

## Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the effective date for Airspace Docket No. 04-ASW-11, as published in the **Federal Register** on December 13, 2004 (69 FR 72113), is corrected as follows:

### § 73.51 [Corrected]

■ On page 72113, correct the effective date to read March 17, 2005.

Issued in Washington, DC, on January 11, 2005.

Edie Parish,

*Acting Manager, Airspace and Rules.*

[FR Doc. 05-849 Filed 1-13-05; 8:45 am]

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 140

RIN 3038-AC18

### Delegation of Authority to Director of the Division of Clearing and Intermediary Oversight; Correction

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Technical amendments.

**SUMMARY:** This document contains technical amendments to the final rule amendments that were published on October 7, 2002 (67 FR 62350). This rule relates to delegations of authority from the Commodity Futures Trading Commission (Commission) to its staff.

**EFFECTIVE DATES:** January 14, 2005.

#### FOR FURTHER INFORMATION CONTACT:

Barbara S. Gold, Associate Director, or Peter Sanchez, Attorney Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone numbers: (202) 418-5450 or (202) 418-5237, respectively; facsimile number: (202) 418-5528; and electronic mail: [bgold@cftc.gov](mailto:bgold@cftc.gov) or [psanchez@cftc.gov](mailto:psanchez@cftc.gov), respectively.

#### SUPPLEMENTARY INFORMATION:

##### 1. Technical Amendments

By Rule 140.93, the Commission has delegated to the Director of the Division of Clearing and Intermediary Oversight (DCIO) various functions reserved to the Commission under Part 4 of the Commission's regulations, which relates to the operations and activities of commodity pool operators (CPOs) and commodity trading advisors.<sup>1</sup> As is

explained below, the technical amendments the Commission is making to Rule 140.93 conform the rule to changes the Commission previously has made to certain paragraphs of the rule itself and to certain other rules to which Rule 140.93 applies.

On October 7, 2002, the Commission amended its rules to reflect the reassignment of responsibilities, including delegations of authority pursuant to Rule 140.83, resulting from its reorganization of its staff. Under the reorganized structure, the (former) Divisions of Trading and Markets and Economic Analysis were reconfigured into two new divisions and one new office, DCIO, the Division of Market Oversight, and the Office of the Chief Economist. As amended, the Commission's rules reflected new assignments of responsibilities, including delegated authorities. In this regard, the Commission removed the words "Trading and Markets" from the body of Rule 140.93 and added, in their place, the words "Clearing and Intermediary Oversight." However, the Commission neglected at that time to make a similar amendment to the title of the rule itself. Accordingly, one of the technical amendments the Commission is making is the removal of the words "Trading and Markets" from the title of Rule 140.93 and the addition, in their place, of the words "Clearing and Intermediary Oversight."

One of the rules to which Rule 140.93 applies is Rule 4.22, which concerns the Annual Report that a CPO registered or required to be registered under the Act must prepare and distribute to each participant in each pool it operates. On December 11, 2002, the Commission delegated to the National Futures Association (NFA) all functions under Rule 4.22(f)—e.g., the receiving and granting or denying of applications for extensions of time to distribute Annual Reports.<sup>2</sup> On that date, the Commission also amended Rule 4.22(f) by removing the word "Commission" from the rule and adding, in its place, the words "National Futures Association."<sup>3</sup> Thus,

under [the Director's] direction as he may designate from time to time."

Commission rules cited to herein are found at 17 CFR Ch. I (2004). Both the Commodity Exchange Act (Act), 7 U.S.C. 1 *et seq.* (2000), and the Commission's rules issued thereunder can be accessed through the Commission's Web site, at: <http://www.cftc.gov/cftc/cftclawreg.htm>.

<sup>2</sup> 67 FR 77470 (December 18, 2002). NFA is a futures association registered as such with the Commission under Section 17 of the Act, 7 U.S.C. 21 (2000).

<sup>3</sup> 67 FR 77409 (December 18, 2002). The Commission did not delegate to NFA any functions under Rule 4.22(g), which concerns the election by a CPO of its pool's fiscal year and the authority of

other technical amendments the Commission is making are the removal of paragraph (a)(2) of Rule 140.93 (such that Rule 140.93 no longer refers to Rule 4.22(f)) and the redesignation of paragraphs (a)(3) through (a)(6) of Rule 140.93 as paragraphs (a)(2) through (a)(5) of Rule 140.93.

