



**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.

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**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 [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The docket for this withdrawn proposed rule is available at 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) (“EO 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 EO 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.

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Alejandro N. Mayorkas  
Secretary,  
U.S. Department of Homeland Security.

[FR Doc. 2021-09671 Filed: 5/7/2021 8:45 am; Publication Date: 5/10/2021]