

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

\* \* \* \* \*

#### ANM or E5 North Bend, OR [Revised]

North Bend VORTAC

(Lat. 43°24'56" N, long. 124°10'06" W)

That airspace extending upward from 700 feet above the surface within an 8 mile radius of the North Bend VORTAC from the 142° radial clockwise to the 352° radial, and within a 14-mile radius of the VORTEC from the 352° radial clockwise to the 142° radial, and within 2.7 miles north of the VORTAC 268° radial extending from the 8 mile radius to 11 miles west of the VORTAC, and within 1.8 miles south and 5.7 miles north of the VORTAC 241° radial extending from the 8 mile radius to 14.8 miles southwest; that airspace extending upward from 1,200 feet about the surface within a 22 mile radius of the VORTAC extending clockwise from the west edge of V-27 south of the VORTAC, to the west edge of V-287 north of the VORTAC, and within 2.2 miles southeast and 10.1 miles northwest of the VORTAC 241° radial, extending from the VORTAC to 22.2 miles southwest.

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Issued in Seattle, Washington, on July 6, 2000.

Daniel A. Boyle,

Acting Manager, Air Traffic Division,  
Northwest Mountain Region.

[FR Doc. 00-18577 Filed 7-24-00; 8:45 am]

BILLING CODE 4910-13-M

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 143

RIN 3038-AB59

#### Adjustment of Civil Monetary Penalties for Inflation

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is amending Rule 143.8, which governs the maximum amount of civil monetary penalties, to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties assessable for violations of the Commodity Exchange Act (Act) and Commission rules and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

**EFFECTIVE DATE:** October 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lawrence B. Patent, Associate Chief

Counsel, or Julie R. Windhorn, Law Clerk, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone Number: (202) 418-5450.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA),<sup>1</sup> requires the head of each Federal agency to adjust by regulation, at least once every four years, the maximum amount of civil monetary penalties (CMPs) provided by law within the jurisdiction of that agency by the cost-of-living adjustment defined in the FCPIAA, as amended.<sup>2</sup> Because the purposes for the inflation adjustments include maintaining the deterrent effect of CMPs and promoting compliance with the law, the Commission monitors the impact of inflation on its CMP maximums and adjusts them as needed to implement the requirements and purposes of the FCPIAA.<sup>3</sup>

##### II. Relevant Commission CMPs

The inflation adjustment requirement applies to:

any penalty, fine or other sanction that—

(A) (i) is for a specific monetary amount as provided by Federal law; or

<sup>1</sup> The FCPIAA is codified in a note at 28 U.S.C. 2461 note. The relevant amendments to the FCPIAA contained in the Debt Collection Improvement Act of 1996, Pub. L. 104-134 (1996), are also codified at 28 U.S.C. 2461 note. In addition, the Federal Reports Elimination Act of 1998, Pub. L. 105-362 (1998), is also codified at 28 U.S.C. 2461 note. This statute, among other things, eliminated section 6 of the FCPIAA, which previously required the President to report annually to Congress. This amendment is not relevant to the adjustment of CMPs for inflation.

<sup>2</sup> Excluded from this requirement is "any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986, the Tariff Act of 1930, the Occupational Safety and Health Act of 1970 or the Social Security Act." 28 U.S.C. 2461 note, as amended by Pub. L. 104-134.

DCIA also requires that the range of minimum and maximum CMPs be adjusted, if applicable. This is not applicable to the Commission because, for the relevant CMPs within the Commission's jurisdiction, the Act provides only for maximum amounts that can be assessed for each violation of the Act or the rules and orders thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

<sup>3</sup> Specifically, the FCPIAA states:

The purpose of [the FCPIAA] is to establish a mechanism that shall—

(1) allow for regular adjustment for inflation of civil monetary penalties;

(2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and

(3) improve the collection by the Federal Government of civil monetary penalties.

(ii) has a maximum amount provided for by Federal law; and

(B) is assessed or enforced by an agency pursuant to Federal law; and

(C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. 28 U.S.C. 2461 note.

