The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 8 spearmint oil handlers subject to regulation under the order, and approximately 38 producers of Scotch spearmint oil and approximately 84 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 38 Scotch spearmint oil producers and 29 of the 84 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This rule continues in effect the action that revised the quantity of Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2010–2011 marketing year, which ends on May 31, 2011. The Native spearmint oil salable quantity and allotment percentage is increased to 1,118,639 pounds and 50 percent, respectively, for the 2010–2011 marketing year.

The use of volume control regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. Volume control is believed to have little or no effect on consumer prices of products containing spearmint oil and likely does not result in fewer retail sales of such products. The marketing order's volume control provisions have been successfully implemented in the domestic spearmint oil industry for nearly three decades and provide benefits for producers, handlers, manufacturers, and consumers.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the spearmint industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the November 19, 2010, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before March 28, 2011. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change. To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-09-0082-0002.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (76 FR 4204, January 25, 2011) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

PART 985—[AMENDED]

■ Accordingly, the interim rule amending 7 CFR part 985 that was published at 76 FR 4204 on January 25, 2011, is adopted as a final rule, without change.

[Note: The affected section of part 985 does not appear in the Code of Federal Regulations.]

Dated: June 6, 2011.

Ellen King,

Acting Administrator,Agricultural Marketing Service.

[FR Doc. 2011–14430 Filed 6–9–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[Docket No. ICEB–2011–0003]

RIN 1653–ZA03

Employment Authorization for Libyan F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of Civil Unrest in Libya Since February 2011

AGENCY: U.S. Immigration and Customs Enforcement; DHS.

ACTION: Notice of suspension of applicability of certain requirements.

SUMMARY: This notice informs the public of the suspension of certain regulatory requirements for F–1 nonimmigrant students whose country of citizenship is Libya and who are experiencing severe economic hardship as a direct result of the civil unrest in Libya since February 2011. The Department of Homeland Security (DHS) is taking action to provide relief to these F–1 students so they may obtain employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F–1 student status. F–1 students who are granted employment authorization by means of this notice will be deemed to be engaged in a "full course of study" for the duration of their employment authorization, provided that they satisfy the minimum course load requirement described in this notice. This suspension of certain regulatory requirements will automatically terminate on December 31, 2011, without further notice.

DATES: This notice is effective June 10, 2011 and will remain in effect until December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Louis Farrell, Director, Student and Exchange Visitor Program; MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20536–5600; (703) 603–3400. This is not a toll-free number. Program information can be found at *http://www.ice.gov/sevis/.*

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary of Homeland Security is exercising her authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment. F–1 students granted employment authorization by means of this notice will be deemed to be engaged in a "full course of study" for the duration of their employment authorization if they satisfy the minimum course load set forth in this notice. *See* 8 CFR 214.2(f)(6)(i)(F).

Who is covered by this notice?

This notice applies exclusively to F–1 students whose country of citizenship is Libya and who were lawfully present in the United States in F–1 nonimmigrant status on February 1, 2011 under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i) and (1) are enrolled in an institution that is Student and Exchange Visitor Program (SEVP) certified for enrollment for F–1 students; (2) are currently maintaining F–1 status; and (3) are experiencing severe economic hardship as a direct result of the civil unrest in Libya since February 2011.

This notice applies to both undergraduate and graduate students, as well as elementary school, middle school, and high school students. The notice, however, applies differently to elementary school, middle school, and high school students, as discussed in the question "Does this notice apply to elementary school, middle school, and high school students in F–1 status?"

F–1 students covered by this notice who transfer to other academic institutions that are SEVP-certified for enrollment of F–1 students remain eligible for the relief provided by means of this notice.

Further, this notice regarding employment authorization does not impact other eligibility requirements for Federal Work-Study jobs.

How long will this notice remain in effect?

This notice grants temporary relief until December 31, 2011 to a specific group of F–1 students whose country of citizenship is Libya. DHS will continue to monitor the situation in Libya. Should the special provisions authorized by this notice need to be modified or extended, DHS will announce such changes in the **Federal Register**.

