

TABLE X—LABEL, MARKING, OR CODE

Defects	Categories	
	Major	Minor
Not specified method .....	101	.....
Missing (when required) .....	102	.....
Loose or improperly applied .....	.....	201
Torn or mutilated .....	.....	202
Torn or scratched, obliterating any markings on the label .....	103	.....
Text illegible or incomplete .....	.....	203
Incorrect .....	104	.....
In wrong location .....	.....	204

**Subpart E—[Removed]**

9. In part 42, Subpart E—Miscellaneous, consisting of §§ 42.140, 42.141, 42.142, and 42.143, is removed.

Dated: November 9, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9–27430 Filed 11–18–09; 8:45 am]

BILLING CODE 3410–02–P

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**8 CFR Parts 103 and 235**

[USCBP–2008–0097]

RIN 1651–AA73

**Establishment of Global Entry Program**

**AGENCY:** U.S. Customs and Border Protection; DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Pursuant to section 7208(k) of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended, U.S. Customs and Border Protection (CBP) proposes to establish an international trusted traveler program, called Global Entry. This voluntary program would allow CBP to expedite clearance of pre-approved, low-risk air travelers into the United States. CBP has been operating the Global Entry program as a pilot at several airports since June 6, 2008. Based on the successful operation of the pilot, CBP now proposes to establish Global Entry as a permanent voluntary regulatory program.

**DATES:** Comments must be received on or before January 19, 2010.

**ADDRESSES:** You may submit comments, identified by docket number USCBP–2008–0097, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Border Security Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC 20001–4501.

*Instructions:* All submissions received must include the agency name and docket title for this rulemaking, and must reference docket number USCBP–2008–0097. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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 during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Fiorella Michelucci, Office of Field Operations, 202–344–1220 or Daniel Tanciar, Office of Field Operations, 202–344–2818.

**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. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rule,

explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

**II. Background and Purpose**

Section 7208(k) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), 118 Stat. 3638, as amended by section 565 of the Consolidated Appropriations Act, 2008, 121 Stat. 1844, codified at 8 U.S.C.

1365b, requires the Secretary of Homeland Security (Secretary) to create a program to expedite the screening and processing of pre-approved, low-risk air travelers into the United States. Under the IRTPA, the Secretary shall ensure that the international trusted traveler program includes as many participants as practicable by establishing a reasonable cost of enrollment, making program enrollment convenient and easily accessible, and providing applicants with clear and consistent eligibility guidelines.

See 8 U.S.C. 1365b(k)(3). The program shall also incorporate available technologies, such as biometrics and e-passports, and security threat assessments.

Section 7208(k) of the IRTPA requires DHS to initiate a rulemaking action to establish the criteria to participate in the program and to set the appropriate fee for such participation. This rule meets that requirement by proposing, among other things, the criteria for participation in this voluntary program and the fee necessary to cover the costs of the program.

*A. Existing Trusted Traveler Programs*

CBP currently operates several regulatory and non-regulatory international trusted traveler programs. These programs provide expedited travel for pre-screened populations and operate under the Port Passenger Accelerated Service System (PORTPASS), a legacy system of the former Immigration and Naturalization Service, described in 8 CFR 235.7. CBP currently operates three PORTPASS

programs: the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), which allows expedited entry at specified land border ports; the Free and Secure Trade program (FAST), which, among other things, provides expedited border processing for known, low-risk commercial drivers<sup>1</sup>; and the I-68 program, which allows expedited entry process for boaters entering the United States from Canada for recreational purposes. Although considered a PORTPASS program, the I-68 program is described separately in 8 CFR 235.1(g). CBP also operates NEXUS, a trusted traveler program limited to travel between the U.S. and Canada. NEXUS is authorized by 8 U.S.C. 1753. Additional details regarding all of these programs can be found at <http://www.cbp.gov>.

#### B. Global Entry Pilot

In addition to the permanent traveler programs described above, CBP is currently conducting a pilot program called Global Entry. The pilot began at three airports on June 6, 2008. See 73 FR 19861 and 73 FR 30416. On August 13, 2008, CBP announced the expansion of the pilot to four additional airports (for a total of seven airports) and to additional terminals at one of the original three airports. See 73 FR 47204. The pilot was expanded to thirteen additional airports (for a total of twenty airports) on August 10, 2009. See 74 FR 152. The Global Entry pilot utilizes fingerprint biometrics technology to verify registered program participants and automated kiosks to provide participants expedited entry into the United States at any of the pilot's airport locations. Applicants apply online through the Global On-line Enrollment System (GOES) at <http://www.globalentry.gov>. Applicants pay a non-refundable fee of \$100 when applying to the program. All applicants undergo a background check, including an interview by a CBP officer, before being enrolled in the pilot program.

The pilot program is generally limited to U.S. citizens, U.S. nationals, and U.S. lawful permanent residents.<sup>2</sup> On April

23, 2009, however, CBP published a notice in the **Federal Register** announcing that it had expanded eligibility for participation in the Global Entry pilot to include citizens of the Netherlands who participate in Privium, an expedited travel program in the Netherlands, provided they otherwise satisfy the requirements for participation in the Global Entry pilot program. See 74 FR 18586.

Only individuals 14 years of age or older may apply to enroll in Global Entry. Individuals may not qualify if they:

- Are inadmissible to the United States under applicable immigration laws;
- Provide false or incomplete information on their application;
- Have been convicted of a criminal offense in any country;
- Have been found in violation of customs or immigration laws; or
- Fail to meet other Global Entry requirements.

An individual who is not accepted into the Global Entry pilot program has three avenues for inquiry: (1) DHS Travelers Redress Inquiry Program (DHS TRIP); (2) directly through the enrollment center; and (3) the CBP Trusted Traveler Ombudsman.

For more information about specific details of the pilot program, please refer to the initial notice published on April 11, 2008, in the **Federal Register** at 73 FR 19861. Additional details also may be found on the Web site: <http://www.globalentry.gov>.

