

# Rules and Regulations

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## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Parts 328 and 329

[CIS No. 2479-09; DHS Docket No. DHS-2009-0025]

RIN 1615-AB85

### Naturalization for Certain Persons in the U.S. Armed Forces

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Department of Homeland Security (DHS) regulations by implementing a statutory amendment reducing from three years to one year the length of time a member of the United States Armed Forces has to serve to qualify for naturalization through service in the Armed Forces. In addition, this rule amends DHS regulations by implementing a statutory amendment to include as eligible for naturalization individuals who served or are serving as members of the Selected Reserve of the Ready Reserve of the U.S. Armed Forces during specified periods of hostility. This rule also amends the regulations to remove the requirement to submit Form G-325B, Biographic Information, with Form N-400, Application for Naturalization, for applicants applying for naturalization through service in the U.S. Armed Forces. By eliminating the Form G-325B requirement, the rule will reduce the response burden and amount of time it takes U.S. Armed Forces members to complete the paperwork required with a naturalization application.

**DATES:** This rule is effective February 18, 2010.

**FOR FURTHER INFORMATION CONTACT:** Kristie Krebs, Office of Field Operations, U.S. Citizenship and Immigration Services, Department of

Homeland Security, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529-2030; telephone number 202-272-1001. This is not a toll-free number. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Prior to November 24, 2003, aliens who served in the U.S. Armed Forces during peacetime were eligible for naturalization after serving honorably for an aggregate period of three years. *See* Immigration & Nationality Act (INA) sec. 328(a), 8 U.S.C. 1439(a) (2002) (amended (2003)); 8 CFR 328.2(a). Additionally, aliens who served in the U.S. Armed Forces during specific periods of hostilities were eligible for naturalization without having served for any particular length of time so long as the service was in active-duty status. *See* INA sec. 329(a), 8 U.S.C. 1440(a) (2002) (amended (2003)); 8 CFR 329.2(a).

On November 24, 2003, Congress amended these requirements in title XVII of the National Defense Authorization Act for Fiscal Year 2004 (NDAA), (Pub. L. 108-136, 117 Stat. 1392 (2003)), and made them effective as if enacted on September 11, 2001. The NDAA reduced from three years to one year the period of military service required to qualify for naturalization through service in the U.S. Armed Forces during peacetime. *See* INA sec. 328(a); 8 U.S.C. 1439(a) (2003); *see also* NDAA sec. 1701(c)(2). In addition, the NDAA extended the benefit of naturalization not only to individuals who served honorably in an active duty status during specified periods of hostilities, but also to individuals who have served honorably as members of the Selected Reserve of the Ready Reserve of the U.S. Armed Forces during such periods of hostilities. *See* INA sec. 329(a); 8 U.S.C. 1440(a) (2003); *see also* NDAA sec. 1702.

U.S. Citizenship and Immigration Services (USCIS) has been applying these statutory amendments since the law was enacted on November 24, 2003. This final rule updates the regulations to reflect these amendments. In addition, this rule removes an unnecessary paperwork requirement in

the naturalization application process for applicants with qualifying service in the U.S. Armed Forces.

##### II. Discussion

###### A. One Year or More of Military Service

Current regulations at 8 CFR 328.2(b) continue to list three or more years of service in the U.S. Armed Forces as an eligibility requirement for naturalization based on service in the U.S. Armed Forces. This final rule reduces the required number of years of service to one or more years in order to conform the regulations to the applicable statutory provision at section 328(a) of the INA, 8 U.S.C. 1439(a), as amended by the NDAA. *See* revised 8 CFR 328.2(b).

###### B. Service in the Selected Reserve of the Ready Reserve During Periods of Hostilities

USCIS regulations, 8 CFR 329.2(a), currently limit eligibility for naturalization based on service during specified periods of hostilities to those who served honorably in an active duty status in the U.S. Armed Forces. In conformance with the expansion of eligibility made by the NDAA (*see* section 329(a) of the INA, 8 U.S.C. 1440(a)), this final rule extends eligibility for naturalization to include those individuals who have served honorably in the U.S. Armed Forces either in an active duty status or as a member of the Selected Reserve of the Ready Reserve. *See* revised 8 CFR 329.2(a). In addition, this rule amends the title of 8 CFR part 329 to include service in the Selected Reserve of the Ready Reserve. Currently, the title only lists active duty service as a basis for naturalization where service occurred during specified periods of hostilities.

