

## § 338.12

personally sign the certificate, and ensure that the essential facts from the certificate are on the stub or entered into the electronic database record. Both certificates and stubs shall be prepared in one operation unless an automated system is used. Photographs shall be affixed to the original and duplicate certificates in the manner prescribed in 8 CFR part 333.

(c) The stub of the original certificate or the information recorded from the stub that is maintained on the electronic database shall be retained by the clerk of court. Courts using the certificate stub shall file and maintain the stub in a 3"×5" card file container. The electronic record shall be maintained in an accessible database with a back-up system to ensure protection and integrity of data. The original certificate shall be delivered to the petitioner. The duplicate certificate shall not be separated from the stub, and shall be forwarded to the appropriate office of the Immigration and Naturalization Service with all other duplicate papers or records in accordance with 8 CFR part 333.

[56 FR 30679, July 5, 1991, as amended at 56 FR 50501, Oct. 7, 1991]

### **§ 338.12 Endorsement by clerk of court in case name is changed.**

Whenever the name of a petitioner, whose petition for naturalization was filed prior to October 1, 1991, has been changed by order of a court as part of a naturalization, the clerk of court or his or her authorized deputy shall make the following endorsement on the front of the original and duplicate certificate of naturalization: "Name changed by decree of court from \_\_\_\_\_, as part of the naturalization." inserting in full the original name of the petitioner. This notation will be inserted immediately following the year of naturalization. If the stubs are being kept as naturalization records, a similar notation will be made on the stubs of the original and duplicate certificates, on the stub of the original certificate will be signed by the petitioner in the name as changed. If the court is using an electronic database for naturalization recordkeeping, the name change information will be maintained in that database. The original certifi-

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cate will be issued and the duplicate, with or without the stub, depending on the specific courts recordkeeping system, will be sent to the Immigration and Naturalization Service.

[56 FR 30680, July 5, 1991; 56 FR 38485, Aug. 13, 1991, as amended at 56 FR 50501, Oct. 7, 1991]

### **§ 338.13 Spoiled certificate.**

Whenever a certificate of naturalization is damaged, mutilated, defaced, or otherwise spoiled before delivery by the clerk, the original and duplicate, with stubs intact, shall be marked "Spoiled" and transmitted to the appropriate immigration and naturalization office, in the manner described in § 339.2 of this chapter, with the monthly report of the clerk on Form N-4. This section applies to certificates prepared by the clerk of court pursuant to § 338.11.

[22 FR 9824, Dec. 6, 1957, as amended at 56 FR 50502, Oct. 7, 1991]

## **PART 339—FUNCTIONS AND DUTIES OF CLERKS OF COURT REGARDING NATURALIZATION PROCEEDINGS**

Sec.

339.1 Administration of oath of allegiance to applicants for naturalization.

339.2 Monthly reports.

339.3 Relinquishment of naturalization jurisdiction.

339.4 Binding of naturalization records.

339.5 Recordkeeping.

AUTHORITY: 8 U.S.C. 1103, 1443, 1448.

### **§ 339.1 Administration of oath of allegiance to applicants for naturalization.**

It shall be the duty of a judge of a court that administers an oath of allegiance to ensure that such oath is administered to each applicant for naturalization who has chosen to appear before the court. The clerk of court shall issue to each person to whom such oath is administered the Certificate of Naturalization provided by the Service pursuant to § 338.1 of this chapter. The clerk of court shall provide to each person whose name was changed as part of the naturalization proceedings,

pursuant to section 336(e) of the Act, certified evidence of such name change.

[58 FR 49916, Sept. 24, 1993]

### § 339.2 Monthly reports.

(a) *Oath administration ceremonies.* Clerks of court shall on the first day of each month submit to the Service office having administrative jurisdiction over the place in which the court is located a report on Form N-4, in duplicate, listing all oath administration ceremonies held and the total number of persons issued the oath at each ceremony, in accordance with the instructions contained in Form N-4. The report shall be accompanied by all duplicate lists of persons attending naturalization oath ceremonies during the month, certified copies of any court orders granting changes of name, an accounting of the certificates issued to them, and the original of all certificates of naturalization which were voided by the clerk of court. In lieu of forwarding duplicate lists of naturalized persons to the Service with the report on Form N-4, the clerk may deliver the lists to the Service representative immediately after the oath ceremony. In such a case, the N-4 shall reflect that the duplicate list was so delivered.

(b) *Petitions filed for de novo hearings.* The clerk of court shall submit to the district director having administrative jurisdiction over the place in which the court is located, a monthly report of all persons who have filed *de novo* review petitions before the court. The report shall include each petitioner's name, alien registration number, date of filing of the petition for a *de novo* review, and, once an order has been entered, the disposition.

