

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 et seq.; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. At the end of Appendix C to Part 5, add the following new paragraph “5” to read as follows:

Appendix C—DHS Systems of Records Exempt from the Privacy Act

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5. The Department of Homeland Security Arrival and Departure Information System (ADIS) consists of centralized computerized records and will be used by DHS and its components. ADIS is the primary repository of data held by DHS for near real-time immigrant and non-immigrant status tracking through pre-entry, entry, status management, and exit processes, based on data collected by DHS or other Federal or foreign government agencies and used in connection with DHS national security, law enforcement, immigration, intelligence, and other DHS mission-related functions, and to provide associated testing, training, management reporting, planning and analysis, or other administrative uses. The information is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, state, local, tribal, foreign, or international government agencies.

Pursuant to exemptions 5 U.S.C. 552a(j)(2) of the Privacy Act, this system is exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a (k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H); and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request for release or disclosure is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is

the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (H) and (f) (Agency Requirements) because portions of this system are exempt from the individual access provisions of subsection (d) and thus would not require DHS to apply rules for records or portions of records which are exempted from access or amendment upon request. Access to, and amendment of, system records that are not exempt or for which exemption is waived may be obtained under procedures described in the related system of records notice (SORN) or Subpart B of this Part.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 15, 2007.

John Kropf,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E7–16461 Filed 8–21–07; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Parts 1, 264, and 299

[CIS No. 2354–05; DHS Docket No. USCIS–2005–0056]

RIN 1615–AB36

Application Process for Replacing Forms I–551 Without an Expiration Date

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

ACTION: Notice of proposed rulemaking.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS) issues Permanent Resident Cards (Forms I–551) to lawful permanent residents to serve as evidence of immigration status, registration, identity, and employment authorization, and as an entry document upon return from a trip outside of the United States. Currently, there are numerous lawful permanent residents who possess cards without expiration dates. USCIS intends to terminate the validity of such Forms I–551. This rule proposes to establish a 120-day period for lawful permanent residents who have Forms I–551 that do not bear expiration dates to apply for replacement cards. This rule also proposes to amend USCIS regulations to remove references to outdated application procedures for Forms I–551. The application process proposed by this rule will enable USCIS to issue more secure Forms I–551 to affected aliens, update cardholder information, conduct background checks, and electronically store applicants' biometric information that can be used for biometric comparison and authentication purposes consistent with the goals of the Enhanced Border Security and Visa Entry Reform Act of 2002.

In addition, USCIS proposes to notify the public of the termination date for Forms I–551 without expiration dates by a subsequent Notice published in the **Federal Register**. This rule also proposes to correct the title and edition date of the “Application to Replace

Lawful Permanent Resident Card,” Form I-90.

DATES: Written comments must be submitted on or before September 21, 2007.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS-2005-0056, 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 rfs.regs@dhs.gov. Include DHS Docket No. USCIS-2005-0056 in the subject line of the message.

- *Mail:* The Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS-2005-0056 on your correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.

- *Hand Delivery/Courier:* U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number is (202) 272-8377.

FOR FURTHER INFORMATION CONTACT: R. Mark Phillips, Supervisory Adjudications Policy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Ave., Suite 2304, Washington, DC 20529, telephone (202) 272-8350.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. The Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) also invite comments that relate to the economic or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to USCIS will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority to support such recommended change.

Instructions: All submissions received must include the agency name and DHS docket No. USCIS-2005-0056 for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. See

ADDRESSES above for information on how to submit comments.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected at the office of the Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529.

II. Background

A. Statutory and Regulatory Authority and Purpose

A lawful permanent resident (LPR) is an alien who has been granted the privilege of permanently living and working in the United States (lawful permanent resident status), either by adjusting status from a prior immigration status within the United States or by being admitted to the United States on an immigrant visa issued abroad by the U.S. Department of State (DOS). In most cases, USCIS must first approve an immigrant petition for the intending immigrant. Typically, these petitions are filed by an employer (e.g., Form I-140, Immigrant Petition for Alien Worker) or relative (Form I-130, Petition for Alien Relative). After the petition is granted, individuals living within the United States can apply for adjustment of status with USCIS or, for those in removal proceedings, the immigration court, using Form I-485, “Application to Register Permanent Residence or Adjust Status.” Individuals living abroad must file an application for an immigrant visa with a DOS consular office. See 22 CFR 42.63(a)(1) (DS-230, Application for Immigrant Visa and Alien Registration).

As part of the adjustment of status application process, applicants are required to appear at a local USCIS Application Support Center (ASC) and submit to registration and biometrics capture by USCIS. Biometrics capture currently includes fingerprint imaging and a digital photograph. Following approval of an adjustment application or after admission to the United States on an immigration visa, the new LPR will receive a Form I-551, Permanent Resident Card.¹ (commonly referred to as a “green card”). A Form I-551 is evidence of the holder’s authorization to live and work in the United States. See

¹ Form I-551 has two titles—Alien Registration Receipt Card and Permanent Resident Card—because it underwent a name change in January 20, 1999 from “Alien Registration Receipt Card” to “Permanent Resident Card,” and both versions of Form I-551 remain in circulation. 63 FR 70313 (Dec. 21, 1998).

