

§ 36.8

to a particular instrument, with disclosure appropriate to the particular instrument and the customer.

(b) This section does not relieve a futures commission merchant or introducing broker from any other disclosure obligation it may have under applicable law.

§36.8 Suspension or revocation of section 4(c) contract market transaction exemption.

The Commission may, after notice and opportunity for a hearing, suspend or revoke the exemption of any section 4(c) contract market transaction if the Commission determines that the exemption is no longer consistent with the public interest and the purposes of the Act.

§36.9 Fraud and manipulation in connection with section 4(c) contract market transactions.

(a) *Fraud.* The requirements of sections 4b(a) and 4o of the Act and §33.10 of this chapter shall apply to section 4(c) contract market transactions. In any event, it shall be unlawful for any person, directly or indirectly, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of any transaction entered into pursuant to this part—

(1) To cheat or defraud or attempt to cheat or defraud any other person;

(2) Willfully to make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof;

(3) Willfully to deceive or attempt to deceive any other person by any means whatsoever.

(b) *Manipulation.* The requirements of sections 6(c), 6(d), and 9(a) of the Act and §33.9(d) of this chapter shall apply to section 4(c) contract market transactions.

PART 100—DELIVERY PERIOD REQUIRED

AUTHORITY: 7 U.S.C. 7a(a)(4) and 12a.

17 CFR Ch. I (4–1–97 Edition)

§100.1 Delivery period required with respect to certain grains.

A period of seven business days is required during which contracts for future delivery in the current delivery month of wheat, corn, oats, barley, rye, or flaxseed may be settled by delivery of the actual cash commodity after trading in such contracts has ceased, for each delivery month after May 1938, on all contract markets on which there is trading in futures in any of such commodities, and such contract markets, and each of them, are directed to provide therefor.

[41 FR 3211, Jan. 21, 1976]

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

Subpart A—Organization

Sec.

140.1 Headquarters office.

140.2 Regional offices—Regional directors.

Subpart B—Functions

140.10 The Commission.

140.11 Emergency action by the senior Commissioner available.

140.12 Disposition of business by seriatim Commission consideration.

140.13 Vacancy in position of Chairman.

140.14 Delegation of authority to the Secretary of the Commission.

140.20 Designation of senior official to oversee Commission use of national security information.

140.21 Definitions.

140.22 Procedures.

140.23 General access requirements.

140.24 Control and accountability procedures.

140.61 [Reserved]

140.72 Delegation of authority to disclose confidential information to a contract market, registered futures association or self-regulatory organization.

140.73 Delegation of authority to disclose information to United States, States, and foreign government agencies and foreign futures authorities.

140.74 Delegation of authority to issue special calls for Series 03 Reports and Form 40.

140.75 Delegation of authority to the Director of the Division of Trading and Markets.

140.76 Delegation of authority to disclose information in a receivership or bankruptcy proceeding.

Commodity Futures Trading Commission

§ 140.10

- 140.77 Delegation of authority to determine that applications for contract market designation are materially incomplete.
- 140.80 Disclosure of information pursuant to a subpoena or summons.
- 140.81 [Reserved]
- 140.91 Delegation of authority to the Director of the Division of Trading and Markets.
- 140.92 Delegation of authority to grant registrations and renewals thereof.
- 140.93 Delegation of authority to the Director of the Division of Trading and Markets.
- 140.95 Delegation of authority with respect to withdrawals from registration.
- 140.96 Delegation of authority to publish in the FEDERAL REGISTER.
- 140.97 Delegation of authority regarding requests for classification of positions as bona fide hedging.
- 140.98 Publication of no-action, interpretative and exemption letters and other written communications.

Subpart C—Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

- 140.735-1 Authority and purpose.
- 140.735-2 Business and financial transactions and interests.
- 140.735-3 Non-governmental employment and other outside activity.
- 140.735-4 Receipt and disposition of foreign gifts and decorations.
- 140.735-5 Disclosure of information.
- 140.735-6 Practice by former members and employees of the Commission.
- 140.735-7 Statutory violations applicable to conduct of Commission members and employees.
- 140.735-8 Interpretative and advisory service.

AUTHORITY: 7 U.S.C. 4a and 12a.

Subpart A—Organization

§ 140.1 Headquarters office.

(a) *General.* The headquarters office of the Commission is located at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

[48 FR 2734, Jan. 21, 1983, as amended at 60 FR 49335, Sept. 25, 1995]

§ 140.2 Regional offices—Regional directors.

Each of the Regional offices described herein functions as set forth below under the direction of a Regional Director, who is delegated authority

and responsibility for the enforcement of the Act and administration of the programs of the Commission in the particular Region.

(a) The Eastern Regional Office is located at 1 World Trade Center, suite 3747, New York, New York 10048 and is responsible for enforcement of the act and administration of programs of the Commission in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

(b) The Central Regional Office is located at 300 South Riverside Plaza, suite 1600 North, Chicago, Illinois 60606 and is responsible for enforcement of the act and administration of programs of the Commission in the States of Illinois, Indiana, Michigan, Ohio and Wisconsin.

(c) The Western Regional office is located at 10880 Wilshire Boulevard, Suite 1005, Los Angeles, California 90024 and is responsible for enforcement of the act and administration of programs of the Commission in the States of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

(d) The Southwestern Regional office is located at 4900 Main Street, Suite 721, Kansas City, Missouri 64112, with a sub-office at Room 510, Grain Exchange Building, Fourth Street and Fourth Avenue, South, Minneapolis, Minnesota 55415, and is responsible for enforcement of the Act and administration of the programs of the Commission in the States of Arkansas, Colorado, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, and Texas.

[43 FR 21659, May 19, 1978, as amended at 48 FR 2734, Jan. 21, 1983; 49 FR 39534, Oct. 9, 1984; 54 FR 18099, Apr. 27, 1989; 57 FR 3722, Jan. 31, 1992; 57 FR 29203, July 1, 1992]

Subpart B—Functions

§ 140.10 The Commission.

The Commission is composed of a Chairman and four other Commissioners, not more than three of whom

may be members of the same political party, who are appointed by the President, with the advice and consent of the Senate, for 5-year terms, one term ending each year. The Commission is assisted by a staff, which includes lawyers, economists, accountants, investigators and examiners, as well as administrative and clerical employees.

[41 FR 28474, July 12, 1976]

§ 140.11 Emergency action by the senior Commissioner available.

(a) *Authority of senior Commissioner.* When it is not feasible to convene a quorum of the Commission, the Senior Commissioner present at the the principal offices of the Commission (or, during non-business hours, available in the Washington, DC area) may take emergency action on behalf of and in the name of the Commission in accordance with the procedures set forth in this section. Members of the Commission shall be considered senior in the following order: The Chairman, the Vice-Chairman, and other Commissioners in order of their length of service on the Commission. Where two or more Commissioners have commenced their service on the same date, the Commissioner whose unexpired term in office is the longest will be considered senior.

(b) *Exercise of authority.* Subject to the right of the Commission to review any emergency action taken as hereinafter provided, the Senior Commissioner may act on behalf of and in the name of the Commission with respect to all of the functions of the Commission except general rulemaking functions: *Provided, however,* That the Senior Commissioner shall not exercise any authority on behalf of the Commission (1) without consultation with such other member of the Commission as may at the time be present at the Commission's offices in Washington, DC, and without a reasonable attempt to consult, by telephone, with other members of the Commission; and (2) unless, in the opinion of the Senior Commissioner (after consulting with the General Counsel or his deputy or associate, and such other members of the Commission staff as the Senior Commissioner deems appropriate) the public interest requires that action be taken

prior to the next scheduled meeting of the Commission.

