

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.