

Office of the Secretary of Defense

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are calculated to reimburse the Government for the expense of providing such information, and may include:

(a) The costs of time expended by NSA employees to process and respond to the request or demand;

(b) Attorney time for reviewing the request or demand and any information located in response thereto, and for related legal work in connection with the request or demand; and

(c) Expenses generated by materials and equipment used to search for, produce, and copy the responsive information.

§ 93.7 Responsibilities.

(a) *The General Counsel.* The GC is responsible for overseeing NSA compliance with § 93.1(a) and this part 93, and for consulting with DoJ when appropriate. In response to a litigation demand requesting official information or the testimony of NSA personnel as witnesses, the GC will coordinate NSA action to determine whether official information may be released and whether NSA personnel may be interviewed, contacted, or used as witnesses. The GC will determine what, if any, conditions will be imposed upon such release, interview, contact, or testimony. In most cases, an NSA attorney will be present when NSA personnel are interviewed or testify concerning official information. The GC may delegate these authorities.

(b) *The Deputy Director for Plans and Policy (DDPP).* The DDPP will assist the GC, upon request, in identifying and coordinating with NSA components that have cognizance over official information requested in a litigation demand. Additionally, the DDPP will advise the GC on the classified status of official information, and, when necessary, assist in declassifying, redacting, substituting, or summarizing official information for use in litigation. The DDPP may require the assistance of other Key Component Chiefs.

(c) *Chiefs of Key Components and Field Activities.* Chiefs of Key Components and Field Activities shall ensure that their personnel are informed of the contents of this part 93, particularly of the requirements to consult with the OGC prior to responding to any litigation demand, and to inform the OGC

whenever they receive service of process that is not clearly in their individual capacities. Field Chiefs will notify the OGC of the persons they designate under § 93.5(b)(3).

(d) *The Deputy Director for Administration (DDA).* Within 60 days of the date of this part, the DDA shall submit to the GC for approval procedures for the attempted delivery of service of process during duty hours when an attorney of the OGC is not available.

PART 94—NATURALIZATION OF ALIENS SERVING IN THE ARMED FORCES OF THE UNITED STATES AND OF ALIEN SPOUSES AND/OR ALIEN ADOPTED CHILDREN OF MILITARY AND CIVILIAN PERSONNEL ORDERED OVERSEAS

Sec.

94.1 Purpose.

94.2 Applicability.

94.3 Definitions.

94.4 Policy and procedures.

94.5 Forms required.

AUTHORITY: Sec. 301, 80 Stat. 379; 5 U.S.C. 301.

SOURCE: 35 FR 17540, Nov. 14, 1970, unless otherwise noted.

§ 94.1 Purpose.

This part prescribes uniform procedures acceptable to the Immigration and Naturalization Service of the Department of Justice, to (a) facilitate the naturalization of aliens who have served honorably in the Armed Forces of the United States and to (b) militarily certify alien dependents seeking naturalization under the provisions of Immigration and Nationality Act of 1952, as amended, sections 319(b) and 323(c) (8 U.S.C. 1430(b) and 1434(c)); and furnishes policy guidance to the Secretaries of the Military Departments governing discharge or release from active duty in the Armed Forces of the United States of permanent-residence aliens who desire to be naturalized as U.S. citizens under the provisions of Act of June 27, 1952, section 328 (66 Stat. 249); 8 U.S.C. 1439.

§ 94.2 Applicability.

The provisions of this part apply to the Military Departments.

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§ 94.3 Definitions.

(a) *Permanent-residence alien* is an alien admitted into the United States under an immigration visa for permanent residence; or an alien, who, after admission without an immigrant visa, has had his status adjusted to that of an alien lawfully admitted for permanent residence.

(b) *Armed Forces of the United States* denotes collectively all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

§ 94.4 Policy and procedures.

