

## § 18.311

(b) For conducted powerline measurements, the frequency range over which the limits are specified will be scanned.

[50 FR 36070, Sept. 5, 1985, as amended at 51 FR 17971, May 16 1986]

### § 18.311 Methods of measurements.

The measurement techniques which will be used by the FCC to determine compliance with the technical requirements of this part are set out in FCC Measurement Procedure MP-5, "Methods of Measurements of Radio Noise Emissions from ISM equipment". Although the procedures in MP-5 are not mandated, manufacturers are encouraged to follow the same techniques which will be used by the FCC.

## PART 19—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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AUTHORITY: 5 U.S.C. 7301; 47 U.S.C. 154 (b), (i), (j), and 303(r).

SOURCE: 61 FR 56112, Oct. 31, 1996, unless otherwise noted.

### Subpart A—General Provisions

#### § 19.735-101 Purpose.

The regulations in this part prescribe procedures and standards of conduct that are appropriate to the particular functions and activities of the Commission, and are issued by the Commission under authority independent of the uniform Standards of Ethical Conduct

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for Employees of the Executive Branch at 5 CFR part 2635 or otherwise in accordance with 5 CFR 2635.105(c).

#### § 19.735-102 Cross-reference to ethics and other conduct related regulations.

In addition to the rules in this part, employees of the Federal Communications Commission (Commission) are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 and the Commission's regulations at 5 CFR part 3901 which supplement the executive branch-wide standards, the executive branch financial disclosure regulations at 5 CFR part 2634 and the Commission's regulations at 5 CFR part 3902 which supplement the executive branch-wide financial disclosure regulations, and the employee responsibilities and conduct regulations at 5 CFR part 735.

#### § 19.735-103 Definitions.

*Commission* means the Federal Communications Commission.

*Communications Act* means the Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.*

*Employee* means an officer or employee of the Commission including special Government employees within the meaning of 18 U.S.C. 202(a) and the Commissioners.

*Person* means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

#### § 19.735-104 Delegations.

(a) The Commission has delegated to the Chairman responsibility for the detection and prevention of acts, short of criminal violations, which could bring discredit upon the Commission and the Federal service.

(b) *Approvals under 18 U.S.C. 205(e)*. (1) Commissioners may approve the representational activities permitted by 18 U.S.C. 205(e) by other employees in their immediate offices. The Designated Agency Ethics Official has delegated authority to grant such approvals for all other employees except Commissioners.

(2)(i) Requests for approval of the activities permitted by 18 U.S.C. 205(e) shall be in writing and submitted as follows:

(A) In the case of employees in the immediate offices of a Commissioner, to the Commissioner;

(B) In the case of Heads of Offices and Bureaus, to the Chairman; and

(C) In the case of all other employees except Commissioners, to the Head of the Office or Bureau to which the employee is assigned.

(ii) An official (other than the Chairman or another Commissioner) to whom a request for approval under 18 U.S.C. 205(e) is submitted shall forward it to the Designated Agency Ethics Official with the official's recommendation as to whether the request should be granted.

(3) Copies of all requests for approval under 18 U.S.C. 205(e) and the action taken thereon shall be maintained by the Designated Agency Ethics Official.

(c) *Waivers under 18 U.S.C. 208.* (1) Commissioners may waive the applicability of 18 U.S.C. 208(a), in accordance with 18 U.S.C. 208(b)(1) or 208(b)(3) and section 301(d) of Executive Order 12731, for other employees in their immediate offices. The Designated Agency Ethics Official has delegated authority to make such waiver determinations for all other employees except Commissioners.

(2)(i) Requests for waiver of the applicability of 18 U.S.C. 208(a) shall be in writing and submitted as follows:

(A) In the case of employees in the immediate offices of a Commissioner, to the Commissioner;

(B) In the case of Heads of Offices and Bureaus, to the Chairman; and

(C) In the case of all other employees except Commissioners, to the Head of the Office or Bureau to which the employee is assigned.

(ii) An official (other than the Chairman or another Commissioner) to whom a waiver request is submitted shall forward it to the Designated Agency Ethics Official with the official's recommendation as to whether the waiver should be granted.

(3) Copies of all requests for waivers and the action taken thereon shall be maintained by the Designated Agency Ethics Official.

**§ 19.735–105 Availability of ethics and other conduct related regulations and statutes.**

(a)(1) The Commission shall furnish each new employee, at the time of his or her entrance on duty, with a copy of:

(i) The Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635);

(ii) The Supplemental Standards of Ethical Conduct for Employees of the Federal Communications Commission (5 CFR part 3901); and

(iii) The Commission's Employee Responsibilities and Conduct regulations in this part.

(2) The Head of each Office and Bureau has the responsibility to secure from every person subject to his or her administrative supervision a statement indicating that the individual has read and is familiar with the contents of the regulations in this part, and the regulations at 5 CFR parts 2635 and 3901, and to advise the Designated Agency Ethics Official that all such persons have provided such statements. Each new employee shall execute a similar statement at the time of entrance on duty. Periodically, and at least once a year, the Designated Agency Ethics Official shall take appropriate action to ensure that the Head of each Office and Bureau shall remind employees subject to his or her administrative supervision of the content of the regulations in 5 CFR parts 2635 and 3901 and this part.

(b) Copies of pertinent provisions of the Communications Act of 1934; title 18 of the United States Code; the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635); the Commission's Supplemental Standards of Ethical Conduct (5 CFR part 3901); and the Commission's employee responsibilities and conduct regulations in this part shall be available in the office of the Designated Agency Ethics Official for review by employees.

**§ 19.735–106 Interpretation and advisory service.**

(a) Requests for interpretative rulings concerning the applicability of 5 CFR parts 2635 and 3901, and this part, may be submitted through the employee's supervisor to the General Counsel,

who is the Commission's Designated Agency Ethics Official pursuant to the delegation of authority at 47 CFR 0.251(a).

(b) At the time of an employee's entrance on duty and at least once each calendar year thereafter, the Commission's employees shall be notified of the availability of counseling services on questions of conflict of interest and other matters covered by this part, and of how and where these services are available.

**§ 19.735-107 Disciplinary and other remedial action.**

(a) A violation of the regulations in this part by an employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(b) The Chairman will designate an officer or employee of the Commission who will promptly investigate all incidents or situations in which it appears that employees may have engaged in improper conduct. Such investigation will be initiated in all cases where complaints are brought to the attention of the Chairman, including: Adverse comment appearing in publications; complaints from members of Congress, private citizens, organizations, other Government employees or agencies; and formal complaints referred to the Chairman by the Designated Agency Ethics Official.

(c) The Inspector General will be promptly notified of all complaints or allegations of employee misconduct. The Inspector General will also be notified of the planned initiation of an investigation under this part. Such notification shall occur prior to the initiation of the investigation required by paragraph (a) of this section. The Inspector General may choose to conduct the investigation in accordance with the rules in this part. Should the Inspector General choose to conduct the investigation, he will promptly notify the Chairman. In such case, the Inspector General will serve as the designated officer and be solely responsible for the investigation. In carrying out this function, the Inspector General may obtain investigative services from other Commission offices, other governmental agencies or non govern-

mental sources and use any other means available to him in accordance with Public Law 100-504 or the Inspector General Act of 1978, as amended, 5 U.S.C. Appendix. The Inspector General will be provided with the results of all investigations in which he chooses not to participate.

(d) The employee concerned shall be provided an opportunity to explain the alleged misconduct. When, after consideration of the employee's explanation, the Chairman decides that remedial action is required, he shall take remedial action. Remedial action may include, but is not limited to:

- (1) Changes in assigned duties;
- (2) Divestiture by the employee of his conflicting interest;
- (3) Action under the Commission's Ethics Program resulting in one of the following actions:
  - (i) When investigation reveals that the charges are groundless, the person designated by the Chairman to assist in administration of the program may give a letter of clearance to the employee concerned, and the case will not be recorded in his Official Personnel Folder;
  - (ii) If, after investigation, the case investigator deems the act to be merely a minor indiscretion, he may resolve the situation by discussing it with the employee. The case will not be recorded in the employee's Official Personnel Folder;
  - (iii) If the case administrator considers the problem to be of sufficient importance, he may call it to the attention of the Chairman, who in turn may notify the employee of the seriousness of his act and warn him of the consequences of a repetition. The case will not be recorded in the employee's Official Personnel Folder, unless the employee requests it;
  - (iv) The Chairman may, when in his opinion circumstances warrant, establish a special review board to investigate the facts in a case and to make a full report thereon, including recommended action; or
  - (v)(A) If the Chairman decides that formal disciplinary action should be taken, he may prepare for Commission consideration a statement of facts and recommend one of the following:

(1) *Written reprimand.* A formal letter containing a complete statement of the offense and official censure;

(2) *Suspension.* A temporary non pay status and suspension from duty; or

(3) *Removal for cause.* Separation for cause in case of a serious offense.

(B) Only after a majority of the Commission approves formal disciplinary action will any record resulting from the administration of this program be placed in the employee's Official Personnel Folder; or

(4) Disqualification for a particular assignment.

(e) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

### Subpart B—Employee Responsibilities and Conduct

#### § 19.735–201 Outside employment and other activity prohibited by the Communications Act.

Under section 4(b) of the Communications Act, at 47 U.S.C. 154(b)(2)(A)(iv), no employee of the Commission may be in the employ of or hold any official relation to any person significantly regulated by the Commission under that Act. In addition, the Commissioners are prohibited by section 4(b) of the Communications Act, at 47 U.S.C. 154(b)(4), from engaging in any other business, vocation, profession, or employment.

NOTE: Under the Supplemental Standards of Ethical Conduct for Employees of the Federal Communications Commission, at 5 CFR 3901.102, professional employees of the Commission must obtain approval before engaging in the private practice of the same profession as that of the employee's official position, whether or not for compensation.

#### § 19.735–202 Financial interests prohibited by the Communications Act.

(a) No Commissioner shall have a pecuniary interest in any hearing or proceeding in which he participates. (47 U.S.C. 154(j).)

(b)(1) Section 4(b) of the Communications Act, at 47 U.S.C. 154(b)(2)(A), provides:

No member of the Commission or person employed by the Commission shall:

(i) Be financially interested in any company or other entity engaged in the manufacture or sale of telecommunications equipment which is subject to regulation by the Commission;

(ii) Be financially interested in any company or other entity engaged in the business of communication by wire or radio or in the use of the electromagnetic spectrum;

(iii) Be financially interested in any company or other entity which controls any company or other entity specified in clause (i) or clause (ii), or which derives a significant portion of its total income from ownership of stocks, bonds, or other securities of any such company or other entity; or

(iv) Be employed by, hold any official relation to, or own any stocks, bonds, or other securities of, any person significantly regulated by the Commission under this act; except that the prohibitions established in this subparagraph shall apply only to financial interests in any company or other entity which has a significant interest in communications, manufacturing, or sales activities which are subject to regulation by the Commission.

(2) To determine whether an entity has a significant interest in communications related activities that are subject to Commission regulations, the Commission shall consider, without excluding other relevant factors, the criteria in section 4(b) of the Communications Act, at 47 U.S.C. 154(b)(3). These criteria include:

(i) The revenues and efforts directed toward the telecommunications aspect of the business;

(ii) The extent of Commission regulation over the entity involved;

(iii) The potential economic impact of any Commission action on that particular entity; and

(iv) The public perception regarding the business activities of the company.

(3)(i) Section 4(b) of the Communications Act, at 47 U.S.C. 154(b)(2)(B)(i), permits the Commission to waive the prohibitions at 47 U.S.C. 154(b)(2)(A). The Act's waiver provision at 47 U.S.C. 154(b)(2)(B)(i) provides:

The Commission shall have authority to waive, from time to time, the application of the prohibitions established in subparagraph (A) of section 4(b) to persons employed by the Commission if the Commission determines that the financial interests of a person which are involved in a particular case are minimal, except that such waiver authority shall be subject to the provisions of section

208 of title 18, United States Code. The waiver authority established in this subparagraph shall not apply with respect to members of the Commission.

(ii)(A) Requests for waiver of the provisions of 47 U.S.C. 154(b)(2)(A) may be submitted by an employee to the Head of the employee's Office or Bureau, who will endorse the request with an appropriate recommendation and forward the request to the Designated Agency Ethics Official. The Designated Agency Ethics Official has delegated authority to waive the applicability of 47 U.S.C. 154(b)(2)(A).

(B) All requests for waiver shall be in writing and in the required detail. The dollar value for the financial interest sought to be waived shall be expressed explicitly or in categories of value provided at 5 CFR 2634.301(d).

(C) Copies of all waiver requests and the action taken thereon shall be maintained by the Designated Agency Ethics Official. In any case in which the Commission exercises the waiver authority established in section 4(b) of the Communications Act, the Commission shall publish notice of such action in the FEDERAL REGISTER and shall furnish notice of such action to the appropriate committees of each House of the Congress. Each such notice shall include information regarding the identity of the person receiving the waiver, the position held by such person, and the nature of the financial interests which are the subject of the waiver.

**§ 19.735–203 Nonpublic information.**

(a) Except as authorized in writing by the Chairman pursuant to paragraph (b) of this section, or otherwise as authorized by the Commission or its rules, nonpublic information shall not be disclosed, directly or indirectly, to any person outside the Commission. Such information includes, but is not limited to, the following:

(1) The content of agenda items (except for compliance with the Government in the Sunshine Act, 5 U.S.C. 552b); or

(2) Actions or decisions made by the Commission at closed meetings or by circulation prior to the public release of such information by the Commission.

(b) An employee engaged in outside teaching, lecturing, or writing shall not use nonpublic information obtained as a result of his Government employment in connection with such teaching, lecturing, or writing except when the Chairman gives written authorization for the use of that nonpublic information on the basis that its use is in the public interest.

(c) This section does not prohibit the disclosure of an official Commission meeting agenda listing titles and summaries of items for discussion at an open Commission meeting. Also, this section does not prohibit the disclosure of information about the scheduling of Commission agenda items.

(d) Any person regulated by or practicing before the Commission coming into possession of written nonpublic information (including written material transmitted in electronic form) as described in paragraph (a) of this section under circumstances where it appears that its release was inadvertent or otherwise unauthorized shall promptly return the written information to the Commission's Office of the Inspector General without further distribution or use of the written nonpublic information. Any person regulated by or practicing before the Commission who willfully violates this section by failing to promptly notify the Commission's Office of the Inspector General of the receipt of written nonpublic information (including written material transmitted in electronic form) that he knew or should have known was released inadvertently or in any otherwise unauthorized manner may be subject to appropriate sanctions by the Commission. In the case of attorneys practicing before the Commission, such sanctions may include disciplinary action under the provisions of §1.24 of this chapter.

NOTE: Employees also should refer to the provisions of the Standards of Ethical Conduct for Employees of the Executive Branch, at 5 CFR 2635.703, on the use of nonpublic information. Additionally, employees should refer to §19.735-107 of this part, which provides that employees of the Commission who violate this part may be subject to disciplinary action which may be in addition to any other penalty prescribed by law. As is the

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case with section 2635.703, this part is in-

tended only to cover knowing unauthorized disclosures of nonpublic information.

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