

Commodity Futures Trading Commission

§ 140.735-8

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 designated 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 annual financial disclosure (Standard Form 278 or Standard Form 450), or is disclosed to the General Counsel by a member or employee pursuant to §140.735-2a(d) of this part,

or otherwise is made known to the General Counsel.

(i) A conflict of interests or apparent conflict of interests is considered resolved by the General Counsel when the affected member or employee has executed an ethics agreement pursuant to 5 CFR 2634.801 *et seq.* to undertake specific actions in order to *resolve* the actual or apparent conflict.

(ii) If, after advice and guidance from the General Counsel, a member or employee does not execute an ethics agreement, the conflict of interests is considered unresolved and must be referred to the Commission for resolution or further action consistent with 18 U.S.C. 208 and 28 U.S.C. 535.

(iii) *Where an unresolved conflict of interests or apparent conflict of interests is to be forwarded to the Commission by the General Counsel,* the General Counsel will promptly notify the affected member or employee in writing of his or her intent to forward the matter to the Commission. Any member or employee so affected will be afforded an opportunity to be heard by the Commission through written submission.

(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

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

Continued

(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; 67 FR 5941, Feb. 8, 2002]

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.

§ 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 Commis-

sion 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 amount or validity of the debt being collected until a waiver has been granted or the debt has been determined to be for an incorrect amount or invalid.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq.*

the Department of Justice and the United States Attorney in whose venue the violations lie.