

§ 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.

§ 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 Voca-

tional/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 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

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.