(a) *Naturalization of an alien who has served honorably in the Armed Forces of the United States at any time.* (1) Under the provisions of Act of June 27, 1952, section 328 (66 Stat. 249); 8 U.S.C. 1439, an alien who has served in the Armed Forces of the United States for a period(s) totaling three (3) years may be naturalized if he:

(i) Has been lawfully admitted to the United States for permanent residence;

(ii) Was separated from the military service under honorable conditions;

(iii) Files a petition while still in the military service, or within six (6) months after the termination of such service; and

(iv) Can comply in all other respects with the Immigration and Nationality Act of 1952, except that (a) no period of residence or specified period of physical presence in the United States or the State in which the petition for naturalization is filed is required, and (b) residence within the jurisdiction of the court is not required.

(2) The prescribed 3-year period may be satisfied by a combination of active duty and inactive duty in a reserve status.

(3) An alien member desiring to fulfill naturalization requirements through military service shall not be separated prior to completion of three (3) full years of active duty unless:

(i) His performance or conduct does not justify retention, in which case he shall be separated in accordance with the provisions of part 41 of this subchapter and chapter 47, title 10, United States Code (Uniform Code of Military Justice), as appropriate; or

(ii) He is to be transferred to inactive duty in a reserve component in order to:

(a) Complete a reserve obligation under the provisions of part 50 of this subchapter, or

(b) Attend a recognized institution of learning under the early release program, as provided in DoD Instruction 1332.15, "Early Release of Military Enlisted Personnel for College or Vocational/Technical School Enrollment," January 26, 1970.¹

(4) Caution shall be exercised to ensure that an alien's affiliation with the Armed Forces of the United States, whether on active duty or on inactive duty in a reserve status, is not terminated even for a few days short of the 3-year statutory period, since failure to comply with the exact 3-year requirement of Act of June 27, 1952, section 328 (66 Stat. 249); 8 U.S.C. 1439 will automatically preclude a favorable determination by the Immigration and Naturalization Service on any petition for naturalization based on an alien's military service.

(5) During a period of hostilities, as designated by the President of the United States, the expeditious naturalization provisions outlined in paragraph (b) of this section, will take precedence over the foregoing.

(b) *Naturalization of an alien who has served in the Armed Forces of the United States during a period of hostilities as designated by the President of the United States.* (1) Under the provisions of Immigration and Nationality Act of 1952, as amended, section 329 (8 U.S.C. 1440), an alien who serves honorably on active duty in the Armed Forces of the United States during the period beginning February 28, 1961, and ending on a date designated by the President, by Executive order, as the date of termination of the Vietnam hostilities, or during any future period which President, by Executive order, shall designate as a period in which the Armed Forces of the United States are or were

¹Filed as part of original. Copies available from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120, Attention: Code 300.

engaged in military operations involving armed conflict with a hostile foreign force, and who is otherwise eligible, may be naturalized whether or not he has been lawfully admitted to the United States for permanent residence, if the member was inducted, enlisted, or reenlisted in the United States (inclusive of Puerto Rico, Guam, Virgin Islands, Canal Zone, American Samoa, or Swains Island).

(i) The induction, enlistment, or reenlistment in the United States or its stated possessions must actually be in these land areas, in ports, harbors, bays, enclosed sea areas along their routes, or within a marginal belt of the sea extending from the coastline outward three (3) geographical miles.

(ii) Enlistment or reenlistment aboard a ship on the high seas or in foreign waters does not meet the requirements of Immigration and Nationality Act of 1952, as amended, section 329 (8 U.S.C. 1440). In such instances, the provisions of paragraph (a) of this section may apply.

(2) Each Military Department will establish procedures containing the provisions outlined in paragraphs (b)(2) (i) and (ii) of this section. In addition, each qualifying alien shall be advised of the liberalized naturalization provisions of the Immigration and Nationality Act of 1952, as amended, section 329 (8 U.S.C. 1440), i.e., that the usual naturalization requirements concerning age, residence, physical presence, court jurisdiction and waiting periods are not applicable, and will be given appropriate assistance in processing his naturalization application in consonance with procedures contained in "Naturalization Requirements and General Information," published by the U.S. Department of Justice (Form N-17).