The Act provides for CMPs that meet the above definition, and are therefore subject to the inflation adjustment, in three sections: section 6(c) of the Act, section 6b of the Act, and section 6c of the Act.<sup>4</sup>

Penalties may be assessed pursuant to Section 6(c) of the Act, 7 U.S.C. 9, against "any person" found by the Commission to have—

(1) engaged in the manipulation of the price of any commodity or futures contract;

(2) made willfully a false or misleading statement or omitted a material fact in an application or report filed with the Commission; or

(3) violated any provision of the Act or of the rules, regulations or orders thereunder.

Penalties may be assessed pursuant to Section 6b of the Act, 7 U.S.C. 13a, against: (1) Any contract market that the Commission finds is not enforcing or has not enforced its rules; or (2) any contract market, or any director, officer, agent, or employee of any contract market, that is violating or has violated any of the provisions of the Act or any of the rules, regulations, or orders thereunder.

Penalties may be assessed by "the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States" pursuant to section 6c of the Act, 7 U.S.C. 13a-1, against "any person found \* \* \* to have committed any violation [of any provision of the Act or any rule, regulation or order thereunder]."

##### III. Relevant Cost-of-Living Adjustment

The cost-of-living adjustment is defined by the FCPIAA, as amended by the DCIA, as the amount by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.<sup>5</sup> The

<sup>4</sup> 7 U.S.C. 9, 13a and 13a-1.

<sup>5</sup> The Consumer Price Index means the Consumer Price Index for all-urban consumers (CPI-U) published by the Department of Labor. Interested parties may find the relevant Consumer Price Index over the Internet. To access this information, go to the Consumer Price Index Home Page at <http://stats.bls.gov/datahome.htm>; first select, Most Requested Series; then select Overall BLS Most Requested Series; and finally, under Price Indexes, select CPI for All Urban Consumers (CPI-U) 1967=100 (Unadjusted)—CUUROOOAAO.

adjusted CMP maximums are to be rounded based upon the size of the penalty and a specified formula.

The Commission's initial inflation adjustment, reflected in the current Rule 143.8, was published in the **Federal Register** on October 28, 1996, with an effective date of November 27, 1996.<sup>6</sup> Therefore, the cost-of-living adjustment for the CMP maximums that can be assessed and enforced by the Commission would be the amount by which the Consumer Price Index for all-urban consumers published by the Department of Labor for June 1999 (*i.e.*, June of the year preceding this year) exceeds that index for June 1996.<sup>7</sup> After rounding according to the applicable formula,<sup>8</sup> the maximum, inflation-adjusted CMP for each violation of the Act or Commission rules or orders thereunder assessed against any person pursuant to sections 6(c) and 6c of the Act will be \$120,000 or triple the monetary gain to such person for each such violation, and \$575,000 for each such violation when assessed pursuant to section 6b of the Act. The FCPIAA provides that "any increase under [FCPIAA] in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect." Thus, the new CMP maximum may be applied only to violations of the Act that occur after the effective date of this amendment, October 23, 2000.<sup>9</sup>

#### IV. Related Matters

##### A. Effective Date

This amendment to Rule 143.8 will implement a statutory change regarding agency procedure or practice within the meaning of 5 U.S.C. 553(b)(3)(A) and

<sup>6</sup> 61 FR 55564.

<sup>7</sup> The Consumer Price Index for all-urban consumers published by the Department of Labor for June 1999 was 497.9, and for June 1996 was 469.5. Therefore, the relevant cost of living adjustment factor would equal 497.9 divided by 469.5.

<sup>8</sup> The FCPIAA, as amended by DCIA, provides in relevant part for the rounding of any inflation adjustment "to the nearest—

(5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

(6) multiple of \$25,000 in the case of penalties greater than \$200,000."

Calculations of the Commission's inflation-adjusted CMP maximums are the following:

$(497.9/469.5) \times \$110,000 = \$116,653.89$

$(497.9/469.5) \times \$550,000 = \$583,269.44$

When rounded according to the statutory requirements, the inflation-adjusted CMP maximums would be \$120,000 and \$575,000.