Immigration and Nationality Act (INA) sections 264(d), 274A(b)(1)(B)(ii) (8 U.S.C. 1304(d), 1324a(b)(1)(B)(ii)); 8 CFR 264.1(b); 8 CFR 274a.2(b)(1)(v)(A)(2).

USCIS has been authorized to collect information and require the registration of aliens under section 262 of the INA, 8 U.S.C. 1302. Aliens registering with USCIS are required to provide information regarding the date and place of the alien’s entry into the United States; the activities in which the alien has been and intends to be engaged; the length of time the alien expects to remain in the United States; the police and criminal record, if any, of the alien; and any additional matters prescribed by DHS or DOS. INA sec. 264(a), 8 U.S.C. 1304(a). All registered aliens over 18 years of age must carry evidence of registration. INA sec. 264(e), 8 U.S.C. 1304(e). The failure to carry evidence of registration is a misdemeanor offense. *Id.* The Form I-551 is a form of evidence of registration issued to individuals who are LPRs. 8 CFR 264.1(b). The Form I-551 also serves as evidence of employment authorization and identity (see 8 CFR 274a.2(b)(1)(v)(A)(2)), and is used as an entry document upon return from a trip outside the United States (see 8 CFR 211.1(a)(2)).

Until 1989, Forms I-551 issued to LPRs did not contain expiration dates; therefore, those still in circulation do not require periodic replacement. See Memorandum from Commissioner James L. Buck on Alien Registration Documentation (Form I-551) (July 18, 1989).² In August 1989, however, the then-Immigration and Naturalization Service (INS) began issuing Forms I-551 with a 10-year expiration date, thereby requiring the cardholder to apply periodically for a new card, and, in so doing, appear before USCIS to update personal information, the photograph contained on the card, and other biometric information, such as fingerprints. See 8 CFR 264.5(a), (b), (c); Instructions to Form I-90, “Application to Replace Permanent Resident Card.” The Form I-551 replacement process gives DHS an opportunity to collect updated biometric information, conduct background checks, and issue updated cards.

When the 10-year Form I-551 was introduced in 1989, it was not administratively feasible for the INS to terminate the validity of all the millions of Forms I-551 in circulation that did not have expiration dates. USCIS now

² The public can access a copy of this memorandum from the public docket for this rulemaking at <http://www.regulations.gov>, DHS Docket No. USCIS-2005-0056.

has established processes to enable it to require LPRs with Forms I-551 without expiration dates to apply for new cards and terminate the validity of Forms I-551 without expiration dates. These processes include the establishment, in 1997 and 1998, of Application Support Centers (ASCs) across the United States that, through electronic scheduling of appointments, currently serve as efficient intake centers. In addition, biometrics began to be captured electronically in 1999. Finally, USCIS implemented a new, highly-automated filing procedure in May 2005 where applicants file their Forms I-90 with a U.S. Treasury Department-designated and operated lockbox provider that allows USCIS to process the applications and associated fees more expeditiously. As a result of these improvements, USCIS now has the capability to process a large influx of Forms I-90 over a short period of time.

The need to remove Forms I-551 without expiration dates from circulation is supported by the Enhanced Border Security and Visa Entry Reform Act of 2002 ("BSA"), Public Law 107-173, 116 Stat. 543 (May 14, 2002), amended by Public Law 108-299, 118 Stat. 1100 (Aug. 9, 2004). Section 302(b)(1) of the BSA, 8 U.S.C. 1732(b)(1), requires the Secretary of Homeland Security and the Secretary of State, to issue, not later than October 26, 2004, only machine-readable, tamper-resistant visas and other travel and entry documents that use biometrics identifiers. The Form I-551 falls within the scope of the BSA because, in addition to serving as evidence of registration, it also serves as an entry document for LPRs returning to the United States after a trip abroad. *See* 8 CFR 211.1(a)(2).

Prior to October 26, 2004, USCIS determined that the Form I-551 was compliant with the requirements of section 302(b)(1) of the BSA, 8 U.S.C. 1732(b)(1). The Form I-551, including the version that does not contain an expiration date, is machine-readable and contains tamper-resistant features and biometrics identifiers. While compliant, older versions of the Form I-551 without expiration dates do not contain the same level of tamper-resistant features and biometric identifiers as the current version. Forms I-551 with expiration dates must be renewed periodically, at which point USCIS can issue new cards containing updated technologies and biometrics information. This is not possible for Forms I-551 without expiration dates. Consequently, in order to ensure that the Forms I-551 in circulation contain the higher level of tamper-resistant

features and biometric identifiers that currently-issued cards contain, USCIS intends to terminate the validity of Forms I-551 without expiration dates. In addition, USCIS must ensure that it maintains current biometrics to enable it to conduct background checks on Form I-551 holders to confirm that they are compliant with the laws of the United States and that they are not a threat to national security. By periodically requiring all Form I-551 holders to apply for replacement cards, USCIS will be able to confirm this information and update background and biometric information.

