65 FR 3121, 1/20/00). This direct final rule amended the Federal meat and poultry products inspection regulations by increasing the permissible levels of sodium acetate as a flavor enhancer in meat and poultry products and of sodium diacetate as a flavor enhancer and as an inhibitor of the growth of pathogens. This direct