

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

8 CFR Parts 1, 103, 204, 207, 208, 209, 210, 212, 214, 215, 216, 235, 236, 240, 244, 245, 245a, 264, 287, 316, 333 and 335

[CIS No. 2644–19; DHS Docket No. USCIS–2019–0007]

RIN 1615–AC14

### Collection and Use of Biometrics by U.S. Citizenship and Immigration Services; Withdrawal

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The U.S. Department of Homeland Security (DHS) is withdrawing a proposed rule that published on September 11, 2020. The notice of proposed rulemaking proposed to amend DHS regulations concerning the use and collection of biometrics in the enforcement and administration of immigration laws by U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement.

**DATES:** DHS withdraws the proposed rule as of May 10, 2021.

**ADDRESSES:** The docket for this withdrawn proposed rule is available at <http://www.regulations.gov>. Please search for docket number USCIS–2019–0007.

**FOR FURTHER INFORMATION CONTACT:** Steven Kvortek, Security and Public Safety Division Acting Chief, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, DHS, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240–721–3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:** On September 11, 2020, DHS published a notice of proposed rulemaking (NPRM or proposed rule) titled “Collection and Use of Biometrics by U.S. Citizenship and Immigration Services” in the **Federal Register** (85 FR 56338). This rule proposed to amend DHS regulations concerning the use and collection of biometrics in the enforcement and administration of immigration laws by U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). DHS is withdrawing the September 11, 2020, NPRM for a number of reasons.

In response to the NPRM, DHS received 5,147 comments during the 30-day public comment period, and 192 comments on the rule’s information collection requirements before the comment period ended. Commenters consisted of individuals, advocacy groups, legal service providers, professional associations, State or local governments, and social organizations. The majority of commenters expressed general opposition to the rule, mentioning immigration policy concerns, general privacy concerns, and economic concerns (both to individuals and communities). Many commenters wrote that the rule was unnecessary, offensive, an invasion of privacy, would infringe on freedoms, and violate the respect, privacy rights, and civil liberties of U.S. citizens, legal immigrants, noncitizens, victims of domestic violence, other vulnerable parties, and children. Many commenters stated that the rule was overly broad, highly invasive, and would impose excessive monetary costs on applicants and result in administrative delays in adjudicating immigration benefit requests that are already subjected to backlogs and long waits.

Executive Order 14012, “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,” in section 3(a)(i), instructs the Secretary of Homeland Security to identify barriers that impede access to immigration benefits. 86 FR 8277, (Feb. 5, 2021) (“E.O. 14012”). Having reviewed the public comments received in response to the NPRM in light of Executive Order 14012, DHS has decided to withdraw the NPRM. The

proposed rule was intended to provide DHS with the flexibility to change its biometrics collection practices and policies to ensure that necessary adjustments can be made to meet emerging needs, enhance the use of biometrics beyond background checks and document production to include identity verification and management in the immigration lifecycle, enhance vetting to lessen the dependence on paper documents to prove identity and familial relationships, preclude imposters, and improve the consistency in biometrics terminology within DHS. DHS still supports the goals of the NPRM to have flexibility in its immigration benefit administration biometrics collection practices and policies and enhance the use of biometrics for identity verification and management but not in a way that conflicts with Executive Order 14012. DHS, USCIS, CBP, and ICE remain committed to national security, identity management, fraud prevention and program integrity, and will continue to require the submission of biometrics where appropriate. *See, e.g.*, INA section 333 and 335 (requiring submission of photographs and a personal investigation before an application for naturalization may be approved); INA section 264(a) (directing the collection of fingerprints for the purpose of registering aliens); 8 U.S.C. 1732(b)(1) (requiring that alien visas and other travel and entry documents use biometric identifiers); 8 U.S.C. 1365a–1365b (requiring creation of a biometric data system for national security purposes). DHS may engage in a future rulemaking to enhance our biometrics requirements while not hindering access to the immigration system and protecting privacy and civil liberties.

However, commenters suggested that the breadth of the biometrics submission requirements that were proposed in the proposed rule are more than what is necessary to meet the requirements of the adjudication of immigration and naturalization benefits. DHS has considered the commenters concerns, and believe some of them may be justified and require additional deliberation. Accordingly, DHS is withdrawing the NPRM and will analyze the entirety of the NPRM in the context of the directive in E.O. 14012 and what changes may be appropriate and consistent with DHS’s needs,

policies, and applicable law. In the meantime, DHS' current biometrics collection practices and policies are sufficient to meet the statutory and regulatory requirements for document production and the vetting of any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with an immigration benefit or request, including United States citizens.