For these reasons, USCIS proposes to set the form, manner and time that alien registration receipt cards are issued as authorized under section 264(d) of the INA, 8 U.S.C. 1304(d). The rule proposes to amend the regulations to require bearers of Forms I-551 without expiration dates to apply for a replacement card during a 120-day application period. This proposed rule also amends the regulations governing the application process for replacing Forms I-551 and makes technical corrections to the title of the application used to replace Forms I-551. Finally, this rule proposes a mechanism for terminating Forms I-551 without an expiration date by notice in the **Federal Register**.

B. Changes Made by This Rule

1. Requirement To Replace Forms I-551 Without Expiration Dates

This rule proposes to amend 8 CFR 264.5(c)(1) to add Form I-551 without an expiration date to the current list of outdated permanent resident cards that are required to be replaced by the filing of Form I-90, "Application to Replace Permanent Resident Card." The current list consists of Forms AR-3, AR-103, and I-151. This proposed amendment also would impose a 120-day application period for those LPRs holding Forms I-551 without an expiration date to apply for a replacement card. Through the Form I-90 application process, applicants would be required to provide their current biographic and biometric information. Based on this information, USCIS would conduct security checks to verify the identity of card recipients and continued eligibility for LPR status. USCIS would charge the standard, Form I-90 application fee and the biometric information collection service fee to cover all associated costs. The current fees are \$290 for the Form I-90 and \$80 for the biometric information collection

service.³ After completion of the 120-day application period, USCIS would set a termination date for the validity of such Forms I-551.

USCIS believes that an application period of 120 days will be sufficient for affected LPRs to learn of the new requirement and to complete the required Form I-90. USCIS plans to conduct an extensive outreach program to alert the affected group of LPRs of the need to apply for new cards. This outreach program would include issuing press releases, posting program announcements and question-and-answer (Q&A) documents to the USCIS website, distributing fliers and pamphlets at USCIS field offices, and conducting informational meetings with community-based organizations (CBOs). USCIS also will encourage applicants to file the Form I-90 electronically, rather than on paper. In general, USCIS can process I-90 applications submitted electronically faster than those applications filed on paper. The application form itself is not complicated and takes an estimated average time of 55 minutes to complete. USCIS seeks public comment on the application period.

After the 120-day application period expires, LPRs who failed to timely file Forms I-90 to replace their Forms I-551 would still be required to apply for a replacement card. An alien who fails to file a Form I-90 during this application period will still hold the status of an alien who has been lawfully admitted for permanent residence, since this status continues until it is terminated by entry of a removal order against the alien. 8 CFR 1.1(p). The alien will not, however, be in compliance with the requirement under section 264(e) of the Act, 8 U.S.C. 1304(e), that the alien must have in his or her possession at all times the evidence of his or her having registered. To obtain new evidence of registration, the alien will need to file a Form I-90. For any alien who does not file before the application period expires, however, USCIS would not be able to ensure that the alien will receive a new Form I-551 before the old Form I-551 is deemed to have expired. Strictly speaking, an alien who is at least 18 years old, who fails to file a timely Form I-90, and whose current Form I-551, therefore, expires, could be prosecuted for violating section 264(e).

³ If an applicant is able to demonstrate that he or she is unable to pay the standard Form I-90 fee and/or the biometric service fee associated with the filing of a Form I-90, he or she may request a fee waiver pursuant to 8 CFR 103.7(c). However, at present, USCIS does not waive the biometric service fee associated with the filing of a Form I-90. 69 FR 20528, 20529 (Apr. 15, 2004).

If convicted, the person could be sentenced to pay a fine of up to \$100, to imprisonment for up to 30 days, or both. It is also a misdemeanor under section 266(a) of the Act, 8 U.S.C. 1306(a), for an alien to fail to register as required. The alien can be prosecuted for failure to register, however, only if the failure to register is proven to be willful. USCIS does not anticipate that either of these criminal sanctions would be routinely used against aliens who fail to obtain new Forms I-551. The far more common action, should USCIS discover that an alien's Form I-551 has expired, will be to advise the alien to file a Form I-551 to obtain a new Form I-551. If the alien still fails to apply for a new Form I-551, it may become feasible to prove that the failure to do so is willful. USCIS anticipates, however, that aliens will, generally, comply with the requirement to obtain a new Form I-551, once they become aware of the requirement.

Once implemented as a final rule, LPRs affected by the requirements proposed under this rule may choose to apply for naturalization during the 120-day application period instead of a new Form I-551. However, USCIS would not be able to guarantee the completion of its adjudication of such naturalization applications before it terminates the validity of Forms I-551 without expiration dates. For those LPRs who have applied for, but do not receive, a grant of naturalization by the time USCIS sets the termination date, USCIS may issue interim evidence of registration.

