

Exchange believes that it is equitable for members who trade these products to pay the surcharge fee as the Exchange pays a license fee to trade these products. Additionally, the Exchange, due to competitive pressures in the industry, believes that it is equitable to continue to exclude equity option customer transactions from the surcharge fee. The Exchange also believes that it is equitable to provide a surcharge fee credit to assist specialist units in offsetting some of the costs that they incur in routing orders to other options exchanges in order to obtain the National Best Bid and Offer.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>22</sup> and paragraph (f)(2) of Rule 19b-4<sup>23</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>24</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>23</sup> 17 CFR 240.19b-4(f)(2).

<sup>24</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on October 7, 2008, the date on which Phlx submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2008-72 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2008-72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2008-72 and should be submitted on or before November 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-25030 Filed 10-21-08; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>25</sup> 17 CFR 200.30-3(a)(12).

## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary**

#### **Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 10, 2008**

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* DOT-OST-2008-0301.

*Date Filed:* October 10, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* October 31, 2008.

*Description:* Application of Orbest S.A. ("Orbest") requesting issuance of a foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the United States and the European Community and the Member States of the European Community to enable Orbest to engage in: (i) Foreign scheduled and charter air transportation of persons, property and mail between any point or points in a Member State of the European Union and any point or points in the United States and beyond or behind coextensive with the rights provided under the US-EC Agreement; (ii) foreign scheduled and charter air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) other charter pursuant to prior approval requirements; and (iv) transportation authorized by any additional route rights made available to European Community carriers in the future. Orbest also requests exemption authority to the extent necessary to enable it to hold out and provide the

service described above pending issuance of a foreign air carrier permit.

**Renee V. Wright,**

*Program Manager, Docket Operations,  
Federal Register Liaison.*

[FR Doc. E8-25146 Filed 10-21-08; 8:45 am]

BILLING CODE 4910-9X-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### Inspection, Repair, and Maintenance; Periodic Inspection of Commercial Motor Vehicles

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice on State periodic inspection programs.

**SUMMARY:** The FMCSA announces its acceptance of the State of Massachusetts' periodic inspection (PI) program for commercial motor vehicles (CMVs). The Agency has reviewed the State's inspection program for CMVs and determined that it should be added to the list of programs which have been determined to be comparable to, or as effective as, the Federal PI requirements contained in the Federal Motor Carrier Safety Regulations (FMCSRs). The State requires CMVs to be inspected annually or within 7 days of registration for newly acquired vehicles. The agency has published a list of such programs in the **Federal Register** previously, and this list has been revised occasionally. Including Massachusetts, 22 States, the Alabama Liquefied Petroleum Gas Board, the District of Columbia, 10 Canadian Provinces, and one Canadian Territory have PI programs which have been determined to be comparable to, or as effective as, the Federal PI requirements.

**DATES:** This action is effective on October 22, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Huntley, Chief of the Vehicle and Roadside Operations Division, MC-PSV, (202) 366-5370, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 210 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31142) (the Act) requires the Secretary of Transportation to prescribe standards for annual or more frequent inspection

of CMVs unless the Secretary finds another inspection system is as effective as an annual or more frequent inspection. On December 7, 1988, in response to the Act, the Federal Highway Administration (FHWA), the agency within the Department of Transportation responsible for motor carrier safety until 1999, published a final rule amending part 396 of the FMCSRs (53 FR 49402). The final rule requires CMVs operated in interstate commerce to be inspected at least once a year. The inspection is to be based on Federal inspection standards, or a State inspection program determined by the FHWA to be comparable to, or as effective as, the Federal standards. Accordingly, if the agency determines a State's PI program is comparable to, or as effective as, the requirements of part 396, then a motor carrier must ensure all of its CMVs which are required by that State to be inspected through the State's inspection program are so inspected. If a State does not have such a program, the motor carrier is responsible for ensuring its CMVs are inspected using one of the alternatives included in the final rule.

On March 16, 1989, the FHWA published a notice in the **Federal Register** that requested States and other interested parties to identify and provide information on the CMV inspection programs in their respective jurisdictions (54 FR 11020). Upon review of the information submitted, the FHWA published a list of State inspection programs that were determined to be comparable to the Federal PI requirements (54 FR 50726, December 8, 1989). This initial list included 15 States and the District of Columbia. The list was revised on September 23, 1991, to include the inspection programs of the Alabama Liquefied Petroleum Gas (LPG) Board, California, Hawaii, Louisiana, Minnesota, all of the Canadian Provinces, and the Yukon Territory (56 FR 47982). On November 27, 1992, the list was revised to include the Wisconsin bus inspection program (57 FR 56400). On April 14, 1994, the list was revised to include the Texas CMV inspection program (59 FR 17829). The list was revised on November 7, 1995, to include the Connecticut bus inspection program (60 FR 56183). The most recent revision was made on February 19, 1998 to include the Ohio inspection program for church buses (63 FR 8516), and a notice announcing FMCSA's acceptance of certain enhancements to the program on June 18, 2001 (66 FR 32863).

#### Determination: State of Massachusetts Inspection Program

The State of Massachusetts (the State) has implemented a mandatory annual inspection requirement for all buses (vehicles designed to transport 16 or more passengers, including the driver) and trucks as part of its program to improve the safety of operation of CMVs. As of October 1, 2008, the State prohibits any person from operating CMVs that are designed to transport 16 or more passengers, including the driver, or that have a gross vehicle weight rating of 4,536 kilograms (10,001 pounds) or more, unless the vehicle displays a valid safety inspection decal (540 Code of Massachusetts Regulations [CMR] 4.00 and 310 CMR 60.02).

The FMCSA has determined that the Massachusetts inspection program in effect as of October 1, 2008, is comparable to, or as effective as, the Federal PI requirements. Therefore, motor carriers operating CMVs which are subject to the State's program and which are subject to the FMCSRs must use the State's program to satisfy the Federal PI requirements.

It should be noted that in accepting the State's PI program, FMCSA also accepts the recordkeeping requirements associated with the inspection program. Upon successful completion of the Massachusetts Commercial Motor Vehicle Safety Inspection a comprehensive Vehicle Inspection Report (VIR) is created which identifies the vehicle, inspector, and the status of the inspection. In addition to the VIR, a program inspection sticker indicating the vehicle has passed or failed the inspection will be affixed to the vehicle's windshield. For trailers, the required proof of inspection will be the VIR.

Massachusetts will also have a database of all vehicle inspections performed. The vehicle inspection information will be captured at the end of the inspection and stored for a period of five years. State officials can query the database to capture a specific inspection report, or to summarize and analyze a subset or all CMV safety inspection records.

#### States With Equivalent Periodic Inspection Programs

The following is a complete list of States with inspection programs that FMCSA has determined are comparable to, or as effective as, the Federal PI requirements. Alabama (LPG Board), California, Connecticut, District of Columbia,