The Global Entry pilot is operating successfully. The automated kiosks are working smoothly with no current major technical issues or problems. From June 2008 through March 2009, over 8,000 applications were filed and 7,923 participants were enrolled. CBP is approving applications for participation more quickly than was expected. The average approval time for each application has been less than one week—better than the initial estimates of ten to fourteen days. Public reaction has been positive, and CBP has received comments during the pilot lauding the program.<sup>3</sup>

DHS has conducted a statistical analysis based on data for 1,575 flights with at least one Global Entry passenger

onboard from November 19, 2008 to January 9, 2009. That analysis indicates that participation in Global Entry may reduce a passenger's wait time by up to seventy percent—or an estimated seven minutes on average. This analysis further demonstrates that participation in Global Entry reduces the variability of wait times, with less than one percent of Global Entry passengers waiting longer than twenty minutes and approximately ten percent of all U.S. citizens and lawful permanent residents waiting longer than twenty minutes. We found that Global Entry participation varies by airports, airlines and region from where the flight originates.

#### III. Establishing a Permanent Global Entry Program

CBP has determined, based on the success of the Global Entry pilot program, that the pilot should be established as a permanent program and that it should be expanded to include additional airport locations.

Accordingly, pursuant to section 7208(k) of the IRTPA, CBP is proposing to amend its regulations to establish Global Entry as a permanent international trusted traveler program. As proposed under this rule, the permanent Global Entry program will operate in a similar manner as the Global Entry pilot program. CBP anticipates that the existing Global Entry pilot will continue to operate until this proposal is adopted as a final rule. In the interim, CBP will continue to evaluate the pilot and will take into consideration the results of this evaluation, including all comments received by CBP in response to the **Federal Register** notices regarding the pilot, when formulating the details of the permanent Global Entry program in any final rulemaking.

Current participants in the pilot program automatically will be enrolled in the Global Entry program for five years from the date of enrollment in the pilot program. Participation in Global Entry would continue to be voluntary.

This permanent Global Entry program, like the Global Entry pilot program, will facilitate the movement of low-risk, frequent air travelers arriving from outside the United States. The Global Entry program will provide an expedited inspection and examination process for pre-approved, pre-screened travelers by allowing them to proceed directly to automated Global Entry kiosks upon their arrival in the United States. This permanent Global Entry program, along with the other trusted traveler programs that CBP operates, is consistent with CBP's strategic goal of

<sup>1</sup> FAST was established in 2002 under bilateral agreements between the United States and Canada (northern border) and the United States and Mexico (southern border).

<sup>2</sup> A U.S. citizen means a person who acquired U.S. citizenship at birth or upon naturalization as provided by law and who has not subsequently lost such citizenship. A U.S. national is (A) a citizen of the United States or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. 8 U.S.C. 1101 (a)(21). A U.S. lawful permanent resident is a person who has been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

Such status terminates upon entry of a final administrative order of exclusion, deportation or removal. 8 CFR 1.1(p); 8 U.S.C. 1101(a)(20).

<sup>3</sup> For example, the Executive Director of the U.S. Chamber of Commerce commented "[T]he Chamber commends U.S. Customs and Border Protection for announcing that it would pilot the Global Entry international trusted traveler (IRT) program \* \* \* CBP's proposal to pilot Global Entry at three major U.S. airports is an important first step in what the Chamber hopes will be a nationwide program."

facilitating legitimate travel while securing the homeland.

#### A. Eligibility Requirements

##### 1. Persons Eligible To Enroll

U.S. citizens, U.S. nationals, and U.S. lawful permanent residents would be eligible for participation in the program. Children 14 years of age and older, but under the age of 18, must have the consent of a parent or legal guardian to participate in Global Entry. Children under the age of 14 are not eligible to participate in the program.

Additionally, CBP plans to expand the program to include nonimmigrant aliens from other countries via joint arrangements between CBP and its respective counterparts in foreign governments. CBP is working with other countries that operate comparable international trusted traveler programs to enter into reciprocal arrangements for the purposes of expanding eligibility for Global Entry. For example, under the Global Entry pilot program, CBP has entered into an arrangement with the Netherlands to allow citizens of the Netherlands who participate in Privium, an expedited travel program operated by the Government of the Netherlands, to participate in the Global Entry pilot.

Pursuant to the terms of these reciprocal arrangements, both CBP and the respective government of the nonimmigrant alien applicant would vet these applicants during separate enrollments. Each government would determine if the individual is eligible to participate in its respective program. To receive CBP approval to participate in Global Entry, applicants from these other countries would have to satisfy all the requirements specified in this proposed rule. CBP will announce any expansions of the Global Entry regulatory program through such reciprocal arrangements, as well as any substantial modifications or retractions (*i.e.*, cancellations of such arrangements) by publication of a notice in the **Federal Register**. CBP anticipates that each country that participates under the Global Entry pilot would also participate under the permanent Global Entry program.

##### 2. Disqualifying Factors

An individual is ineligible to participate in Global Entry if such individual is inadmissible to the United States under the U.S. immigration laws. An individual may also be ineligible to participate in Global Entry if CBP determines that the individual presents a potential risk for terrorism, criminality or smuggling, or is otherwise not a low-risk traveler. This risk determination

will be based in part upon an applicant's ability to demonstrate past compliance with laws, regulations, and policies. An applicant may not qualify for participation if any of the following risk factors are applicable:

- The applicant provides false or incomplete information on the application;
- The applicant has been arrested for, or convicted of any criminal offense or has pending criminal charges or outstanding warrants;
- The applicant has been found to be in violation of any customs, immigration, or agriculture regulations, procedures, or laws in any country;
- The applicant is the subject of an investigation by any Federal, State, or local law enforcement agency;
- The applicant is inadmissible to the United States under U.S. immigration laws and regulations, including applicants with approved waivers of inadmissibility or parole documentation;
- The applicant cannot satisfy CBP of their low-risk status or meet other program requirements; or
- The applicant has been identified on a government watch list.