(c) *Report to the Commission.* The exercise of Senior Commissioner authority shall be reported to the Commission within one business day thereafter either by the Senior Commissioner or at his direction, and shall be recorded by the Secretariat in the Minute Record of all official actions of the Commission. The Secretariat shall promptly notify any directly affected person of the action taken and that it was the Senior Commissioner available, rather than the Commission as a whole, who took the action.

(d) *Review by the Commission.* The Commission may, in the following circumstances, review any action taken under Senior Commissioner authority and may affirm, modify, alter or set aside the decision:

(1) Upon the request of any member of the Commission, any action taken by a Senior Commissioner shall be reviewed by the Commission.

(2) In the event action by a Senior Commissioner suspends, denies or revokes or otherwise directly and adversely affects any license, right or privilege of any person, that person may in writing request review by the Commission and shall be entitled to have the action of the Senior Commissioner reviewed by the Commission.

(3) The Commission may, in its discretion, review any action taken by a Senior Commissioner upon petition by any other person.

(e) *Final effect of action by Senior Commissioner.* In any matter, the action taken under Senior Commissioner authority shall be deemed the action of the Commission unless and until the Commission shall otherwise direct.

[41 FR 28474, July 12, 1976]

§ 140.12 Disposition of business by secretariat Commission consideration.

(a) Whenever the Chairman of the Commission is of the opinion that joint deliberation among the members of the Commission upon any matter is unnecessary in light of the nature of the matter, impracticable, or would impede the orderly disposition of agency business, but is of the view that such matter should be the subject of a vote of the Commission, such matter may

Commodity Futures Trading Commission

§ 140.21

be disposed of by circulation of any relevant materials concerning the matter. The relevant materials shall be circulated to each member of the Commission, unless a member is unavailable or has determined not to participate in the matter. A written record of the vote of each participating Commission member shall be reported to the Secretariat who shall retain it in the records of the Commission.

(b) Whenever any member of the Commission so requests, any matter circulated for disposition pursuant to paragraph (a) of this section shall be withdrawn from circulation and scheduled instead for a Commission meeting.

[43 FR 43452, Sept. 26, 1978]

§ 140.13 Vacancy in position of Chairman.

At any time that a vacancy exists in the position of Chairman of the Commission the remaining members of the Commission shall elect a member to serve as acting Chairman who shall exercise the executive and administrative functions of the Commission that would otherwise be exercised by a Chairman in accordance with section 2(a)(6) of the Commodity Exchange Act, as amended, until a new Chairman has been appointed by the President and confirmed by the Senate: *Provided, however,* That if the President shall appoint a new Chairman from among the existing members of the Commission, that Commissioner shall serve as acting Chairman for these purposes until such time as his appointment as Chairman has been confirmed or rejected by the Senate.

[43 FR 50167, Oct. 27, 1978]

§ 140.14 Delegation of authority to the Secretary of the Commission.

After the Commission has formally reached a decision or taken other action on a matter, has agreed upon the language of the document which embodies the Commission decision or other action, including, but not limited to, a rule, regulation or order, and has directed that the document be issued, the Secretary of the Commission (or a person designated in writing by the Secretary) shall sign the document on behalf of the Commission. Signature by

the Secretary shall be a ministerial function and shall not be discretionary. The delegation to the Secretary of the authority to sign documents on the Commission's behalf shall not affect any other delegation which the Commission has made, or may make, which authorizes any other officer or employee of the Commission to take action and to sign documents on the Commission's behalf. In addition, the Commission reserves the authority to provide for signature on its behalf by the Chairman or any other member of the Commission in particular circumstances.

[44 FR 33677, June 12, 1979]

§ 140.20 Designation of senior official to oversee Commission use of national security information.

(a) The Executive Director is hereby designated to oversee the Commission's program to ensure the safeguarding of national security information received by the Commission from other agencies, to chair a Commission committee composed of members of the staff selected by him with authority to act on all suggestions and complaints with respect to the Commission administration of its information security program, and, in conjunction with the Security Officer of the Commission, to ensure that practices for safeguarding national security information are systematically reviewed and that those practices which are duplicative or unnecessary are eliminated.

(b) The Executive Director may submit any matter for which he has been designated under paragraph (a) of this section to the Commission for its consideration.

[44 FR 65736, Nov. 15, 1979, as amended at 61 FR 21955, May 13, 1996]

§ 140.21 Definitions.

(a) *Classified information.* Information or material that is:

(1) Owned by, produced for or by, or under control of the United States Government, and

(2) Determined pursuant to Executive Order 12356 or prior or succeeding orders to require protection against unauthorized disclosure, and

(3) So designated.

(b) *Compromise.* The disclosure of classified information to persons not authorized access thereto.

(c) *Custodians.* An individual who has possession of or is otherwise charged with the responsibility for safeguarding or accounting for classified information.

(d) *Classification levels.* Refers to Top Secret “(TS)”, Secret “(S)”, and Confidential “(C)” levels used to identify national security information. Markings “For Official Use Only,” and “Limited Official Use” shall not be used to identify national security information.

[48 FR 15464, Apr. 11, 1983]

§ 140.22 Procedures.

(a) *Original classification.* The Commodity Futures Trading Commission has no original classification authority.

(b) *Derivative classification.* Personnel of the Commission shall respect the original classification markings assigned to information they receive from other agencies.

(c) *Declassification and downgrading.* Since the Commission does no original classification of material, declassification and downgrading of sensitive material is not applicable.

(d) *Dissemination.* All classified national security information which the Commission receives from any agency will be cared for and returned in accordance with the particular agency’s policy guidelines and may not be disseminated to any other agency without the consent of the originating agency.

[48 FR 15464, Apr. 11, 1983]

§ 140.23 General access requirements.

(a) *Determination of trustworthiness.* No person shall be given access to classified information unless a favorable determination has been made as to the person’s trustworthiness. The determination of eligibility, referred to as a security clearance, shall be based on such investigations as the Commission may require in accordance with the applicable Office of Personnel Management standards and criteria.

(b) *Determination of need-to-know.* A person is not entitled to receive classified information solely by virtue of

having been granted a security clearance. A person must also have a need for access to the particular classified information sought in connection with the performance of official government duties or contractual obligations. The determination of that need shall be made by officials having responsibility for the classified information.

[48 FR 15464, Apr. 11, 1983]

§ 140.24 Control and accountability procedures.

Persons entrusted with classified information shall be responsible for providing protection and accountability for such information at all times and for locking classified information in approved security equipment whenever it is not in use or under direct supervision of authorized persons.

(a) *General safeguards.* (1) Classified material must not be left in unoccupied rooms or be left inadequately protected in an occupied office, or one occupied by other than security cleared employees. Under no circumstances shall classified material be placed in desk drawers or anywhere other than in approved storage containers.

(2) Employees using classified material shall take every precaution to prevent deliberate or casual inspection of it by unauthorized persons. Classified material shall be kept under constant surveillance and face down or covered when not in use.

(3) All copies of classified documents and any informal material such as memoranda, rough drafts, shorthand notes, carbon copies, carbon paper, typewriter ribbons, recording discs, spools and tapes shall be given the same classification and secure handling as the classified information they contain.

(4) Commission personnel authorized to use classified materials will obtain them from the Executive Director or his delegee on the day required and return them to the Executive Director or his delegee before the close of business on the same day.

