

GMS Flash Alert



Immigration Edition

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United States - Proposed Rule to Expand Biometrics Collection

On September 1, 2020, the U.S. Department of Homeland Security (DHS) announced that it will publish a notice of proposed rulemaking to amend regulations related to the use and collection of biometrics for immigration purposes.¹ Following the standard review and approval process, under the new rule DHS and the federal agencies that operate under its umbrella including the U.S. Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE), would be permitted to use new biometrics collection techniques on foreign nationals, as well as U.S. citizens.

The proposed rule is scheduled to be published in the U.S. *Federal Register* on September 11, 2020. The public will have 30 days to submit comments on the proposed rule, and 60 days to comment on the new USCIS forms that would require biometrics.

WHY THIS MATTERS

It is not clear at this time if the new rule would impact foreign workers who are already in the United States under H, L, E, J, or TN status. It is possible that they may be required to submit biometrics in order to extend or amend their status. We are not yet aware if international students who are seeking to change schools or those who have received an offer of employment from a U.S. employer, would be subject to the new biometrics requirement.

If foreign professionals, scholars and students who have already been vetted are now required to comply with this new rule as part of their initial or extension application submitted to USCIS, then there may be additional delays in the adjudication of their petitions. The average processing time for USCIS to initiate and process the biometrics intake is approximately 3-8 weeks.

Biometrics Use Now

Currently, DHS requires biometrics from foreign nationals who submit applications, petitions, and requests for certain immigration benefits including N-400 (*Application for Naturalization*), I-765 (*Application for Employment Authorization*), I-539 (*Application to Extend/Change Nonimmigrant Status*)² and I-485 (*Application to Register Permanent Residence or Adjust Status*).

USCIS uses biometrics to verify identity, produce secure documents (e.g., Employment Authorization Document cards and Lawful Permanent Resident cards), and conduct required criminal and national security background checks.

Generally, the collection of biometrics involves DHS capturing fingerprints, a signature and photographs from applicants during appointments at a local Application Support Center (ASC). For foreign nationals applying for an immigrant or nonimmigrant visa stamp at a U.S. Consulate or Embassy outside the U.S., biometrics are collected during the consular interview as part of the application process.

What Are the Proposed Changes?

Under the proposed rule, DHS would be authorized to collect biometrics from any individual in connection with an immigration benefit including U.S. citizens, U.S. permanent residents, and foreign nationals who have already been screened previously.³ DHS would also be able to use new biometrics technologies including voice, iris, and facial recognition.

Under the new rule, DHS would have the authority to collect DNA samples to verify family relationships when the applicant or petitioner is unable to provide sufficient documentary evidence to establish the claimed filiation.

The proposed rule will also remove the minimum age requirement for biometrics collection. This means that children under the age of 14 would be obligated to provide biometrics unless DHS waives this requirement, which they could do on a case-by-case basis.

Further, this rule would allow USCIS to require biometrics from victims of domestic violence and human trafficking in order to adjudicate their immigration relief benefits.

Similarly, if the rule is adopted, DHS would be allowed to collect biometrics from foreign nationals upon arrest in order to keep them in custody, request medical care, and initiate removal proceedings.

According to DHS, the proposed rule improves the screening and vetting process and reduces DHS' dependence on paper documents and biographic information to prove identity and familial relationships.

FOOTNOTES:

1 See the DHS webpage for the [September 1, 2020 press release](#).

2 For prior coverage of Form I-539 matters (including biometrics policy), see GMS [Flash Alert 2019-032](#) (February 20, 2020).

3 [Unpublished Proposed Rule](#) by the Homeland Security Department on 09/11/2020 "Collection and Use of Biometrics by U.S. Citizenship and Immigration Services."

Contact us

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