#### B. Program Application and Selection Process

The application for the Global Entry program will continue to be available on-line through the Global On-Line Enrollment System (GOES) at <http://www.globalentry.gov>. The application (the same application currently used for the pilot) would be completed and submitted electronically through GOES. Alternative application options, such as providing enrollment data via private sector entities, will be considered by CBP. If and when CBP provides for alternative application processes, CBP will announce those options to the public.

There would be three steps to the application process:

**Step 1: Completion of on-line application:** Applicants would complete and submit the program application on-line through GOES and submit payment of a non-refundable fee through [Pay.gov](http://Pay.gov). Applicants would be provided with a GOES on-line account in order to assist them and permit CBP to communicate with the applicant during the application process.

**Step 2: Application review and notification:** CBP officers would review the applicant's information for processing to ensure that the applicant is in compliance with U.S. customs and immigration laws and regulations. CBP also will compare the information provided in the application against

government criminal and antiterrorism databases. CBP may also use foreign government databases and sources to the extent permitted by relevant U.S. laws and regulations, and to the extent allowed under applicable arrangements with foreign governments.

Applicants should check their GOES account after the application is filed to ensure that CBP received the application. After review, the applicant will receive notification from CBP through the applicant's GOES account regarding the status of the application. CBP will also send a message to the e-mail address provided by the applicant at the time of the application to check their GOES account. Applicants meeting the eligibility criteria will be notified that they can schedule an interview as indicated below. If the application is denied, instructions will be given on how to proceed if the applicant wishes to seek additional information.

**Step 3: Interview and Processing at Enrollment Center:** Applicants will be notified that they can schedule an interview at an Enrollment Center using the GOES link to the on-line scheduling feature. Applicants would choose an Enrollment Center at any Global Entry airport location. The list of Enrollment Centers and contact information for those locations can be found at <http://www.globalentry.gov>. As operation of the program expands, CBP would add additional enrollment locations to the list.

At the Enrollment Center, CBP officers would review the information provided by the applicant and conduct an interview of the applicant. The applicant would be required to bring to the interview originals of the identification documentation he or she specified in the application. Usually, this will be a U.S. passport or Lawful Permanent Resident Card (Form I-551) or, in the case of aliens, a foreign passport (and visa, if applicable). During this process, CBP officers would perform the following procedures: verify identity and proof of citizenship, U.S. national or lawful permanent resident status, as applicable; confirm admissibility to the United States; confirm the validity of travel documents; confirm that the candidate meets eligibility requirements; electronically capture a full set of ten fingerprints; conduct various checks, including a check for criminal records in law enforcement databases (which involves submission of the fingerprints to the Federal Bureau of Investigation (FBI)); and take a digital photograph of each applicant for the Global Entry database. CBP may consider whether to

require the submission of other biometrics in the future.

Although an application can be made for a child (14 years of age or older, but under 18) to travel with a non-custodial adult, a child appearing at the Enrollment Center for processing must be accompanied by at least one custodial adult (parent or guardian). At the interview, the CBP officer may request appropriate documentary evidence of parental custody from the parent or guardian seeking to enroll the child in the Global Entry program.

After the interview, applicants will be notified of their acceptance into the Global Entry program by a message posted to their GOES account. If an applicant is denied participation in Global Entry, a notice will be sent to the applicant's GOES account advising him or her of the denial, with instructions on how to proceed if the applicant wishes to seek additional information.

Each Global Entry participant would be screened against the relevant criminal and anti-terrorism government databases each time he or she uses the Global Entry kiosk. CBP would also continue to conduct periodic checks for all participants during the entire period of enrollment to ensure that CBP can quickly take action should new information be made available that would disqualify the participant.

The required immigration status and citizenship of participants must be valid at all times. Participants must possess required immigration and identity documents at all times during their travel, including at the time of arrival to participating airports.

#### C. Redress

An individual whose application is denied or whose participation is suspended or terminated has three possible methods for redress. These processes do not create or confer any legal right, privilege or benefit, but are wholly discretionary on the part of CBP. The methods of redress include:

##### (1) Enrollment Center

The applicant/participant may contest his or her denial, suspension or removal in writing to the enrollment center where that individual's interview was conducted, or if the applicant/participant has not been interviewed, he or she can write to the CBP Ombudsman as described in paragraph (3) below. The enrollment center addresses are available at <http://www.globalentry.gov>. The letter must be received by CBP within 30 calendar days of the date provided as the date of suspension or removal. The individual should write on the envelope "Redress Request RE:

Global Entry." The letter should address any facts or conduct listed in the notification from CBP as contributing to the denial, suspension or removal and why the applicant/participant believes the reason for the action is invalid. The applicant/participant may also contact the enrollment center where the interview was conducted if it is believed that the denial, suspension or revocation was based upon inaccurate information. The individual should also include any reasonably available supporting documentation. After review, CBP will inform the individual of its redress decision. The decision of CBP in the matter is final. If the individual's request for redress is successful, the individual's eligibility to participate in Global Entry will resume immediately.

##### (2) DHS Travelers Redress Inquiry Program (DHS TRIP)

The applicant/participant may choose to initiate the redress process through DHS TRIP. An applicant/participant seeking redress may obtain the necessary forms and information to initiate the process on the DHS TRIP Web site at [http://www.dhs.gov/xtrvlsec/programs/gc\\_1169676919316.shtm](http://www.dhs.gov/xtrvlsec/programs/gc_1169676919316.shtm), or by contacting DHS Trip by mail at the address on this Web site.

##### (3) Ombudsman

If an applicant/participant believes the denial, suspension or revocation was based upon inaccurate information he or she may contact the CBP Trusted Traveler Ombudsman at the address on the Web site <http://www.globalentry.gov> and following the link for "Trusted Traveler Program Denials."