2. Termination of the Validity of Forms I-551 Without an Expiration Date

Forms I-551 without an expiration date will remain valid throughout the 120-day application period that will be set by the final rule for replacing such Forms I-551. After the 120-day application period, USCIS will assess the number of applications received and the timeframes for application processing and card production. Once USCIS has processed the applications and issued replacement Forms I-551, USCIS will be in a position to set a date for terminating the validity of Forms I-551 without expiration dates. This rule proposes amendments to 8 CFR 264.5(c)(1) to provide that USCIS will announce the termination date after the 120-day application period through a Notice published in the **Federal Register**.

USCIS is proceeding in this way to minimize the possibility that applicants will not have received a replacement Form I-551 in hand when the validity of their previous Form I-551 is

terminated. USCIS cannot precisely estimate the number of applications it will receive to allow USCIS to plan exact timelines for card production and, in turn, a termination date. USCIS will only be able to set timelines based upon the actual volume of applications received. Issuing a separate Notice published in the **Federal Register** to advise the public of the termination of the validity of Forms I-551 without expiration dates would allow USCIS to implement a termination date that accommodates USCIS's processing needs and applicants' need for valid documentation.

In addition to establishing the mechanism for terminating Forms I-551 without expiration dates, this rule also clarifies that "Form I-551," when used elsewhere in the regulations, means a valid, unexpired Form I-551. To do so, this proposed rule would amend the list of terms defined in 8 CFR 1.1 by adding a limiting definition of Form I-551. Current regulations do not define Form I-551; instead, the regulations identify its uses. As stated earlier in this Supplementary Information, the regulations identify Form I-551 as an entry document in 8 CFR 211.1(a)(2), evidence of registration in 8 CFR 264.1(b), an immigration status document in 8 CFR 274a.12(a)(1), and a combination identity and employment authorization document in 8 CFR 274a.2(b)(1)(v)(A)(2). These references to Form I-551 apply to both the version of the card with an expiration date and the version of the card without an expiration date. This rule proposes introducing a limiting definition of Form I-551 rather than amend each reference so that it is clear to the public what constitutes a valid Form I-551 with respect to any of its uses, particularly following the termination date of the validity of Forms I-551 without an expiration date. This rule proposes to limit the term, "Form I-551" to mean the version of the form with an expiration date. See proposed 8 CFR 1.1(AA). A Form I-551 that does not bear an expiration date would not be valid for any use under the regulations unless otherwise specifically provided in the regulations. *Id.*

Until the validity of Forms I-551 without an expiration is terminated via Notice published in the **Federal Register**, this rule, at 8 CFR 264.1(c)(1), proposes that such Forms I-551 would remain valid. To do otherwise would have the effect of prematurely terminating the validity of Forms I-551. The current regulations permit the use of expired Forms I-551 in other circumstances as well. For example, an expired Form I-551 may be used for

entry to the United States and for presenting evidence of identity to an employer. 8 CFR 211.3 (entry); 8 CFR 274a.2(b)(1)(v)(B)(1)(v) (identity). Under this proposed rule, such Forms I-551 and those without expiration dates would remain valid in these instances.

It is important to note that the planned termination of Forms I-551 without expiration dates as proposed under this rule would not affect the immigration status and employment authorization of the holders of such cards; they remain LPRs and their employment is authorized incident to status. See INA 274A(h)(3)(A), 8 U.S.C. 1324a(h)(3)(A); 8 CFR 274a.12(a).

Under the requirements proposed in this rule, an LPR who fails to obtain a new Form I-551 by the I-551 termination date would not be in possession of a valid Form I-551. As a result, he or she may experience difficulties in meeting other requirements where valid documentation is necessary. For example, the LPR with an invalid Form I-551 may experience difficulty returning to the United States after a trip abroad or in obtaining new employment, and would not be in possession of valid registration documentation. See 8 CFR 211.1(a) (entry to the United States); 8 CFR 274a.2(b)(1)(v)(A) (employment); 8 CFR 264.1(b) (registration).

3. Changes to the Application Process for Replacing Forms I-551

This rule also proposes amending the regulations at 8 CFR 264.5(e) to update the application procedures for replacing Forms I-551. Current regulations at 8 CFR 264.5(e) cover the following application requirements: The documentation that must accompany Form I-90 upon filing, including the Permanent Resident Card being replaced, photographs, evidence of name change, and signature on the Data Collection Form (Form I-89); proper filing locations; fingerprint submissions; interviews; and waiver of the photograph, in-person filing, and signature requirements. Form I-90 processing procedures are also provided in the instructions to the Form I-90. Because the form instructions are more current, some of the information in the form instructions reflect changes to procedures that are not also reflected in 8 CFR 264.5(e). Whereas 8 CFR 264.5(e)(1) requires the submission of photographs and supporting documentary evidence with the application upon filing, current form instructions provide that this biometric information and evidence will be accepted by USCIS when the applicant

