Outgoing quality regulation (7 CFR 998.200).

(d) Claims for indemnification may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all of the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee shall pay such claims as it determines to be valid, to the extent of the equivalent indemnification value applicable to the peanuts used in the product so withheld. On products manufactured from edible quality grades of peanuts, such claims may be filed with the Committee no later than November 1 of the second year following the year in which the peanuts were produced.

(e) Notice of claims for indemnification on peanuts of the current crop year shall be received by the Committee (by mail or legible facsimile) no later than the close of the business day on November 1, following the end of the crop year. For the purpose of this paragraph, ''notice'' shall be defined as the covering (executed and signed) Form PAC–5, accompanied by a copy of the applicable valid grade inspection certificate and the lab certificate showing the aflatoxin assay results which caused the request for rejection.

(f) Each handler shall include, directly or by reference, in the handler's sales contract, the following provisions:

(1) Buyer shall give the Peanut Administrative Committee (Committee) office notice of any request made to the Federal or Federal-State Inspection Service for an ''appeal'' inspection for aflatoxin. Results of the ''appeal'' inspection will be reported by the Federal or Federal-State Inspection Service or other designated lab to Committee management. If the Committee management determines that the test results of the ''appeal'' sample show the lot to be high in aflatoxin, Committee management shall inform the buyer and handler of the results. In this case, the buyer may apply to reject the lot and return it to the handler by filing a rejection letter with Committee management. Upon a determination of the Committee, confirmed by the Agricultural Marketing Service, authorizing rejection, such peanuts, and title thereto, if passed to the buyer, shall be returned to the seller. Buyer must return the rejected lot to the seller within 45 days of the date on which Committee management informs buyer of the ''appeal'' sample test results, otherwise the buyer agrees that he/she forfeits the right to reject the lot and return it to the seller.

(2) Seller shall, prior to shipment of a lot of shelled peanuts covered by this sales contract, cause appropriate samples to be drawn by the Federal or Federal-State Inspection Service from such lot, shall cause the sample(s) to be sent to a USDA laboratory or if designated by the buyer, a laboratory listed on the most recent Committee list of approved laboratories to conduct such assay, for an aflatoxin assay and cause the laboratory, if other than the buyer's to send one copy of the results of the assay to the buyer. A portion of the costs of aflatoxin sampling and testing, as provided in § 998.200(c)(3), shall be for the account of the buyer and the buyer agrees to pay such costs.

(g) Any handler who fails to include such provisions in his/her sales contract shall be ineligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts covered by the sales contract.

(h)(1) Any handler who fails to conform to the requirements of paragraph (g) of the *Incoming quality regulation* (7 CFR 998.100) shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee.

(2) Any handler who fails to comply with the requirements of paragraph (h)(1) or (h)(2) of the *Outgoing quality regulation* (7 CFR 998.200) shall be ineligible for any indemnification payments until such non-compliance is corrected to the satisfaction of the Committee.

(i) Any handler who fails to cause positive lot identification on any lot of peanuts to accurately reflect the crop year in which such peanuts were produced, pursuant to paragraph (d) of the *Outgoing quality regulation* (7 CFR 998.200), shall be ineligible for any indemnification payments until such non-compliance is corrected to the satisfaction of the Committee.

(j) Categories of cleaned inshell peanuts eligible for indemnification are as follows:

(1) Cleaned inshell peanuts [1]

(i) U.S. Jumbos

(ii) U.S. Fancy Handpicks

(iii) Valencia-Roasting Stock [2]

[1] Eligible lots of cleaned inshell peanuts which are found, after shipment, to contain excessive aflatoxin, may be rejected to the handler. Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border reentry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be the extent of the indemnification payment.

[2] Inshell peanuts with not more than 25 percent having shells damaged by discoloration, which are cracked or broken, or both.

(2) *Reserved.*

(k) The indemnification value for peanuts indemnified shall be 35 cents per pound.