#### D. Enrollment Period and Payment of Fee

Congress has authorized the Secretary to charge a reasonable fee for participation in the program. See 8 U.S.C. 1365b(k)(3)(B). Pursuant to this authority, CBP is proposing a fee of \$100. This non-refundable fee would be paid to CBP at the time of application through the Federal Government's on-line payment system, Pay.gov. Pay.gov is a system by which parties can make secure electronic payments to many Federal Government agencies. If the applicant is enrolled, this fee would cover his or her participation in the Global Entry Program for a total of five years. CBP currently charges a fee of \$100 to apply for participation in the Global Entry pilot. Participants in the Global Entry pilot would not have to reapply or pay an additional fee to participate in the Global Entry program. Upon implementation of the Global

Entry program, participants in the Global Entry pilot would be automatically enrolled in the Global Entry program for five years from the date of their enrollment in the pilot program.

CBP believes that the \$100 proposed fee is reasonable because, as explained in more detail below, it covers only the application processing costs associated with this program, including the submission of applicant fingerprints to the FBI, and provides a benefit to the applicant. Applicants who are enrolled as Global Entry participants will receive the benefit of expedited clearance through airports at which the Global Entry program is operational, for a period of five years, provided their participation is not terminated before the end of the five-year period.

##### (1) Alternatives To Charging a Fee

The only alternative to charging a fee to cover CBP's application processing costs associated with the Global Entry program would be for the United States Government, and specifically CBP, to pay for the costs out of its general appropriated funds, without reimbursement. However, IRTPA authorizes the Secretary to charge a reasonable fee and not charging a fee would be contrary to stated Congressional and Administration policy that a fee should be charged when a specific benefit is rendered. 31 U.S.C. 9701; Office of Management and Budget (OMB) Circular A-25, User Charges (Revised), section 6, 58 FR 38142 (July 15, 1993). Therefore, CBP has determined that charging a fee for the subject service is the only viable alternative.

##### (2) Amount of the Fee

CBP has determined that \$100 is the amount necessary to recover the costs incurred by CBP for the processing of the application, including the submission of the applicant's fingerprints to the FBI, and other administrative costs of the program.

However, the program costs covered by this fee do not include inspection costs incurred by CBP each time a Global Entry participant enters the United States. Such costs are covered by the various inspection user fees already charged by CBP. See 8 U.S.C. 1356(d); 19 U.S.C. 58c(a)(5).

The application processing costs covered by the fee are provided as follows:

UNIT COST OF PROCESSING AN  
APPLICATION FOR GLOBAL ENTRY  
[5-year cycle]

Unit Cost FBI Fingerprints .....	\$17.25
Unit Cost of Vetting an Applicant .....	38.04
Unit Cost of Issuing Sticker .....	1.00
Unit Cost of Establishing, Operating, and Maintaining an Enrollment Center .....	32.53
Unit Cost of GES Servers, Storage, Enhancements and Upgrades .....	11.14
Grand Total Unit Cost of Processing a Global Entry Application .....	99.96

**Notes for Table**

1. Position costs for application processing is calculated by multiplying .5 by the hourly rate of a U.S. Customs and Border Protection Officer (CBPO), (Total position cost = \$144,000, including training, equipment and other costs). A 3.16% pay raise and benefits weighted average rate was applied.
2. A 3% inflation rate adjustment was applied for all costs.
3. GES is the acronym for CBP's Global Enrollment System. Application for the Global Entry program will occur in the Global On-Line Enrollment System (GOES), which is part of GES. The GES is housed in the CBP Secure network.

**Other Assumptions**

CBPOs working at the enrollment centers will perform other functions when no application processing-related work exists.

Unit cost is based on regular hours. Overtime is excluded.

Total enrollees = 250,000 (This total would be reached in a five-year cycle).

As the above table indicates, the total calculated costs to CBP, per applicant, are \$99.96. To simplify accounting tasks for both applicants and CBP, and to allow for the possibility of small variations in the estimated costs compared to the actual costs, CBP is setting the cost per applicant at one hundred dollars. This fee will be non-refundable.

Based on the above considerations, CBP is proposing to amend its regulations at 8 CFR 103.7 to add language prescribing a fee of one hundred dollars (\$100) to apply for participation in the Global Entry program.

**E. Participating Airports**

The Global Entry program, like the existing Global Entry pilot program, would allow participants expedited entry into the United States at any of its airport locations by using automated kiosks located in the Federal Inspection Services (FIS) area of each participating airport. Although it is anticipated that the Global Entry program would

eventually operate at most major international airport locations, the program initially would be limited to those airports that are participating in the Global Entry pilot. The airports chosen for Global Entry are those which typically experience the largest numbers of travelers arriving there from outside of the United States. The Global Entry pilot is currently operational at the following seven airports: John F. Kennedy International Airport, Jamaica, New York, (JFK); George Bush Intercontinental Airport, Houston, Texas (IAH); Washington Dulles International Airport, Sterling, Virginia (IAD); Los Angeles International Airport, Los Angeles, California (LAX); Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia (ATL); Chicago O'Hare International Airport, Chicago, Illinois (ORD); and Miami International Airport, Miami, Florida (MIA).

Expansions to new airports would be announced to the public in a **Federal Register** notice and on the Web site <http://www.globalentry.gov>, just as they are currently announced for the pilot. An updated list of all the airports at which Global Entry is operational will be available at <http://www.globalentry.gov>.

**F. Arrival Procedures for Global Entry Participants**

A Global Entry participant would not have to wait in the regular passport control primary inspection lines. After arriving at the FIS area, the participant would proceed directly to the Global Entry kiosk. A sticker affixed to the participant's passport at the time of acceptance in Global Entry would provide visual identification that the individual can be referred to the kiosk. These stickers will be made available to participants at the enrollment center located in each participating airport. Global Entry would use fingerprint biometrics technology to verify a participant's identity and confirm his or her status as a participant in the program. In addition to fingerprint biometrics, CBP may offer the use of additional biometric technologies as options for identity verification at Global Entry kiosks to participants when the technologies become available to the Global Entry program.