Why is DHS taking this action?

DHS is taking action to provide relief to F–1 students whose country of citizenship is Libya and who are experiencing severe economic hardship as a direct result of the civil unrest in Libya since February 2011. These students may obtain employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F–1 status.

Since the government crackdown of protests in the east of the country in February, there has been armed conflict in Libya between loyalists of the current government led by Muammar Qadhafi and opposition forces calling for his departure. Approximately 2,000 F–1 students whose country of citizenship is Libya are enrolled in schools in the United States. Given the current conditions in Libya, affected F–1 students whose primary means of financial support comes from the Libyan Government or family members in Libya may now need to be exempt from the normal student employment requirements to be able to continue their studies in the United States and meet basic living expenses. The suspension of all commercial air travel to Libya, violence and uncertainty at land borders, and an overall lack of security, have made it unfeasible for students to safely return to Libya for the foreseeable future. To ameliorate the hardship arising from the lack of financial support and facilitate the students' continued studies, DHS is suspending the applicability of certain requirements governing on-campus and off-campus employment.

What is the minimum course load requirement set forth in this notice?

Undergraduate students who are granted on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester/quarter hours of instruction per academic term. Graduate-level F–1 students who are granted on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester/quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v). In addition, F–1 students (both undergraduate and graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless the student's course of study is in a language study program. *See* 8 CFR 214.2(f)(6)(i)(G). Elementary school, middle school, and high school students must maintain "class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation," as required under 8 CFR 214.2(f)(6)(i)(E).

May Libyan F–1 students who already have on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?

Yes. Libyan F–1 students who already have on-campus or off-campus employment authorization may benefit under this notice, which suspends regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i)(A) and (B) and the employment eligibility requirements under 8 CFR 214.2(f)(9) as specified in this notice. Such Libyan F–1 students may benefit without having to apply for a new Form I–766, *Employment Authorization Document* (EAD). To benefit from this notice, the

student must request that his or her Designated School Official (DSO) enter the following statement in the remarks field of the Student and Exchange Visitor Information System (SEVIS) student record, which will be reflected on the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status:

> Approved for more than 20 hours per week of [DSO must insert "on-campus" or "off-campus," depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of employment] until [DSO must insert the student's program end date, December 31, 2011, or the current EAD expiration date (if the student is currently working off campus), whichever date comes first].

Must the F–1 student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her full course of study?

No. F–1 students who are granted employment authorization under this notice will be deemed to be engaged in a "full course of study" for the duration of their employment authorization, provided that qualifying undergraduate level F–1 students remain registered for a minimum of six semester/quarter hours of instruction per academic term, and qualifying graduate level F–1 students remain registered for a minimum of three semester/quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). Such students will not be required to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 status.

Will F–2 dependents (spouse or minor children) of F–1 students covered by this notice be eligible to apply for employment authorization?

No. An F–2 spouse or minor child of an F–1 student is not authorized to work in the United States and, therefore, may not accept employment under the F–2 status. *See* 8 CFR 214.2(f)(15)(i).

Will the suspension of the applicability of the standard student employment requirements apply to aliens who are granted an F–1 visa after this notice is published in the Federal Register?

No. The suspension of the applicability of the standard regulatory requirements only applies to those F–1 students whose country of citizenship is Libya and who were lawfully present in the United States in F–1 nonimmigrant status on February 1, 2011 under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i) and (1) are enrolled in an institution that is SEVP certified for enrollment of F–1 students; (2) are currently maintaining F–1 status; and (3) are experiencing severe economic hardship as a direct result of the civil unrest in Libya. F–1 students who do not meet these requirements do not qualify for the suspension of the applicability of the standard regulatory requirements, even if they are experiencing severe economic hardship as a direct result of the civil unrest in Libya since February 2011.