###### C. Elimination of Requirement to Submit Form G-325B

Applicants applying for naturalization based on service in the U.S. Armed Forces have been required to submit Form G-325B, Biographic Information, along with Form N-400, Application for Naturalization. *See* 8 CFR 328.4, 329.4(a). Prior to 2001, USCIS sent applicants' completed Forms G-325B to the Department of Defense (DoD) for background checks. As part of improvements to this process, DoD authorized the USCIS in 2001 to conduct these background checks.

Subsequently, USCIS determined that the information collected on Form N-400 (e.g., name, date of birth, Social Security number) was sufficient to perform the background checks. Therefore, USCIS discontinued sending Forms G-325B to DoD. Moreover, USCIS notes that it does not use the G-325B in its adjudication of Forms N-400, or for any other purpose.

Notwithstanding the discontinued use of Form G-325B, USCIS regulations continue to require applicants to submit the form with their naturalization applications. See 8 CFR 328.4 and 329.4(a). However, continuing to require Form G-325B would needlessly increase applicant response and USCIS processing times, as USCIS must issue a Request for Evidence and place the case on hold if the Form G-325B is not submitted with the Form N-400. Because the submission of a Form G-325B no longer serves a purpose in the adjudication process, this rule removes the Form G-325B submission requirement for applicants applying for naturalization under section 328 or 329 of the INA. See revised 8 CFR 328.4 and 329.4(a).

### III. Regulatory Requirements

#### A. Administrative Procedure Act

The Administrative Procedure Act (APA) provides that an agency may dispense with notice and comment rulemaking procedures when an agency is promulgating an interpretative rule, a general statement of policy, or a rule of agency organization, procedure, or practice. See 5 U.S.C. 553(b)(A). The elimination of the requirement to submit Form G-325B is procedural in nature and does not alter the substantive rights of affected naturalization applicants. Accordingly, DHS finds that this part of the rule is exempt from the notice and comment requirements under the APA at 5 U.S.C. 553(b)(A).

The APA provides that an agency may dispense with notice and comment rulemaking procedures when an agency, for "good cause," finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." See 5 U.S.C. 553(b)(B). This rule amends DHS regulations to conform with the changes made by the NDAA, reducing from three years to one year the amount of time a member of the U.S. Armed Forces has to serve to qualify for naturalization and extending the benefit of expedited naturalization to members of the Selected Reserve of the Ready Reserve. INA sec. 328(a), 329(a); 8 U.S.C. 1439(a), 1440(a). These requirements were mandated by statute and DHS has applied these

requirements since the law was enacted in 2003 (effective, with some exceptions, as if enacted on September 11, 2001). DHS views the act of promulgating this part of the rule as both ministerial and non-controversial. Accordingly, DHS finds that notice and comment is unnecessary and that this part of the rule is except from the notice and comment requirements under the APA at 5 U.S.C. 553(b)(B).

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. When an agency invokes the good cause exception under the Administrative Procedure Act to make changes effective through an interim final or final rule, the RFA does not require an agency to prepare a regulatory flexibility analysis. DHS has determined in this final rule that good cause exists under 5 U.S.C. 553(b) to exempt this rule from the notice and comment. Therefore, a regulatory flexibility analysis is not required for this rule. However, DHS does expect that this rule will not have a significant economic impact on a substantial number of small entities because it affects only individuals.

#### C. Executive Order 12866

This rule is not a significant regulatory action as defined under Executive Order 12866, section 3(f), Regulatory Planning and Review. Thus it has not been reviewed by the Office of Management and Budget (OMB).

#### D. Unfunded Mandates Reform Act of 1995

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

#### E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million

or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

#### F. Executive Order 13132: Federalism

This rule 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.

#### G. Executive Order 12988: Civil Justice Reform

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

#### H. Paperwork Reduction Act of 1995 (PRA)

Under the Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163 (1995), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rulemaking does not propose to impose any new reporting or recordkeeping requirements under the PRA.