After arriving at the kiosk, the participant would activate the system by inserting either a machine-readable passport or a machine-readable Lawful Permanent Resident card into the document reader. On-screen instructions would guide the participant to provide fingerprints electronically. These fingerprints would be compared with the fingerprint biometrics on file to

validate identity and confirm that the individual is a participant of the program. The participant would also be prompted to look at the camera for a digital photograph and to respond to several questions by use of a touch-screen. CBP Officers stationed in booths next to the kiosk lanes would oversee activities at the kiosk. If a problem occurs with a participant's validation, the participant will be directed to proceed to the front of the regular inspection lines.

When the procedures at the kiosk have been successfully completed, the participant would be issued a transaction receipt. This receipt would be provided to the CBP Officer along with the passport or Lawful Permanent Resident card at the exit control area for examination.

When using the Global Entry kiosks, Global Entry participants would be required to declare all articles being brought into the United States pursuant to 19 CFR 148.11.

If Global Entry participants declare any of the following, the kiosk would redirect the user to the nearest open passport control primary inspection station:

1. Commercial merchandise or commercial samples, or items that exceed the applicable personal exemption amount;
2. More than \$10,000 in currency or other monetary instruments (checks, money orders, etc.), or foreign equivalent in any form; or
3. Restricted/prohibited goods, such as agricultural products, firearms, mace, pepper spray, endangered animals, birds, narcotics, fireworks, Cuban goods, and plants.

Pursuant to 19 CFR part 162, Global Entry participants may be subject to random examination or further examination and inspection at any time during the arrival process if determined necessary by CBP. Each successful use of Global Entry would constitute a separate and completed inspection and application for entry by the participants on the date that Global Entry is used.

All aliens seeking admission to the United States generally must be inspected by the examining officer in order to determine admissibility and shall present required documentation. See 8 U.S.C. 1225(a)(3), (b), 1182(a)(7); 8 CFR part 235. Additionally, pursuant to 8 U.S.C. 1185(b) and 8 CFR part 235, a person claiming U.S. citizenship must establish that fact to the examining officer's satisfaction and must present a U.S. passport or other acceptable documentation. The advance inspection and identification, when the enrolled participant satisfies the conditions and

requirements set forth in this section, satisfies the reporting requirements of 8 CFR 235.1(a). Each successful use of Global Entry constitutes a separate and completed inspection and application for entry by the program participants on the date Global Entry is used.

#### *G. Electronic System for Travel Authorization (ESTA)*

The Visa Waiver Program (VWP) enables citizens and nationals from participating countries to travel to and enter the United States for business or pleasure for up to ninety days without obtaining a visa. Nonimmigrant aliens who wish to travel to the United States under the VWP are required to obtain a travel authorization via ESTA (Electronic System for Travel Authorization) in advance of departure to the United States. To obtain travel authorization, applicants must submit biographical data and answer eligibility questions. ESTA is accessible online at <https://esta.cbp.dhs.gov> for citizens and eligible nationals of VWP countries.

The Global Entry regulatory program is separate from VWP. Therefore, when CBP expands the program to include persons other than U.S. citizens, U.S. nationals, and U.S. lawful permanent residents, any Global Entry participants who are nonimmigrant aliens from a participating VWP country (e.g., the Netherlands) and who wish to travel to the United States under the VWP would be required to receive a travel authorization via ESTA in advance of departure to the United States. Global Entry applicants who have not already received a travel authorization via ESTA will be able to do so as part of the Global Entry application and enrollment process. During the Global Entry enrollment and interview phase the applicant will be asked whether he or she is in possession of an ESTA number. If not in possession of an ESTA number, the applicant will be asked questions from which it can be determined whether the applicant is VWP-eligible, and a determination regarding ESTA authorization will be made.

### **IV. Statutory and Regulatory Requirements**

#### *A. Executive Order 12866*

This rule is not an “economically significant” rulemaking action under Executive Order 12866 because it will not result in the expenditure of more than \$100 million in any one year. This rule, however, is a significant regulatory action under Executive Order 12866; therefore, this proposed rule has been reviewed by the Office of Management and Budget.

Global Entry is a voluntary program that provides a benefit to the public by speeding the CBP processing time for participating travelers. Travelers who are otherwise admissible to the United States will be able to enter or exit the country regardless of whether they participate in Global Entry. This evaluation explores the potential costs and benefits of this voluntary trusted traveler program.

As noted above, CBP estimates that over a five year period, 250,000 enrollees will be processed, an annual average of 50,000 individuals. CBP will charge a fee of \$100 per applicant and estimates that each application will require 40 minutes (0.67 hours) of the enrollee’s time to search existing data resources, gather the data needed, and complete and review the application form. Additionally, an enrollee will experience an “opportunity cost of time” to travel to an Enrollment Center upon acceptance of the initial application. We assume that one hour will be required for this time spent at the Enrollment Center and travel to and from the Center, though we note that during the pilot program, many applicants coordinated their trip to an Enrollment Center with their travel at the airport. We have used one hour of travel time so as not to underestimate potential opportunity costs for enrolling in the program. We use a value of \$28.60 for the opportunity cost for this time, which is taken from the Federal Aviation Administration’s *Economic Values for FAA Investment and Regulatory Decisions, A Guide*. (July 3, 2007. See Table ES–1). This value is the weighted average for U.S. business and leisure travelers. For this evaluation, we assume that all enrollees will be U.S. citizens, U.S. nationals, or Lawful Permanent Residents.

Using these values, we estimate that the cost per enrollee is \$147.76 (\$28.60 per hour × 1.67 hours + \$100 enrollment fee). If there are 50,000 enrollees annually, this is a cost of \$7,388,100 per year. Over five years, the total costs will be approximately \$32 million at a seven percent discount rate (\$35 million at a three percent discount rate).

As noted previously, Global Entry will allow for expedited processing for those travelers enrolled in the program. DHS currently estimates that, based on its statistical analysis from two-months worth of data, those enrolling in Global Entry will save seven minutes on average. Monetizing those benefits is difficult; entry processing times vary widely among airports and times of day, and the number of trips that the Global Entry benefit will be used for any given individual is unknown. During some

peak periods at some international airports, entry processing times can be an hour or more. Avoiding such lines by using Global Entry kiosks and avoiding all other entry processing would likely represent a clear savings in time for a typical participant.