Dated: October 18, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–27455 Filed 10–25–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 340

[INS No. 1634–93]

RIN 1115–AD45

Revocation of Naturalization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations relating to revocation of naturalization under section 340 of the Immigration and Nationality Act (Act). This rule establishes an administrative process whereby a district director may reopen and reconsider applications for naturalization pursuant to section 340(h) of the Act. This rule will facilitate the transfer of naturalization authority contemplated by Congress from the courts to the Attorney General while retaining the protection for the individual provided under judicial naturalization.

EFFECTIVE DATE: October 24, 1996.

FOR FURTHER INFORMATION CONTACT:

Jody Marten or Thomas Cook, Naturalization and Citizenship Services Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone (202) 514–3240. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The Immigration Act of 1990 (IMMACT), Public Law 101–649, dated November 29, 1990, amended section 340 of the Act, Revocation of Naturalization, to bring the reopening process of section 340(i) of the Act into conformity with the change to Administrative Naturalization. That

section, now designated 340(h), provides the Attorney General with the power to correct, reopen, alter, modify, or vacate an application granted under Administrative Naturalization. Such power had heretofore rested within the discretion of the courts, which had held exclusive jurisdiction over naturalization prior to the enactment of IMMACT.

With the change to Administrative Naturalization brought about by IMMACT, however, courts no longer hold jurisdiction over naturalization applications. It is now the responsibility of the Service to receive applications for naturalization and conduct examinations to determine statutory eligibility for citizenship. Additionally, the Service renders formal determinations on grants and denials of applications for naturalization, and provides for administrative review of applications subject to denial for cause before a final determination is made. Accordingly, Congress had amended section 340(i) of the Act to provide the Attorney General with the reopening power previously held by the courts.

In fact, the amendment to section 340(h) of the Act simply replaces the court's jurisdiction with that of the Attorney General, leaving the authority described in that statute unchanged. Taking this into account, the Service has developed a regulatory proposal that resembles the way courts conducted proceedings under the pre-amended section 340(i) of the Act. In developing the proposed rule, the Service relied upon Federal Rules of Civil Procedure 60(b) and related jurisprudence. On July 28, 1994, the Service published a proposed rule in the Federal Register at 59 FR 38381 with request for comments by September 26, 1994, to provide a procedure for the Service to reopen administrative proceedings pursuant to section 340(h) of the Act, as amended. The proposed rule was structured in a manner that would facilitate the transfer of naturalization authority contemplated by Congress while protecting the individual's rights provided under judicial naturalization.

The proposed rule redesignated § 340.11 as § 340.2 and changed the heading to distinguish the actions described therein from those described in § 340.1. In addition, it clarified the procedures and guidelines for recommending institution of revocation proceedings or criminal procedures. The proposed rule at § 340.1(e)(2) was rewritten to clarify the appeal process to the district director with the referral to the Administrative Appeals Unit.

Discussion of Comments

The Service received comments from five individuals. Three of the commenters stated they were concerned about the 1-year deadline on re-opening of applications for naturalization. One commenter stated 1 year was not sufficient time if an applicant's fraudulent means of securing naturalization became apparent more than 1 year after being naturalized. Another commenter objected to the length of time of 1 year that the Service had to reopen a naturalization application, while the Executive Office for Immigration Review (EOIR) at the same time published regulations and provided the applicant only with 30 days in which to file a motion to reconsider a final administrative decision under 8 CFR 3.2. Another commenter raised concern for the due process rights of the applicant, and two commenters stated personal service was a fundamental fairness issue. The following is a summarized discussion of those comments and the Service's response.

Section 340.1(b)(1) Procedures for Reopening of Naturalization Proceedings

The Service proposed that the district director under whose jurisdiction the original naturalization proceeding took place has jurisdiction to reopen proceedings under this section. The notice of intent to reopen naturalization proceedings and to revoke naturalization must be served no later than 1 year after the effective date of the order admitting a person to citizenship, as determined under § 337.9 of this chapter.

One commenter suggested that, in requiring service of a notice of intent to reopen naturalization and deny naturalization within 1 year of the original naturalization decision, the Service had adopted too narrow a reading of its authority under section 340(h). He stated grounds for naturalization revocation may become known after the 1-year time frame. For example, terrorists and other persons who may have committed criminal and terrorist acts which would have rendered them ineligible for naturalization may come to the Service's attention more than 1 year after naturalization. He pointed out by limiting administrative reopening to 1 year, the Service is prevented from revoking naturalization in these situations.