<sup>9</sup> See also *Landgraf v. USI Film Products*, 511 U.S. 244 (1994) (holding that there is a presumption against retroactivity in changes to damage remedies or civil penalties in the absence of clear statutory language to the contrary).

therefore does not require notice.<sup>10</sup> The Commission also believes that opportunity for public comment is also unnecessary under 5 U.S.C. 553(b)(3)(B). This amendment does not affect any substantive change in Commission regulations, nor alter any obligation that a party has under Commission rules, regulations or orders. No party must change its manner of doing business, either with the public or the Commission, to comply with the rule amendments. These changes are undertaken pursuant to a statutory requirement that all agencies make such adjustments and are intended to prevent inflation from eroding the practical, deterrent effect of CMPs.

While higher maximum CMPs may expose persons to potentially higher financial liability, in nominal terms, for violations of the Act or Commission rules or orders thereunder, the rule amendments do not require that the maximum penalty be imposed on any party, nor do they alter any substantive due process rights that a party has in an administrative proceeding or a court of law that protect against imposition of excessive penalties. Further, the rule amendments only apply to violations of the Act, Commission rules or Commission orders that occur after the effective date of these amendments.

##### B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rules on small businesses. The amended rule will potentially affect those persons who are found by the Commission or the Federal courts to have violated the Act or Commission rules or orders. Some of these affected parties could be small businesses. Nevertheless, the Chairman, on behalf of the Commission, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

While the Commission recognizes that certain persons assessed a CMP for violating the Act or Commission rules or orders may be small businesses, the rule does not mandate the imposition of the maximum fixed CMP set forth in the rule on any party. As is currently the

<sup>10</sup> 5 U.S.C. 553(b) generally requires notice of proposed rulemaking to be published in the **Federal Register**. That provision states, however, that except when notice or hearing is required by statute, notice is not required for:

(A) \* \* \* interpretive rules, general statements of policy, or rules of agency organization, procedure or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.

case, the imposition of the maximum fixed CMP will occur only where the administrative law judge, the Commission or a Federal court finds that the gravity of the offense warrants a CMP in that amount.<sup>11</sup>

The rule should not increase in real terms the economic burden of the fixed maximum CMPs set forth in the Act. Instead, the rule implements a statutory requirement that agencies adjust for inflation existing CMPs so that the real economic value of such penalties, and therefore the Congressionally-intended deterrent effect of such CMPs, is not reduced over time by inflation. Nor does the rule impose any new, affirmative duty on any party or change any existing requirements and thus no party who is currently complying with the Act and Commission regulations will incur any expense in order to comply with the new rule. Therefore, the Commission believes that this final rule will not have a significant economic impact on a substantial number of small entities.<sup>12</sup>

##### C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3507(d), 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 this rule. The Commission

<sup>11</sup> Section 6(e) of the Act, 7 U.S.C. 9a(1), directs the Commission to "consider the appropriateness of [a] penalty to the gravity of the violation" when assessing a CMP pursuant to section 6(c) of the Act, 7 U.S.C. 9. In addition, the Commission's penalty guidelines state that the Commission, when assessing any CMP, will consider the gravity of the offense in question. In assessing the gravity of an offense, the Commission may consider such factors as whether the violations resulted in harm to the victims, whether the violations involved core provisions of the Act and whether the violator acted intentionally or willfully, as well as other factors. See CFTC Policy Statement Relating to the Commission's Authority to Impose Civil Money Penalties and Futures Self-Regulatory Organizations' Authority to Impose Sanctions; Penalty Guidelines, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,265 (November 1994).

<sup>12</sup> Any agency that regulates the activities of small entities must establish a policy or program to reduce and, when appropriate, to waive civil penalties for violations of statutory or regulatory requirements by small entities. An agency is not required to reduce or to waive civil penalties, however, if: (1) An entity has been the subject of multiple enforcement actions; (2) an entity's violations involve willful or criminal conduct; or (3) the violations involve serious health, safety or environmental threats. See Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. 104-121, § 223, 110 Stat. 862 (March 29, 1996). The Commission takes these provisions of SBREFA into account when it considers whether to seek or to impose a civil monetary penalty in a particular case involving a small entity.

believes this rule amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

#### List of Subjects in 17 CFR Part 143

Civil monetary penalty, Claims.

In consideration of the foregoing and pursuant to authority contained in sections 6(c), 6b and 6c of the Act, 7 U.S.C. 9, 13a, and 13a-1(d), and 28 U.S.C. 2461 note as amended by Pub. L. No. 104-134, the Commission hereby amends part 143 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

#### PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

1. The authority of citation for part 143 is revised to read as follows:

**Authority:** 7 U.S.C. 9 and 15, 9a, 12a(5), 13a, 13a-1(d) and 13(a); 31 U.S.C. 3701-3719; 28 U.S.C. 2461 note.

2. Section 143.8 is amended by revising paragraphs (a) and (c) to read as follows:

##### § 143.8 Inflation-adjusted civil monetary penalties.

(a) Unless otherwise amended by an act of Congress, the inflation-adjusted maximum civil monetary penalty for each violation of the Commodity Exchange Act or the rules or orders promulgated thereunder that may be assessed or enforced by the Commission under the Commodity Exchange Act pursuant to an administrative proceeding or a civil action in Federal court will be:

(1) For each violation for which a civil monetary penalty is assessed against any person (other than a contract market) pursuant to section 6(c) of the Commodity Exchange Act, 7 U.S.C. 9:

(i) For violations committed between November 27, 1996 and October 22, 2000, not more than the greater of \$110,000 or triple the monetary gain to such person for each such violation; and

(ii) For violations committed on or after October 23, 2000, not more than the greater of \$120,000 or triple the monetary gain to such person for each such violation;

(2) For each violation for which a civil monetary penalty is assessed against any contract market or other person pursuant to section 6c of the Commodity Exchange Act, 7 U.S.C. 13a-1:

(i) For violations committed between November 27, 1996 and October 22, 2000, not more than the greater of

\$110,000 or triple the monetary gain to such person for each such violation; and

(ii) For violations committed on or after October 23, 2000, not more than the greater of \$120,000 or triple the monetary gain to such person for each such violation; and

(3) For each violation for which a civil monetary penalty is assessed against any contract market or any director, officer, agent, or employee of any contract market pursuant to section 6b of the Commodity Exchange Act, 7 U.S.C. 13a:

(i) For violations committed between November 27, 1996 and October 22, 2000, not more than \$550,000 for each such violation; and

(ii) For violations committed on or after October 23, 2000, not more than \$575,000 for each such violation.

\* \* \* \* \*

(c) Unless otherwise amended by an act of Congress, the penalties set forth in this section or any penalty adjusted for inflation in the future pursuant to paragraph (b) of this section shall be applicable only to violations of the Commodity Exchange Act, Commission rules, or Commission orders which occur after the date on which such future inflation adjustments become effective.

Issued in Washington, DC on July 19, 2000 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00-18728 Filed 7-24-00; 8:45 am]

**BILLING CODE 6351-01-U**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 558

##### New Animal Drugs for Use in Animal Feeds; Halofuginone and Roxarsone

**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 a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for use of approved, single-ingredient halofuginone hydrobromide and roxarsone Type A medicated articles to make two-way combination Type C medicated feeds used for prevention of coccidiosis, increased rate of weight gain, improved feed efficiency, and

improved pigmentation in broiler and replacement chickens.

**DATES:** This rule is effective July 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Andres, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-1600.

**SUPPLEMENTARY INFORMATION:** Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141-157 that provides for use of STENOROL® (2.72 grams per pound (g/lb) of halofuginone hydrobromide) and 3-NITRO® (45.4, 90, 227, or 360 g/lb of roxarsone) Type A medicated articles to make combination Type C medicated feeds for broiler chickens, replacement broiler breeder chickens, and replacement caged laying chickens prior to sexual maturity. The combination Type C medicated feeds contain 2.72 grams per ton (g/ton) halofuginone hydrobromide and 22.7 to 45.4 g/ton roxarsone and are used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation. The NADA is approved as of July 3, 2000, and the regulations are amended in 21 CFR 558.265 and § 558.530 (21 CFR 558.530) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Also, § 558.530 is editorially amended in paragraphs (a) and (d)(5) to simplify the regulation.

In accordance with the freedom of information provisions of 21 CFR part 20 and 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 Dockets Management Branch (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)(2) 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.