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[Rules and Regulations]
[Page 45475-45477]
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Rules and Regulations
Federal Register
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[[Page 45475]]

DEPARTMENT OF STATE

22 CFR Parts 40 and 42

[Public Notice: 7085]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of State's regulations related to the application for an immigrant visa and alien registration, to offer a completely electronic application procedure as an alternative to submission of Form DS-230, the Application for Immigrant Visa and Alien Registration.

DATES: This rule is effective August 3, 2010.

FOR FURTHER INFORMATION CONTACT: Andrea Lage, Legislative and Regulations Division, Visa Services, 2401 E Street, NW., Department of State, Washington, DC 20520-0106, (202) 663-1399.

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

The Government Paperwork Elimination Act (GPEA) requires that, when possible, Federal agencies use electronic forms, electronic filing, and electronic signatures to conduct business with the public. For this reason, the Department of State developed and introduced an electronic application process for immigrant visa applicants to eventually replace the current paper-based application process, which consists of Parts 1 and 2 of Form DS-230, Application for Immigrant Visa and Alien Registration. While the Department will continue to accept the DS-230 when necessary, it proposes to eventually eliminate the DS-230 entirely and replace it with the DS-260, the Electronic Application for Immigrant Visa and Alien Registration, an electronic form designed to be completed and signed electronically.

What effect does the electronic application process have on the immigrant visa applicant?

The procedure is the same for the immigrant visa applicant except that he or she will not be required to print a form to take to the visa interview. All information entered into the DS-260 will be available to the National Visa Center and to the consular officer at the time of application processing and interviewing, thus simplifying the process for the applicant. The applicant is required to sign the DS-260 electronically at the time of submission by clicking a ``Sign and Submit Application'' box contained within the application. The applicant will also be required to swear under oath at the time of the interview that the information provided on the DS-260 is true and correct to the best of the individual's knowledge and provide a biometric signature in connection with the oath.

How does the applicant sign the form electronically?

The applicant will be required to click on the box designated ``Sign and Submit Application'' found within the certification section of the application.

How does the consular officer confirm the identity of an applicant who has submitted an electronic application (DS-260)?

Photos, passports, and fingerscans collected as part of the application process will identify the applicant.

How does the applicant certify that the information on the DS-260 is correct?

By signing the DS-260 electronically (i.e., clicking on the ``Sign and Submit Application'' button), the applicant certifies that the information provided is correct. The applicant will also be required to swear under oath to statements contained on the DS-260 at the time of the interview and to provide a biometric signature in connection with the oath.

Is the electronic signature binding on an immigrant visa applicant?

Yes. The electronic signature indicates that the applicant is familiar with and intends to be bound by the statements contained in the application and has answered all questions truthfully, under penalty of perjury.

Can a third party prepare the DS-260?

A third party may assist the applicant in preparing the DS-260, however the applicant must electronically sign the application himself or herself. The applicant must identify in the application any third party who has assisted in the preparation of the DS-260.

Regulatory Findings

Administrative Procedure Act

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rule making procedures set forth at 5 U.S.C. 553.

Regulatory Flexibility Act

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth at sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a substantial economic impact on a substantial number of small entities. This regulates individual aliens who seek consideration for immigrant visas and does not affect any small entities, as defined in 5 U.S.C. 601(6).

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency

[[Page 45476]]

rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121. The 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 the ability of United States-based companies to compete with foreign-based companies in domestic or import markets.

Executive Order 12866

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principals set forth in Executive Order 12866 and had determined that the benefits of the proposed regulation justify the costs. The Department does not consider the rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of \$100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

Executive Order 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Parts 40 and 42

Aliens, Foreign Officials, Immigration, Nonimmigrants, Passports and Visas.

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Accordingly, for the reasons set forth in the preamble, the Department of State amends 22 CFR Part 40 and 41 as follows:

PART 40--[AMENDED]

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1. The authority citation for Part 40 continues to read as follows:

Authority: 8 U.S.C. 1104.

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2. Section 40.1 is amended by revising paragraph (1)(2) to read as follows:

Sec. 40.1 Definitions.

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(1) * * *

(2) For an immigrant visa applicant, personally appearing before a consular officer and verifying by oath or affirmation the statements contained on Form DS-230 or Form DS-260 and in all supporting documents, having previously submitted all forms and documents required in advance of the appearance and paid the visa application processing fee.

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PART 42--[AMENDED]

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3. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 107-56, sec. 421.

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4. Section 42.63 is revised to read as follows:

Sec. 42.63 Definitions.