Does this notice apply to an F–1 student who departs the United States after this notice is published in the Federal Register and who needs to obtain a new F–1 visa before he or she may return to the United States to continue his or her educational programs?

Yes, provided that the DSO has properly notated the student's SEVIS record, which will then appear on the student's Form I–20. Subject to the specific terms of this notice, the normal rules for visa issuance (including those related to public charge and nonimmigrant intent) remain applicable to nonimmigrants that need to apply for a new F–1 visa in order to continue their educational programs in the United States.

Does this notice apply to elementary school, middle school, and high school students in F–1 status?

This notice does not reduce the required course load for elementary school, middle school, or high school students in F–1 status. Such students must maintain the minimum number of hours of class attendance per week prescribed by the school for normal progress toward graduation. *See* 8 CFR 214.2(f)(6)(i)(E). Eligible F–1 students from Libya enrolled in an elementary school, middle school, or high school do benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session. DHS notes, however, that the suspension of this requirement is solely for DHS purposes of determining valid F–1 status. Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors. With regard to off-campus employment, elementary school, middle school, and high school students benefit from the suspension of the requirement that a student must have been in F–1 status for one full academic year in order to be eligible for off-campus employment and the requirement that limits a student's work authorization to no more than 20 hours per week of off-campus employment while school is in session. With regard to off-campus employment, nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors. The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F–1 students—regardless of educational level—as required by the regulations at 8 CFR 214.2(f)(9)(i) and (f)(9)(ii).

On-Campus Employment Authorization

Will F–1 students who are granted on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?

Yes. For F–1 students covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 student's on-campus employment to 20 hours per week while school is in session. A student whose country of citizenship is Libya and who is experiencing severe economic hardship as result of civil unrest in Libya since February 1, 2011 is authorized to work more than 20 hours per week while school is in session if his or her DSO has entered the following statement in the remarks field of the SEVIS student record, which will be reflected on the student's Form I–20:

> Approved for more than 20 hours per week of on-campus authorization and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of employment] until [DSO must insert the student's program end date or December 31, 2011, whichever date comes first].

To obtain on-campus employment authorization, the student must demonstrate to his or her DSO that the employment is necessary to avoid severe economic hardship that is directly resulting from the civil unrest in Libya. A student authorized by his or her DSO to engage in on-campus employment by means of this notice does not need to make any filing with U.S. Citizenship and Immigration Services (USCIS). The standard rules permitting fulltime work on-campus when school is not in session or during school vacations apply. *See* 8 CFR 214.2(f)(9)(i).

Will F–1 students who are granted on-campus employment authorization under this notice be authorized to reduce their normal course load and still maintain their F–1 nonimmigrant status?

Yes. F–1 students who are granted on-campus employment authorization under this notice will be deemed to be engaged in a "full course of study" for the purpose of maintaining their F–1 status for the duration of their on-campus employment if they satisfy the minimum course load requirement described in this notice. *See* 8 CFR 214.2(f)(6)(i)(F). However, the authorization for reduced course load is solely for DHS purposes of determining valid F–1 status. Nothing in this notice mandates that a school allow a student to take a reduced course load if the reduction would not meet the school's minimum course load requirement for continued enrollment.[1]

Off-Campus Employment Authorization

What regulatory requirements does this notice temporarily suspend relating to off-campus employment?

For F–1 students covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F–1 status for one full academic year in order to be eligible for off-campus employment;

(b) The requirement that an F–1 student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study; and

(c) The requirement that limits a student's work authorization to no more than 20 hours per week of off-campus employment while school is in session.

Will F–1 students who are granted off-campus employment authorization under this notice be authorized to reduce their normal course load and still maintain their F–1 nonimmigrant status?

