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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 103

[CIS No. 2517-11; Docket No. USCIS-2012-0006]

RIN 1615-AC01

Notices of Decisions and Documents Evidencing Lawful Status

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

ACTION: Final rule; request for comments.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations governing when U.S. Citizenship and Immigration Services (USCIS) will issue correspondence, notices of decisions, and documents evidencing lawful status in the United States to an applicant, petitioner, attorney, or accredited representative. Specifically, this final rule explains how USCIS will issue requests, notices, cards, and original documents to applicants, petitioners, and their attorneys or accredited representatives of record. This final rule also amends the regulations to allow represented applicants to specifically consent to and request that any notices, decisions, and secure identity documents be sent solely to the official business address of the applicants' attorney or accredited representative, as reflected on a properly executed Notice of Entry of Appearance as Attorney or Accredited Representative. Further, through this final rule, DHS clarifies USCIS notification practices relating to represented parties. These changes will conform USCIS notice procedures to account for the full range of stakeholder norms, including industry preferences, in response to stakeholder comments.

DATES: Effective Date: This final rule is effective on [Insert date 90 days from date of publication in the FEDERAL REGISTER].

Comment Date: Written comments on the final rule must be submitted on or before [Insert date 60 days from date of publication in the FEDERAL REGISTER].

Written comments on the Paperwork Reduction Act (PRA) section of this final rule (regarding the revisions to the Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative and Form G-28I, Notice of Entry of Appearance as Attorney in Matters Outside the Geographic Confines of the United States) must be submitted on or before [Insert date 30 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by DHS docket number USCIS-2012-0006 by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: You may submit comments directly to USCIS by e-mail at uscisfrcomment@uscis.dhs.gov. Include DHS docket number USCIS-2012-0006 in the subject line of the message.
- Mail: Comments may be submitted to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue, NW, Washington, DC 20529-2140. To ensure proper handling, please reference DHS docket number USCIS-2012-0006 on your correspondence. This mailing address may be used for paper, disk, or CD-ROM submissions.
- Hand Delivery/Courier: Laura Dawkins, Chief, Regulatory Coordination Division, U.S. Citizenship and Immigration Services, Department of Homeland

Security, 20 Massachusetts Avenue, NW., Washington, DC 20529-2140.

Contact Telephone Number is (202) 272-8377.

- Please refer to the PRA section of this final rule for instructions on how to submit comments regarding the revisions to Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative and Form G-28I, Notice of Entry of Appearance as Attorney in Matters Outside the Geographic Confines of the United States).

FOR FURTHER INFORMATION CONTACT: Minas Khoudaghouljian, Chief, Adjustment and Naturalization Branch, Service Center Operations Directorate, Washington, DC, 20 Massachusetts Ave., NW., Washington, DC 20529. E-mail: Minas.Khoudaghouljian@uscis.dhs.gov. Telephone: (202) 272-1785.

SUPPLEMENTARY INFORMATION:

I. Public Participation.

All interested parties are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this final rule. DHS and U.S. Citizenship and Immigration Services (USCIS) also invite comments that relate to the economic, environmental, or federalism effects that might result from this final rule. Comments that will provide the most assistance to USCIS in implementing these changes will reference a specific portion of the final rule, explain the reason for any recommended change, and include data, information, or authority that supports a recommended change.

Instructions: All submissions must include the agency name and DHS Docket No. USCIS-2012-0006 for this rulemaking. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the

Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

II. Background.

USCIS generally sends original notices and documents to the applicant or petitioner who requested the immigration benefit. See 8 CFR 103.2(b)(19). Under certain limited circumstances, notices to an unrepresented applicant or petitioner may be sent to a location or person designated by the applicant or petitioner. Examples of such situations would include a Violence Against Women Act self-petitioner who provides a “safe” address for mail or an applicant who is subject to legal guardianship. If the applicant or petitioner is represented by an attorney or accredited representative (collectively referred to as representatives), USCIS also will send a courtesy copy of such notices and documents to the representative. See 8 CFR 103.2(a)(3), 292.5(a). In this rule, DHS updates and clarifies how applicants, petitioners, and their representatives will be notified of actions taken on their immigration benefit requests.