#### Authority

As stated in the NPRM, DHS has general and specific statutory authority to collect or require submission of biometrics from applicants, co-applicants, petitioners requestors, derivatives, beneficiaries and others directly associated with a request for immigration benefits; and for purposes incident to apprehending, arresting, processing, and care and custody of aliens. 85 FR 56347. DHS is withdrawing the NPRM using those same authorities.

**Alejandro N. Mayorkas,**

*Secretary, U.S. Department of Homeland Security.*

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

#### 8 CFR Parts 106, 241, and 274a

[CIS No. 2653-19; DHS Docket No. USCIS-2019-0024]

RIN 1615-AC40

#### Employment Authorization for Certain Classes of Aliens With Final Orders of Removal; Withdrawal

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The U.S. Department of Homeland Security (DHS) is withdrawing a notice of proposed rulemaking (NPRM) that published on November 19, 2020. The NPRM proposed to revise DHS regulations governing employment authorization for individuals who have a final order of removal and are released from DHS custody on an order of supervision. The NPRM also proposed to amend DHS regulations to clearly indicate the employment eligibility of individuals who have been granted deferral of removal based on the United States' obligations under the Convention

Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

**DATES:** DHS withdraws the NPRM as of May 10, 2021.

**ADDRESSES:** The docket for this withdrawn proposed rule is available at <http://www.regulations.gov>. Please search for docket number USCIS-2019-0024.

#### FOR FURTHER INFORMATION CONTACT:

Steven P. Kvortek, Acting Chief, Security and Public Safety Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, DHS, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240-721-3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:** On November 19, 2020, DHS published an NPRM titled "Employment Authorization for Certain Classes of Aliens With Final Orders of Removal." (85 FR 74196). This NPRM proposed to eliminate employment authorization under 8 CFR 274a.12(c)(18) for individuals who have a final order of removal and are released on an order of supervision with a narrow exception. DHS also proposed to amend its regulations to clearly indicate that individuals who have been granted CAT deferral of removal would be employment authorized based on their grant of CAT deferral of removal.

In response to the NPRM, DHS received more than 302 comments during the 30-day public comment period. Nearly 98 percent of commenters opposed the proposed rule with several commenters specifically requesting that DHS withdraw the NPRM.<sup>1</sup> Less than 2 percent expressed support for the rule with such commenters generally supporting the rule because they believed it would deter illegal immigration and protect U.S. workers. The commenters who opposed the NPRM argued that it would significantly limit the ability of individuals who have a final order of removal and are released on an order of supervision to legally work, be self-sufficient, and support their families, which may include U.S. citizen children and lawful permanent resident spouses or partners. Several commenters also noted the proposed rule would impose exorbitant costs and burdens on U.S.

employers related to labor turnover and the proposed E-Verify requirement. Various state and local agencies, including Attorneys General from 15 states, also opposed the rule on the basis it would decrease tax revenue, deny states various revenue streams, and increase costs related to state-funded public benefit programs. Many commenters also disagreed with the NPRM's assertion that the proposed changes would incentivize individuals with final orders of removal to leave the United States. They argued that the majority of individuals who have a final order of removal and are released on an order of supervision are in the United States with DHS's acknowledgment, as reflected by their release on an order of supervision, and that DHS's inability to remove them primarily stems not from inaction on the individual's part but due to the unwillingness of foreign governments to issue them travel documents and cooperate in their repatriation.

The NPRM stemmed from two executive orders issued by President Trump, which have been revoked since the publication of the NPRM. DHS initiated the regulatory action pursuant to Executive Order 13768, "Enhancing Public Safety in the Interior of the United States" (Jan. 24, 2017) and Executive Order 13788, "Buy American and Hire American" (Apr. 18, 2017). These executive orders directed DHS to revise or rescind any regulations inconsistent with these orders. DHS issued the NPRM after determining that the current regulations at 8 CFR 274a.12(c)(18) could be inconsistent with the above-mentioned executive orders.

On January 20, 2021, President Biden issued Executive Order 13993, "Revision of Civil Immigration Enforcement Policies and Priorities," which revoked Executive Order 13768. Further, on January 25, 2021, President Biden issued Executive Order 14005, "Ensuring the Future Is Made in All of America by All of America's Workers," which revoked Executive Order 13788. Executive Orders 13993 and 14005 directed agencies to review, revise, or rescind any agency actions or guidance inconsistent with the executive orders.

Having reviewed the NPRM and the public comments in light of Executive Orders 13993 and 14005, DHS has decided to withdraw the NPRM. The original bases and rationale for promulgating the NPRM no longer align with the current Administration's immigration enforcement priorities. This Administration is focused on protecting the interests of American workers by ensuring the "[Federal

<sup>1</sup> Comments may be viewed at the Federal Docket Management System (FDMS) at <http://www.regulations.gov>, docket number USCIS-2019-0024.