(c) *Reports relating to petitions filed prior to October 1, 1991.* The clerks of court shall, on the first day of each month, submit to the district director or officer in charge having administrative jurisdiction over the place in which the court is located, a report on Form N-4, in duplicate, listing all certificates of naturalization issued or spoiled pursuant to § 338.11 of this chapter during the preceding month in accordance with the instructions contained in Form N-4. The report shall be accompanied by all duplicates of cer-

tificates of naturalization with stubs intact.

(d) *Other proceedings and orders.* The clerk of court shall forward to the Service office having administrative jurisdiction over the place in which the court is located certified copies of the records of such other proceedings and other orders instituted on or issued by the court affecting or relating to the naturalization of any person as may be required from time to time by the Service.

(e) *Use of reports for accounting purposes.* Form N-4 shall be used by state and federal courts as a monthly billing document, submitted to the Service for reimbursement in accordance with section 344(f)(1) of the Act. The Service shall use the information submitted on this form to calculate costs incurred by courts in performing their naturalization functions. State and federal courts will be reimbursed pursuant to terms set forth in annual agreements entered into between the Service and the Administrative Office of United States Courts.

[56 FR 50502, Oct. 7, 1991, as amended at 58 FR 49916, Sept. 24, 1993; 60 FR 6652, Feb. 3, 1995]

### § 339.3 Relinquishment of naturalization jurisdiction.

Whenever a court relinquishes naturalization jurisdiction, the clerk of court shall, within ten days following the date of relinquishment, furnish the district director having administrative jurisdiction over the place in which the court is located, a certified copy of the order of court relinquishing jurisdiction. A representative of the Service shall thereafter examine the naturalization records in the office of the clerk of court and shall bind and lock them. The clerk of court shall return all unused forms and blank certificates of naturalization to the district director with his monthly report on Form N-4.

[22 FR 9825, Dec. 6, 1957]

### § 339.4 Binding of naturalization records.

Whenever a volume of petitions for naturalization, applications to take the oath of allegiance, declarations of

intention, orders of court, or other documents affecting or relating to the naturalization of persons is completed, it shall be bound and locked by the clerk of court.

[22 FR 9825, Dec. 6, 1957]

**§ 339.5 Recordkeeping.**

The maintenance of records and submission of reports under this chapter may be accomplished by either electronic or paper means.

[56 FR 50502, Oct. 7, 1991]

**PART 340—REVOCATION OF  
NATURALIZATION**

Sec

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

340.2 Revocation proceedings pursuant to section 340(a) of the Act.

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

**§ 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 credible and probative evidence which:

(1) Shows that the Service granted the application by mistake; or

(2) Was not known to the Service Officer during the original naturalization proceeding; and—

(i) Would have had a material effect on the outcome of the original naturalization; and

(ii) Would have proven that:

(A) The applicant's application was based on fraud or misrepresentation or concealment of a material fact; or

(B) The applicant was not, in fact, eligible for naturalization.

(b) *Procedure for reopening of naturalization proceedings—(1) Jurisdiction.* The district director under whose jurisdiction the applicant currently resides has jurisdiction to reopen proceedings under this section, except that notice of intent to reopen naturalization proceedings and to revoke naturalization must be served no later than 2 years after the effective date of the order ad-

mitting a person to citizenship, as determined under § 337.9 of this chapter. This section applies to any order admitting a person to citizenship with an effective date before, on, or after October 24, 1996.

(2) *Notice of intent to reopen naturalization proceedings and to revoke naturalization.* (i) If the district director determines that reopening a naturalization proceeding is warranted under paragraph (a) of this section, the district director shall prepare a written notice of intent to reopen naturalization proceedings and to revoke naturalization. The notice shall describe in clear and detailed language the grounds on which the district director intends to reopen the proceeding. The notice shall include all evidence which the district director believes warrants reopening of the proceeding. The notice shall advise the applicant of his or her right to submit a response to the notice and to request a hearing, as provided in paragraph (b)(3) of this section.

(ii) The Service shall serve the notice of intent to reopen naturalization proceedings and to revoke naturalization upon the applicant by personal service, as described in § 103.5a(a)(2) of this chapter. When personal service is accomplished by certified or registered mail, return receipt requested, but the notice is returned as undeliverable, the Service shall serve the notice again, using another one of the methods of personal service described in § 103.5a(a)(2) of this chapter.

(3) *Applicant's opportunity to respond and to request hearing.* (i) Within sixty (60) days of service of the notice of intent to reopen naturalization proceedings and to revoke naturalization, the applicant may submit a response to the Service. The response may include any statements and/or additional evidence the applicant wishes to present in response to the proposed grounds for reopening.

(ii) The applicant may request a hearing on the notice of intent to reopen naturalization proceedings and to revoke naturalization before an immigration officer authorized to review naturalization applications under sections 310 and 335 of the Act. The applicant must submit a written request for