

designations and adding a new definition in alphabetical order for "OTC derivatives dealer" to read as follows:

**§ 400.3 Definitions.**

\* \* \* \* \*

*OTC derivatives dealer* has the same meaning set out in 17 CFR 240.3b-12.

\* \* \* \* \*

**PART 401—EXEMPTIONS**

■ 5. The authority citation for part 401 continues to read as follows:

**Authority:** Sec. 101, Pub. L. 99-571, 100 Stat. 3209 (15 U.S.C. 78o-5(a)(4)).

**§ 401.3 [Amended]**

■ 6. In paragraphs (a)(2)(ii)(B) and (a)(2)(ii)(C), remove the reference "\$ 400.3(c)" and add in its place "\$ 400.3".

**§ 401.9 [Amended]**

■ 7. Amend § 401.9 as follows:

■ A. In paragraph (b), remove the reference "\$ 400.3(m)" and add in its place "\$ 400.3".

■ B. In paragraph (i), remove the reference "\$ 400.3 (k) and (l)" and add in its place "\$ 400.3".

■ C. In paragraph (n), remove the reference "\$ 400.3(o)" and add in its place "\$ 400.3".

■ D. In paragraph (o), remove the reference "\$ 400.3(j)" and add in its place "\$ 400.3".

■ E. In paragraph (p), remove the reference "\$ 400.3(b)" and add in its place "\$ 400.3".

**PART 402—FINANCIAL RESPONSIBILITY**

■ 8. The authority citation for part 402 continues to read as follows:

**Authority:** 15 U.S.C. 78o-5(b)(1)(A), (b)(4).

■ 9. Section 402.1 is amended by revising paragraph (b) to read as follows:

**§ 402.1 Application of part to registered brokers and dealers and financial institutions; special rules for futures commission merchants and government securities interdealer brokers; effective date.**

\* \* \* \* \*

(b) *Registered brokers or dealers.* This part does not apply to a registered broker or dealer (including an OTC derivatives dealer) that is subject to § 240.15c3-1 of this title (SEC Rule 15c3-1).

\* \* \* \* \*

**§ 402.2a [Amended]**

■ 10. In paragraph (c), under the heading for Schedule B, in paragraph (1)

under the "Columns 3 and 4" paragraph, remove the reference "17 CFR 400.3(m)" and add in its place "17 CFR 400.3".

**PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES**

■ 11. The authority citation for part 403 continues to read as follows:

**Authority:** Sec. 101, Pub. L. 99-571, 100 Stat. 3209; sec. 4(b), Pub. L. 101-432, 104 Stat. 963; sec. 102, sec. 106, Pub. L. 103-202, 107 Stat. 2344 (15 U.S.C. 78o-5(a)(5), (b)(1)(A), (b)(4)).

■ 12. Section 403.1 is revised to read as follows:

**§ 403.1 Application of part to registered brokers and dealers.**

With respect to their activities in government securities, compliance by registered brokers or dealers with § 240.8c-1 of this title (SEC Rule 8c-1), as modified by § 403.2 (a), (b) and (c), with § 240.15c2-1 of this title (SEC Rule 15c2-1), with § 240.15c3-2 of this title (SEC Rule 15c3-2), as modified by § 403.3, and with § 240.15c3-3 of this title (SEC Rule 15c3-3), as modified by § 403.4 (a) through (d), (f)(2) through (3), (g) through (j), and (m), including provisions in those rules relating to OTC derivatives dealers, constitutes compliance with this part.

**PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS**

■ 13. The authority citation for part 404 continues to read as follows:

**Authority:** 15 U.S.C. 78o-5 (b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

■ 14. Section 404.1 is revised to read as follows:

**§ 404.1 Application of part to registered brokers and dealers.**

Compliance by a registered broker or dealer with § 240.17a-3 of this title (pertaining to records to be made), § 240.17a-4 of this title (pertaining to preservation of records), § 240.17a-13 of this title (pertaining to quarterly securities counts) and § 240.17a-7 of this title (pertaining to records of non-resident brokers or dealers), including provisions in those rules relating to OTC derivatives dealers, constitutes compliance with this part.

**§ 404.4 [Amended]**

■ 15. In paragraph (a)(3)(i)(B), remove the reference "\$ 400.3(c)" and add in its place "\$ 400.3".

**PART 405—REPORTS AND AUDITS**

■ 16. The authority citation for part 405 continues to read as follows:

**Authority:** 15 U.S.C. 78o-5 (b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

■ 17. Section 405.1 is amended by revising paragraph (a) to read as follows:

**§ 405.1 Application of part to registered brokers and dealers and to financial institutions; transition rule.**

(a) Compliance by registered brokers or dealers with §§ 240.17a-5, 240.17a-8, and 240.17a-11 of this title (Commission Rules 17a-5, 17a-8 and 17a-11), including provisions of those rules relating to OTC derivatives dealers, constitutes compliance with this part.

\* \* \* \* \*

Dated: September 8, 2006.

**Randal K. Quarles,**

*Under Secretary, Domestic Finance.*

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 73**

[Docket No. 1998C-0790] (formerly 98C-0790)

**Listing of Color Additives Exempt From Certification; Mica-Based Pearlescent Pigments; Confirmation of Effective Date**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of July 5, 2006, for the final rule that appeared in the **Federal Register** of June 2, 2006 (71 FR 31927). The final rule amended the color additive regulations to provide for the safe use of titanium dioxide coated mica-based pearlescent pigments as color additives in the following foods: Cereals, confections and frostings, gelatin desserts, hard and soft candies (including lozenges), nutritional supplement tablets and gelatin capsules, and chewing gum.