Yes. F–1 students who are granted employment authorization by means of this notice will be deemed to be engaged in a "full course of study" for purpose of maintaining their F–1 status for the duration of their employment authorization if they satisfy the minimum course load requirement described in this notice. *See* 8 CFR 214.2(f)(6)(i)(F). However, the authorization for reduced course load is solely for DHS purposes of determining valid F–1 status. Nothing in this notice mandates that a school allow a student to take reduced course load if such reduced course load would not meet the school's minimum course load requirement.[2]

How may Libyan F–1 students obtain employment authorization for off-campus employment with a reduced course load under this notice?

F–1 students must file a Form I–765 *Application for Employment Authorization* with USCIS if they wish to apply for off-campus employment authorization based on severe economic hardship resulting from the civil unrest in Libya since February 1, 2011. Filing instructions are located at: *http://www.uscis.gov/i-765.*

Fee considerations. Submission of a Form I–765 currently requires payment of a $340 fee. If the applicant is unable to pay the fee, he or she must submit a written affidavit or unsworn declaration requesting a waiver of the fee and including the statement: "I declare under penalty of perjury that the foregoing is true and correct." *See http://www.uscis.gov/feewaiver.* The submission must include an explanation of why he or she should be granted the fee waiver and the reasons for his or her inability to pay. *See* 8 CFR 103.7(c).

Supporting documentation. An F–1 student seeking off-campus employment authorization due to severe economic hardship must demonstrate to the DSO at the school where the F–1 student is enrolled that this employment is necessary to avoid severe economic hardship and that the hardship is resulting from the civil unrest in Libya since February 1, 2011. If the DSO agrees that the student should receive such employment authorization, he or she must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on the student's Form I–20:

Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or December 31, 2011, whichever date comes first].

The student must then file the properly endorsed Form I–20 and Form I–765, according to the instructions for the Form I–765. The student may begin working off campus only upon receipt of the EAD from USCIS.

DSO recommendation. In making a recommendation that a student be approved for Special Student Relief, the DSO certifies that:

(a) The student is in good academic standing as determined by the DSO;

(b) The student is a citizen of Libya and is experiencing severe economic hardship as a direct result of the civil unrest in Libya since February 1, 2011, as documented on the Form I–20;

(c) The student is carrying a full course of study at the time of the request for employment authorization;

(d) The student will be registered for the duration of his or her authorized employment for a minimum of six semester or quarter hours of instruction per academic term if the student is at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level; and

(e) The off-campus employment is necessary to alleviate severe economic hardship to the individual caused by the civil unrest in Libya since February 1, 2011.

Processing. To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the student should:

(a) Ensure that the application package includes: (1) A completed Form I–765; (2) the required fee or properly documented fee waiver request as defined in 8 CFR 103.7(c); and (3) a signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase "SPECIAL STUDENT RELIEF." Failure to include this notation may result in significant processing delays. If USCIS approves the student's Form I–765, the USCIS official will send the student a Form I–766 EAD as evidence of his or her employment authorization. The EAD will contain an expiration date that does not exceed the student's program end date.

Paperwork Reduction Act

An F–1 student seeking off-campus employment authorization due to severe

[1] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, Web site, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[2] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, Web site, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

economic hardship must demonstrate to the DSO at the school where he or she is enrolled that this employment is necessary to avoid severe economic hardship. If the DSO agrees that the student should receive such employment authorization, he or she must recommend application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is currently contained in the SEVIS collection of information currently approved by OMB under OMB Control Number 1653–0038.

This notice also allows F–1 students whose country of citizenship is Libya and who are experiencing severe economic hardship as a direct result of civil unrest in Libya since February 1, 2011, to obtain employment authorization, work an increased number of hours while school is in session, and reduce their course load, while continuing to maintain their F–1 student status.

To apply for work authorization an F–1 student must complete and submit currently approved Form I–765 according to the instructions on the form. The authority to collect the information contained on the current Form I–765 has previously been approved by the Office of Management and Budget under the Paperwork Reduction Act (PRA) (OMB Control No. 1615–0040). Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

Janet Napolitano,

Secretary.

[FR Doc. 2011–14482 Filed 6–9–11; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 307, 381, and 590

[Docket No. FSIS–2010–0014]

RIN [0583–AD35]

Changes to the Schedule of Operations Regulations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the meat, poultry products, and egg products regulations pertaining to the schedule of operations. FSIS is amending these regulations to define the 8-hour work day as including time that inspection program personnel need to spend at the workplace donning and doffing required gear, time spent walking to their workstations after donning required gear, and time spent walking from their work stations prior to doffing required gear.

DATES: Effective July 11, 2011.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Assistant Administrator, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–3700, *telephone:* (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA), 21 U.S.C. 601 *et seq.,* and the Poultry Products Inspection Act (PPIA), 21 U.S.C. 451 *et seq.,* provide for mandatory Federal inspection of livestock and poultry slaughtered at official establishments and of meat and poultry products processed at official establishments. The Egg Products Inspection Act (EPIA), 21 U.S.C. 1031 *et seq.,* provides for mandatory inspection of egg products processed at official plants. FSIS bears the cost of mandatory inspection provided during non-overtime and non-holiday hours of operation. Official establishments and egg products plants pay for inspection services performed on holidays or on an overtime basis.

On August 9, 2010, FSIS proposed to amend its regulations pertaining to the schedule of operations. FSIS proposed to define the 8-hour work day as including time that inspection program personnel need to spend at the workplace donning and doffing required gear, time spent walking to their workstations after donning required gear, and time spent walking from their work stations prior to doffing required gear. As explained in the preamble to the proposed rule, FSIS proposed the amendments to administer its inspection program in accord with the Supreme Court's holding in *IBP, Inc.* v. *Alvarez,* 546 U.S. 21 (2005), and policy guidance from the Office of Personnel Management (OPM).

Specifically, the preamble to the proposed rule explained that this regulatory change is necessary in light of the Supreme Court's ruling that the Fair Labor Standards Act (FLSA) covers (1) any activity that is integral and indispensable to a principal activity; and (2) during a continuous workday, any walking time that occurs after the beginning of the employee's first principal activity and before the end of the employee's last principal activity. *IBP,* 546 U.S. at 37. The preamble to the proposed rule also briefly addressed OPM's treatment of the *de minimis* exception, codified at 5 CFR 551.412(a), and an OPM letter to the National Treasury Employees Union discussing that regulation. Finally, the preamble to the proposed rule described a settlement reached between FSIS and the National Joint Council of Food Inspectors regarding inspector compensation for donning and doffing activities.

Comments and FSIS Responses

FSIS received 20 comments on the proposed rule from the public, industry, and trade organizations. FSIS also received a letter concerning the proposal from the Department of Labor. Commenters generally supported that FSIS inspection program personnel should be fully compensated for work. However, commenters had varying opinions regarding the Agency's interpretation of *IBP,* the distinction between unique and non-unique gear, and application of the *de minimis* rule; and questions about how FSIS will implement the rule.

Unique Versus Non-Unique Gear and the Application of De Minimis

Several comments addressed the Agency's treatment of *IBP, Inc.* v. *Alvarez,* 546 U.S. 21 (2005), as it relates to the distinction between unique and non-unique gear and application of the *de minimis* rule. The two comments discussed in detail below were reflective of all comments related to this topic. "Unique" gear refers to items that are unique to the jobs at issue, such as cut-resistant gloves and chain link metal aprons in livestock slaughter establishments. "Non-unique" gear refers to generic items, such as hardhats, and hairnets, worn in all slaughter and processing establishments.

The first comment, submitted by the Department of Labor (DOL), argued that whether gear worn by employees is unique or non-unique is irrelevant to whether donning and doffing the gear is a principal, compensable activity. DOL stated that the preamble to the proposed rule incorrectly implied that *IBP* only dealt with unique protective gear. Rather, DOL stated that the two lower court cases that were consolidated by the Supreme Court in *IBP* in fact dealt with both unique and non-unique gear, and that the Supreme Court treated all items interchangeably, without regard to