

CPOs, and their principals. This is because the only burden that will be imposed by the Amendments will be in furtherance of the obligation to comply with the antifraud provisions of Section 4o of the Act when presenting the past performance of CTAs, CPOs, and their principals—whether by way of actual, simulated or hypothetical performance or through the use of testimonials.

Assuming *arguendo*, however, that compliance with Section 4o will constitute a significant burden, the burden is neither new nor additional, because the Amendments are consistent with the Commission's longstanding interpretation of Section 4o as applicable to all advertisements by CTAs, CPOs, and their principals, including advertisements that are viewed electronically, and with the requirement that such advertisements must not be false or misleading.

The Commission did not receive any comments relative to its analysis of the application of the RFA to the Proposal.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)²⁷ imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Amendments do not require a new collection of information on the part of any entities.

The Commission did not receive any comments relative to its analysis of the application of the PRA to the Proposal.

C. Cost-Benefit Analysis

Section 15(a) of the Act²⁸ requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and

could in its discretion determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission did not receive any comments relative to its cost-benefit analysis of the Proposal.

List of Subjects in 17 CFR Part 4

Advertising, Commodity pool operators, Commodity trading advisors, Commodity futures, Commodity options, Customer protection, Reporting and Recordkeeping.

- For the reasons presented above, the Commission hereby amends chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

- 1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

- 2. Section 4.41 is amended by removing "or" at the end of paragraph (a)(1), removing the period and adding a semi-colon and "or" at the end of paragraph (a)(2), adding new paragraph (a)(3), and revising paragraphs (b)(1)(i), (b)(2), and (c)(1) to read as follows:

§ 4.41 Advertising by commodity pool operators, commodity trading advisors, and the principals thereof.

(a) * * *

(3) Refers to any testimonial, unless the advertisement or sales literature providing the testimonial prominently discloses:

- (i) That the testimonial may not be representative of the experience of other clients;
- (ii) That the testimonial is no guarantee of future performance or success; and
- (iii) If, more than a nominal sum is paid, the fact that it is a paid testimonial.

(b) * * *

(1) * * *

(i) The following statement: "These results are based on simulated or hypothetical performance results that have certain inherent limitations. Unlike the results shown in an actual performance record, these results do not represent actual trading. Also, because these trades have not actually been executed, these results may have under- or over-compensated for the impact, if any, of certain market factors, such as lack of liquidity. Simulated or

hypothetical trading programs in general are also subject to the fact that they are designed with the benefit of hindsight. No representation is being made that any account will or is likely to achieve profits or losses similar to those being shown." ; or

* * * * *

(2) If the presentation of such simulated or hypothetical performance is other than oral, the prescribed statement must be prominently disclosed and in immediate proximity to the simulated or hypothetical performance being presented.

(c) * * *

(1) To any publication, distribution or broadcast of any report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice, whether by electronic media or otherwise, including information provided via internet or e-mail, the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations; and

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Issued in Washington, DC, on February 16, 2007, by the Commission.

Eileen A. Donovan,

Acting Secretary of the Commission.

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DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 123

Advance Electronic Presentation of Cargo Information for Truck Carriers Required To Be Transmitted Through ACE Truck Manifest at Ports in the States of Michigan and New York

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Pursuant to section 343(a) of the Trade Act of 2002 and implementing regulations, truck carriers and other eligible parties are required to transmit advance electronic truck cargo information to the Bureau of Customs and Border Protection (CBP) through a CBP-approved electronic data interchange. In a previous notice, CBP designated the Automated Commercial Environment (ACE) Truck Manifest System as the approved interchange and announced that the requirement that advance electronic cargo information be transmitted through ACE would be

²⁷ 44 U.S.C. 3501 *et seq.*

²⁸ 7 U.S.C. 19(a) (2000).

phased in by groups of ports of entry. This notice announces that at all land border ports in Michigan and New York, truck carriers will be required to file electronic manifests through the ACE Truck Manifest System.