Because participation in the Global Entry program is voluntary, the perceived benefits of reduced wait time would have to equal or exceed the cost of the program over five years. Potential enrollees will determine whether or not it is worthwhile to enroll in the program based on their individual preferences, which will be influenced by the number of trips they make and the typical wait times they experience when entering the United States. The most likely participants in the program are those that plan to make multiple trips over five years, typically experience long waits at the airports they use, or are averse to the perceived hassle or inconvenience of standing in line for entry processing. Using the estimates presented above, if the annualized cost of the program is \$36 (total cost of \$147.76 amortized over five years at a seven percent discount rate) and the average time saved per trip is seven minutes (monetized savings of \$3.34 per trip), then an average traveler would need to make approximately eleven trips annually through participating airports to consider enrollment in the Global Entry program worth the cost and estimated burden.

Additionally, those travelers not enrolled in Global Entry could experience a small benefit in time-savings as well. If Global Entry participants are not standing in the regular entry processing lines, non-enrollees could experience reduced wait times.

Finally, the costs for CBP to administer this program are not included here because they will be recovered through the \$100 enrollment fee. CBP could experience benefits by speeding entry processing and avoiding time needed to process proven low-risk travelers.

#### *B. Regulatory Flexibility Act*

This section examines the impact of the proposed rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 604), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small

governmental jurisdiction (locality with fewer than 50,000 people).

CBP has considered the impact of this proposed rule on small entities. The individuals to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). CBP acknowledges that there are certain "sole proprietors" who would be considered small businesses and could be affected if they chose to participate in Global Entry. However, Global Entry is voluntary and the fee to enroll in Global Entry is one hundred dollars plus the opportunity cost of the individual applying. CBP believes such an expense would not rise to the level of being a "significant economic impact," particularly as the expense need not be incurred unless the enrollee chooses to incur it. However, we welcome comments on that assumption. The most helpful comments are those that can give us specific information or examples of a *direct impact* on small entities. If we do not receive comments that demonstrate that the rule causes small entities to incur direct costs, we may, during the process of drafting the final rule, certify that this action does not have a significant economic impact on a substantial number of small entities.

#### C. Unfunded Mandates Reform Act of 1995

This proposed 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 are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### D. Executive Order 13132

The 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, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### E. Paperwork Reduction Act

Information is being collected from voluntary applicants in order to assess whether the individuals meet the eligibility requirements and are otherwise deemed to be low-risk travelers and therefore may

appropriately participate in the voluntary Global Entry program. This information will be collected through the Global On-Line Enrollment System (GOES). This collection of information is required and authorized by 8 U.S.C. 1365b and 8 CFR part 235 for use in international trusted traveler programs. Additionally, the information being collected is necessary to satisfy the requirements regarding examination of aliens applying for admission to the United States pursuant to 8 U.S.C. 1225(a)(3), 8 U.S.C. 1225(b) and 8 U.S.C. 1182(a)(7), and U.S. Citizens entering the United States pursuant to 8 U.S.C. 1185(b).

An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. OMB has already approved the collection of the Global Entry application information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB Control Number 1651-0121. A revision request will be submitted to OMB to reflect the additional respondents that will be submitting the requisite information through GOES.

The burden estimates for collecting and entering information for the GOES on-line application for Global Entry, interview time, and travel time are presented below:

*Estimated Number of Respondents:* 50,000.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Total Annual Responses:* 50,000.

*Estimated Time per Response:* 40 minutes.

*Estimate Total Annual Burden Hours:* 33,500.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Border Security Regulations Branch, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC 20001-4501.

Comments are invited on:

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

(b) The accuracy of the agency's estimate of the burden of the collection of the information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operations, maintenance, and purchases of services to provide information.

#### F. Privacy

The on-line application for Global Entry collects information similar to that collected on applications for CBP's other trusted traveler programs (e.g., NEXUS, SENTRI and FAST). The information collected through the on-line application is deposited into the Global Enrollment System (GES), as the system of record for CBP trusted traveler programs. The personal information provided by the applicants, including the fingerprint biometrics taken at the time of the personal interview, may be shared with other government and law enforcement agencies in accordance with applicable laws and regulations. The personal information that is collected through GOES is maintained in a Privacy Act system of records (GES) that was last published in the **Federal Register** (71 FR 20708) on April 21, 2006. CBP has also published two Privacy Impact Assessments that cover this program on the DHS Privacy Office Web site, <http://www.dhs.gov/privacy> [GES, GOES]. In addition, an update addressing on-line functionality of the enrollment process was posted to the DHS Privacy Office Web site on November 1, 2006. Applicant biometrics (fingerprints, photographs) are stored in the DHS Automated Biometric Identification System (IDENT). The IDENT Privacy Act System of Records notice was last published on June 5, 2007.

#### G. Signing Authority

The signing authority for this document falls under 8 U.S.C. 1365b(k) pertaining to the authority of the Secretary of Homeland Security to develop and implement a trusted traveler program to expedite the travel of previously screened and known travelers across the borders of the United States.

#### List of Subjects

##### 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of

information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

#### 8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

### Proposed Amendments to CBP Regulations

For the reasons set forth in this document, it is proposed to amend 8 CFR parts 103 and 235 as follows:

#### PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 would continue to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 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.

2. In § 103.7, paragraph (b)(1) is amended by adding at the end of the list of forms (after the entry for “Form N–644”) the following: “Global Entry. For filing an application for Global Entry—\$100.”

#### PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

3. The authority citation for part 235 would continue to read as follows:

**Authority:** 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731–32; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458 as amended by section 546 of Pub. L. 109–295 and by section 723 of Pub. L. 110–53).

