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Part IV

Department of Homeland Security

8 CFR Part 103

**Electronic Signature on Applications and
Petitions for Immigration and
Naturalization Benefits; Interim Final Rule**

DEPARTMENT OF HOMELAND SECURITY**8 CFR Part 103**

[CIS No. 2224-02]

RIN 1615-AA83

Electronic Signature on Applications and Petitions for Immigration and Naturalization Benefits**AGENCY:** Department of Homeland Security.**ACTION:** Interim final rule with request for comments.

SUMMARY: On March 1, 2003, the Immigration and Naturalization Service (Service) transferred from the Department of Justice to the Department of Homeland Security (DHS), pursuant to the Homeland Security Act of 2002, Public Law 107-296. The Service's immigration services function transferred to the Bureau of Citizenship and Immigration Services (BCIS) of the DHS. This rule amends the DHS regulations concerning the signature requirement for applications and petitions filed with the BCIS by specifically permitting applicants and petitioners to sign electronically. This change is necessary to allow the BCIS to begin accepting electronically filed applications and petitions as required by law. By accepting electronically filed applications and petitions, the BCIS expects to streamline its information collection processes, improve customer service, move towards fulfilling the mandates of the Government Paperwork Elimination Act (GPEA), and support the feasibility study for online filing mandated by the Public Law 107-296. The BCIS requests comments on this rule and particularly on how it can best implement electronic signature and filing.

DATES: *Effective date:* This rule is effective on May 29, 2003.*Comment date:* Written comments must be submitted on or before June 30, 2003.**ADDRESSES:** Please submit written comments to the Director, Regulations and Forms Services Division, Bureau of Citizenship and Immigration Services, 425 I Street NW., Room 4034, Washington, DC 20536. To ensure proper handling please reference CIS No. 2224-02 on your correspondence. Comments may also be submitted electronically to the Bureau at insregs@usdoj.gov. When submitting comments electronically to the Bureau, you must include CIS No. 2224-02 in the subject box so that the comments can be routed to the appropriate office

for review. Comments are available for public inspection at the above address by calling (202) 514-3291 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Ann Palmer, Special Assistant, Bureau of Citizenship and Immigration Services, 800 K Street NW., Room 1000, Washington, DC 20536, telephone (202) 514-6442.**SUPPLEMENTARY INFORMATION:****Background***Why Is the BCIS Amending the Regulations to Specifically Permit Electronic Signatures on Applications and Petitions?*

The BCIS has embarked on a 10-year effort to modernize the immigration services program. This effort is designed to improve the efficiency, integrity, and customer service of the program. A part of this effort is to provide for electronic filing of immigration and naturalization applications and petitions to minimize the requisite reporting burden on the public. Central to the electronic filing initiative is the ability to provide for an electronic signature on the required benefit applications and petitions. Electronic filing and the acceptance of electronic signatures is authorized by the GPEA (44 U.S.C. 3504). The GPEA provides that the Office of Management and Budget (OMB) must ensure that no later than 5 years from October 21, 1998, executive agencies provide for the option of electronic submission of information, when practicable, as a substitute for paper. To implement the GPEA, this interim rule adopts a regulatory change to permit electronic filing and signatures. It also provides for the use and acceptance of electronic signatures, when practicable.

Moreover, section 461 of the Homeland Security Act of 2002 (effective January 24, 2003) provides that the Secretary of Homeland Security shall conduct a study of the feasibility of online filing. Information received in reply to this publication as well as evaluation of this initial phase of the program will be used in conducting the feasibility study as mandated in the Homeland Security Act of 2002. Section 461 of the Homeland Security Act of 2002 also provides that the Secretary shall establish an electronic tracking system for applications in order to provide applicants with access to the status of their applications. This system was brought online on September 28, 2002.

Accordingly, to successfully accomplish the electronic immigration benefit filing initiative the current DHS's regulations must be amended.

Current regulations at 8 CFR 103.2(a)(2) require that all applications and petitions filed with the BCIS be signed. However, they do not specify the format of the required signature. The BCIS currently collects all application and petition information, including signatures, on paper, but is preparing to begin offering the electronic filing of certain immigration benefit applications in order to meet the goals of the 10-year immigration services modernization program and the obligations under GPEA. In addition, courts appear to recognize electronic signatures supported by appropriate authentication safeguards if the governing statute or rule specifically permits them. Therefore, this rule amends the regulations at 8 CFR 103.2(a)(2) to specifically permit applicants and petitioners to electronically sign their applications or petitions filed electronically with the BCIS. This change will allow the BCIS to accept electronically filed applications and petitions without diminishing the certification made under penalty of perjury by applicants and petitioners that the application or petition, and all evidence submitted with it is true and correct.

What Method of Electronic Signature Does the BCIS Intend To Implement?

When electronic filing is implemented, the electronic versions of the applications and petitions will display a statement that by selecting the "Signature" block, the applicant or petitioner is certifying under penalty of perjury that the application or petition is true and correct. The applicant or petitioner would then be required to select the "Signature" block of his or her application or petition in order to submit it to the BCIS. The applicant or petitioner would receive a confirmation number electronically to acknowledge that the BCIS has accepted the application and electronic signature. The applicant or petitioner would also be encouraged, but not required, to print, sign, and date in permanent ink the application or petition, and maintain a paper copy of the electronic submission for his or her records.

How Does the BCIS Plan To Implement Electronic Filing?

The GPEA directs agencies to offer customers the option of electronic submission of information, when practicable, as a substitute for paper. However, the BCIS does not currently have the technology necessary to support full implementation of electronic filing for all applications and petitions for immigration and

naturalization benefits. The BCIS will begin deploying such technology in fiscal year (FY) 2004. Therefore, until the technology exists to support comprehensive electronic filing, the BCIS is identifying a limited number of high volume applications and petitions that the BCIS determines to be practicable for electronic filing. This approach will allow the BCIS to minimize disruptions to current business practices while it pursues the parallel strategy of integrating modern technology necessary to support full implementation of electronic filing for immigration and naturalization benefits.