DATES: Trucks entering the United States through land border ports of entry in the states of Michigan and New York will be required to transmit the advance information through the ACE Truck Manifest system effective May 24, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson, via e-mail at james.d.swanson@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 343(a) of the Trade Act of 2002, as amended (the Act; 19 U.S.C. 2071 note), required that CBP promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published in the **Federal Register** (68 FR 68140) a final rule to effectuate the provisions of the Act. In particular, a new section 123.92 (19 CFR 123.92) was added to the regulations to implement the inbound truck cargo provisions. Section 123.92 describes the general requirement that, in the case of any inbound truck required to report its arrival under section 123.1(b), if the truck will have commercial cargo aboard, CBP must electronically receive certain information regarding that cargo through a CBP-approved EDI system no later than 1 hour prior to the carrier's reaching the first port of arrival in the United States. For truck carriers arriving with shipments qualified for clearance under the FAST (Free and Secure Trade) program, section 123.92 provides that CBP must electronically receive such cargo information through the CBP-approved EDI system no later than 30 minutes prior to the carrier's reaching the first port of arrival in the United States.

ACE Truck Manifest Test

On September 13, 2004, CBP published a notice in the **Federal Register** (69 FR 55167) announcing a test allowing participating Truck Carrier

Accounts to transmit electronic manifest data for inbound cargo through ACE, with any such transmissions automatically complying with advance cargo information requirements as provided in section 343(a) of the Trade Act of 2002. Truck Carrier Accounts participating in the test were given the ability to electronically transmit the truck manifest data and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange messaging.

A series of notices announced additional deployments of the test, with deployment sites being phased in as clusters. Clusters were announced in the following notices published in the

Federal Register: 70 FR 30964 (May 31, 2005); 70 FR 43892 (July 29, 2005); 70 FR 60096 (October 14, 2005); 71 FR 3875 (January 24, 2006); 71 FR 23941 (April 25, 2006); 71 FR 42103 (July 25, 2006); 71 FR 77404 (December 26, 2006) and 72 FR 7058 (February 14, 2007).

CBP continues to test ACE at various ports. CBP will continue, as necessary, to announce in subsequent notices in the **Federal Register** the deployment of the ACE truck manifest system test at additional ports.

Designation of ACE Truck Manifest System as the Approved Data Interchange System

In a notice published October 27, 2006, (71 FR 62922), CBP designated the Automated Commercial Environment (ACE) Truck Manifest System as the approved EDI for the transmission of required data and announced that the requirement that advance electronic cargo information be transmitted through ACE would be phased in by groups of ports of entry.

ACE will be phased in as the required transmission system at some ports even while it is still being tested at other ports. However, the use of ACE to transmit advance electronic truck cargo information will not be required in any port in which CBP has not first conducted the test.

The October 27, 2006, document identified all land border ports in the states of Washington and Arizona and the ports of Pembina, Neche, Walhalla, Maida, Hannah, Sarles, and Hansboro in North Dakota as the first group of ports where use of the ACE Truck Manifest System is mandated. Subsequently, CBP announced on January 19, 2007 (72 FR 2435) that, after 90 days notice, the use of the ACE Truck Manifest System will be mandatory at all land border ports in the states of California, Texas and New Mexico, as well.

ACE Mandated at Land Border Ports of Entry in Michigan and New York

Applicable regulations (19 CFR 123.92(e)) require CBP, 90 days prior to mandating advance electronic information at a port of entry, to publish notice in the **Federal Register** informing affected carriers that the EDI system is in place and fully operational.

Accordingly, CBP is announcing in this document that, effective 90 days from the date of publication of this notice, truck carriers entering the United States at any land border port of entry in the states of Michigan and New York will be required to present advance electronic cargo information regarding truck cargo through the ACE Truck Manifest System.

Although other systems that have been deemed acceptable by CBP for transmitting advance truck manifest data will continue to operate and may still be used in the normal course of business for purposes other than transmitting advance truck manifest data, use of systems other than ACE will no longer satisfy advance electronic cargo information requirements at a port of entry in Michigan and New York as of May 24, 2007.

Compliance Sequence

CBP will be publishing subsequent notices in the **Federal Register** as it phases in the requirement that truck carriers utilize the ACE system to present advance electronic truck cargo information at other ports. ACE will be phased in as the mandatory EDI system at the ports identified below in the sequential order in which they are listed. The sequential order provided below is somewhat different than that announced in the October 27, 2006, notice. Although further changes to this order are not currently anticipated, CBP will state in future notices if changes do occur. In any event, as mandatory ACE is phased in at these remaining ports, CBP will always provide 90 days' notice through publication in the **Federal Register** prior to requiring the use of ACE for the transmission of advance electronic truck cargo information at a particular group of ports.

The remaining ports at which the mandatory use of ACE will be phased in, listed in sequential order, are as follows:

1. The remaining land border ports in the state of North Dakota and all land border ports in the state of Vermont.
2. All land border ports in the states of Idaho and Montana.
3. All land border ports in the states of Maine, New Hampshire, and Minnesota.

4. All land border ports in the state of Alaska.

Dated: February 20, 2007.

Deborah J. Spero,
Acting Commissioner, Customs and Border Protection.

[FR Doc. 07-829 Filed 2-22-07; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 71 and 171

[Docket No. 1995N-0220 (formerly 95N-0220)]

Substances Approved for Use in the Preparation of Meat and Poultry Products; Announcement of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Food and Drug Administration (FDA) is announcing the effective date for the information collection requirements contained in a final rule published in the **Federal Register** of August 25, 2000 (65 FR 51758). The rule amended FDA's regulations on food additive and color additive petitions to permit an efficient joint review by both FDA and the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA), of petitions for approval to use a food ingredient or source of radiation in or on meat or poultry products. An information collection requirement cannot be instituted unless it is reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA), approved by OMB, and assigned an OMB control number. OMB's approval of the information collection requirements of the August 25, 2000, final rule was announced in the **Federal Register** of March 1, 2001 (66 FR 12938), and these requirements are currently approved under OMB control number 0910-0016. Accordingly, FDA is announcing that the information collection requirements of the August 25, 2000, final rule will go into effect on March 26, 2007.

DATES: Effective Date: The amendments to §§ 71.1 and 171.1 (21 CFR 71.1 and 171.1), published in the **Federal Register** of August 25, 2000, are effective as of March 26, 2007.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS-206), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740-3835, 301-436-1256.

SUPPLEMENTARY INFORMATION: On August 25, 2000, FDA published a final rule entitled, "Substances Approved for Use in the Preparation of Meat and Poultry Products," which, in part, amended its regulations to permit an efficient joint review by both FDA and FSIS of USDA, of petitions for approval to use a food ingredient or source of radiation in or on meat or poultry products. The final rule requires applicants petitioning for approval for the use of substances in meat and poultry products to provide four copies of the petition to FDA, rather than the three copies previously specified in §§ 71.1 and 171.1. FDA will then forward a copy of the petition or relevant portions of the petition to FSIS so that both agencies can perform the necessary reviews simultaneously, thus reducing the time it takes to authorize a food additive or color additive for use in meat and poultry products. The rule does not require petitioners to submit any new information to either FDA or FSIS. This final rule resulted from a coordinated effort by the two agencies to ease the paperwork burden on regulated industries through streamlining the Government's approval process for substances used as food additives or color additives in meat and poultry products (§§ 71.1 and 171.1).

At the time of publication of the final rule, the information collection requirements contained in §§ 71.1 and 171.1 had been submitted to, but not yet approved by, OMB under the PRA (44 U.S.C. 3501-3520). Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless and until the collection displays a valid OMB control number.

FDA announced OMB approval of the information collection requirements in §§ 71.1 and 171.1, as amended by FDA's August 25, 2000, final rule, in the **Federal Register** of March 1, 2001. The agency is now announcing that these requirements will become effective on March 26, 2007. The information collection requirements at §§ 71.1 and 171.1 were originally assigned OMB control number 0910-0461. In December 2003, OMB control number 0910-0016 replaced OMB control number 0910-0461 as the valid control number that authorizes the information collection requirements. OMB control number 0910-0016 remains the

currently approved control number for §§ 71.1 and 171.1.

Dated: February 14, 2007.

Jeffrey Shuren,
Assistant Commissioner for Policy.
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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01-07-017]

Drawbridge Operation Regulations; Cheesquake Creek, Morgan, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the New Jersey Transit Rail Operation (NJTRO) Railroad Bridge across Cheesquake Creek, mile 0.2, at Morgan, New Jersey. Under this temporary deviation, the bridge may remain in the closed position for two 24-hour time periods between February 20, 2007 and February 24, 2007. The exact two 24-hour closure dates will be determined based upon favorable weather necessary to perform the scheduled repairs. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from February 20, 2007 through February 24, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668-7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668-7069.

SUPPLEMENTARY INFORMATION:

The NJTRO Railroad Bridge, across Cheesquake Creek, mile 0.2, at Morgan, New Jersey, has a vertical clearance in the closed position of 3 feet at mean high water and 8 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.709(b).