**DATES:** Effective date confirmed: July 5, 2006.

**FOR FURTHER INFORMATION CONTACT:** Paul C. DeLeo, Center for Food Safety and Applied Nutrition (HFS-265), Food and

Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740-3835, 301-436-1302.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 2, 2006 (71 FR 31927), FDA amended the color additive regulations to add § 73.350 *Mica-based pearlescent pigments* (21 CFR 73.350) to provide for the safe use of titanium dioxide coated mica-based pearlescent pigments as color additives in the following foods: Cereals, confections and frostings, gelatin desserts, hard and soft candies (including lozenges), nutritional supplement tablets and gelatin capsules, and chewing gum.

FDA gave interested persons until July 3, 2006, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of June 2, 2006, should be confirmed.

#### List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Office of Food Additive Safety, notice is given that no objections or requests for a hearing were filed in response to the June 2, 2006, final rule. Accordingly, the amendments issued thereby became effective July 5, 2006.

Dated: September 8, 2006.

**Laura M. Tarantino,**

*Director, Office of Food Additive Safety,  
Center for Food Safety and Applied Nutrition.*  
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## DEPARTMENT OF JUSTICE

### 28 CFR Parts 0 and 45

[AG Order No. 2835-2006]

#### Reporting Violations to the Office of the Inspector General and the Office of Professional Responsibility; Delegations of Authority

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations of the Department of Justice to codify the obligation to report misconduct to the Office of the Inspector General (OIG) and the

Department of Justice Office of Professional Responsibility (OPR), to reflect the conferral of statutory law enforcement authority on OIG special agents, to update the structure, functions, and responsibilities of OPR, and to reflect the current organizational structure of the OIG.

**DATES:** *Effective Date:* September 11, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Mary Anne Hoopes, Associate Counsel, Office of Professional Responsibility, United States Department of Justice, Washington, DC 20530 (202) 514-3365 (regarding matters related to OPR), or Gail A. Robinson, General Counsel, Office of the Inspector General, United States Department of Justice, Washington, DC 20530 (202) 616-0646 (regarding matters related to the OIG).

**SUPPLEMENTARY INFORMATION:** 1. This rule amends 28 CFR part 0 to clarify the delegation of authority by the Attorney General to the Counsel for Professional Responsibility and to codify authority of the Inspector General. This rule permits OPR and the OIG to investigate specific matters, make such recommendations as appropriate to the Deputy Attorney General and the Attorney General, and coordinate their activities to improve the professionalism of the Department and to reduce waste, fraud, and abuse.

2. This rule amends 28 CFR part 45 by adding three new sections. The rule codifies the Attorney General's April 12, 2002 Memorandum For Department of Justice Employees Regarding the Duty to Report Misconduct and Cooperate with Investigators. This Memorandum provides for notifying the OIG of fraud, waste, abuse, or misconduct, except for those matters in the jurisdiction of OPR. This rule is not a substantive change, but merely codifies existing practice. The rule also implements section 308 of the Department of Justice Appropriations Authorization Act for FY 2002 and 2003, Public Law 107-273 (Nov. 2, 2002), which amended 5 U.S.C. app. 3, 8E, and which provides in pertinent part:

The Attorney General shall ensure by regulation that any component of the Department of Justice receiving a nonfrivolous allegation of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice, except with respect to allegations described in subsection (b)(3) [matters within the investigative jurisdiction of the Department of Justice Office of Professional Responsibility], shall report that information to the Inspector General.

This rule is also a codification of preexisting principles as set forth in the *United States Attorneys' Manual*,

§ 1-4.100, *Standards of Conduct Allegations of Misconduct by Department of Justice Employees Reporting Misconduct Allegations*. Although the language of section 308 of P.L. 107-273 is not identical to the prior regulations on this subject, the Attorney General interprets the statutory language as intended to codify the prior and existing practice.

3. This rule revises the description of OPR to reflect the changes made in that Office's jurisdiction since its creation on December 9, 1975, including AG Order 833-79 (45 FR 27754-55, April 24, 1980); AG Order 1931-94 (November 8, 1994), AG Order 2167-98 (63 FR 35847, July 8, 1998), AG Order 2190-98 (63 FR 62937-01, November 10, 1998), and AG Order 2492-2001 (66 FR 37902-01, July 20, 2001).

As originally constituted, OPR's jurisdiction was extraordinarily broad. OPR was empowered to "[r]eceive and review any information or allegation concerning conduct by a Department employee that may be in violation of law, regulations or orders, or of applicable standards of conduct or may constitute mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety." 28 CFR 0.39a(a). Its role in investigating those allegations, however, was relatively narrow, in keeping with its small size. OPR was to "[m]ake such preliminary inquiry as may be necessary to determine whether the matter should be referred to another official within the Department," 28 CFR 0.39a(c), and then to make an appropriate referral either to the head of the Department of Justice component to which the employee was assigned, or to that component's internal inspection unit, if no violation of law was alleged, or to the appropriate investigative agency, if the conduct appeared to involve a violation of law, 28 CFR 0.39a(d)(1) and (2). OPR then received reports from the investigating component on the status and outcome of investigations referred by OPR. 28 CFR 0.39a(e)(1). If OPR deemed it inappropriate to refer an allegation to the employing component, it was to refer the matter to the Attorney General and the Deputy Attorney General, or, if that would be inappropriate, to the Associate Attorney General or the Solicitor General. 28 CFR 0.39a(d)(3). In that event, OPR was to "recommend what further action should be undertaken" with respect to the allegation, "including the assignment of any task force or individual to undertake the action recommended." 28 CFR 0.39a(g). Finally, under 28 CFR 0.39a(h), OPR was authorized to