OMB previously approved the use of forms G-325, G-325A, G-325B, and G-325C under the same OMB Control No. 1615-0008. Removing the requirement to submit Form G-325B will reduce the number of respondents and annual burden hours associated with OMB Control No. 1615-0008. Accordingly, USCIS will submit the Form OMB 83-C, Correction Worksheet, to OMB to reduce the annual number of respondents and annual burden hours.

### List of Subjects

#### 8 CFR Part 328

Citizenship and naturalization, Military personnel, Armed Forces personnel, Application requirements, Residency requirements.

#### 8 CFR Part 329

Citizenship and naturalization, Military personnel, Armed Forces personnel, Application requirements.

■ Accordingly, chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

**PART 328—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WITH 1 YEAR OF SERVICE IN THE UNITED STATES ARMED FORCES**

■ 1. The heading for part 328 is revised as set forth above.

■ 2. The authority citation for part 328 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1439, 1443.

■ 3. Section 328.2 is amended by revising paragraph (b) to read as follows:

**§ 328.2 Eligibility.**

\* \* \* \* \*

(b) Has served under paragraph (a) of this section for a period of 1 or more years, whether that service is continuous or discontinuous;

\* \* \* \* \*

■ 4. Section 328.4 is amended by revising the last sentence to read as follows:

**§ 328.4 Application.**

\* \* \* The application must be accompanied by Form N-426, Request for Certification of Military or Naval Service.

**PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WITH ACTIVE DUTY OR CERTAIN READY RESERVE SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES**

■ 5. The heading for part 329 is revised as set forth above.

■ 6. The authority citation for part 329 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1440, 1443; 8 CFR part 2.

■ 7. Section 329.2 is amended by revising paragraph (a) introductory text to read as follows:

**§ 329.2. Eligibility.**

\* \* \* \* \*

(a) Has served honorably in the Armed Forces of the United States as a member of the Selected Reserve of the Ready Reserve or in an active duty status in the Armed Forces of the United States during:

\* \* \* \* \*

■ 8. Section 329.4 is amended by revising the last sentence of paragraph (a) to read as follows:

**§ 329.4. Application and evidence.**

(a) *Application.* \* \* \* The application must be accompanied by

Form N-426, Request for Certification of Military or Naval Service.

\* \* \* \* \*

**Janet Napolitano,**

*Secretary.*

[FR Doc. 2010-578 Filed 1-15-10; 8:45 am]

**BILLING CODE 9111-97-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA-2010-0009; Directorate Identifier 2010-NE-01-AD; Amendment 39-16178; AD 2010-02-08]**

**RIN 2120-AA64**

**Airworthiness Directives; Turbomeca Turmo IV A and IV C Turboshaft Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During a maintenance inspection before the first flight of the day, an oil leak was found on an engine deck. A circumferential crack on the intermediate bearing return flexible pipe union (pipe part number 9 560 17 606 0) was identified as the origin of the leak. A similar oil pipe union crack was then reported at the same location on another engine, on the same pipe part number. This pipe part number was approved as Modification TU 233 in 2008.

Although such cracks have been detected and did not lead to an in-service event, the possibility exists that some additional cracks could occur and may not be detected before the potential complete rupture of the union.

We are issuing this AD to prevent a helicopter engine in-flight shutdown resulting in an emergency auto-rotation landing or accident.

**DATES:** This AD becomes effective February 3, 2010.

We must receive comments on this AD by February 18, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

• *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* (202) 493-2251.

Contact Turbomeca S.A., 40220 Tarnos, France; e-mail: [noria-dallas@turbomeca.com](mailto:noria-dallas@turbomeca.com); telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, or go to: <http://www.turbomeca-support.com>, for a copy of the service information identified in this AD.

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:**

Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: [kevin.dickert@faa.gov](mailto:kevin.dickert@faa.gov); telephone (781) 238-7117; fax (781) 238-7199.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009-0261-E, dated December 18, 2009 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

During a maintenance inspection before the first flight of the day, an oil leak was found on an engine deck. A circumferential crack on the intermediate bearing return flexible pipe union (pipe part number 9 560 17 606 0) was identified as the origin of the leak. A similar oil pipe union crack was then reported at the same location on another engine, on the same pipe part number. This pipe part number was approved as Modification TU 233 in 2008.

Although such cracks have been detected and did not lead to an in-service event, the possibility exists that some additional cracks could occur and may not be detected before the potential complete rupture of the union.