(5) Classified information shall not be revealed in telephone or telecommunications conversations.

(6) Any person who has knowledge of the loss or possible compromise of classified information shall immediately

report the circumstances either to the Security Officer or to the Executive Director or his delegee. The Executive Director or his delegee shall initiate a preliminary inquiry to determine the circumstances surrounding an actual or possible compromise, and to determine what corrective measures and administrative, disciplinary, or legal action is necessary.

(b) *Reproduction controls.* (1) The number of copies of documents containing classified information must be kept to the minimum required by operational necessity to decrease the risk of compromise and reduce storage costs.

(2) Top Secret documents, except for the controlled initial distribution of information processed or received electrically, shall not be reproduced without the consent of the originator.

(3) Unless restricted by the originating agency, Secret and Confidential documents may be reproduced to the extent required by operational needs.

(4) Reproduced copies of classified documents shall be subject to the same accountability and controls as the original documents.

(5) Classified reproduction shall be controlled by persons with the proper level of security clearance.

(6) Records shall be maintained to show the number and distribution of reproduced copies to all Top Secret documents, of all classified documents covered by special access programs distributed outside the originating agency, and of all Secret and Confidential documents which are marked with special dissemination and reproduction limitations.

(7) Unauthorized reproduction of classified material will be subject to appropriate disciplinary action.

(c) *Storage of classified material.* (1) All classified material in the custody of the Commission will be stored in accordance with the guidelines set forth in 32 CFR 2001.43.

(2) In addition, the Commission remains subject to the provisions of 32 CFR part 2001, *et seq.*, insofar as they are applicable to classified materials held by the Commission.

[48 FR 15464, Apr. 11, 1983, as amended at 61 FR 21955, May 13, 1996]

§ 140.61 [Reserved]

§ 140.72 Delegation of authority to disclose confidential information to a contract market, registered futures association or self-regulatory organization.

(a) Pursuant to the authority granted under sections 2(a) (11), 8a(5) and 8a(6) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the Executive Director, the Deputy Executive Director, the Special Assistant to the Executive Director, the Director of the Division of Trading and Markets, each Deputy Director of the Division of Trading and Markets, the Chief Accountant, the General Counsel, each Deputy General Counsel, the Director of the Division of Economic Analysis, each Deputy Director of the Division of Economic Analysis, the Director of the Market Surveillance Section, the Director of the Division of Enforcement, each Deputy Director of the Division of Enforcement, the Program Coordinator of the Division of Enforcement, each Associate Director of the Division of Enforcement, the Chief Counsel of the Division of Enforcement, each of the Regional Coordinators, and each of the Directors of the Market Surveillance Branches, the authority to disclose to an official of any contract market, registered futures association, or self-regulatory organization as defined in section 3(a) (26) of the Securities Exchange Act of 1934, any information necessary or appropriate to effectuate the purposes of the Act, including, but not limited to the full facts concerning any transaction or market operation, including the names of the parties thereto. This authority to disclose shall be based on a determination that the transaction or market operation disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors or that disclosure is necessary or appropriate to effectuate the purposes of the Act. The authority to make such a determination is also delegated by the Commission to the Commission employees identified in this section. A Commission employee delegated authority under this section may exercise that authority on his or her own initiative or in response

to a request by an official of a contract market, registered futures association or self-regulatory organization.

(b) Disclosure under this section shall only be made to a contract market, registered futures association or self-regulatory organization official who is named in a list filed with the Commission by the chief executive officer of the contract market, registered futures association or self-regulatory organization, which sets forth the official's name, business address and telephone number. The chief executive officer shall thereafter notify the Commission of any deletions or additions to the list of officials authorized to receive disclosures under this section. The original list and any supplemental list required by his paragraph shall be filed with the Secretary of the Commission, and a copy thereof shall also be filed with the Regional Coordinator for the region in which the contract market is located or in which the registered futures association or self-regulatory organization has its principal office.

(c) Notwithstanding the provisions of paragraph (a) of this section, in any case in which a Commission employee delegated authority under this section believes it appropriate, he or she may submit to the Commission for its consideration the question of whether disclosure of information should be made.

(d) For purposes of this section, the term "official" shall mean any officer or member of a committee of a contract market, registered futures association or self-regulatory organization who is specifically charged with market surveillance or audit or investigative responsibilities, or their duly authorized representative or agent, who is named on the list filed pursuant to paragraph (b) of this section or any supplement thereto.

(e) For the purposes of this section, the term "self-regulatory organization" shall mean the same as that defined in section 3(a) (26) of the Securities Exchange Act of 1934.

(f) Any contract market, registered futures association or self-regulatory organization receiving information from the Commission under these provisions shall not disclose such information except that disclosure may be

made in any self-regulatory action or proceeding.

[48 FR 22134, May 17, 1983, as amended at 57 FR 20638, May 14, 1992; 61 FR 1709, Jan. 23, 1996]

§ 140.73 Delegation of authority to disclose information to United States, States, and foreign government agencies and foreign futures authorities.

(a) Pursuant to sections 2(a)(11), 8a(5) and 8(e) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the General Counsel, or in his or her absence to each Deputy General Counsel, the Director of the Division of Enforcement, each Deputy Director of the Division of Enforcement, the Program Coordinator of the Division of Enforcement, the Chief Counsel of the Division of Enforcement, each Associate Director of the Division of Enforcement, the Director of the Division of Economic Analysis or, in his or her absence, each Deputy Director of the Division, the Director of the Market Surveillance Section, the Director of the Division of Trading and Markets or in his or her absence each Deputy Director of the Division of Trading and Markets the authority to furnish information in the possession of the Commission obtained in connection with the administration of the Act, upon written request, to:

(1) Any department or agency of the United States, including for this purpose an independent regulatory agency, acting within the scope of its jurisdiction in the investigation or prosecution of any violation of law;

(2) Any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction; or

(3) Any foreign futures authority, as defined in section 1a(10) of the Act, or any department or agency of any foreign government or political subdivision thereof, acting within the scope of its jurisdiction, provided that the Commission official making the disclosure is satisfied that the information will not be disclosed except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government

or political subdivision or any department or agency thereof, or foreign futures authority is a party.

(b) Any disclosure made pursuant to paragraph (a) of this section shall be made with the concurrence of the Director of the Division of Enforcement or in his or her absence a Deputy Director of the Division of Enforcement. Provided, however, that no such concurrence is necessary for the Director of the Division of Economic Analysis or in his or her absence each Deputy Director of the Division or for the Director of the Market Surveillance Section to release information under paragraph (a)(1) of this section concerning current or on-going market transactions or operations.

(c) In furnishing information under this delegation pursuant to paragraphs (a)(1) and (2) of this section, the Commission official making the disclosure shall remind the department or agency involved that section 8(e) of the Act prohibits the disclosure by such department or agency of information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers except in an action or proceeding under the laws of the United States, the State, or a political subdivision thereof to which the department or the agency of either the state or political subdivision, the Commission, or the United States is a party.

(d) This delegation shall not affect any other delegation which the Commission has made or may make, which authorizes any other officer or employee of the Commission to furnish information to governmental bodies on the Commission's behalf.

(e) Notwithstanding the provisions of paragraph (a) of this section, in any case in which any employee delegated authority therein believes it appropriate the matter may be submitted to the Commission for its consideration. Nothing in this section shall prohibit the Commission from exercising the authority delegated in paragraph (a) of this section.

[48 FR 22135, May 17, 1983, as amended at 57 FR 20638, May 14, 1992; 61 FR 1709, Jan. 23, 1996]

§ 140.74 Delegation of authority to issue special calls for Series 03 Reports and Form 40.

(a) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Economic Analysis, or the Director's designee, the authority to issue special calls under Commission Rule 18.00 for series 03 reports, and under Commission Rule 18.04 for a Form 40.

(b) The Director of the Division of Economic Analysis may submit any matter which has been delegated to the Director under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Economic Analysis under paragraph (a) of this section.

[50 FR 47530, Nov. 19, 1985]

§ 140.75 Delegation of authority to the Director of the Division of Trading and Markets.

Pursuant to sections 2(a)(11), 8a(5) and 8(g) of the Act, the Commission hereby delegates to the Director of the Division of Trading and Markets and to such members of the Commission's staff acting under his or her direction as the Director may designate from time to time, the authority to disclose any registration information contained in the registration applications filed by Commission registrants or any compilation of such information maintained by the Commission to any department or agency of any State or any political subdivision thereof. Disclosure under this section may be made upon reasonable request made to the Commission or without request whenever the Director of Trading and Markets or any Commission employee designated by the Director to make disclosures under this section determines that such information may be appropriate for use by any department or agency of a State or political subdivision thereof. Notwithstanding the provisions of this section, in any case in which the Director of Division of Trading and Markets deems it appropriate,

or in any case in which the Commission so requests, the Director may submit matter to the Commission for its consideration.

[48 FR 22136, May 17, 1983]

§ 140.76 Delegation of authority to disclose information in a receivership or bankruptcy proceeding.

(a) Pursuant to sections 2(a)(11) and 8(b) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Enforcement, the Director of the Division of Trading and Markets, the General Counsel or any Commission employee under their direction as they may designate, the authority to disclose data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers, when such disclosure is made in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under the Act, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under title 11 of the United States Code.

(b) Notwithstanding the provisions of paragraph (a), in any case in which the Director of the Division of Enforcement, the Director of the Division of Trading and Markets, the General Counsel, or any employee designated by them to make disclosures pursuant to this section believes it appropriate, the matter may be submitted to the Commission for consideration. In addition, the Commission reserves to itself the authority to determine whether to grant a request for information in any particular case.

[49 FR 4464, Feb. 7, 1984]

§ 140.77 Delegation of authority to determine that applications for contract market designation are materially incomplete.

(a) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Directors of the Division of Economic Analysis and the Division of Trading and Markets or their

designees, the authority to determine that an application for contract market designation is materially incomplete under section 6 of the Commodity Exchange Act and to so notify the applicant.

(b) The Directors of the Division of Economic Analysis and the Division of Trading and Markets may submit any matter which has been delegated to them under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Directors of the Division of Economic Analysis and the Division of Trading and Markets under paragraph (a) of this section.

[48 FR 34946, Aug. 2, 1983, as amended at 57 FR 20638, May 14, 1992]

§ 140.80 Disclosure of information pursuant to a subpoena or summons.

The Commission shall provide notice to any person who has submitted information to the Commission when a summons or subpoena seeking the submitted information is received by the Commission. Notice ordinarily will be provided by mailing a copy of the summons or subpoena to the last known home or business address of the person who submitted the information. However, under circumstances which would make notice by mail unduly burdensome or costly, notice of the existence of the summons or subpoena may be affected by alternative means such as publication in the FEDERAL REGISTER. The Commission will not disclose such information until the expiration of at least fourteen days from the date of mailing, or such other notice as is given. This section shall not apply to (a) Congressional subpoenas or Congressional requests for information, (b) information which is considered by the Commission to be public information, or (c) information as to which the submitter has waived the notice provision of this section.

[49 FR 4464, Feb. 7, 1984]

§ 140.81 [Reserved]**§ 140.91 Delegation of authority to the Director of the Division of Trading and Markets.**

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Trading and Markets and to such members of the Commission's staff acting under his direction as he may designate from time to time:

(1) All functions reserved to the Commission in § 1.10 of this chapter, except for those relating to nonpublic treatment of reports set forth in § 1.10(g) of this chapter;

(2) All functions reserved to the Commission in § 1.12 of this chapter;

(3) All functions reserved to the Commission in § 1.14 of this chapter;

(4) All functions reserved to the Commission in § 1.15 of this chapter;

(5) All functions reserved to the Commission in § 1.16 of this chapter; and

(6) All functions reserved to the Commission in § 1.17 of this chapter, except for those relating to non-enumerated cover cases set forth in § 1.17(j)(3) of this chapter.

(b) The Director of the Division of Trading and Markets may submit any matter which has been delegated to him under paragraph (a) of this section to the Commission for its consideration.

[44 FR 13460, Mar. 12, 1979, as amended at 60 FR 8195, Feb. 13, 1995]

140.92 Delegation of authority to grant registrations and renewals thereof.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Trading and Markets and to such members of the Commission's staff acting under his direction as he may designate, the authority to grant registrations and renewals thereof.

(b) The Director of the Division of Trading and Markets may submit any matter which has been delegated to him under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section may prohibit the Commission, at its election,

from exercising the authority delegated to the Director of the Division of Trading and Markets under paragraph (a) of this section.

[45 FR 20785, Mar. 31, 1980]

§ 140.93 Delegation of authority to the Director of the Division of Trading and Markets.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Trading and Markets and to such members of the Commission's staff acting under his direction as he may designate from time to time:

(1) All functions reserved to the Commission in § 4.12(a) of this chapter.

(2) All functions reserved to the Commission in § 4.22(f)(3) of this chapter; and

(3) All functions reserved to the Commission in § 4.22(g)(3) of this chapter.

(4) All functions reserved to the Commission in § 4.20(a) of this chapter.

(5) All functions reserved to the Commission in § 4.5(c)(2)(v) of this chapter.

(6) All functions reserved to the Commission in § 4.6(b) of this chapter.

(b) The Director of the Division of Trading and Markets may submit any matter which has been delegated to him under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Trading and Markets under paragraph (a) of this section.

[46 FR 26023, May 8, 1981, as amended at 46 FR 34311, July 1, 1981; 50 FR 15884, Apr. 23, 1985; 52 FR 41986, Nov. 2, 1987]

§ 140.95 Delegation of authority with respect to withdrawals from registration.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Trading and Markets and to such members of the Commission's staff acting under his direction as he may designate, the authority to review, postpone, condition, deny, or otherwise act upon a request for withdrawal from registration.

§ 140.96

17 CFR Ch. I (4–1–97 Edition)

(b) The Director of the Division of Trading and Markets may submit any matter which has been delegated to him under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section shall prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Trading and Markets under paragraph (a) of this section.

[46 FR 48918, Oct. 5, 1981]

§ 140.96 Delegation of authority to publish in the Federal Register.

(a) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Economic Analysis or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to publish in the FEDERAL REGISTER notice of the availability for comment of the proposed terms and conditions of applications for contract market designation, and to determine to publish, and to publish, requests for public comment on proposed exchange rule amendments of major economic significance.

(b) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Economic Analysis or the Director's designee, and to the Director of the Division of Trading and Markets or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to determine to publish, and to publish, in the FEDERAL REGISTER, requests for public comment on proposed exchange and self-regulatory organization rule amendments when publication of the proposed rule amendment is in the public interest and will assist the Commission in considering the views of interested persons.

(c) The Director of the Division of Economic Analysis or the Director of the Division of Trading and Markets may submit any matter which has been delegated to such Director under paragraphs (a) or (b) of this section to the Commission for its consideration.

(d) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Economic Analysis and to the Director of the Division of Trading and Markets under paragraphs (a) and (b) of this section.

[50 FR 47532, Nov. 19, 1985, as amended at 55 FR 35897, Sept. 4, 1990; 57 FR 20638, May 14, 1992]

§ 140.97 Delegation of authority regarding requests for classification of positions as bona fide hedging.

(a) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Economic Analysis, or the Director's designee, all functions reserved to the Commission in §§ 1.47 and 1.48 of this chapter.

(b) The Director of the Division of Economic Analysis may submit any matter which has been delegated to the Director under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Economic Analysis under paragraph (a) of this section.

[57 FR 12874, Apr. 14, 1992]

§ 140.98 Publication of no-action, interpretative and exemption letters and other written communications.

(a) Except as provided in paragraphs (b) and (c) of this section, and except for applications for orders granting exemptions submitted pursuant to section 4(c) of the Commodity Exchange Act and any written responses thereto, each written response by the Commission or its staff to a letter or other written communication requesting:

(1) Interpretative legal advice with respect to the Commodity Exchange Act or any rule, regulation or order issued or adopted by the Commission thereunder;

(2) A statement that, on the basis of the facts stated in such letter or other communication, the staff would not recommend that the Commission take any enforcement action; or

(3) An exemption, on the basis of the facts stated in such letter or other communication, from the provisions of the Commodity Exchange Act or any rules, or regulations or orders issued or adopted by the Commission thereunder; shall be made available, together with the letter or other written communication making the request, for inspection and copying by any person as soon as practicable after the response has been sent or given to the person requesting it.

(b) Any person submitting a letter or other written communication making such a request may also submit therewith a request that the letter or other written communication, as well as any Commission or staff response thereto, be accorded confidential treatment for a specified period of time, not exceeding 120 days from the date of the response thereto, together with a statement setting forth the considerations upon which the request for such treatment is based. If the staff determines that the request is reasonable and appropriate it will be granted and the letter or other written communication as well as the response thereto will not be made available for public inspection or copying until the expiration of the specified period. If it appears to the staff that the request for confidential treatment should be denied, the staff shall so advise the person making the request and such person may withdraw the letter or other written communication within 30 days thereafter. In such case, no response will be sent or given and the letter or other written communication shall remain in the Commission's files but will not be made public pursuant to this section. If such letter or other written communication is not so withdrawn, it shall be deemed to be available for public inspection and copying together with any written response thereto.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, no portion of a letter or other written communication received by the Commission or its staff of the type described in paragraph (a) of this section, or any written response thereto, shall be made available for inspection and copying or otherwise published which would separately disclose the business

transactions or market positions of any person and trade secrets or names of customers, except in accordance with the provisions of section 8 of the Commodity Exchange Act.

[57 FR 61291, Dec. 24, 1992]

Subpart C—Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

AUTHORITY: 7 U.S.C. 4a (f) and (j), 12a(5), and 13.

SOURCE: 41 FR 27511, July 2, 1976, unless otherwise noted.

§ 140.735-1 Authority and purpose.

This subpart sets forth specific standards of conduct required of members, employees, and special government employees, and regulations concerning former members, employees, and special government employees of the Commodity Futures Trading Commission. These rules are separate from and in addition to the Office of Government Ethics' conduct rules, Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Commission's supplemental rules set forth in 5 CFR part 5100. In addition, this subpart contains references to various statutes governing employee conduct in order to aid members and employees in their understanding of statutory restrictions and requirements.¹

[58 FR 52657, Oct. 12, 1993]

§ 140.735-2 Business and financial transactions and interests.

(a) *Application.* This section applies to all transactions effected by or on behalf of a Commission member or employee, including transactions for the account of other persons effected by

¹These references, however, do not purport to cover all restrictions and requirements, and the paraphrased restatements of statutory provisions, such as that of 18 U.S.C. 201, *et seq.*, appearing in this subpart C, are not intended to be, and should not be construed as, verbatim quotations of the law. The statutory text should be consulted in any situation in which it might apply.

the member or employee, directly or indirectly under a power of attorney or otherwise. Since this section applies to “indirect” participation in transactions, a member or employee is considered to have sufficient interest in the transactions of the spouse or minor child of the member or employee, or other relatives who are residents of the immediate household of the member or employee, so that such transactions must be reported and, absent compelling countervailing reasons, are subject to all the terms of this section.

(b) *Prohibitions.* No Commission member or employee shall:

(1) Participate, directly or indirectly, in any transaction—

(i) Involving a contract of sale of any commodity for future delivery;

(ii) Involving any commodity that is of the character of, or is commonly known to the trade as, an option, privilege, indemnity, bid, offer, put, call, advance guaranty or decline guaranty; or

(iii) For the delivery of any commodity that is or is to be executed pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account or leverage contract or similar contracts when subject to regulation by the Commission under section 19 of the Act; except that the prohibitions in paragraphs (b)(1) (i) and (ii) of this section shall not apply to:

(A) A transaction in connection with a farming, ranching, oil and gas, mineral rights or other natural resource operation in which the Commission member or employee has a financial interest, if the Commission member or employee is not involved in the decision to engage in, and does not have prior knowledge of, the actual futures or option transaction and has previously notified the General Counsel in writing of the nature of the operation, the extent of the member’s or employee’s interest, the types of transactions in which the operation may engage and the identity of the person or persons who will make trading decisions for the operation; or

(B) A transaction entered into by any investment company (*e.g.*, a mutual fund) or similar pooled investment entity other than one operated by a per-

son who is a commodity pool operator with respect to that entity, in which the direct or indirect ownership interest of the Commission member or employee is limited to and represents less than 1 per cent of the total ownership interest of the fund or entity and with which the Commission member or employee has no other relationship;²

(2) Participate, directly or indirectly, in any investment transaction involving an actual commodity if:

(i) The transaction involves the use of nonpublic information, or

(ii) The transaction is effectuated by an instrument regulated by the Commission, and is not in connection with a transaction permitted under paragraph (b)(1) of this section, or

(iii) The transaction is effected by an instrument functionally equivalent to an instrument regulated by the Commission;³

² Attention is directed to section 9(c) of the Commodity Exchange Act, which makes it a felony for any member or employee of the Commission, or agent thereof, to participate, directly or indirectly, in, *inter alia*, any commodity futures, option or leverage transaction, unless authorized to do so by Commission rule or regulation. Attention is also directed to 17 CFR 4.5, which excludes certain otherwise regulated persons from the definition of “commodity pool operator” with respect to the operation of specific investment entities enumerated in the regulation.

Although not required, if they choose to do so, Commission members or employees may use powers of attorney or other arrangements in order to meet the notice requirements of, and to assure that they have no control or knowledge of, futures or option transactions permitted under paragraph (b)(1)(A) of this section. A Commission member or employee considering such arrangements should consult with the Office of the General Counsel in advance for approval. Should a Commission member or employee gain knowledge of an actual futures or option transaction that has already taken place and the market position represented by that transaction still remains open, he or she should promptly report that fact and all other details to the General Counsel and seek advice as to what action, including recusal from pending matters involving that market, may be appropriate.

³ Attention is directed to section 9(c) of the Commodity Exchange Act which provides, among other things, that it shall be a felony for any Commission member or employee to participate in any investment transaction in

(3) Have a beneficial interest, through ownership of securities or otherwise, in any person⁴ regulated by the Commission,⁵ such as a contract market or clearinghouse or member thereof, a registered futures commission merchant,⁶ any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor or commodity pool operator, or any other person required to be registered in a fashion similar to any of the above under the Commodity Exchange Act or pursuant to any rule or regulation promulgated by the Commission;

(4) Have a significant beneficial interest, through ownership of securities or otherwise, in any other person required to file reports under the Commodity Exchange Act or pursuant to any rule or regulation promulgated by the Commission;⁷ or

an actual commodity that the Commission by rule or regulation has prohibited to Commission members and employees. A transaction involving an instrument that is the "functional equivalent to an instrument regulated by the Commission" would include, for example, but is not limited to, a transaction in a stock index effectuated through the purchase or sale of an option traded on a national securities exchange where the stock index also underlies a futures contract regulated by the Commission. Attention is also directed to §140.735-8 of this subpart for information regarding interpretative and advisory service by the General Counsel of the Commission.

⁴As defined in section 1a(16) of the Commodity Exchange Act and 17 CFR 1.3(u) thereunder, a "person" includes an individual, association, partnership, corporation, and a trust.

⁵Attention is directed to sections 2(a)(7) and 9(c) of the Commodity Exchange Act. See footnotes 1, 2, and 8 to this subpart.

⁶This provision does not, however, preclude a member or employee from carrying securities on margin, pursuant to customary margin requirements, with a broker who is also a registered futures commission merchant, or engaged in the trading of commodity options, or commodity leverage transactions.

⁷For purposes of this section, the Office of the General Counsel normally views "significant" ownership as being 10 per cent or more of the outstanding securities of a firm or a \$25,000 total investment in a firm, regardless of the percentage of stock owned. The Office

(5) Purchase or sell any securities of a company which, to his knowledge, is involved in any:

(i) Pending investigation by the Commission;

(ii) Proceeding before the Commission or to which the Commission is a party; or

(iii) Other matter under consideration by the Commission that could significantly affect the company.

[58 FR 52657, Oct. 12, 1993]

§ 140.735-3 Non-governmental employment and other outside activity.

A Commission member or employee shall not accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission. For purposes of this section, a person subject to regulation by the Commission includes but is not limited to a contract market or clearinghouse or member thereof, a registered futures commission merchant, any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor, commodity pool operator or any person required to be registered in a fashion similar to any of the above or file reports under the Act or pursuant to any rule or regulation promulgated by the Commission.⁸

[58 FR 52658, Oct. 12, 1993]

§ 140.735-4 Receipt and disposition of foreign gifts and decorations.

(a) For purposes of this section only:

(1) *Commission member* or *employee* means any Commission member or any person employed by or who occupies an office or a position in the Commission;

has also noted that each investment must be considered on a case-by-case basis and that an investment level in excess of \$25,000 may not be "significant" in the case of a large company.

⁸Attention is directed to section 2(a)(7) of the Commodity Exchange Act, which provides, among other things, that no Commission member or employee shall accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission, or participate, directly or indirectly, in any contract market operations or transactions of a character subject to regulation by the Commission.

an expert or consultant under contract with the Commission, or in the case of an organization performing services under such contract, any individual involved in the performance of such service; and the spouse, unless the individual and his or her spouse are separated, and any dependent, as defined by section 152 of the Internal Revenue Code of 1954, of any such person.

(2) *Foreign government* means:

(A) Any unit of foreign governmental authority, including any foreign national, state, local, and municipal government;

(B) Any international or multinational organization whose membership is composed of any unit of foreign government described in paragraph (a)(2)(A) of this section; and

(C) Any agent or representative of any such unit or such organization, while acting as such.

(3) *Gift* means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government, except grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

(4) *Decoration* means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government.

(5) *Minimal value* means a retail value in the United States at the time of acceptance of \$140 or less, except as redefined to reflect changes in the consumer price index at three year intervals by the Administrator of General Services pursuant to authority granted in 5 U.S.C. 7342(a)(5)(A).

(b) Commission members and employees shall not:

(1) Request or otherwise encourage the tender of a gift or decoration;

(2) Accept a gift of currency, except that which has an historical or numismatic value;

(3) Accept travel or expenses for travel, such as transportation, food and lodging, from foreign governments, other than those authorized in paragraph (c)(5) of this section; or

(4) Accept any gift or decoration, except as authorized by this section.

(c) Gifts which may be accepted:

(1) Commission members and employees may accept and retain gifts of

minimal value tendered or received as a souvenir or mark of courtesy from a foreign government without further approval. If the value of a gift is uncertain, the recipient shall be responsible for establishing that it is of minimal value, as defined in this section. Documentary evidence may be required in support of the valuation.

(2) Commission members and employees may accept, on behalf of the United States, gifts of more than minimal value tendered or received from a foreign government when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. When a tangible gift of more than minimal value is accepted on behalf of the United States, it becomes the property of the United States.

(3) Commission members and employees may accept a gift of more than minimal value where such gift is in the nature of an educational scholarship or medical treatment.

(4) Within 60 days after accepting a tangible gift of more than minimal value, other than a gift described in paragraph (c)(5) of this section, a Commission member or employee shall file a statement with the Executive Director of the Commission which shall include the following information:

(A) The name and position of the Commission member or employee;

(B) A brief description of the gift and the circumstances justify acceptance;

(C) The identity, if known, of the foreign government and the name and position of the individual who presented the gift;

(D) The date of acceptance of the gift;

(E) The estimated value in the United States of the gift at the time of acceptance; and

(F) The disposition or current location of the gift.

(5) Commission members and employees are authorized to accept from a foreign government gifts of travel or expenses for travel taking place entirely outside the United States, such as transportation, food and lodging, of

more than minimal value if the acceptance is approved by the Executive Director, upon a finding that it is consistent with the interests of the Commission. Either prior to or within 30 days after accepting each gift of travel or travel expenses pursuant to this subparagraph, the Commission member or employee concerned shall file a statement with the Executive Director containing the following information:

(A) The name and position of the Commission member or employee;

(B) A brief description of the gift and the circumstances justifying acceptance;

(C) The identity, if known, of the foreign government and the name and position of the individual who presented the gift; and

(D) The date of acceptance.

(6) Not later than January 31 of each year the Executive Director shall compile a listing of all statements filed during the preceding year by Commission members and employees pursuant to paragraphs (c)(4) and (c)(5) of this section and shall transmit the listing to the Secretary of State.

(d) Commission members or employees may accept, retain and wear decorations tendered by a foreign government in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the Executive Director. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the employee, within 60 days of acceptance, with the Executive Director for official use or forwarding to the Administrator of General Services for disposal in accordance with paragraph (g) of this section. Under normal circumstances, it can be expected that a Commission member or employee will be notified of the intent of a foreign government to award him or her or a spouse or dependent a decoration for outstanding or unusually meritorious service sufficiently in advance so that the approval required can be sought prior to its acceptance. A request for the approval of the Executive Director shall be submitted in writing, stating the nature of

the decoration and the reason why it is being awarded. Whenever possible, the request should also be accompanied by a statement from the foreign government, preferably in the form of the citation, which shows the basis for the tender of the award, whether it is in recognition of active field service in time of combat operations or for other outstanding or unusually meritorious performance.

(e) Within 60 days after acceptance of a tangible gift of more than minimal value or a decoration for which the Executive Director has not given approval, a Commission member or employee shall:

(1) Deposit the gift or decoration for disposal with the Executive Director; or

(2) Subject to the approval of the Commission, upon the recommendation of the Executive Director, deposit the gift or decoration with the Commission for official use.

A gift or decoration may be retained for official use if the Commission determines that it can be properly displayed in an area accessible to employees and members of the public. Within 30 days after termination of the official use of a gift, the Executive Director shall forward the gift to the Administrator of General Services in accordance with paragraph (g) of this section.

(f) Whenever possible, gifts and decorations that have been deposited with the Executive Director for disposal shall be returned to the donor. The Executive Director, in coordination with the Office of the General Counsel, shall examine the circumstances surrounding the donation, assessing whether any adverse effect on the foreign relations of the United States might result from the return of the gift or decoration to the donor. The appropriate Department of State officials shall be consulted if a question of adverse effect on United States foreign relations arises.

(g) Gifts and decorations that have not been returned to the donor, retained for official use, or for which official use has terminated, shall be forwarded by the Executive Director to the Administrator of General Services for transfer, donation, or other disposal in accordance with the provisions of

the Federal Property and Administrative Services Act of 1949, as amended, and 5 U.S.C. 7342.

(h) In accordance with 5 U.S.C. 7342(h), the U.S. Attorney General may bring a civil action in any United States district court against any Commission member or employee who knowingly solicits or accepts a gift from a foreign government not consented to by the Congress of the United States in 5 U.S.C. 7342, or who fails to deposit or report such gift as required by 5 U.S.C. 7342. The court may assess a penalty against such Commission member or employee in any amount not exceeding the retail value of the gift improperly solicited or received plus \$5,000.

(i) A violation of the requirements set forth in this section by a Commission employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(j)(1) The burden of proving minimal value shall be on the recipient. In the event of a dispute over the value of a gift, the Executive Director shall arrange for an outside appraiser to determine whether the gift is of more or less than minimal value.

(2) When requested by the Administrator of Government Services, the Executive Director shall arrange for an appraisal of a gift or decoration.

(k) No appropriated funds of the Commission may be used to buy any tangible gift of more than minimal value for any foreign individual, unless the gift has been approved by Congress.

[47 FR 24115, June 3, 1982. Redesignated at 58 FR 52658, Oct. 12, 1993]

§ 140.735-5 Disclosure of information.

A Commission employee or former employee shall not divulge, or cause or allow to be divulged, confidential or non-public commercial, economic or official information to any unauthorized person, or release such information in advance of authorization for its release.⁹ Except as directed by the Com-

⁹Attention is directed to section 9(d) of the Commodity Exchange Act, which provides that it shall be a felony punishable by a fine of not more than \$500,000 or imprisonment for not more than five years, or both, to-

mission or its General Counsel as provided in these regulations, no Commission employee or former employee is authorized to accept service of any subpoena for documentary information contained in or relating to the files of the Commission. Any employee or former employee who is served with a subpoena requiring testimony regarding non-public information or documents shall, unless the Commission authorizes the disclosure of such information, respectfully decline to disclose the information or produce the documents called for, basing his refusal on these regulations.¹⁰ Any employee or former employee who is served with a subpoena calling for information regarding the Commission's business shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making such information or document available in the public interest.¹¹ In any proceeding in

gether with the costs of prosecution—(1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity future or commodity and which information has not been promptly made public, to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an option, privilege, indemnity, bid, offer, put, call, advance guaranty or decline guaranty, or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account or leverage contract, or under any contract or other arrangement that the Commission determines to serve the same function or is marketed in the same manner as such standardized contract, and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any of the foregoing transactions.

¹⁰No employee shall disclose such information unless directed to do so by the Commission.

¹¹The prohibitions regarding confidential or nonpublic information stated above are intended to cover the matters addressed in

which the Commission is not a party, no employee of the Commission shall testify concerning matters related to the business of the Commission unless authorized to do so by the Commission.

[58 FR 52658, Oct. 12, 1993]

§ 140.735-6 Practice by former members and employees of the Commission.

(a) Personal and substantial participation or nonpublic knowledge of a particular matter. No person who has been a member or employee of the Commission shall ever knowingly make, with the intent to influence, any communication to or appearance before the Commission in connection with any particular matter involving a specific party or parties¹² in which such person, or one participating with him or her in the particular matter, participated personally and substantially, or gained nonpublic knowledge of facts thereof, while with the Commission.¹³

sections 4(c), 8, and 9(d) of the Commodity Exchange Act as well as nonpublic information under the Freedom of Information Act, 5 U.S.C. 552, the rules of the Commission thereunder, 17 CFR part 145, the Privacy Act, 5 U.S.C. 552a, the rules of the Commission thereunder, 17 CFR part 146, and cases where, apart from specific prohibitions in any statute or rule, the disclosure or use of such information would be unethical.

¹²The phrase "particular matter involving a specific party or parties" does not apply to general rulemaking, general policy and standards formulation or other similar matters. See § 2637.201(c)(1) of the regulations of the Office of Government Ethics, 5 CFR 2637.201(c)(1); *cf.*, memorandum of the Attorney General dealing with the conflict-of-interest provisions prior to amendment by the Ethics in Government Act (reproduced following 18 U.S.C. 201).

¹³Attention is directed to 18 U.S.C. 207(a)(1), as amended, which generally prohibits former Federal officers and employees permanently from knowingly making, with the intent to influence, any communication to or appearance before any Federal (or District of Columbia) department, agency or court, or court martial, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and in which the former officer or employee participated

(b) Particular matter under an individual's official responsibility. No person who has been a member or employee of the Commission shall, within two years after that employment has ceased, knowingly make, with the intent to influence, any communication to or appearance before the Commission in connection with a particular matter involving a specific party or parties which was actually pending under his official responsibility as a member or employee of the Commission at any time within one year prior to the termination of government service.¹⁴

(c) Restrictions on former members and senior employees. A former member or employee of the Commission who occupied a "senior" position specified in 18 U.S.C. 207(c)(2), as amended, shall not within one year after such "senior" employment has ceased, knowingly make, with the intent to influence, any communication to or appearance before the Commission on behalf of any other person in connection with any matter in which such person seeks official action by the Commission.¹⁵

personally and substantially while with the government.

¹⁴Attention is directed to 18 U.S.C. 207(a)(2), as amended. Section 207(a)(2) generally prohibits former Federal officers and employees, within two years after their Federal employment has ceased, from knowingly making, with the intent to influence, any communication to or appearance before any Federal (or District of Columbia) department, agency or court, or court martial, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and which was actually pending under the official responsibility of the former officer or employee within one year prior to the termination of government service.

As used in paragraph (b) of this section, the term "official responsibility" has the meaning assigned to it in 18 U.S.C. 202(b), namely, the "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

¹⁵Attention is directed to 18 U.S.C. 207(c), as amended, which places restrictions on the

Continued

(d) Exceptions. The prohibitions contained in paragraphs (a), (b), and (c) of this section do not apply to communications solely for the purpose of furnishing scientific or technological information if approved by the Commission or generally to giving testimony under oath or making a statement which is subject to penalty or perjury. Further, the prohibition contained in paragraph (c) of this section does not apply to an uncompensated statement in a particular area within the special knowledge of the former Commission member or employee.¹⁶

(e) Reporting requirement. Any former member or employee of the Commission who, within two years after ceasing to be such, is employed or retained as the representative of any person (except the United States) in connection with a matter in which it is contemplated that he will appear before or communicate with the Commission shall, within ten days of such retainer or employment, or of the time when appearance before or communication with the Commission is first con-

representational activities of certain senior officers and employees after their departure from a senior position. Section 207(c) generally makes it unlawful for one year after service in a "senior" position terminates for a former "senior" Federal employee to knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one year period prior to termination from "senior" service, if that communication or appearance is on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that employee.

Note that the one year period is measured from the date when the employee ceases to be a senior employee, not from the termination of Government service, unless the two occur simultaneously. This provision prohibits communications to or appearances before the Government and does not prohibit "behind-the-scenes" assistance. The restriction does not require that the former employee have ever been in any way involved in the matter that is the subject of the communication or appearance. The restriction applies with respect to any matter, whether or not involving a specific party.

¹⁶Attention is directed to 18 U.S.C. 207(j), as amended (listing other exceptions). Self-representation is not prohibited under section 207.

templated, file with the General Counsel of the Commission a statement as to the nature thereof together with any desired explanation as to why it is deemed consistent with this section. Employment of a recurrent character may be covered by a single comprehensive statement. Each such statement should include an appropriate caption indicating that it is filed pursuant to this section. The reporting requirement of this paragraph does not apply to communications incidental to court appearances in litigation involving the Commission.

(f) Definitions. As used in this section, the phrase "appearance before the Commission" means any formal or informal appearance on behalf of any person (except the United States) before the Commission, or any member or employee thereof with an intent to influence. As used in this section, the phrase "communication with the Commission" means any oral or written communication made to the Commission, or any member or employee thereof, on behalf of any person (except the United States) with an intent to influence.

(g) Advisory ruling. Persons in doubt as to the applicability of this section may apply for an advisory ruling by addressing a letter requesting such a ruling to the General Counsel.

(h) Procedures for administrative enforcement of statutory restrictions on post-government employment conflicts of interest.¹⁷ (1) Scope. The provisions of this paragraph prescribe procedures for administrative enforcement of the restrictions which 18 U.S.C. 207 (a), (b), and (c), as amended, place on appearances before or communications with Federal (and District of Columbia) departments, agencies and courts, and other enumerated entities, as well as the officers and employees thereof, by former Commission members and employees.

(2) Investigations. The General Counsel of the Commission, or his or her designee, shall conduct such investigations as he or she deems appropriate to

¹⁷This section does not apply to employees who leave service after December 31, 1990.

determine whether any former Commission member or employee have violated 18 U.S.C. 207 (a), (b) or (c), as amended. The General Counsel shall report the results of his or her investigations to the Commission and shall recommend to the Commission such action as he or she deems appropriate.

(3) Hearings. Hearings required to be held under the provisions of this section shall be held before an Administrative Law Judge, utilizing the procedures prescribed by the Commission's rules of practice for adjudicatory proceedings (17 CFR part 10), except to the extent that those rules are inconsistent with the provisions of this section. Any proceeding brought under the provisions of this section shall be prosecuted by the General Counsel or his or her designee.

(4) Sanctions. If the Commission finds, after notice and opportunity for a hearing, that a former Commission member or employee has violated 18 U.S.C. 207 (a), (b) or (c), as amended, the Commission may prohibit that person from making, on behalf of any other person (except the United States), any formal or informal appearance before, or with the intent to influence any oral or written communication to, the Commission on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action.

[58 FR 52658, Oct. 12, 1993; 58 FR 58593, Nov. 2, 1993]

§ 140.735-7 Statutory violations applicable to conduct of Commission members and employees.

A violation of section 2(a)(7), 8 or 9 (c) or (d) of the Commodity Exchange Act, as amended, shall be deemed to be a violation of this subpart as well.

[58 FR 52660, Oct. 12, 1993]

§ 140.735-8 Interpretative and advisory service.

(a) *Counselor for the Commission.* The General Counsel, or his or her designee, will serve as Counselor for the Commission and as the Commission's representative to the Office of Government Ethics, on matters covered by this subpart. The General Counsel will also serve as the Commission's des-

ignated agency ethics official to review the financial reports filed by high-level Commission officials under title II of the Ethics in Government Act, as well as otherwise to coordinate and manage the Commission's ethics program.

(b) *Duties of the Counselor.* The Counselor shall:

(1) Coordinate the agency's counseling services and assure that counseling and interpretations on questions of conflict of interests and other matters covered by the regulations in this subpart are available as needed to Regional Deputy Counselors, who shall be appointed by the General Counsel, in coordination with the Chairman of the Commission, for each Regional Office of the Commission;

(2) Render authoritative advice and guidance on matters covered by the regulations in this subpart which are presented to him or her by employees in the Washington, DC headquarters office; and

(3) Receive information on, and resolve or forward to the Commission for consideration, any conflict of interests or apparent conflict of interests which appears in the Statements of Employment and Financial Interests submitted under this subpart, which is not resolved by the Director of Human Resources, and any other conflict of interests or apparent conflict of interests which otherwise appears.

(c) *Regional Deputy Counselors.* Regional Deputy Counselors shall:

(1) Give advice and guidance as requested to the employees assigned to their respective Regional Offices; and

(2) Receive information on and refer to the Director of Human Resources, any conflict of interests or appearance of conflict of interests in Statements of Employment and Financial Interests submitted by employees to whom they are required to give advice and guidance.

(d) *Confidentiality of communications.* Communications between the Counselor and Regional Deputy Counselors and an employee shall be confidential, except as deemed necessary by the Commission or the Counselor to carry

out the purposes of this subpart and of the laws of the United States.¹⁸

(e) *Furnishing of conduct regulations.* The Director of Human Resources shall furnish a copy of this Conduct Regulation to each member, employee, and special government employee immediately upon his or her entrance on duty and shall thereafter, annually, and at such other times as circumstances warrant, bring to the attention of each member and employee this Conduct Regulation and all revisions thereof.

(f) *Availability of counseling services.* The Director of Human Resources shall notify each member, employee, and special government employee of the availability of counseling services and of how and where these services are available at the time of entrance on duty and periodically thereafter.

[58 FR 52660, Oct. 12, 1993, as amended at 61 FR 21955, May 13, 1996; 62 FR 13302, Mar. 20, 1997]

PART 141—SALARY OFFSET

Sec.

- 141.1 Purpose and scope.
- 141.2 Definitions.
- 141.3 Applicability.
- 141.4 Notice requirements.
- 141.5 Hearing.
- 141.6 Written decision.
- 141.7 Coordinating offset with another Federal agency.
- 141.8 Procedures for salary offset.
- 141.9 Refunds.
- 141.10 Statute of limitations.
- 141.11 Non-waiver of rights.
- 141.12 Interest, penalties, and administrative costs.

AUTHORITY: 5 U.S.C. 5514, E.O. 11609 (redesignated E.O. 12197), 5 CFR part 550, subpart K, and 7 U.S.C. 4a(j), unless otherwise noted.

SOURCE: 55 FR 5207, Feb. 14, 1990, unless otherwise noted.

¹⁸No attorney-client privilege, however, attaches to such communications since the Counselors are counsel to the Commission, not to the employee. Thus, any evidence of criminal law violations divulged by an employee to the Counselor must be reported by the latter to the Commission, which may refer the matter to the Criminal Division of the Department of Justice and the United States Attorney in whose venue the violations lie.

§ 141.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee's salary without his/her consent to satisfy certain debts owed to the federal government. These regulations apply to employees of other federal agencies and current employees of the Commission who owe debts to the Commission and to current employees of the Commission who owe debts to other federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq.*;

(2) The Social Security Act, 42 U.S.C. 301 *et seq.*;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 *et seq.*, 4 CFR parts 101 through 105, 45 CFR part 1177.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office in accordance with General Accounting Office procedures. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected. Neither the requesting of a waiver nor the filing of a claim with the General Accounting Office will affect the