Which Forms Does the BCIS Plan to Offer for Electronic Filing?

The BCIS currently has approximately 50 forms that are applications or petitions for immigration and naturalization benefits. Twelve of these 50 forms represent 90 to 95 percent of the immigration benefit workload filed with the BCIS annually. These 12 forms are:

1. Form I-90, Application to Replace Permanent Resident Card;
2. Form I-129, Petition for Nonimmigrant Worker;
3. Form I-130, Immigrant Petition for Alien Relative;
4. Form I-131, Application for Travel Document;
5. Form I-140, Immigrant Petition for Alien Worker;
6. Form I-485, Application to Adjust Status;
7. Form I-539, Application to Extend/Change Status;
8. Form I-751, Petition to Remove Conditions on Residence;
9. Form I-765, Application for Employment Authorization;
10. Form I-821, Application for Temporary Protected Status;
11. Form N-400, Application for Naturalization; and
12. Form N-600/N-643, Application for Certificate of Citizenship.

Of the remaining forms, none represents more than 1 percent of the BCIS's annual immigration benefit workload.

In recent years, the Forms I-90 and I-765 have represented approximately 30 percent of the annual immigration benefit workload. In addition, the BCIS believes these forms are good candidates for electronic filing because they:

- Are relatively short and easy to complete;
- Are applications for renewals, replacements, or authorizations based on immigration status so that the BCIS can verify against existing data;
- Require capture of biometrics (photograph, fingerprint, and signature)

at an Application Support Center where the BCIS will be able to increase process integrity by verifying the identity of the applicants. Although some applicants who have not previously needed to appear at the Application Support Center will now be required to do so, they will no longer need to appear at the district office to file their application and/or will no longer be required to submit passport style photographs to the BCIS; and

- Require little or no supporting documentation that would have to be submitted in paper.

For these reasons, the BCIS is identifying the Forms I-90 and I-765 as the first forms to offer for electronic filing. By scheduling implementation of the remaining 10 high volume applications and petitions over the following 3 years, the BCIS believes it will achieve the goal of GPEA by facilitating the electronic filing of applications and petitions while continuing to accept paper applications and petitions. The BCIS invites comments from the public on choosing Forms I-90 and I-765 as applications appropriate for electronic submission and on how it intends to accept electronic signatures.

Forms I-90 and I-765 require that an alien appear before the BCIS, at which time the alien's identity is verified. The ability to file applications electronically, therefore, both improves the BCIS's ability to verify the eligibility of the alien for the benefit sought, and clear the alien through the appropriate databases, but does not increase the exposure of the immigration system to fraud.

The BCIS is planning to implement e-filing of Forms I-129, I-131, I-140, I-539 and I-821 by the end of FY 2003.

Explanation of Changes in This Rule

The DHS is amending the regulations at 8 CFR 103.2(a)(2) to specify that the signature requirement that applies to all applications and petitions filed with the BCIS can be met by either a handwritten signature for paper filings or an electronic signature for electronic filings. This change will have no effect on the signature requirements set forth in other provisions of 8 CFR that do not relate to applications or petitions for immigration and naturalization benefits filed with the BCIS.

Request for Comments

The BCIS is seeking public comments regarding this interim rule. The BCIS requests that parties interested in commenting on the provisions contained within this rule do so on or before June 30, 2003.

Good Cause Exception to the Administrative Procedure Act

The DHS's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(B). Under the GPEA, agencies must offer by October 2003 the optional use and acceptance of electronic documents and signatures, and electronic recordkeeping, where practicable. This interim rule only provides for an additional avenue for the filing of certain documents by permitting electronic signatures. In implementing the GPEA, individuals affected by this rule are given greater ability to make filings, and does not limit their ability to make filings. As such, the DHS believes that there are no parties who could be aggrieved by this rule.

This rule is also an internal rule of administration in the sense that it only changes the manner in which a signature may be affixed on a document. This rule will have the effect of reducing, for some applicants, the costs of filing and will not increase the costs of filing for any applicant. Accordingly, the BCIS finds that it is impracticable and contrary to the public interest to publish this rule with prior notice and comment period normally required under 5 U.S.C. 553.

Regulatory Flexibility Act

The Secretary of Homeland Security, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule simply permits electronic signatures on applications and petitions for immigration and naturalization benefits that are submitted by individual petitioners and applicants. This rule does not have an impact on small entities as that term is defined in 5 U.S.C. 601(6).

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 effect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. 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 United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Homeland Security, Bureau of Citizenship and Immigration Services, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly this rule has been submitted to the OMB for review.

Executive Order 13132

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.

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.

Paperwork Reduction Act

This rule will allow the BCIS to begin accepting electronically filed applications for the Forms I-90 and I-765. By accepting electronically filed applications, the BCIS expects to streamline the information collection process for its applicants, thereby reducing the burden on the public. Accordingly, the BCIS has submitted the required Paperwork Reduction Change Worksheet (OMB-83C) to the Office of Management and Budget (OMB) reflecting the reduction in burden hours for Forms I-90 and I-765, and the OMB has approved the changes.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (government agencies), Fees, Forms, Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

■ Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

■ 2. Section 103.2 is amended by revising paragraph (a)(2) to read as follows:

§ 103.2 Applications, petitions, and other documents.

(a) * * *

(2) *Signature.* An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the BCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

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Dated: April 22, 2003.

Tom Ridge,

Secretary of Homeland Security.

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