(i) Military basic training and orientation programs will include advice and assistance to interested aliens in completing and submitting the application and other forms required to initiate naturalization proceedings.

(ii) In addition, applicants should be advised that:

(a) Under the laws of certain foreign countries, military service in the Armed Forces of the United States may result in the loss of their native

country citizenship but this same service may make them eligible for U.S. citizenship.

(b) Their eligibility for naturalization, based upon the honorable service in an active duty status prescribed in the Immigration and Nationality Act of 1952, as amended, section 329 (8 U.S.C. 1440) will be retained, even though they apply for naturalization after their return to the United States following the termination or completion of their overseas assignment, or after their honorable discharge from the Armed Forces of the United States.

(c) If they are stationed at a base in the continental United States, Alaska, Hawaii, Puerto Rico, Guam, or the Virgin Islands, they should apply for citizenship only if they expect to be stationed at the base for at least 60 days following application. Unless the Immigration and Naturalization Service has at least 60 days in which to complete the case, there is no assurance that it can be completed before the applicant is transferred, since the processing procedures outlined below take time and are not entirely within the control of the Immigration and Naturalization Service.

(1) Every naturalization application must be processed when received by the Immigration and Naturalization Service. Special arrangements have been made to expedite the processing of petitions of alien members of the Armed Forces.

(2) After processing, the alien applicant and two citizen witnesses must personally appear for examination by an officer of the Immigration and Naturalization Service in connection with the filing of a petition for naturalization in court.

(3) Finally, the applicant must appear in person before the naturalization court on a date set by the court so that he may be admitted to citizenship.

(d) If the alien member is scheduled for overseas assignment where naturalization courts are not available, he should apply for naturalization on the earliest possible date but no later than 60 days before departure for overseas assignment. No assurance that processing will be completed before the applicant's departure for overseas will be

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given by the Immigration and Naturalization Service unless it has 60 days to complete the matter.

(I) An alien serviceman who is serving overseas and has submitted or submits the required naturalization application and forms to the Immigration and Naturalization Service may not be granted ordinary leave, or Rest and Recuperation (R&R) leave (where authorized in overseas areas) for naturalization purposes, unless a written notification from the Immigration and Naturalization Service has been received by the serviceman informing him that the processing of his application has been completed, and requesting him to appear with two U.S. citizen witnesses before a representative of the Immigration and Naturalization Service at a designated location for the purpose of completing the naturalization.

(2) If possible, an applicant granted leave for such purposes should advise the Immigration and Naturalization Service when he expects to arrive in the leave area and, in any event, should contact the Immigration and Naturalization Service office immediately upon arrival in the area. Every effort will be made to complete the naturalization within the leave period.

(c) *Naturalization of alien spouses and/or alien adopted children of military and civilian personnel ordered overseas.* Alien spouses and/or alien adopted children of military and civilian personnel of the Department of Defense who are authorized to accompany or join their sponsors overseas and who wish to obtain U.S. citizenship prior to departure will be given maximum assistance by commanders of military installations.

(1) DD Form 1278, "Certificate of Overseas Assignment to Support Application to File Petition for Naturalization,"² will be issued to alien dependents by military commanders at the times indicated below in order that the alien may file such certificate with the nearest Immigration and Naturalization Service Office to initiate naturalization proceedings. Only DD Form 1278 will be accepted by the Immigration and Naturalization Service. Mili-

tary commanders will not issue memoranda or letters of any kind in lieu thereof.

(i) When dependents are authorized automatic concurrent travel, DD Form 1278 will be issued not earlier than 90 days prior to the dependents' scheduled date of travel.

(ii) When advance application for concurrent travel is required, DD Form 1278 will be issued after approval is received and not earlier than 90 days prior to the dependents' scheduled date of departure.