The Service believes the 1-year period for reopening a naturalization case and filing a notice of intent to revoke naturalization does not provide sufficient time if the applicant's fraudulent means of securing naturalization become apparent more than 1 year after being naturalized. The Service believes the 1-year rule imposes a limitation on the exercise of the Attorney General's authority that is not required by statute.

Furthermore, the Service found that extending the 1-year time limit to 2 years still has the effect of keeping the number of reopenings to actions truly corrective in nature and maintains the original intent of this regulation. The Service does not intend the reopening process to be used in cases requiring extensive investigation of possible grounds for revocation. The Service views the reopening proceedings as more of a corrective measure, as opposed to a simplified alternative to revocation proceedings under section 340(a) of the Act. If evidence of any of the above-listed grounds is obtained after 2 years from the time naturalization vested, or investigation of possible grounds for reopening extends beyond such period, the Service must forego administrative reopening and proceed with judicial revocation proceedings under section 340(a) of the Act.

The Service also changed the jurisdiction from that of the district office where the original naturalization took place to the district office having jurisdiction over the naturalized person's last known place of residence in the United States to make the jurisdiction consistent with § 340.2. The Service also changed the language from the proposed regulation from notice of intent to deny to notice of intent to revoke naturalization. Although the naturalized applicant has been served a notice of intent to reopen naturalization proceedings, he or she remains a citizen until the Service revokes naturalization.

Section 340.1(b)(2) Notice of Intent To Reopen Naturalization Proceedings and To Revoke Naturalization

The proposed rule states that if the district director determines that reopening a naturalization proceeding is warranted under § 340.1(a), he or she shall prepare a written notice of intent to reopen naturalization proceedings and to revoke naturalization. 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 § 340.1(b)(3). The Service is further obligated to 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).

Two commenters stated that personal service on the newly naturalized citizen was an absolute prerequisite for reopening naturalization proceedings.

One commenter said the Service should require personal service as described by § 103.5a(a)(2) because it is less restrictive than unspecified personal service under 8 CFR 246.1 for rescission. He also said that the Service should send certified letters with return receipt requested. The commenter stated this requirement should be the same as that required for service of an order to show cause, *i.e.,* to be the individual's last known address. Two of the commenters stated that, in general, the proposed regulation would place the citizen and former alien in the same position as a lawful permanent resident alien, or a person with less standing. They stated that personal service is a fundamental tenet and prerequisite to due process.

In response to the comments, the Service has added a new paragraph (b)(2)(ii) to § 340.1, to clarify that the use of certified mail is a form of ''personal service.'' It will read as follows: ''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 one of the other methods of personal service described in § 103.5a(a)(2) of this chapter.''

One of the commenters also stated the persons being naturalized should be advised that their naturalization could be revoked within 1 year of being naturalized. The Service believes there is no reason to provide additional notice regarding reopening of citizenship applications since the naturalization requirements and procedures are clearly stated in the regulations. In addition, upon applying for naturalization, the instructions for completing the Form N–400, Application for Naturalization, specify the penalties for an applicant who knowingly and willfully falsifies or conceals a material fact or submits a false document. The applicant also signs under penalty or prejury that the application and evidence submitted with it are all true and correct.

Section 340.1(b)(3) Applicant's Opportunity To Respond and To Request Hearing

In this paragraph, the applicant may submit a response to the Service's notice of intent to reopen naturalization proceedings and to revoke naturalization within sixty (60) days. The applicant may request a hearing before an immigration officer, and must submit a written request for a hearing together with any statements and/or additional documents.

One commenter considered it unfair that the Service has 1 year in which to initiate naturalization proceedings, while the applicant is required to appeal a final decision within 30 days under the proposed EOIR regulations cited at 8 CFR 3.2. The commenter stated that this promotes the convenience of the Service rather than the fundamental fairness and justice to all parties to implement the *Woodby* standard of clear, convincing, and unequivocal evidence. *See Woodby* v. *Immigration and Naturalization Service,* 385 U.S. 276 (1966). The commenter contended that there is a greater onus on the applicant to provide evidence to rebut the Service's allegations. None of the other commenters addressed the time in which an applicant must respond to the Service's notice.