appears at an Application Support Center (ASC) (a USCIS facility that captures biometrics) following submission of the application. In addition, 8 CFR 264.5(e)(2)(i) provides that applicants must file Forms I-90 with the local office or Service Center having jurisdiction over their place of residence; instructions to the Form I-90 provide that the application must be submitted to the lockbox address specified in the instructions or filed electronically. Finally, while 8 CFR 264.5(e)(3)(i) only requires applicants who are replacing their Permanent Resident Cards because they have reached 14 years of age to submit to fingerprinting, the instructions to the Form I-90 require all applicants to appear at a USCIS ASC to submit to biometrics capture. Biometrics capture is a broader term than fingerprinting and covers fingerprints, photographs, and signatures. 69 FR 5088, 5090 (Feb. 3, 2004) (proposing a fee increase for biometric capture services, as well as other immigration and naturalization benefits and services).

To ensure that applicants receive clear and consistent filing information, this rule proposes to revise 8 CFR 264.5(e) in its entirety to remove outdated filing instructions, refer applicants to the instructions accompanying the form, and update biometrics capture requirements. Proposed 8 CFR 264.5(e) includes a paragraph on filing requirements, biometrics capture, and interviews. Rather than specify the filing requirements, this proposed rule refers applicants to the Form I-90 instructions. Proposed 8 CFR 264.5(e)(1). The Form I-90, including the filing instructions, is available on the USCIS Web site at <http://www.uscis.gov>. USCIS has determined that filing information is better placed in form instructions alone, which are reviewed and updated periodically and are more accessible to the public than regulatory provisions. By providing one source for stating the filing requirements, USCIS will avoid confusion and potential conflict between the requirements stated in the regulations and those stated in the form instructions.

This rule also proposes to amend USCIS regulations to reflect the biometrics capture requirements in the current Form I-90 instructions. Proposed 8 CFR 264.5(e)(2). Those instructions require all applicants to appear at an ASC for biometrics capture and pay a separate biometrics fee with the Form I-90 filing. By contrast, the current regulations require all applicants to provide a photograph and

signature, but only require individuals replacing their Form I-551 on the basis that they have turned 14 years of age to be subject to fingerprinting. See 8 CFR 264.5(e)(3)(i). This rule proposes to amend the regulations to require all applicants to submit to all of the types of biometrics capture, including fingerprinting. USCIS is proposing to expand the fingerprinting requirement to all Form I-90 applicants to enable USCIS to obtain current biometrics information needed for Form I-551 card production, conduct appropriate background checks before cards are issued, and store this information for biometrics comparison and authentication purposes required by section 302(b)(2)(A) of the BSA, 8 U.S.C. 1732(b)(2)(A).

Note, in particular, that this proposed rule would change the current provision in current 8 CFR 264.5(e)(3)(iii) concerning the USCIS authority to waive the submission of biometric information. In light of the security concerns arising from the September 11, 2001, terrorist attack on the United States, it has been USCIS policy not to exercise this authority by actually waiving the photograph or other requirements. See Memorandum from William R. Yates for Regional Directors and Center Directors, Alterations to the ADIT photograph requirements (September 4, 2003) Memorandum from Johnny N. Williams for Regional Directors, Waiver of Photograph for I-90 Applicants Seeking Replacement or Renewal Form I-551 (February 14, 2003). The Memoranda are included in the public docket for this rule at <http://www.regulations.gov>, DHS Docket No. USCIS-2005-56. A Form I-551 without a photograph of the person to whom it relates does not serve the essential purpose of the Form I-551: To provide for a ready means of identifying the actual person who has been lawfully admitted for permanent residence. In the case of an alien who is physically unable to come to a USCIS facility due to advanced age or physical infirmity, the practice has not been actually to waive the photograph and other biometrics requirements. Instead, the practice has been to provide an alternative means for collecting this evidence. The most common practice is to permit the applicant to provide passport-style photographs, police clearance letters, and other appropriate evidence.

The rule, once final, would retain the provisions governing waivers of the biometrics capture requirement in current 8 CFR 264.5(e)(3)(iii) and interviews in current 8 CFR 264.5(e)(3)(ii), except that the provisions

are renumbered to new 8 CFR 264.5(e)(2) and (e)(3). In addition, the rule simplifies the text of these provisions; no substantive changes are proposed.

This rule also proposes technical corrections to 8 CFR 299.1 and 299.5 by adding the updated edition date (03/31/05) and title of the Form I-90 to those sections. The Form I-90's proper title is "Application to Replace Permanent Resident Card." The form was revised to reflect this title; however, the regulations listing immigration forms were never revised.

III. Regulatory Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBRFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). DHS has considered the impact of this rule on small entities and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The individual lawful permanent residents to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). There is no change expected in any process as a result of this rule that would have a direct effect, either positive or negative, on a small entity. Accordingly, this rule, once final, will not have a significant economic impact on a substantial number of small entities.