4. A new section 235.7a is added to read as follows:

##### § 235.7a Global Entry program.

(a) *Program Description.* The Global Entry program is a voluntary international trusted traveler program consisting of an integrated passenger processing system that will expedite the movement of low-risk air travelers into the United States by providing an expedited inspection process for pre-approved, pre-screened travelers. In order to participate, a person must meet the eligibility requirements specified in this section, apply in advance, undergo pre-screening by CBP, and be accepted into the program. The Global Entry program allows participants expedited entry into the United States at selected airports identified by CBP at <http://www.globalentry.gov>. Participants will be processed through the use of CBP-approved technology that will include

the use of biometrics to validate identity and to perform enforcement queries.

(b) *Definitions.* For purposes of this section:

*Nonimmigrant Alien* means any person not a citizen or U.S. national who has been granted the right to reside temporarily in the United States. The individuals making up this category are described at section 101(a)(15) of the Act.

*U.S. Citizen* means a person who acquired U.S. citizenship at birth or upon naturalization as provided by law and who has not subsequently lost such citizenship.

*U.S. Lawful Permanent Resident* means, in accordance with section 101(a)(20) of the Act, a person who has been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws and whose status has not changed. Such status terminates upon entry of a final administrative order of exclusion, deportation, or removal.

*U.S. National* means a citizen of the United States or a non-citizen who owes permanent allegiance to the United States as provided in section 101(a)(22) of the Act.

(c) *Program Eligibility Criteria—(1) Eligible Individuals.* The following individuals, who hold a valid, machine-readable passport or a valid, machine-readable Lawful Permanent Resident Card, may apply to participate in Global Entry:

(i) U.S. citizens, U.S. nationals, and U.S. lawful permanent residents absent any of the disqualifying factors described in paragraph (c)(2) of this section.

(ii) Certain nonimmigrant aliens from countries that have entered into reciprocal arrangements with CBP concerning international trusted traveler programs absent any of the disqualifying factors described in paragraph (c)(2) of this section, and subject to the conditions set forth in the particular arrangement. Individuals from a country that has entered into such an arrangement with CBP may be eligible to apply for participation in Global Entry only after announcement by CBP by publication of a notice in the **Federal Register**. The notice will include the country, the scope of eligibility of nonimmigrant aliens from that country (whether citizens of the foreign country only or also non-citizens) and other conditions that may apply based on the terms of the arrangement. CBP may change or terminate these arrangements without prior notice to the public, but will announce such actions as soon as

practicable by publication of a notice in the **Federal Register**.

(iii) Children 14 years of age and older, but under the age of 18 who meet the eligibility criteria of paragraph (c)(1)(i) or (ii) of this section, must have the consent of a parent or legal guardian to participate in Global Entry. Children under the age of 14 are not eligible to participate in the program.

(2) *Disqualifying Factors.* An individual is ineligible to participate in Global Entry if CBP determines that the individual presents a potential risk for terrorism, criminality or smuggling, or is otherwise not a low-risk traveler. This risk determination will be based in part upon an applicant’s ability to demonstrate past compliance with laws, regulations, and policies. An applicant may not qualify for participation if any of the following risk factors are applicable:

(i) The applicant provides false or incomplete information on the application;

(ii) The applicant has been arrested for, or convicted of any criminal offense or has pending criminal charges or outstanding warrants;

(iii) The applicant has been found in violation of any Customs, Immigration, or Agriculture regulations, procedures, or laws in any country;

(iv) The applicant is the subject of an investigation by any Federal, State, or local law enforcement agency;

(v) The applicant is inadmissible to the United States under the immigration laws, including applicants with approved waivers of inadmissibility or parole documentation;

(vi) The applicant cannot satisfy CBP of their low-risk status or meet other program requirements; or

(vii) The applicant has been identified on a Government watch list.

(d) *Participating Airports.* The Global Entry program allows participants expedited entry into the United States at the locations identified at <http://www.cbp.gov>. Expansions of the Global Entry program to new airports will be announced by publication in the **Federal Register** and at <http://www.cbp.gov>.

(e) *Program Application.*

(1) Each applicant must complete and submit the program application electronically through the Global On-Line Enrollment System (GOES). The application and application instructions for the Global Entry program are available at <http://www.globalentry.gov>.

(2) Each applicant must pay a non-refundable fee in the amount set forth at 8 CFR 103.7(b)(1) for “Global Entry” at the time of application. The fee covers participation for a total of 5 years

(provided participation is not suspended or terminated by CBP prior to the end of the 5 years, which is the length of the membership period). The fee is to be paid to CBP at the time of application through the Federal Government's on-line payment system, Pay.gov.

(3) Each applicant may apply to renew participation up to 90 days prior to the close of the original membership period but before the expiration date to prevent a lapse in participation.

(4) Each applicant may check the status of his or her application through his or her personal GOES account.

(f) *Interview and Enrollment.*

(1) After submitting the application, the applicant will be notified by CBP to schedule an in-person interview at a Global Entry Enrollment Center. Applicants may schedule the interview by using GOES and may select an Enrollment Center from the list presented.

(2) Each applicant must bring to the interview with CBP the original of the identification document specified in his or her application.

(3) CBP will collect a full set of ten fingerprints to conduct biometric based background checks.

(4) Each applicant must allow CBP to take a digital photograph of the applicant.

(5) An applicant may be required to provide additional biometric information that CBP may require to participate in the program.

(6) After the interview, each applicant will be notified by CBP of his or her acceptance or denial in Global Entry by a message posted to his or her personal GOES account.

(g) *Valid Machine-Readable Passport or Valid Lawful Permanent Resident Card.* Each participant must possess a valid, machine-readable passport or valid, machine-readable U.S. Lawful Permanent Resident Card (Form I-551). Machine-readable passports must include two optical-character, typeface lines at the bottom of the biographical page of the passport that help to quickly read the biographical information on the passport. Machine-readable U.S. Lawful Permanent Resident Cards must also include two optical-character, typeface lines that help to read the information on the card.