The Service believes that the 2-year period established in § 340.1(b)(1), for service of a notice of intent to reopen a naturalization proceeding and to revoke naturalization is well-founded, given Fed.R.Civ.P. 60(b) and the cases decided in the courts under section 340(h) before Congress vested this authority in the Attorney General. The EOIR regulation that the commenter relies on pertains to administrative practice before the Board of Immigration Appeals, and is not relevant to the reopening of a naturalization proceeding under section 340(h).

Section 340.1(b)(4) Withdrawal of Application or Failure To Respond

The Service proposed that the applicant may submit a written statement admitting the facts which the district director alleges as grounds for reopening, and withdraw the application for naturalization. In addition, the applicant must sign the statement under oath or affirmation or certify the truth of the statement under penalty of perjury. If the applicant fails to submit a response to the notice of intent to reopen naturalization proceedings and to revoke naturalization within the period specified in § 340.1(b)(3), the applicant shall be considered to have admitted the grounds for reopening and to have withdrawn the application for naturalization.

In light of these consequences of failing to respond, two commenters felt personal service on the newly naturalized citizen was an absolute prerequisite for reopening naturalization proceedings.

One commenter said that failure to respond should constitute withdrawal only, not admission of grounds for revocation. He said preventing an alien from contesting deportability because of failure to respond unfairly penalizes the alien. Because the Service might not have to prove deportability by the *Woodby* standard, the commenter is concerned that the alien's right to due process is not properly protected. But an alien's admission of the allegations underlying a deportation charge is sufficient to meet the *Woodby* standard. *Cf. Matter of Rodriguez-Majano,* 19 I & N Dec. 811, 812 (BIA 1988). And treating a default as an admission is not unknown to the law. F. Rule Civ. P. 55. So long as the individual has notice of the allegations, and of the consequences of a failure to respond, the Service does not believe that § 340.1(b)(4)(ii) poses any due process problems.

As indicated in the discussion of § 340.1(b)(2), the Service believes it has resolved the due process issue, by not only recognizing use of certified or registered mail as a form of ''personal service,'' but by providing further that the notice must be served anew if the certified or registered mail is returned as ''undeliverable.'' In addition, in revising the last sentence of § 340.1(b)(2), the Service will serve the notice again using one of the methods of personal service described in § 103.5a(2). The Service believes it has protected the applicant's due process rights by advising him or her of the procedures for appealing the notice of intent to revoke naturalization. Therefore, the final rule maintains that failure to respond will be deemed an admission of the stated grounds for reopening and denying naturalization.

Section 340.1(g)(3) Effect of Final Decision of Denial Upon Applicant's Status

The Service proposed that, when a decision to reopen naturalization proceedings and to revoke naturalization becomes final, the district director shall order the applicant to surrender his or her certificate of naturalization. The district director shall then cancel the certificate of naturalization.

One commenter stated that, in addition to the cancellation of the certificate of naturalization, the district director should order the applicant to surrender his or her certificate of naturalization and any U.S. passport in his or her possession. Then, the Service should notify the Department of State.

The Service believes that until a decision to reopen naturalization proceedings and to revoke naturalization becomes final, through failure to appeal or through exhaustion of all administrative and/or judicial appeals, the applicant remains a citizen of the United States. When the Service makes a final decision, the naturalization is rendered void *ab initio* and the applicant must surrender his or her certificate of naturalization for cancellation. The Service agrees that when an individual's citizenship has been revoked, his or her U.S. passport should be canceled as well. Therefore, the district office having authority over the revocation will notify the Department of State, Passport Services, Washington, D.C., of the revocation of naturalization since the cancellation of a passport is within its authority.

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 impact on a substantial number of small entities because of the following factors. This rule proposes a procedure for the Service to reopen naturalization applications filed by individuals. The affected parties are not small entities, and the impact of the regulation is not an economic one.

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, and accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 12612

The regulation adopted herein 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 Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

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:

PART 340—REVOCATION OF NATURALIZATION

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

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

2. A new § 340.1 is added 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 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 admitting 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 a hearing together with any statements and/or additional evidence within sixty (60) days of service of this notice. The Service shall schedule a requested hearing as soon as practicable.

(4) *Withdrawal of application or failure to respond.* (i) Upon receipt of the notice of intent to reopen naturalization proceedings and to revoke naturalization, the applicant may submit a written statement admitting the facts which the district director alleges as grounds for reopening, and withdrawing the application for naturalization. The applicant shall sign the statement under oath or affirmation or shall certify the truth of the statement under penalty of perjury.

(ii) If the applicant fails to submit a response to the notice of intent to reopen naturalization proceedings and to revoke naturalization within the period specified in paragraph (b)(3) of this section, that failure to respond will be deemed an admission of the stated grounds for reopening and revoking naturalization.

(5) *Right to counsel.* The applicant may be represented at any time during

reopening proceedings by an attorney or other representative qualified under part 292 of this chapter.

(6) *Burden of proof.* Upon service of a notice of intent to reopen naturalization proceedings and to revoke naturalization, the applicant bears the burden of persuading the district director that, notwithstanding the evidence described in the notice, the applicant was eligible for naturalization at the time of the order purporting to admit the applicant to citizenship.

(c) *Record of reopened proceedings.* The record shall include, but is not limited to:

(1) The applicant's application for naturalization;

(2) The Service's notice of intent to reopen naturalization proceedings and to revoke naturalization with proof of service to the applicant;

(3) All evidence forming the basis for reopening the naturalization application;

(4) The applicant's statement and/or evidence in response to the Service's notice and in support of the application; and

(5) The record of the hearing, if a hearing was held.

(d) *Decision.* (1) The district director shall render 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.

(2) *Referral for revocation suit.* Rather than reopening a naturalization decision and revoking naturalization, the district director shall refer a case for revocation proceedings under § 340.2 if:

(i) The applicant's answer to the notice of intent to reopen a naturalization proceeding and to revoke naturalization and any additional evidence that the applicant submits raises a genuine factual issue about the propriety of the applicant's naturalization, so that resolution of the factual issue will depend on the credibility of witnesses testifying under oath and subject to cross-examination; or

(ii) After rendering a decision on the merits, the district director determines that the applicant had adequately rebutted the allegations made in the notice of intent to reopen naturalization proceedings and to revoke naturalization, but the district director thereafter obtains additional evidence of at least one of the grounds set forth in paragraph (a) of this section.

(e) *Appeals.* (1) The applicant may appeal an adverse decision under paragraph (d) of this section to the Office of Examinations, Administrative Appeals Unit. Any appeal shall be filed initially with the district director within thirty (30) days after service of the notice of decision. Such appeal shall be filed in accordance with § 103.1 and § 103.7 of this chapter, by filing the appeal on Form I–290B with the fee. Appeals received after the 30-day period may be subject to dismissal for failure to timely file.

(2) If, within 45 days of the filing of a notice of appeal, the district director determines that the materials filed in support of the appeal adequately rebut the grounds for reopening, the district director may reconsider the decision to reopen the naturalization application and to revoke naturalization, and affirm the original decision naturalizing the applicant. In such a case, it is not necessary for the district director to forward the case to the Administrative Appeals Unit. If, after the district director affirms an original naturalization grant under this paragraph, the Service obtains additional evidence of the grounds set forth in paragraph (a) of this section, the Service may not bring a new motion to reopen the naturalization proceeding and to revoke naturalization, but may seek to revoke the applicant's naturalization only pursuant to section 340(a) of the Act.

(f) *Judicial review.* If a decision of the Office of Examinations, Administrative Appeals Unit, is adverse to the applicant, the applicant may seek judicial review in accordance with section 310 of the Act.

(g) *Effect of final decision of denial upon applicant's status.* (1) A final decision to reopen a naturalization proceeding and to revoke naturalization shall be effective as of the date of the original order purporting to admit the applicant to citizenship. The order purporting to admit the applicant to citizenship shall then have no legal effect.