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments in the aggregate of \$100 million or more in any one year. However, as discussed below under Executive Order 12866, this action will result in the expenditure by the private sector of more than \$100 million over the period of time that the program is in place. Only holders of Forms I-551, "Permanent Resident Cards," without expiration dates will bear the costs of this rule.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule, once final, will result in an effect on the economy of

approximately \$290 million in the first year after this rule is published, \$24 million in the second year after this rule is published, and \$13 million in the third year after this rule is published. This increase is directly associated with the expected increase in the number of Forms I-90 and amount of accompanying filing and biometrics fees that USCIS will receive to replace Forms I-551, "Permanent Resident Cards," without expiration dates prior to termination of such cards.

D. Executive Order 12866

This rule has been identified as an economically significant rule under Executive Order 12866, section 3(f)(1), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review. USCIS has assessed both the costs and benefits of this rule, as required by Executive Order 12866, and has made a reasoned determination that the benefits justify the costs.

USCIS estimates that 750,000 persons will apply for a replacement Form I-551, "Permanent Resident Card," in accordance with this rule. The most likely estimated cost of this rule for these persons is \$327 million over a three-year period of analysis (2007–2009). Over the three-year period of analysis, the present value cost of this proposed rule is approximately \$267 million at 7%. A three-year period of analysis was chosen since those aliens who are required by this rulemaking to obtain a new Form I-551 will do so only in 2007, 2008, and 2009. The \$327 million estimate consists of \$278 million in fees associated with the Form I-90, \$42 million in opportunity cost for an applicant's time, and \$7 million in transportation costs for round trip transit to the nearest USCIS Application Support Center (ASC). The calendar year breakdown of these costs is \$290 million for Calendar Year (CY) 2007 (\$278 million in fees plus \$12 million in applicant time and transportation costs), \$24 million for CY 2008 (applicant time and transportation costs), and \$13 million for CY 2009 (applicant time and transportation costs). The cost assessment, which includes a discussion of both the maximum and most likely estimated costs of this rule, follows.

In an effort to improve the security of the documents that USCIS issues for use by the public, this rule calls for a 120-day period, beginning 30 days from the date of publication of the final rule in the **Federal Register**, within which time LPRs holding Forms I-551 without expiration dates must apply to replace

their card. To apply, they must file Form I-90 with a fee of \$290 and an additional biometrics capture fee of \$80. The total current cost is \$370.

Those who apply for a replacement Form I-551 under this rule must submit biometrics that will be used for background checks and stored for future use. Based on technology and processes being developed by DHS, stored biometrics will be available for access by DHS for other immigration and law enforcement uses (a security benefit to the public at large), and these applicants might not need to return to an ASC for purposes of triggering certain background checks such as FBI fingerprints, should they decide to naturalize or apply for a replacement Form I-551 in the future.

The primary benefit to the government resulting from this rule is enhanced national security. Once the program is complete, all LPRs will have Forms I-551 with late-model technology. The biometrics of the rightful holder will be electronically stored in a secure DHS database that is easily retrievable and that can be used for data matching purposes among the DHS components. The card itself will bear a current photograph, facilitating its use by employers and the travel industry.

USCIS considered a number of alternatives to this proposed rulemaking. One alternative was for USCIS to maintain the current regulations. However, such an action would result in the agency's failure to fully meet the goals of section 303(b) of the BSA, 8 U.S.C. 1732(b). Another alternative was to expire pre-1989 cards, but lower the fees for replacing the cards. However, under this alternative, the agency would fail to meet its general obligation to ensure that the fees for such services are established at rates that allow the agency to recoup its costs, and would unfairly transfer the costs of this program to all other applicants for benefits and services from USCIS. See OMB Circular A-25 (available at <http://www.whitehouse.gov/omb/circulars/a025/a025.html>).

USCIS data indicates that the number of Forms I-551 without an expiration date issued, minus the number of persons known to have held these cards before naturalizing, is 1.9 million. Consequently, the maximum number of aliens impacted by this rule is 1.9 million.⁴ The direct cost to each applicant for replacement of a card

⁴ As stated above, and as explained below, USCIS only anticipates that 750,000 persons will apply for a replacement card. This discussion uses the figure 1.9 million instead to reflect the maximum number of persons that may be impacted by this rule.

under this program is \$370 in fees (\$290 for the application plus \$80 for the biometrics capture fee). These costs fall exclusively upon individuals who possess cards issued before August of 1989 and which do not have an expiration date. Because these persons would not otherwise have to acquire new cards, and would not otherwise have all their biometrics captured, we believe these fees would be generated only by this new rule. Based upon these figures, this rule will cost applicants a maximum of \$703 million in fees ($\370×1.9 million).

Furthermore, each member of this group would be required to spend two hours and 55 minutes complying with this rule. USCIS estimates that each applicant will spend ten minutes reading the application Form I-90 instructions. Each applicant also will take ten minutes to complete the form and thirty-five minutes to assemble and submit the form, for a total of 55 minutes of each applicant's time.

