§71.1 [Amended]
1. The incorporation by reference in 14 CFR part 71 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 5000  Class D Airspace.
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AGL MI D  Grayling, MI [New]
Grayling Army Airfield, MI
(Lat. 44°40′49″ N., long. 84°43′44″ W.)
That airspace extending upward from the surface to and including 3,700 feet MSL within a 4.2-mile radius of Grayling Army Airfield. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.
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Paragraph 6002  Class E Airspace Designated as Surface Areas.
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AGL MI E2  Grayling, MI [New]
Grayling Army Airfield, MI
(Lat. 44°40′49″ N., long. 84°43′44″ W.)
That airspace extending upward from the surface to and including 3,700 feet MSL within a 4.2-mile radius of Grayling Army Airfield. This Class E Surface Area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004  Class E Airspace Areas Designated as an Extension to a Class D Surface Area.
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AGL MI E4  Grayling, MI [New]
Grayling Army Airfield, MI
(Lat. 44°40′49″ N., long. 84°43′44″ W.)
That airspace extending upward from the surface within 2 miles each side of the 304° bearing from Grayling Army Airfield extending from the 4.2-mile radius of Grayling Army Airfield to 7.7 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.
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§71.11 [Amended]
1. The authority citation for 14 CFR part 71 continues to read as follows:
under the Investment Company Act governs the operation of money market funds; the rule facilitates the maintenance of a stable net asset value by permitting money market funds to use the amortized cost method of valuing their securities. Under the Act, funds must calculate their current net asset value per share by reference to: (i) the market values of their portfolio securities or, (ii) in the absence of readily available market quotations for the securities, their fair value as determined in good faith by the funds’ boards of directors. Rule 2a-7 provides an exemption from these requirements in the case of money market funds. Under the amortized cost method of valuation in rule 2a-7, portfolio securities are valued by reference to their acquisition cost as adjusted for amortization of premium or discount. In order to use this method of valuing securities, a money market fund must establish controls to monitor the deviation between the fund’s stabilized share price of $1.00, and its market-based share price. If the deviation becomes significant, the fund’s board of directors may be required to take steps necessary to address this deviation, including re-pricing its shares at less than $1.00. This is often referred to as “breaking the buck.” The risk-limiting conditions built into rule 2a-7, together with the management skill and, in some cases, the financial commitment of the advisers that sponsor money market funds, have contributed to the stability of money market funds for more than 30 years. Until recently, only one money market fund, a small institutional fund, had ever broken the buck. On September 16, 2008, the Reserve Primary Fund became the first large money market fund to break the buck when it announced that it would re-price its securities at $0.97 per share. The fund sought and obtained from us an order permitting it to suspend redemptions and postpone the payment of redemption proceeds. These events, and the turmoil in the credit markets in general, have placed pressure on money market funds, particularly those that offer their shares primarily to institutional shareholders and have experienced substantial redemptions.

To bolster investor confidence in money market funds and protect the stability of the global financial system, on September 19, 2008, the Treasury Department announced the establishment of the Guaranty Program.

Under the Guaranty Program, the Treasury Department will guarantee the share price of participating money market funds that seek to maintain a stable net asset value of $1.00 per share, or some other fixed amount, subject to certain conditions and limitations. The Guaranty Program provides coverage only to shareholders of record as of September 19, 2008, and the coverage is limited to the number of shares they held as of the close of business on that day. The Commission is assisting the Treasury Department in administering the Guaranty Program. The Treasury Department opened the Guaranty Program on Monday, September 29, 2008. Most of the nation’s money market funds elected to participate in the Program by the October 8, 2008 deadline by executing an agreement with the Treasury Department (“Guarantee Agreement” or “Agreement”) and paying the required participation fee.

Under the terms of the Guaranty Program, the Treasury Department guarantees that, upon the liquidation of a participating money market fund, the fund’s shareholders will receive the fund’s stable share price of $1.00 for each fund share owned as of September 19, 2008. Pursuant to the Agreement, a participating money market fund that breaks the buck, i.e., experiences a “Guarantee Event,” is required to commence liquidation within five business days (with an exception under a curing provision). The Agreement further requires the fund board to promptly suspend the redemption of its outstanding shares “in accordance with applicable Commission rules, orders and no-action letters.” The fund must be liquidated within thirty days after a Guarantee Event unless the Treasury Department, in its discretion, consents in writing to a later date (the “Liquidation Date”). These provisions are intended to ensure that the money market fund liquidates in an orderly manner and maximizes the proceeds realized from the disposition of the fund’s portfolio securities.

II. Discussion

A. Reason for the Exemption

Section 22(e) of the Investment Company Act prohibits funds, including money market funds, from suspending the right of redemption, or postponing the date of payment of redemption upon redemption of any redeemable security for more than seven days, except for certain periods specified in that section. Although section 22(e) permits funds to postpone the date of payment or satisfaction upon redemption for up to seven days, it does not permit funds to suspend the right of redemption, absent certain specified circumstances or a Commission order. However, in order for the Guaranty Program to operate as intended, a participating money market fund that experiences a Guarantee Event and must liquidate may need to suspend redemptions and postpone the payment of proceeds beyond the seven-day limit...
money market fund under the Guaranty Program would ultimately eliminate a source of advisory fees for the adviser.\textsuperscript{20} Section 22(e) also provides for suspending redemptions and postponing payment in certain specified circumstances or “for such other periods as the Commission may by order permit for the protection of security holders.”\textsuperscript{21} The temporary rule we are adopting today is intended to achieve the same purposes when a money market fund commences liquidation under the Guaranty Program.

B. Operation of Rule 22e–3T

The exemption from section 22(e) provided by rule 22e–3T is available to any money market fund that has a currently effective Agreement, subject to two other conditions.\textsuperscript{22} First, the fund must have delivered to the Treasury Department the required notice indicating that it has experienced a Guarantee Event and will promptly commence liquidation of the fund under the terms of the Agreement.\textsuperscript{23} Second, the fund must not have cured the Guarantee Event, as provided under the terms of the Agreement.\textsuperscript{24} In the event that a participating money market fund experiences a Guarantee Event and commences liquidation in compliance with the terms of the Agreement, the fund will be exempt from section 22(e).

The rule also provides that the Commission may rescind or modify the exemptive relief by order if necessary to protect the liquidating money market fund's security holders.\textsuperscript{25} This provision permits the Commission to modify the relief if, among other things, a liquidating fund has not devised, or is not properly executing, a plan of liquidation that protects fund security holders. Under this provision, the Commission may modify the relief “after appropriate notice and opportunity for hearing,” in accordance with section 40 of the Act.

The Program cannot extend beyond September 18, 2009. Under the terms of the Agreement, however, a money market fund has thirty days to liquidate.

Accordingly, rule 22e–3T will expire on October 18, 2009.\textsuperscript{26}

III. Request for Comment

The Commission requests comment on interim final temporary rule 22e–3T. We will carefully consider the comments that we receive and intend to respond to them in a subsequent release. We seek comment generally on all aspects of the temporary rule. Are the conditions for relief adequate to protect the interests of security holders? Should the rule include additional conditions and, if so, what should those conditions be? Should the rule have a later or earlier expiration date and, if so, what should the expiration date be and why?

IV. Other Matters

The Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a proposed rulemaking in the Federal Register.\textsuperscript{27} This requirement does not apply, however, if the agency “for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”\textsuperscript{28} The APA also generally requires that an agency publish an adopted rule in the Federal Register 30 days before it becomes effective.\textsuperscript{29} This requirement also does not apply, however, if the agency finds good cause for making the rule effective sooner.\textsuperscript{30}

For the reasons discussed in this release, we believe that we have good cause to act immediately to adopt this rule on an interim final temporary basis. The Treasury Department established the Program in response to extraordinary market turmoil and in recognition that maintaining confidence in money market funds is critical to protecting the integrity and stability of the global financial markets. The Program is currently operating to guarantee a large portion of existing money market fund assets. Immediate adoption of this rule will facilitate the Program and allow it to operate as designed. Without the relief provided by this rule, liquidity funds would not be able to promptly suspend redemptions and postpone the payment of proceeds without formally requesting and obtaining an individual exemption from the Commission, which could cause the funds to be inadverted with redemption requests that they would have to meet

\textsuperscript{19} As discussed above, the Guaranty Program covers only shareholders of record as of September 19, 2008, and the coverage is limited to the number of shares they held as of the close of business on that day.


\textsuperscript{22} Moreover, the Guarantee Agreement would preclude a liquidation from relieving the adviser or any other affiliated person of the fund from their obligations to support the fund’s net asset value under any agreement in place at the time the Agreement is entered into by the fund. See sections 1(n) and 5(c) of the Guarantee Agreement.

\textsuperscript{23} Section 22(e)(3)(A) of the Act.

\textsuperscript{24} Rule 22e–3T(a).

\textsuperscript{25} Rule 22e–3T(a)(2). See also section 2(c) of the Agreement.

\textsuperscript{26} The Commission may publish a notice in the Federal Register announcing an earlier expiration date for the rule if the Guaranty Program terminates before September 18, 2009.

\textsuperscript{27} 5 U.S.C. 553(b).

\textsuperscript{28} Id.

\textsuperscript{29} 5 U.S.C. 553(d).

\textsuperscript{30} Id.
in the interim. This could result in a disorderly liquidation that would be at odds with the objective of the Program and could substantially harm certain of the affected fund’s security holders.31

The temporary rule takes effect on November 26, 2008. For the reasons discussed above, we have acted on an interim final basis. We emphasize that we are requesting comment on the temporary rule. We will carefully consider the comments we receive, and we intend to respond to them in a subsequent release. Moreover, this is a temporary rule that will expire on October 18, 2009. The rule will have no application to any money market fund after that time.

We find that there is good cause to have the temporary rule take effect on November 26, 2008, and that notice and public procedure in advance of effectiveness of the rule are impracticable, unnecessary, and contrary to the public interest.

V. Paperwork Reduction Act

Rule 22e–3T does not impose any recordkeeping or information collection requirements, or other “collections of information” within the meaning of the Paperwork Reduction Act.32 Accordingly, the Paperwork Reduction Act is not applicable.

VI. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits of its rules. We have identified certain costs and benefits of rule 22e–3T and request comment on all aspects of this cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. Where possible, we request that commenters provide empirical data to support any positions advanced.

As discussed above, the Guarantee Agreement requires money market funds to engage in an orderly liquidation upon experiencing a Guarantee Event. The Agreement further contemplates that funds will suspend the redemption of fund shares pending the liquidation. We believe it is necessary to provide an exemption from section 22(e) for funds participating in the Program to facilitate orderly liquidations.

A. Benefits

As discussed above, the rule will facilitate achievement of the benefits of the Guaranty Program by permitting participating money market funds to fulfill their obligations under the Agreement and initiate the steps necessary to effect an orderly liquidation. An orderly liquidation would protect value for fund shareholders and minimize disruption to financial markets. The rule would also provide certainty for participating funds, and enable funds to avoid the expense and delay of obtaining an exemptive order from the Commission.

B. Costs

Most of the costs associated with rule 22e–3T, such as the requirement to deliver to the Treasury Department a notice indicating that the money market fund has experienced a Guarantee Event, are necessitated by the Agreement. The rule may, however, impose some costs on shareholders who seek to redeem their shares, but are unable to do so. We believe the potential costs associated with rule 22e–3T are modest because the rule provides a narrow exemption that is only triggered in connection with the Guaranty Program and the exemption is only temporary.

C. Request for Comment

We request comment on all aspects of this cost-benefit analysis. Commenters should address in particular whether rule 22e–3T will generate the anticipated benefits or impose any other costs on funds or other market participants. We also request comment as to any costs or benefits associated with rule 22e–3T that we may not have considered here. Commenters are specifically invited to share quantified costs and benefits.

VII. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.33 We anticipate that the rule will promote efficiency in the financial markets by facilitating orderly liquidations. The rule also may promote capital formation by providing investors reassurance about the safety of money market funds and minimizing disruption in the financial markets. We do not anticipate any effect on competition. We request comment on whether rule 22e–3T is likely to promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data to support their views.

VIII. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act ("RFA")34 requires the Commission to undertake an initial regulatory flexibility analysis of the effect of its rules on small entities unless the Commission certifies that the rules do not have a significant economic impact on a substantial number of small entities.35 Pursuant to section 605(b) of the RFA, the Commission hereby certifies that Investment Company Act rule 22e–3T does not have a significant impact on a substantial number of small entities.36

Rule 0–10 of the Investment Company Act defines a “small entity” for purposes of the Act as an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. Rule 22e–3T applies only to funds participating in the Treasury Department’s Temporary Guaranty Program for Money Market Funds, and none of these funds meets the definition of a small entity under the Act.

We solicit comment on the certification. Commenters are asked to describe the nature of any impact on small entities and provide any empirical data.

IX. Statutory Authority

The Commission is adopting rule 22e–3T pursuant to the authority set forth in sections 6(c), 22(e) and 38(a) of the Investment Company Act (15 U.S.C. 80a–6(c), 80a–22(e) and 80a–37(a)).

List of Subjects in 17 CFR Part 270

Investment companies; Securities.

Text of Rule

§ 26.26.116 Adoption of rule 22e–3T by the Department of the Treasury.

For the reasons set out in the Preamble, the Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows:

31 15 U.S.C. 80a–2(c).
32 32 44 U.S.C. 3501 et seq.
33 44 U.S.C. 3501 et seq.
34 5 U.S.C. 603(a).
35 5 U.S.C. 605(b).
36 Although the requirements of the RFA do not apply to rules adopted under the APA’s “good cause” exception, see 5 U.S.C. 601(2) (defining “rule” and notice requirement under the APA), we have nevertheless provided this certification.
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 530

[Docket No. FDA–2008–N–0326]

New Animal Drugs; Cephalosporin Drugs; Extralabel Animal Drug Use; Revocation of Order of Prohibition; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is revoking the order prohibiting the extralabel use of cephalosporin antimicrobial drugs in food-producing animals. FDA received many substantive comments on the order of prohibition. The agency is taking this action so that it may fully consider these comments.

DATES: Effective November 26, 2008, the final rule published July 3, 2008 (73 FR 38110), for which the effective date was September 25, 2008 (73 FR 38110), is withdrawn.

FOR FURTHER INFORMATION CONTACT: Neal Bataller, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7519 Standish Pl., Rockville, MD, 20855, 240–276–9200, e-mail: neal.bataller@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 3, 2008 (73 FR 38110), FDA published an order prohibiting the extralabel use of cephalosporin antimicrobial drugs in food-producing animals, with a 60-day comment period and a 90-day effective date for the final order. The order, that was to take effect on November 30, 2008, would have resulted in a change to § 530.41 (21 CFR 530.41) to list cephalosporins as prohibited from extralabel use in food-producing animals as provided for in 21 CFR 530.25(f).

In response to publication of this order, the agency received requests for a 60-day extension of the comment period. The requests conveyed concern that the original 60-day comment period would not allow the requesters sufficient time to examine the available evidence, consider the impact of the order, and provide constructive comment.

FDA considered the requests and, in the Federal Register of August 18, 2008 (73 FR 48127), extended the comment period for the order for 60 days, until November 1, 2008. Accordingly, FDA also delayed the effective date of the final rule 60 days, until November 30, 2008.

The agency received many substantive comments on the order of prohibition. Therefore, to allow more time to fully consider the comments, FDA has decided to revoke the order so that it does not take effect November 30, 2008. This means that neither the order nor the change to § 530.41 that would have listed cephalosporins as prohibited from extralabel use will take effect on November 30, 2008. If, after considering the comments and other relevant information, FDA decides to issue another order of prohibition addressing this matter, FDA will follow the procedures in 21 CFR 530.25 that provide for a public comment period prior to implementing the order.

We note that, insofar as withdrawal of the amendment to § 530.41 might be considered a rule subject to 5 U.S.C. 553(b), the agency for good cause finds that prior notice and comment procedures are unnecessary because there is no need to amend § 530.41 since the order is being revoked.

Dated: November 21, 2008.

William T. Flynn, Acting Director, Center for Veterinary Medicine.

[FR Doc. E8–28093 Filed 11–25–08; 8:45 am]

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