(2) A district director's decision to reopen naturalization proceedings and to revoke naturalization will be final, unless the applicant seeks administrative or judicial review within the period specified by law or regulation.

(3) When a decision to reopen naturalization proceedings and to revoke naturalization becomes final, the district director shall order the applicant to surrender his or her certificate of naturalization. The district director shall then cancel the certificate of naturalization, and shall also notify the Department of State of the revocation of naturalization.

(4) Notwithstanding the service of a notice of intent to reopen naturalization proceedings and to revoke naturalization, the applicant shall be considered to be a citizen of the United States until a decision to reopen proceedings and deny naturalization becomes final.

(h) *Applicant's request for reopening or modification of application.* After having been granted naturalization and administered the oath of allegiance and renunciation, an applicant may move that the Service reopen his or her naturalization application for the purpose of amending the application in accordance with § 334.5 of this chapter.

§ 340.11 [Redesignated as § 340.2 and revised]

3. Section 340.11 is redesignated as § 340.2 and is revised to read as follows:

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

(a) *Recommendations for institution of revocation proceedings.* Whenever it appears that any grant of naturalization may have been illegally procured or procured by concealment of a material fact or by willful misrepresentation, the facts shall be reported to the district director having jurisdiction over the naturalized person's last known place of residence in the United States. If the district director is satisfied that a prima facie case exists for revocation pursuant to section 340(a) of the Act, he or she shall report the facts in writing to the Regional Director, with a recommendation regarding the institution of revocation proceedings.

(b) *Recommendation for criminal prosecution.* If it appears to the district director that a case described in paragraph (a) of this section or one in which a final decision has been reached under § 340.1(g) is amenable to criminal penalties under 18 U.S.C. 1425 for unlawful procurement of citizenship or naturalization, the district director may present such facts to the appropriate United States Attorney for possible criminal prosecution.

(c) *Reports.* It shall be the responsibility of the district director to advise the Service office that originated the information upon which the revocation inquiry is based about the progress of the investigation, and report the findings of the inquiry as soon as practicable.

Dated: October 15, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–27749 Filed 10–24–96; 4:00 pm]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List and the previous Foreign List.

EFFECTIVE DATE: November 12, 1996.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are the deletions from and additions to the Board's OTC List, which was last published on July 30, 1996 (61 FR 39556), and became effective August 12, 1996. A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks traded over-the-counter in the United States that meet the criteria in Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR Part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated for trading in the national market system (NMS security) under rules approved by the Securities and Exchange Commission (SEC). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the SEC and at the National Association of Securities Dealers, Inc. and will be incorporated into the Board's next quarterly publication of the OTC List.

Also listed below are the deletions from and additions to the Foreign List which was last published on July 29, 1996 (61 FR 39556) and became effective August 12, 1996. A copy of the complete Foreign List is available from the Federal Reserve banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6 (a) and (b), 220.17 (a), (b), (c) and (d), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2 and 220.17 Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List and the Foreign List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

AMERICAN WHITE CROSS, INC.
$.01 par common
AW COMPUTER SYSTEMS, INC.
Class A, $.01 par common
BEN FRANKLIN RETAIL STORES, INC.
$.01 par common
BIOSYS, INC.
No par common
BPI PACKAGING TECHNOLOGIES, INC.
Class B, Warrants (expire 10–07–96)
CAPSTONE PHARMACY SERVICES, INC.
Warrants (expire 08–23–96)
CEL-SCI CORPORATION
Warrants (expire 02–06–97)
CLOTHESTIME, INC.
$.001 par common
DANSKIN, INC.
$.01 par common
DAVID WHITE, INC.
$3.00 par common
DIACRIN INC.
Units (expire 12–31–2000)
ERNST HOME CENTER, INC.
$.01 par common
EV ENVIRONMENTAL, INC.
$.01 par common
EXSTAR FINANCIAL CORPORATION
$.01 par common
FIRST CHARTER BANK, N.A. (CA)
$2.56 par common
FORREST OIL CORPORATION
Warrants (expire 10–01–96)
GAMETEK, INC.
$.01 par common
GANDER MOUNTAIN, INC.
$.01 par common