(h) *Arrival Procedures.* In order to utilize the Global Entry program upon entry in the United States, each participant must:

(1) Use the Global Entry kiosk and follow the on-screen instructions;

(2) Declare all articles being brought into the United States pursuant to 19 CFR 148.11. A Global Entry participant

will be redirected to the nearest open passport control primary inspection station, if the participant declares any of the following:

(i) Commercial merchandise or commercial samples, or items that exceed the applicable personal exemption amount;

(ii) More than \$10,000 in currency or other monetary instruments (checks, money orders, etc.), or foreign equivalent in any form; or

(iii) Restricted/prohibited goods, such as agricultural products, firearms, mace, pepper spray, endangered animals, birds, narcotics, fireworks, Cuban goods, and plants.

(i) *Application for Entry, Examination and Inspection.* Each successful use of Global Entry constitutes a separate and completed inspection and application for entry by the participants on the date that Global Entry is used. Pursuant to the enforcement provisions of 19 CFR part 162, Global Entry participants may be subject to further examination and inspection at any time during the arrival process if determined necessary by CBP.

(j) *Pilot Participant Enrollment.* Upon implementation of the Global Entry Program, participants in the Global Entry pilot will be automatically enrolled in the Global Entry Program for 5 years from the date of enrollment in the pilot program.

(k) *Denial, Removal and Suspension.*

(1) If an applicant is denied participation in Global Entry, a notice will be sent to the applicant's GOES account advising him or her of the denial, with instructions on how to proceed if the applicant wishes to seek additional information.

(2) A Global Entry participant may be suspended or removed from the program for any of the following reasons:

(i) CBP, at its sole discretion, determines that the participant has engaged in any misconduct under the Global Entry program;

(ii) CBP, at its sole discretion, determines that the participant provided false information during the application and/or application process;

(iii) CBP, at its sole discretion, determines that the participant failed to follow the terms, conditions and requirements of the program;

(iv) CBP, at its sole discretion, determines that the participant has been arrested or convicted of a crime or otherwise no longer meets the program eligibility criteria; or

(v) CBP, at its sole discretion, determines that such action is otherwise necessary.

(3) CBP will notify the participant of his or her suspension or removal in

writing. Such suspension or removal is effective immediately.

(l) *Redress.*

An individual whose application is denied or whose participation is suspended or terminated has three possible methods for redress. These processes do not create or confer any legal right, privilege or benefit, but are wholly discretionary on the part of CBP. The methods of redress include:

(1) *Enrollment Center.*

The applicant/participant may contest his or her denial, suspension or removal in writing to the enrollment center where that individual's interview was conducted or if the applicant/participant has not been interviewed, he or she can write to the CBP Ombudsman in accordance with paragraph (l)(3) of this section. The enrollment center addresses are available at <http://www.globalentry.gov>. The letter must be received by CBP within 30 calendar days of the date provided as the date of suspension or removal. The individual should write on the envelope "Redress Request RE: Global Entry." The letter should address any facts or conduct listed in the notification from CBP as contributing to the denial, suspension or removal and why the applicant/participant believes the reason for the action is invalid. The applicant/participant may also contact the enrollment center where the interview was conducted if it is believed that the denial, suspension or revocation was based upon inaccurate information. The individual should also include any reasonably available supporting documentation. After review, CBP will inform the individual of its redress decision. The decision of CBP in the matter is final. If the individual's request for redress is successful, the individual's eligibility to participate in Global Entry will resume immediately.

(2) *DHS Travelers Redress Inquiry Program (DHS TRIP).*

The applicant/participant may choose to initiate the redress process through DHS TRIP. An applicant/participant seeking redress may obtain the necessary forms and information to initiate the process on the DHS TRIP Web site at: [http://www.dhs.gov/xtrvlsec/programs/gc\\_1169676919316.shtm](http://www.dhs.gov/xtrvlsec/programs/gc_1169676919316.shtm), or by contacting DHS Trip by mail at the address on this Web site.

(3) *Ombudsman.*

If an applicant/participant believes the denial, suspension or revocation was based upon inaccurate information he or she may contact the CBP Trusted Traveler Ombudsman at the address on the Web site <http://www.globalentry.gov>

and following the link for “Trusted Traveler Program Denials.”

Dated: November 13, 2009.

**Janet Napolitano,**

Secretary.

[FR Doc. E9-27774 Filed 11-18-09; 8:45 am]

BILLING CODE 9111-14-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2009-1081; Directorate Identifier 2009-CE-058-AD]

RIN 2120-AA64

#### Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A. Model PIAGGIO P-180 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

An operator reported a short circuit between a generator power cable and an anti-ice shutoff valve, which was caused by chafing between the cable and the valve; the insulation of the cable and surrounding sleeve were worn off.

An investigation revealed that a scarce clearance between the cables and adjacent parts, together with vibrations of generator power cables favoured by insufficient clamping, was the root cause of the damage.

If left uncorrected, this situation could lead to short circuits with possible fire and/or loss of important aircraft systems.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by January 4, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2009-1081; Directorate Identifier 2009-CE-058-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

##### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2009-0212, dated October 6, 2009 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

An operator reported a short circuit between a generator power cable and an anti-ice shutoff valve, which was caused by chafing between the cable and the valve; the

insulation of the cable and surrounding sleeve were worn off.

An investigation revealed that a scarce clearance between the cables and adjacent parts, together with vibrations of generator power cables favoured by insufficient clamping, was the root cause of the damage.

If left uncorrected, this situation could lead to short circuits with possible fire and/or loss of important aircraft systems.

This Airworthiness Directive (AD) requires an inspection to detect damaged cables/sleeves, and replacement/repair as necessary; in addition, this AD requires to ensure that acceptable minimum clearances between cables and parts exist, and to improve clamping to minimize vibrations of the cables.

You may obtain further information by examining the MCAI in the AD docket.

#### Relevant Service Information

PIAGGIO AERO INDUSTRIES S.p.A. has issued Service Bulletin (Mandatory) N.: 80-0271, dated May 18, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

#### FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

#### Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

#### Costs of Compliance

We estimate that this proposed AD will affect 63 products of U.S. registry.