Prior to 1994, the Immigration and Naturalization Service (INS),¹ generally mailed two copies of every approval and denial notice in cases in which the applicant or petitioner was represented – one to the representative and one to the applicant or petitioner. See Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits, 59 FR 1455, 1463 (Jan. 11, 1994). In 1991, as part of a broader rule designed to simplify and streamline filing and processing of immigration benefits, INS proposed new notice procedures. See Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits, 56 FR 61201, 61207 (Dec. 2, 1991). Specifically, INS proposed that, where an applicant or petitioner is represented, all notices, cards and documents issued at approval would be sent to that representative. Documents produced after an approval notice was sent out, however, would be mailed directly to the applicant, with no confirmation to the representative. Id. Commenters on that proposed rule pointed to past problems with attorneys and accredited representatives receiving courtesy copies and argued that INS should continue to issue separate notices as a safeguard. See 59 FR 1455. INS agreed with the commenters and in the final rule required that separate notices would be sent to the applicant or petitioner and his or her authorized representative. Id. at 1463.

III. Reason for this change.

On August 29, 2011, DHS published a final rule addressing USCIS's transformation initiative – a program to change USCIS business processes from a paper-

¹ The Homeland Security Act of 2002 transferred primary authority for the administration and enforcement of the immigration and naturalization laws to the Secretary of Homeland Security. See Public Law 107-296, section 1102(2), 116 Stat. 2135 (Nov. 25, 2002), as amended by Pub. L. 108-7, section 105(a)(1), 117 Stat. 11 (Feb. 20, 2003) (codified at 8 U.S.C. 1103(a)); see also 6 U.S.C. 271(b) (transfer of INS immigration benefits adjudication functions to USCIS).

based process to an electronic environment. Immigration Benefits Business Transformation, Increment I, 76 FR 53764 (Aug. 29, 2011) (August 2011 final rule). The August 2011 final rule removed references to form numbers, form titles, expired regulatory provisions, and descriptions of internal procedures, many of which will change as USCIS transitions from paper forms to its electronic immigration system USCIS Electronic Immigration System, also known as USCIS ELIS. DHS did not alter substantive provisions of the regulations but updated language in the regulations to facilitate filing and adjudication in an electronic environment.

Among the provisions amended in the August 2011 final rule was 8 CFR 103.2(b)(19), which governs how USCIS will notify applicants, petitioners, and their representatives of actions taken on their immigration benefit requests. See 76 FR at 53780. Before the August 2011 rule, 8 CFR 103.2(b)(19) provided that notices and secure documents would go directly to the applicant or petitioner, where the applicant and petitioner were unrepresented. The rule also provided that when applicants or petitioners were represented, USCIS would also send notices to the attorney of record or accredited representative. In the August 2011 final rule, DHS revised 8 CFR 103.2(b)(19). See 76 FR at 53781.

In response to the August 2011 final rule, many USCIS stakeholders, including several large employers, colleges, universities, and law firms, asked USCIS to clarify its notification process. Some stakeholders noted that it is a common business practice for employers to have their representatives receive and distribute documents to their international workforce. They also noted that USCIS has routinely sent original notices to attorneys or accredited representatives. The stakeholders asked USCIS to clarify that

the August 2011 final rule did not change this practice and urged that USCIS maintain its current practice.

DHS agrees that a clarification is needed. DHS has been informed by stakeholders that large corporations, universities, and employers of foreign workers prefer having notices or decisions regarding petitions they have filed on behalf of their employees sent to one centralized location, such as the corporation's in house counsel, the employer's legal representative, or the company's human resources department. As previously stated, USCIS will continue its prior practice of sending original notices for benefit requests to attorneys or accredited representatives. Nevertheless, DHS does not believe that the current regulations are sufficiently clear on this point.

Consequently, in this final rule, DHS will amend its regulations in several ways. First, USCIS will clarify that it will send notices only to the applicant or petitioner when the applicant or petitioner is unrepresented. See new 8 CFR 103.2(b)(19)(i). Second, if USCIS has been properly notified that the person or entity filing the benefit request is represented by an attorney or accredited representative recognized by the Department of Justice, Board of Immigration Appeals, USCIS will send notices to the applicant or petitioner who filed the benefit request and to their attorney or accredited representative of record. See new 8 CFR 103.2(b)(19)(ii)(A). Third, if provided for in the applicable form, form instructions, or regulations for a specific benefit request, an applicant or petitioner may request that USCIS send original notices and documents only to the official business address of their attorney or accredited representative, as reflected on a properly executed Notice of Entry of Appearance as Attorney or Accredited Representative, with a courtesy copy being sent to the applicant or petitioner for their

records. See id. Fourth, for applications or petitions filed electronically, USCIS will notify both the applicant or petitioner and the authorized attorney or accredited representative electronically of any notices or decisions. Electronic notification will not be provided, however, if the applicant or petitioner specifically requests to receive paper notices or decisions by mail, or if USCIS determines that issuing a paper notice or decision for an electronically-filed application or petition is warranted. See new 8 CFR 103.2(b)(19)(ii)(B). Fifth, USCIS has codified its current practice of sending Form I-797, Notice of Action, as an approval notice with a tear-off I-94, Arrival-Departure Record, to the applicant's or petitioner's attorney or accredited representative. Currently, applicants who are approved for an extension of stay or change of status receive a Form I-797, Notice of Action that has a tear-off I-94, which the applicant can use as evidence of his or her current lawful status. For applicants or petitioners who are represented, USCIS will continue to send these notices only to the official business address of their attorneys or accredited representatives, as reflected on a properly executed Notice of Entry of Appearance as Attorney or Accredited Representative, unless the applicant or petitioner specifically request that USCIS instead send it to his or her mailing address. Finally, USCIS will continue to send original secure identification documents, such as Permanent Resident Cards and Employment Authorization Documents, only to the applicant or petitioner (when the alien is a self-petitioner), unless the applicant or self-petitioner specifically consents to having the secure identification document sent to his or her attorney of record or accredited representative. The Notice of Entry of Appearance as Attorney or Accredited Representative or the online representative account profile in USCIS's electronic immigration system must reflect the official business address of the

attorney or accredited representative in the address section. See new 8 CFR 103.2(b)(19)(iii). These changes will conform USCIS’s notice procedures with industry norms in response to stakeholder comments.

IV. Statutory and Regulatory Requirements.

A. Administrative Procedure Act.

The Administrative Procedure Act (APA) requires DHS to provide public notice and seek public comment on substantive regulations. See 5 U.S.C. 553. The APA, however, provides limited exceptions to this requirement for notice and public comment, including for “rules of agency organization, procedure or practice.” 5 U.S.C. 553(b)(A).

This final rule addresses requirements that are procedural in nature and does not alter the substantive rights of individuals. In this final rule, DHS clarifies policies for sending notices, copies, and originals of correspondence, decisions, and secure identification documents to applicants, petitioners, attorneys and accredited representatives. These minor changes to USCIS mailing procedures do not alter a substantive right. Therefore, since this final rule is procedural, notice and opportunity for public comment are not required. See 5 U.S.C. 553(b)(A). DHS nevertheless invites comments on this final rule and will consider all timely comments submitted during the public comment period as described in the “Addresses” section.

B. Regulatory Flexibility Act.

The Regulatory Flexibility Act (RFA) mandates that DHS conduct a regulatory flexibility analysis when it publishes any general notice of proposed rulemaking. 5 U.S.C. 603(a). RFA analysis is not required when a rule is exempt from notice-and-comment rulemaking. DHS has determined that this rule is exempt from the notice-and-

comment requirements in 5 U.S.C. 553, and, therefore, a regulatory flexibility analysis is not required.

C. Unfunded Mandates Reform Act of 1995.

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

D. Small Business Regulatory Enforcement Fairness Act of 1996.

This final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness 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 U.S.-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 12866 and Executive Order 13563.

DHS does not consider this final rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, as supplemented by Executive Order 13563. Based on DHS's preliminary analysis, this final rule is cost neutral as it imposes no costs and does not result in discernible monetary benefits.

Accordingly, this final rule has not been submitted to the Office of Management and Budget (OMB) for review.

DHS is pursuing this regulatory action to accord its regulations with industry norms and stakeholder requests. This final rule makes two clarifications and one change. First, the regulation will clarify that USCIS will send original notices and documents only to the applicant or petitioner if he or she is not represented by an attorney or accredited representative, recognized by the BIA, who has filed a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative or a Form G-28I, Notice of Entry of Appearance as Attorney in Matters Outside the Geographic Confines of the United States. See 8 CFR 292.4(a), 292.5(a). Second, if the applicant or petitioner is represented, USCIS generally will send original notices and documents both to the applicant or petitioner and to their attorney or accredited representative.

This regulation will allow applicants and petitioners to choose to have USCIS mail original notices and documents only to their attorneys or accredited representatives if USCIS indicates that this option is available through the USCIS online application system, applicable forms, form instructions, or regulations for a specific benefit request. As stated earlier in this preamble, some stakeholders noted that it is a common business practice for employers to have their representatives receive and distribute documents to their international workforce. Because this final rule provides that option for the employer, employers will benefit from not being required to adjust their internal processes to match USCIS notice practices. DHS may amend a form in the course of regular program administration to expand the options for the mailing of notices at its discretion, but will incur no cost as a direct result of this final rule. Employers generally prefer that original notices and documents from USCIS are sent only to their representatives, thus DHS expects no cost to result from indicating to which address

applicants or petitioners want notices sent. In addition, attorneys or representatives already transmit documents to the aliens and petitioners they represent based on where the alien or petitioner needs or desires to maintain the original, so this rule should impose no additional record keeping burden.

DHS also is revising the regulation to provide that two originals will be sent in the case of represented parties instead of the current practice of sending one original and one courtesy copy. This will not result in any additional costs because the costs for issuing an original of a USCIS notice, such as printing and mailing, would be similar to the costs for issuing a copy. Finally, the quantity of notices and documents sent will not change, only where and how they are sent. Therefore, DHS estimates that these two clarifications and change will not result in a direct cost to USCIS or to an applicant or petitioner, though applicants and petitioners may benefit from the clarifications.

F. Executive Order 13132.

This final rule will not have substantial direct effects on the States, on the relationship between the Federal 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, DHS has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement.

G. Executive Order 12988: Civil Justice Reform.

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act.

Under the PRA, 44 U.S.C. chapter 35, all Departments are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. USCIS² is revising the Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) and the Notice of Entry of Appearance as Attorney In Matters Outside the Geographical Confines of the United States (Form G-28I), and their associated form instructions to prepare the forms for filing availability in USCIS ELIS, to add a foreign address and foreign phone number field, and to make plain language changes. In addition Forms G-28 and G-28I are revised to add check-boxes that will implement the changes this final rule makes to 8 CFR 103.2(b)(19). Specifically, USCIS is revising the forms to provide that, for represented parties, DHS will send all original notices regarding any application or petition filed with DHS to both the applicants or petitioners and the attorney of record or accredited representative either through the mail or electronic delivery. However, on the Form G-28 and Form G-28I, unless otherwise provided in the applicable regulations or form instructions, the applicant or petitioner may instruct USCIS to send any original notice regarding an application or petition that he or she has filed with USCIS, including Requests for Evidence and notices of decision, to the official business address of their attorney of record or accredited representative as listed in the form. USCIS is also revising the G-28/28I to provide that, for represented parties, DHS will only send Form I-94, Arrival-Departure Record or any secure identity document, such as a Permanent Resident Card or Employment Authorization Document, for which he or she is

² DHS is the authoritative regulatory actor that is carrying out this rulemaking. USCIS is the component of DHS that manages its forms and publishes Federal Register notices under the Paperwork Reduction Act. Thus, USCIS is referenced as the actor in the Paperwork Reduction Act section of this preamble with regard to the form revisions.

approved, to the applicant or petitioner (where the individual is a self-petitioner/beneficiary), unless the applicant or self-petitioner/beneficiary instructs USCIS to send the secure identity document to the official business address of his or her attorney of record or accredited representative. See new 8 CFR 103.2(b)(19)(i)-(iii).

The revised Forms G-28 and G-28I have been submitted to the Office of Management Budget (OMB) for review and approval under procedures covered under the PRA. USCIS is requesting comments on this information collection for 30-days until [Insert date 30 days from date of publication in the FEDERAL REGISTER]. USCIS previously published a notice in the Federal Register in connection with this information collection on May 19, 2014 at 79 FR 28757.³ DHS received 8 comments in connection with this notice during the 60-day comment period. Public comments were submitted by 7 individuals and one organization. All of the comments are summarized and addressed as follows.

Two commenters requested that USCIS reprogram the Form G-28/28I that may be completed on a computer (“fillable form”) to permit more alphabetic characters than it currently permits attorneys to insert. Both of these commenters also requested that the fillable data fields permit the insertion of non-textual and special characters in addition to alphabetic characters. In response, USCIS cannot expand the number of characters permitted in the form’s data fields or permit symbols and special characters. The technology used for the bar coding of the forms and the upload of the forms incorporates data standards that are intended to insure the integrity of the data that is captured and

³ See Agency Information Collection Activities: Notice of Entry of Appearance as Attorney or Accredited Representative; Notice of Entry of Appearance as Attorney In Matters Outside the Geographical Confines of the United States, Form G-28; G-28I; Revision of a Currently Approved Collection, 79 FR 28757 (May 19, 2014).

facilitate the flow of the data into information collection, storage and reporting systems. The form data standards impose limits on the size of fields and the use of special characters based on what past results and research show are the parameters that provide the best results while still serving the needs of respondents and DHS. As such, the data fields cannot permit an unlimited number or type of characters. Nevertheless, USCIS believes the data elements can accommodate the requirements of most attorneys and accredited representatives. USCIS also provides a new Part 6. Additional Information section in the form to allow respondents to add or address any additional responses that may exceed the current field limits.

One commenter requested that USCIS add a space on the Form G-28/28I to indicate who is an authorized signatory for represented entities that are filing the related immigration benefit request. USCIS understands that who is an authorized signatory for an entity is not defined on all USCIS forms or by regulations and it may not always be clear. Nevertheless, Form G-28/28I is not the proper form for entities to use to designate an authorized signatory because it is used only to identify the petitioner/applicant's attorney or accredited representative of record to DHS. DHS and USCIS will explore whether this issue needs to be addressed in a future rulemaking, field office guidance, form instructions, or other policy instruments. Meanwhile, all benefit requests require the person signing the request to possess the authority to file the request on the applicant or petitioner's behalf. Where USCIS has reason to doubt the person's authority to sign, we may send a request for evidence as necessary to establish that the person has the requisite authority.

One commenter requested that USCIS move all signature blocks to the same place at bottom of the page. USCIS is uncertain what the commenter is requesting. The signature of the applicant, petitioner, or respondent precedes the signature of the attorney or accredited representative on the final page of the Form G-28/28I, and they are followed only by a section of the form which permits necessary additional information. The commenter is invited to submit clarifying comments in response to this notice.

One commenter complained that USCIS regularly fails to associate a new Form G-28/28I with the case when the form is filed to indicate that a pending, previously unrepresented filer, now has representation, or when the filer of the benefit request submits a new Form G-28/28I to indicate that it has a new representative. USCIS endeavors to make sure that each case reflects that it is subject to representation when a valid Form G-28/28I is filed. Nonetheless, USCIS processes millions of immigration benefit requests per year and much of the adjudication continues to be a paper-reliant process. As cases are adjudicated, files proceed through a number of steps, including intake, receipting, background and security checks, and routing to the proper office for further processing. As a result, immediately associating a subsequently filed Form G-28/28I with the client's case is not always possible. Nonetheless, USCIS appreciates the commenter's views and will strive to improve the precision of its process and service to its customers. If any attorney or accredited representative is concerned that his or her G-28/G-28I has not reached the appropriate USCIS office, we encourage you to contact the National Customer Service Line for information on how to the notify the appropriate USCIS office handling your client's case of your authorized representation.

One commenter has asked USCIS to revise the fillable form to allow the attorney to write in the state two-letter abbreviations without requiring that they search through an alphabetical listing of all state abbreviations in a drop-down menu. USCIS agrees with this comment. Thus, we will adopt the suggestion when we revise the form.

One commenter requested that the form permit a period to be placed in the address data element so, for example, addresses such as North Main Street may be N. Main, Court may be Ct., and Boulevard can be Blvd. As stated previously, USCIS follows standards in form development that insure the integrity of the data collected and uploaded into its systems. In addition, guidance from the U.S. Postal Service about addressing mail states: “Avoid commas, periods, or other punctuation—it helps your mailpiece speed through our processing equipment.” See <https://www.usps.com/ship/addressing-tips.htm>. Thus, the commenter’s suggestion is not adopted.

In the notice, USCIS requested comments on the new features of Form G-28/G-28I regarding the USCIS notification practices relating to represented parties that DHS is promulgating in this final rule. One commenter suggested that DHS should send all original correspondence, including notices, Permanent Resident Cards, and Employment Authorization Documents, to the attorney of record when USCIS has been informed that the filer is represented. The commenter suggested that only courtesy copies be sent to the represented party, because their clients often move and the mail may not make it to them at their new address.

DHS and USCIS understand and appreciate the commenters view. As stated elsewhere in this preamble, however, INS proposed in 1991 that all notices, cards and

documents be sent to the representative as the commenter suggests. Commenters largely opposed the proposal and argued that INS should continue to issue separate notices. See 59 FR 1455. INS agreed with the commenters and in the final rule required separate notices to be sent to the applicant or petitioner and his or her authorized representative. Id. at 1463. One commenter on this notice requested this change. The commenter's suggestion will not be adopted and the represented client will be permitted to choose where notices and secure identity documents are sent.

One commenter requested that USCIS add a column for Department of State filings in Part 3, section 1, of the Form G-28/28I. The comment did not expand on that request. Part 3 of the form is the Eligibility Information for the Attorney. USCIS knows of no edit to that section that would convey that the representation involves a filing at a U.S. consulate or embassy. In addition, while several USCIS immigration benefit requests permit filing at a U.S. consulate or embassy, the commenter did not provide a reason why such a distinction is necessary or helpful on Form G-28/28I and USCIS knows of none. Thus the suggestion is not adopted. USCIS welcomes a comment on this notice from the commenter clarifying the suggestion.

One commenter also requested that the Form G-28/28I be revised to permit the attorney to enter a foreign state and province in Section 3, parts 6d and 6e. Neither Form G-28 nor Form G-28I includes a Section 3, nor do they include a part 6d or 6e. Perhaps USCIS has misunderstood the comment, because both forms already permit inclusion of foreign states and provinces. Thus no changes are made in response to this comment. DHS invites the commenter to submit a scanned pen and ink markup of his suggested

edits in response to this 30-day notice that shows the changes the commenter had in mind.

One commenter requested that USCIS add Internet hyperlinks to the form and docket in addition to the docket number in all Federal Register notices published for a form revision as required by the PRA. USCIS appreciates how much more convenient it is to click on an Internet hyperlink that takes you directly to the form or part of a Web site upon which you wish to comment instead of being required to use one's intuition to navigate through the parts of a website to find a desired document. We would adopt this comment if we could. The timing and process of a Federal Register notice, however, precludes USCIS from knowing the precise uniform resource locator (URL) for viewing the forms until after it has been published. In addition, for ease in handling comments, and maintaining the docket, DHS wants to utilize the Federal Docket Management System docket at <http://www.regulations.gov> for the official versions of the forms and all comments received on each information collection request. If a form cannot be found on the Internet, a copy will be provided upon request as indicated in the Federal Register notice.

One commenter requests that USCIS change question 9 on the Form G-28/28I to ask for the telephone number at which the individual can best be reached, and not ask for a mobile number. USCIS understands the comment and agrees that there should be a field to capture the daytime telephone number for the applicant or petitioner as the primary contact number. USCIS, however, will not delete the mobile telephone number as a data element. USCIS asks for the mobile telephone number in Item Number 9 to facilitate USCIS text message updates to the applicant and petitioner or represented party.

For clarification, USCIS will add the words “(if any)” after the words “Mobile Telephone Number” to avoid any implication that a mobile telephone number is mandatory.

One commenter asked USCIS to specify what notices and documents the client will receive and what notices and documents the attorney will receive if no box is checked on Form G-28/28I, if only box 2a is checked, if only box 2b is checked, or if both boxes are checked on the form. The commenter did not indicate where or in what manner they are suggesting USCIS provide that information. Nevertheless, this final rule explains what type of notices, documents, and situations to which these changes apply much more in depth than what we provide in the instructions for Form G-28/28I or the Federal Register notice. USCIS believes the additional explanation in this final rule will clarify this issue for the commenter. No additional changes will be made in response to the comment.

One commenter requested that USCIS change the Form G-28/G-28I signature requirements to conform to that of U.S. Immigration and Customs Enforcement (ICE). The commenter stated that ICE does not require represented parties to sign Form G-28 when they are in ICE custody or detention. DHS regulations at 8 CFR 103.2(a)(3) and 8 CFR 292.4(a) require individuals to sign Form G-28/28I. The regulations provide no exemption for individuals who are in the custody of law enforcement. Thus, USCIS cannot adopt the commenter’s suggestion.

Finally, two commenters expressed general and strong support for the changes that USCIS proposed to make to the Form G-28. No commenters opposed the proposed changes.

When submitting comments on this information collection, your comments should

address one or more of the following four points.

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collection:

(1) Type of information collection: Revised information collection.

(2) Abstract: This information collection is used by DHS to determine eligibility of the individual to appear as an authorized attorney or accredited representative. Form G-28 is used by attorneys admitted to practice in the United States and accredited representatives of charitable organizations recognized by the Executive Office for Immigration Review, Board of Immigration Appeals. Form G-28I is used by attorneys admitted to the practice of law in countries other than the United States and applies only to representation in matters in DHS offices outside the geographical confines of the United States. If the representative is eligible, the form is filed with the case and the information is entered into DHS systems for whatever type of application or petition it may be.

(3) Title of Form/Collection: Notice of Entry of Appearance as Attorney or Accredited Representative and the Notice of Entry of Appearance as Attorney in Matters Outside the Geographical Confines of the United States.

(4) Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: Form G-28 and Form G-28I.

(5) Affected public who will be asked or required to respond: Business or other for-profit. The information collected on Form G-28 and Form G-28I allows an attorney to identify his or her representation of a person in matters either within the geographical confines of the United States, or outside of the geographical confines of the United States respectively.

(6) An estimate of the total number of annual respondents: For the paper Form G-28, 2,223,700 respondents with an average response time of .833 hour (50 minutes); for the USCIS ELIS-filed Form G-28, 281,950 respondents with an average response time of .667 hour (40 minutes); for the paper Form G-28I, 25,057 respondents with an average response time of .833 hour (50 minutes).

(7) An estimate of the total public burden (in hours) associated with the collection: 2,057,943 annual burden hours.

Written comments and/or suggestions regarding the estimated public burden and associated response time should be directed to DHS and to the OMB USCIS Desk Officer. Comments may be submitted to DHS as provided in the ADDRESSES section of this preamble and to the OMB USCIS Desk Officer via facsimile at 202-395-5806 or via e-mail at oir_submission@omb.eop.gov. When submitting comments by e-mail,

please make sure to add OMB Control Number 1615-0026 in the subject box. All submissions received must include the agency name, OMB Control Number and Docket ID.

List of Subjects in 8 CFR Part 103

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

Accordingly, DHS is amending part 103 of chapter I of title 8 of the Code of Federal Regulations to read as follows:

PART 103—IMMIGRANT BENEFITS; BIOMETRIC REQUIREMENTS: 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, 1356b; 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; Pub. L. 112-54.

Subpart A—Applying for Benefits, Surety Bonds, Fees

2. Section 103.2(b)(19) is revised to read as follows:

§ 103.2 Submission and adjudication of benefit requests.

* * * * *

(b) * * *

(19) Notification. (i) Unrepresented applicants or petitioners. USCIS will only send original notices and documents evidencing lawful status based on the approval of a benefit request directly to the applicant or petitioner if the applicant or petitioner is not represented.

(ii) Represented applicants or petitioners. (A) Notices. When an applicant or petitioner is represented, USCIS will send original notices both to the applicant or petitioner and his or her authorized attorney or accredited representative. If provided in this title, on the applicable form, or on form instructions, an applicant or petitioner filing a paper application or petition may request that all original notices, such as requests for evidence and notices of decision, only be sent to the official business address of the applicant's or petitioner's authorized attorney or accredited representative, as reflected on a properly executed Notice of Entry of Appearance as Attorney or Accredited Representative. In such instances, a courtesy copy of the original notice will be sent to the applicant or petitioner.

(B) Electronic notices. For applications or petitions filed electronically, USCIS will notify both the applicant or petitioner and the authorized attorney or accredited representative electronically of any notices or decisions. Except as provided in paragraph (b)(19)(ii)(C) of this section, USCIS will not issue paper notices or decisions for electronically-filed applications or petitions, unless:

(1) The option exists for the applicant or petitioner to request to receive paper notices or decisions by mail through the U.S. Postal Service, by indicating this preference in his or her electronic online account profile in USCIS's electronic immigration system; or

(2) USCIS, in its discretion, determines that issuing a paper notice or decision for an electronically-filed application or petition is warranted.

(C) Approval notices with attached Arrival-Departure Records. USCIS will send an original paper approval notice with an attached Arrival-Departure Record, reflecting

USCIS's approval of an applicant's request for an extension of stay or change of status, to the official business address of the applicant's or petitioner's attorney or accredited representative, as reflected on a properly executed Notice of Entry of Appearance as Attorney or Accredited Representative or in the address section of the online representative account profile in USCIS's electronic immigration system, unless the applicant specifically requests that the original approval notice with an attached Arrival-Departure Record be sent directly to his or her mailing address.

(iii) Secure identity documents. USCIS will send secure identification documents, such as a Permanent Resident Card or Employment Authorization Document, only to the applicant or self-petitioner unless the applicant or self-petitioner specifically consents to having his or her secure identification document sent to the official business address of the applicant's or self-petitioner's attorney of record or accredited representative, as reflected on a properly executed Notice of Entry of Appearance as Attorney or Accredited Representative or in the address section of the online representative account profile in USCIS's electronic immigration system.

* * * * *

Jeh Charles Johnson
Secretary.

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