Another of the rules to which Rule 140.93 applies is Rule 4.5, which, among other things, provides an exclusion from the term "commodity pool operator" for specified "eligible persons" with respect to their operation of certain "qualifying entities," provided those persons comply with certain conditions in operating those entities. On August 1, 2003, the Commission eliminated certain of those conditions from Rule 4.5 by removing paragraphs (c)(2)(i) and (c)(2)(ii) and redesignating paragraphs (c)(2)(iii) and (c)(2)(iv) as paragraphs (c)(2)(i) and (c)(2)(ii) of the rule.<sup>4</sup> At that time, however, the Commission did not also amend Rule 140.93 to make conforming changes to its references to Rule 4.5. To remedy this oversight, the final technical amendment the Commission is making is the correction in (newly redesignated) Rule 140.93(a)(4) to refer to Rule 4.5(c)(2)(ii).

## II. Need for Correction

As published, Rule 140.93 contains text which no longer is accurate. Thus, it is in need of correction.

## III. Related Matters

### A. The Administrative Procedure Act

The Commission finds that that Rule 140.93 relates solely to agency practice and procedure and that notice of proposed rulemaking and opportunity for public participation are not required. Thus, the Commission has determined to make the amendments to Rule 140.93 effective immediately. The forgoing is in accordance with the Administrative Procedure Act, as codified, 5 U.S.C. 553.<sup>5</sup>

### B. The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601, *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The RFA defines the term "rule" to mean "any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title \* \* \* for which the agency provides an opportunity for notice and public

the Commission to disapprove a change of fiscal year after a fiscal year has been chosen.

<sup>4</sup> 68 FR 47221 (August 8, 2003).

<sup>5</sup> See 46 FR 26003, 26013, (May 6, 1981).

<sup>1</sup> Rule 140.93 further extends this delegation "to such members of the Commission's staff acting

comment.” 5 U.S.C. 601(2). Since the rules are not being effected pursuant to section 553(b), they are not “rules” as defined in the RFA, and the analysis and certification process certified in that statute do not apply.

#### C. The Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501, *et seq.*, which 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, does not apply to these rule amendments because these rule amendments do not contain information collection requirements as defined by the PRA.

#### D. Cost-Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission, before issuing a new regulation under the Act, to consider the costs and benefits of its action. The Commission understands that, by its terms, section 15 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.

Section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule 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 has considered the costs and benefits of this rule package in light of the specific areas of concern identified in section 15, at the time that the Commission delegated these responsibilities to the Division and the National Futures Association.

#### List of Subjects in 17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

### PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ Accordingly, 17 CFR part 140 is corrected by making the following technical amendments:

■ 1. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2, 12a.

#### § 140.93 [Corrected]

■ 2. In § 140.93:

■ a. Remove the words “Trading and Markets” in the title and add, in their place, “Clearing and Intermediary Oversight.”

■ b. Remove paragraph (a)(2);

■ c. Redesignate paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3), respectively;

■ d. Redesignate paragraph (a)(5) as paragraph (a)(4) and correct “§ 4.5(c)(2)(v)” in newly redesignated paragraph (a)(4) to read “§ 4.5(c)(2)(ii)”;

and

■ e. Redesignate paragraph (a)(6) as paragraph (a)(5).

\* \* \* \* \*

Issued in Washington, DC, on January 11, 2005 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–817 Filed 1–14–05; 8:45 am]

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### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Food and Drug Administration

#### 21 CFR Part 558

#### New Animal Drugs for Use in Animal Feeds; Melengestrol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Ivy Laboratories, Division of Ivy Animal Health, Inc. The ANADA provides for use of a melengestrol acetate liquid Type A medicated article to make Type C medicated feeds for heifers fed in confinement for slaughter and for heifers intended for breeding.

**DATES:** This rule is effective January 14, 2005.

#### FOR FURTHER INFORMATION CONTACT:

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Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: [lonnie.luther@fda.gov](mailto:lonnie.luther@fda.gov).

**SUPPLEMENTARY INFORMATION:** Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed ANADA 200–343 for use of HEIFERMAX 500 (melengestrol acetate) Liquid Premix, a liquid Type A medicated article used to make dry and liquid Type C medicated feeds for heifers fed in confinement for slaughter and for heifers intended for breeding. Ivy Laboratories’ HEIFERMAX 500 Liquid Premix is approved as a generic copy of Pharmacia and Upjohn Co.’s MGA 500 (melengestrol acetate) Liquid Premix, approved under NADA 39–402. The application is approved as of December 3, 2004, and the regulations are amended in 21 CFR 558.342 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of “rule” in 5 U.S.C. 804(3)(A) because it is a rule of “particular applicability.” Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

#### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. Section 558.342 is amended by revising paragraph (b) and in the table in