(a) Application Forms. (1) Application on Form DS-230 or Form DS-260 Required.--Every alien applying for an immigrant visa must make application, as directed by the consular officer, on Form DS-230, Application for Immigrant Visa and Alien Registration, or on Form DS-260, Electronic Application for Immigrant Visa and Alien Registration. This requirement may not be waived. Form DS-230 consists of parts I and II which, together, are meant in any reference to this Form.

(2) Application of alien under 14 or physically incapable. The application on Form DS-230 or on Form DS-260 for an alien under 14 years of age or one physically incapable of completing an application may be executed by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, the alien.

(b) Preparation of forms. The consular officer shall ensure that Form DS-230 or Form DS-260 and all other forms an alien is required to submit are fully and properly completed in accordance with the applicable regulations and instructions.

(c) Additional information as part of application. The officer may require the submission of additional information or question the alien on any relevant matter whenever the officer believes that the information provided in Form DS-230 or Form DS-260 is inadequate to determine the alien's eligibility to receive an immigrant visa. Additional statements made by the alien become a part of the visa application. All documents required under the authority of Sec. 42.62 are considered papers submitted with the alien's application within the meaning of INA 221(g)(1).

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5. Section 42.67 is revised to read as follows:

Sec. 42.67 Execution of application, registration, and fingerprinting.

(a) Execution of visa application: (1) Application fee.--A fee is prescribed for each application for an immigrant visa. It shall be collected prior to the execution of the application and a receipt shall be issued.

(2) Oath and signature on Form DS-230. The applicant shall be required to read the Form DS-230, Application for Immigrant Visa and Alien Registration, when it is completed, or it shall be read to the applicant in the applicant's language, or the applicant shall otherwise be informed of its full contents. Applicants shall be asked whether they are willing to subscribe thereto. If the applicant is not willing to subscribe to the application unless changes are made in the information stated therein, the required changes shall be made. The application shall then be sworn to or affirmed and signed by or on behalf of the applicant before a consular officer, or a designated officer of the American Institute of Taiwan, who shall then sign the application over the officer's title.

(3) Oath and signature on Form DS-260. The applicant shall be required to read the Form DS-260, Electronic Application for Immigrant Visa and Alien Registration, when it has been completed, or it shall be read to the applicant in the applicant's language, or the applicant shall otherwise be informed of its full contents, before the applicant electronically signs and submits the application to the Department. At the time of the applicant's interview the applicant shall be asked whether they are willing to subscribe thereto to the information provided on Form DS-260. If the alien is not willing to subscribe to the application unless changes are made in the information stated therein, the required changes shall be made. The application shall then be sworn to or affirmed and signed, biometrically, by or on behalf of the applicant before a consular officer, or a designated officer

[[Page 45477]]

of the American Institute of Taiwan, who shall then electronically sign the application.

(b) Registration. The alien shall be considered to be registered for the purposes of INA 221(b) and 203(g) upon the filing of Form DS-230 or Form DS-260, when duly executed, or the transmission by the Department to the alien of a notification of the availability of an immigrant visa, whichever occurs first.

(c) Fingerprinting. Every applicant for an immigrant visa must furnish fingerprints prior to the execution of Form DS-230 or Form DS-260.

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6. Section 42.81 is amended by revising paragraph (b) to read as follows:

Sec. 42.81 Procedure in refusing individual visas.

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(b) Refusal procedure. A consular officer may not refuse an

immigrant visa until either Form DS-230, Application for Immigrant Visa and Alien Registration, or Form DS-260, Electronic Application for Immigrant Visa and Alien Registration, has been executed by the applicant. When an immigrant visa is refused, an appropriate record shall be made in duplicate on a form prescribed by the Department. The form shall be signed and dated by the consular officer. The consular officer shall inform the applicant of the provision of law or implementing regulation on which the refusal is based and of any statutory provision of law or implementing regulation under which administrative relief is available. Each document related to the refusal shall then be attached to Form DS-230 for retention in the refusal files. Alternatively, each document related to the refusal shall be electronically scanned and electronically attached to Form DS-260 for retention in the electronic refusal files. Any documents not related to the refusal shall be returned to the applicant. The original copy of a document that was scanned and attached to the DS-260 for the refusal file shall be returned to the applicant. If the ground of ineligibility may be overcome by the presentation of additional evidence and the applicant indicates an intention to submit such evidence, all documents may, with the consent of the alien, be retained in the consular files for a period not to exceed one year. If the refusal has not been overcome within one year, any documents not relating to the refusal shall be removed from the file and returned to the alien.

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Dated: July 22, 2010.

Janice L. Jacobs,
Assistant Secretary, Bureau of Consular Affairs, Department of State.
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