Applicants will also be required to travel to the nearest USCIS Application Support Center (ASC). While travel times and distances will vary, USCIS estimates the average round-trip to an ASC will be 20 miles, and that the average time for that trip will be an hour. It will take an average of one hour for an applicant to wait for service, and to have his or her biometrics collected.

Total time for each applicant to comply with this requirement is two hours and fifty-five minutes. The Bureau of Labor Statistics reports in its 2006 national compensation survey that the average, U.S.-employed person earned \$19.29 an hour (BLS Web site). In addition, the average wage of this large group should mimic the national average. Consequently, USCIS believes that \$19.29 an hour is a reasonable proxy to use to value the opportunity cost of time for the applicants subject to this rule. The total cost for applicant time spent is calculated as \$107 million (1.9 million persons \times 2.916 hours \times $\$19.29$).

Additionally, there is the cost of travel. USCIS anticipates most applicants will drive privately-owned vehicles to the ASCs. GSA's published decision of February 1, 2007, on this subject calculates the cost of operating a privately-owned vehicle as 48.5 cents a mile. (GSA Web site, reporting on findings for February 1, 2007). Therefore, USCIS calculates the transportation costs as \$19 million (1.9 million persons \times 48.5 cents per mile \times 20 miles).

Thus, if all holders of cards issued without expiration dates filed a replacement application, the total

maximum cost of the program would consist of \$703 million in fees, \$107 million in time, and \$19 million in transportation costs. The total maximum cost of compliance to this rule by 1.9 million persons is \$829 million (\$703 million + \$107 million + \$19 million).

Notwithstanding, experience from the replacement program for an earlier, now-invalid version of the Permanent Resident Card (Form I-151) has shown that a portion of these applicants will apply for naturalization rather than replace their Permanent Resident Cards and thus significantly reduce the overall cost of this rule. Other holders of affected cards may be deceased, may have relinquished their United States residence, or may have previously replaced their cards for other reasons, such as the replacement of a lost or mutilated card. In addition, some potential applicants may choose not to spend time and money to replace their cards, because they do not habitually travel outside the United States. Some potential applicants, in spite of USCIS's public relations efforts, may not learn of the requirement that such cards be changed. Also, some cards may be in possession of persons who obtained them fraudulently or who have committed serious criminal offenses

since obtaining their cards. USCIS theorizes that these persons may choose not to take the perceived risk of contacting DHS and of calling into question their right to be in the United States.

USCIS accordingly estimates the most likely outcome of this program is that 750,000 persons issued cards without expiration dates, but not yet recorded as naturalized, will apply for replacement cards under this rule. USCIS calculates the cost of the primary estimate as \$327 million (\$829 million \times 0.395 or 750,000 of 1.9 million maximum applicants). Based on the formulas provided above, USCIS's \$327 million estimate consists of \$278 million in fees associated with the Form I-90, \$42 million in opportunity costs for an applicant's time, and \$7 million in transportation costs for round trip transit to the nearest USCIS Application Support Center.

Accounting Statement

As required by OMB Circular A-4 (available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.html>), in Table 1, USCIS has prepared an accounting statement showing the classification of the expenditures associated with this economically significant rule. The table

provides USCIS's primary or most likely estimate of the dollar amount of these costs expressed on an annualized basis and also includes USCIS's maximum annualized estimate at both the three percent and seven percent discount rates. The period of analysis is three years (2007, 2008, and 2009). Based on USCIS's primary or most likely estimate, the undiscounted total cost of this rule will be approximately \$327 million. USCIS anticipates that the duration of the I-551 replacement card program implemented by the final rule will be three (3) years. Consequently, when the undiscounted total cost is broken down into calendar years, this rulemaking is expected to cost \$290 million in 2007, \$24 million in 2008, and \$13 million in 2009. Below is the expected annualized cost of this rulemaking, at both 3% and 7%, over the three year period of analysis. Enhanced security and the capabilities accompanying the storage of full fingerprint sets for subsequent retrieval constitute non-quantified benefits.

OMB #: 1615-0082

Agency/Program Office: DHS/USCIS

Rule Title: Application Process for

Replacing Forms I-551 without an

Expiration Date

RIN#: 1615-AB36

CLASSIFICATION OF EXPENDITURES, CY 2007 THROUGH CY 2009

[2006 Dollars]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
BENEFITS	Enhanced Border Control, More secure alien registration document			Preamble
Monetized benefits				
Annualized quantified, but un-monetized, benefits	NA	NA	NA	NA
(Unquantified) benefits	Enhanced Security.			
COSTS				
Annualized monetized costs at 3 percent	\$89.07 million per year.			
Annual monetized costs at 7 percent	\$99.85 million per year.			
Annualized quantified, but un-monetized, costs	NA	NA	NA	NA
Qualitative (unquantified) costs				
TRANSFERS				
Annualized monetized transfers: "on budget"	NA	NA	NA	NA
From whom to whom?				
Annualized monetized transfers: "off-budget"	NA	NA	NA	NA
From whom to whom?				
Category	Effects			Source citation (RIA, preamble, etc.)
Effects on State, local, and/or Tribal governments	NA	NA	NA	NA
Effects on small businesses	NA	NA	NA	NA
Effects on wages	NA	NA	NA	NA
Effects on growth	NA	NA	NA	NA