(iii) When concurrent travel is not authorized, DD Form 1278 will be issued after authorization for dependents' movement is received and not earlier than 90 days prior to the dependents' scheduled date of travel.

(2) Upon receipt of DD Form 1278, the alien will file this form, together with the application for petition for naturalization, Immigration and Naturalization Form N-400 (adult) or N-402 (child) as appropriate, if not previously filed, with the nearest office of the Immigration and Naturalization Service. The application must be accompanied by:

(i) Three identical photographs.

(ii) Form FD-358, Applicant Fingerprint Card, and

(iii) Form G-325, Biographic Information.

(3) Further processing of the application for citizenship is as prescribed by the Immigration and Naturalization Service.

(4) Upon completion of the naturalization process, immediate application for passport should be made, in order that it can be issued prior to scheduled departure of the dependent for overseas.

§ 94.5 Forms required.

The following forms required for naturalization purposes may be obtained from any office of the Immigration and Naturalization Service:

(a) N-400 Application to File a Petition for Naturalization (Adult) (Submit original form only).

(b) N-402 Application to File a Petition for Naturalization (Child) (Submit original form only).

²Filed as part of original. Copies may be obtained from Departments of the Army, Navy, and Air Force.

(c) G-325 Biographic Information (Submit original and duplicate of multileaf form).

(d) G-325B Biographic Information (Submit original form only).

(e) FD-258 Applicant Fingerprint Card (Submit one completed card).

(f) N-426 Certificate of Military or Naval Service (Submit in triplicate). (Should be handled on a priority basis so as to avoid prejudicing the early completion of the naturalization process, particularly for an alien who may receive an overseas assignment.)

(g) “Naturalization Requirements and General Information,” published by the U.S. Department of Justice (Form N-17) describes the naturalization requirements and lists Immigration and Naturalization offices which process applications.

PART 97—RELEASE OF OFFICIAL INFORMATION IN LITIGATION AND PRESENTATION OF WITNESS TESTIMONY BY DOD PERSONNEL (TOUHY REGULATION)

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APPENDIX A TO PART 97—LITIGATION REQUESTS AND DEMANDS TO THE DEPARTMENT OF THE ARMY

APPENDIX B TO PART 97—LITIGATION REQUESTS AND DEMANDS TO THE DEPARTMENT OF THE NAVY

APPENDIX C TO PART 97—LITIGATION REQUESTS AND DEMANDS TO THE DEPARTMENT OF THE AIR FORCE

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 113.

SOURCE: 87 FR 57827, Sept. 22, 2022, unless otherwise noted.

§ 97.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures for the release of official infor-

mation in litigation and the presentation of witness testimony by Department of Defense (DoD) personnel pursuant to 5 U.S.C. 301 and the Supreme Court’s decision in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

§ 97.2 Applicability.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as the “DoD Components”).

(b) Is intended only to provide guidance for the internal operations of the DoD, without displacing the responsibility of the Department of Justice to represent the United States in litigation.

(c) Does not preclude official comments on matters in litigation.

(d) Does not apply to the release of official information or the presentation of witness testimony in connection with:

(1) Courts-martial convened by the authority of a Military Department.

(2) Administrative proceedings or investigations conducted by or for a DoD Component.

(3) Security-clearance adjudicative proceedings, including those conducted pursuant to DoD Directive 5220.6, “Defense Industrial Personnel Security Clearance Review Program,” January 2, 1992, as amended (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/522006p.pdf>).

(4) Administrative proceedings conducted by or for the Equal Employment Opportunity Commission or the Merit Systems Protection Board.

(5) Negotiated grievance proceedings conducted in accordance with a collective bargaining agreement.

(6) Requests by Government counsel representing the United States or a Federal agency in litigation.

(7) Disclosures to Federal, State, local, or foreign authorities related to investigations or other law-enforcement activities conducted by a DoD