E. Executive Order 13132

This proposed rule will not have substantial direct effects on the States, on the relationship between the National 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, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 Civil Justice Reform

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

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. This rule includes an approved information collection. The OMB control number for this collection is 1615–0082 and is contained in 8 CFR 299.5. However, this rule will increase the number of respondents and the burden hours, and public costs. Accordingly, when this rule is finalized, USCIS will submit to OMB for approval an 83–C Change Worksheet that reflects any change in Form I–90 filings and any related changes to the public costs associated with this collection.

List of Subjects*8 CFR Part 1*

Administrative practice and procedure, Immigration.

8 CFR Part 264

Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

PART 1—DEFINITIONS

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

Authority: 8 U.S.C. 1101; 8 U.S.C. 1103; 5 U.S.C. 301; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

2. Section 1.1(aa) is added to read as follows:

§ 1.1 Definitions.

* * * * *

(aa) The term *Form I–551* means a Permanent Resident Card, or an Alien Registration Receipt Card, issued on a Form I–551 with an expiration date. Unless otherwise specifically provided in this chapter I, a Form I–551 is not valid for any use under this chapter I unless it bears an expiration date and is unexpired.

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

3. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1303–1305; 8 CFR part 2.

4. Section 264.5 is amended by:
a. Revising paragraph (c)(1); and by
b. Revising paragraph (e).
The revisions read as follows:

§ 264.5 Application for a replacement Permanent Resident Card.

* * * * *

(c) * * *

(1) A permanent resident must apply on Form I–90 to replace a prior edition of the Alien Registration Receipt Card issued on Form AR–3, AR–103, or I–151. A permanent resident must apply between October 22, 2007 and February 19, 2008 on Form I–90 to replace a prior edition of Form I–551 without an expiration date. A permanent resident who fails to apply during this 120-day

application period still must apply to replace a Form I–551 without an expiration date but might not be issued a replacement Form I–551 before the termination of the validity of all Forms I–551 without an expiration date. USCIS will announce the termination date of the validity of Forms I–551 without an expiration date in a Notice published in the **Federal Register**. Forms I–551 without an expiration date will remain valid until such termination date.

* * * * *

(e) *Application process*—(1) *Filing requirements*. Form I–90 must be filed in accordance with the instructions on the form.

(2) *Biometrics capture*. If the application is properly filed, the applicant will receive a notice to appear in person at a USCIS facility for biometrics capture. In the case of an applicant who is physically incapable, because of the applicant's confinement due to advanced age or physical infirmity, of appearing at a USCIS facility for biometrics capture, USCIS may excuse the applicant's personal appearance at a USCIS facility and provide an appropriate alternative means for obtaining the applicant's photograph or other biometrics information.

(3) *Interview*. An applicant may be required to appear in person before an immigration or consular officer and be interviewed under oath in connection with this application.

* * * * *

PART 299—IMMIGRATION FORMS

5. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103; 8 CFR part 2.

6. Section 299.1 is amended in the table by revising the entry for Form “I–90”, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title and description
I–90	03/31/05	Application to Replace Permanent Resident Card

§ 299.5 Display of control numbers.

7. Section 299.5 is amended in the table by revising the entry for Form “I–90”, to read as follows:

* * * * *

Form No.	Form title	Currently assigned OMB control No.
I-90	Application to Replace Permanent Resident Card	1615-0082

Michael Chertoff,
Secretary.

[FR Doc. E7-16311 Filed 8-21-07; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-200-28869; Airspace
Docket No. 07-ACE-11]

Proposed Establishment of Class E5 Airspace; Tarkio, MO

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Gould Peterson Municipal Airport, Tarkio, MO. The development of an Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to serve flights operating into the Gould Peterson Municipal Airport during Instrumental Flight Rules (IFR) conditions makes this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing an approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before October 1, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You must identify the docket number FAA-2007-28869/Airspace Docket No. 07-ACE-11, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT:

Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329-2522.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2007-28869/Airspace Docket No. 07-ACE-11." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at <http://www.faa.gov> or the Superintendent of Documents' Web page at <http://www.access.gpo.gov/nara>.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8793. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267-9677, to request a copy of Advisory Circular No.

11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Tarkio, MO. Controlled airspace is necessary to accommodate aircraft using the new RNAV(GPS) IAP at Gould Peterson Municipal Airport. This action would enhance the safety and management of aircraft operations at Gould Peterson Municipal Airport, Tarkio, MO.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006, and effective September 16, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows: