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FEDERAL COMMUNICATIONS COMMISSION

5 CFR Ch. XXIX

47 CFR Part 19

[FCC 96-419]

RIN 3209-AA15

Supplemental Standards of Ethical Conduct and Financial Disclosure Regulations for Employees of the Federal Communications Commission and Revision of the Commission's Employee Responsibilities and Conduct Regulations

AGENCY: Federal Communications Commission (FCC or Commission).

ACTION: Final rule.

SUMMARY: The Federal Communications Commission, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of the Commission that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The supplemental rules require professional employees of the Commission to obtain approval prior to engaging in certain outside activities and provide cross-references to restrictions based on authority other than the executive branch-wide Standards. The Commission also is revising its residual standards of conduct regulations found in 47 CFR part 19 by repealing those sections that were superseded by the executive branch-wide Standards and the Commission's supplemental regulation, and by adding general cross references to the Executive Branch-wide standards and related regulations. In addition, the Commission is transferring to a new supplemental part certain provisions in its existing financial disclosure regulations.

EFFECTIVE DATE: These regulations are effective October 31, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon B. Kelley, Senior Attorney-Advisor, Office of General Counsel, Federal Communications Commission, telephone: (202) 418-1720.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published a final rule entitled Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006-35067, as corrected at 57 FR 48557, 57 FR 52583 and 60 FR 51667, with additional grace period extensions at 59 FR 4779-4780, 60 FR 6390-6391 and 60 FR 66857-66858. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform Standards of Ethical Conduct that apply to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental ethical conduct standards regulations necessary to implement their respective ethics programs. The Commission, with OGE's concurrence, has determined that its supplemental regulations, being codified in new chapter XXIX of 5 CFR, consisting of parts 3901 and 3902 (see the discussion below at section II.B of this Supplementary Information block with regard to this latter financial disclosure supplemental regulation) are necessary to implement the Commission's ethics program successfully, in light of the Commission's programs, operations and statutory requirements.

II. Analysis of the Regulations

A. Supplemental Standards of Ethical Conduct

Section 3901.101 General

Section 3901.101 explains that the regulation applies to all employees of the Commission, and is supplemental to the executive branch-wide Standards. The section also cross-references the Commission's employee responsibilities and conduct regulations at 47 CFR part 19, as well as the executive branch-wide financial disclosure regulations at 5 CFR part 2634 and the FCC supplemental financial disclosure regulations at 5 CFR part 3902.

Section 3901.102 Prior Approval for Practice of a Profession

The OGE standards, at 5 CFR 2635.803, recognize that an agency may find it necessary or desirable to issue supplemental regulations requiring its employees to obtain approval before engaging in outside employment or activities. The Commission's old standards of conduct regulations, at 47 CFR 19.735-203(b), have long required prior approval for the outside practice of an employee's profession. The Commission has found this requirement useful in ensuring that the outside employment activities of employees conform with all applicable laws and regulations. In accordance with 5 CFR 2635.803, the Commission has determined that it is necessary to the administration of its ethics program to continue to require such approval with minor modifications.

Section 3901.102(a) requires any professional employee of the Commission to obtain approval before engaging in the practice of the same profession as that of the employee's official position. This provision reflects the way the Commission has applied the prior approval requirement which has been found at 47 CFR 19.735-203(b), which is now being removed. For clarity, new § 3901.102(a) also includes definitions of the terms "profession" and "professional employee" that are based upon the definition of "profession" in OGE's executive branch-wide outside employment regulation at 5 CFR 2636.305(b)(1). The procedure for requesting prior approval under the requirement which has been found at 47 CFR 19.735-203(b) also is being changed, in § 3901.102(b), to require employees to obtain approval from both the Designated Agency Ethics Official or his or her designee, and the employee's immediate supervisor; and to require employees to submit a revised request for approval upon a significant change in the nature or scope of the employee's FCC position or the services to be provided in practicing his or her profession.

The criteria in § 3901.102(c), to be used in approving or denying requests for prior approval, indicate that § 3901.102 does not itself provide a basis to deny permission to engage in an outside activity. The basis for disapproval, if any, must be found in

applicable statutes or the executive branch-wide Standards.

B. Supplemental Financial Disclosure Regulations

The Commission's old employee responsibilities and conduct regulations, at 47 CFR 19.735-403(b), have long required all employees who file either Standard Form (SF) 278, "Public Financial Disclosure Report," or SF/OGE Form 450, "Confidential Financial Disclosure Report," to also file a supplemental financial disclosure form (FCC Form A54A) that collects information about income and interests in property or assets valued below the minimum reporting limits of the SF 278 and the SF/OGE Form 450, respectively. Section 4(b) of the Communications Act of 1934, at 47 U.S.C. 154(b)(2)(A), contains prohibitions on certain financial interests of any value. The Commission has determined that it is necessary to fulfill its statutory responsibilities under the Communications Act to continue to require employees to submit this supplemental financial disclosure form. Accordingly, pursuant to 5 CFR 2634.103, 2634.601(b) and 2634.901(b), the Commission is issuing, with OGE's concurrence, a supplemental financial disclosure regulation in new part 3902 of 5 CFR retaining procedures which have been found in 47 CFR 19.735-403(b), now being revoked, for Commission employees to follow in filing FCC Form A54A.

Section 3902.101 General

Section 3902.101 of the final rule explains that the regulations in part 3902 apply to employees of the Federal Communications Commission and supplement the Executive Branch Financial Disclosure Regulations contained in 5 CFR part 2634.

Section 3902.102 Employees Required to Submit FCC Form A54A, "Confidential Supplemental Statement of Employment and Financial Interests"

Section 3902.102 of the final rule provides that all employees of the Commission, including special Government employees, who are required to file a Standard Form (SF) 278, "Public Financial Disclosure Report," or SF/OGE Form 450, "Confidential Financial Disclosure Report," are also required to file FCC Form A54A, "Confidential Supplemental Statement of Employment and Financial Interests." In addition, § 3902.102 explains that the purpose of FCC Form A54A is to require disclosure of income and interests in property and assets valued below the minimum

reporting limits of the SF 278 and the SF/OGE Form 450, due to the restrictions on financial interests in the Communications Act.

Section 3902.103 Submission and Review of Employees' Statements

Section 3902.103 of the final rule provides the time frames for filing these statements by employees, to whom the statements should be submitted for review, and the process if an employee is found to have a conflict or appearance of a conflict of interest arising from a financial interest. The Commission's old employee responsibilities and conduct regulations, at 47 CFR 19.735-405 which is now being revoked, have long contained identical procedures and the Commission has found them necessary to fulfill its statutory responsibilities under section 4(b) of the Communications Act, at 47 U.S.C. 154(b).

Section 3902.104 Confidentiality of Employees' Statements

Section 3902.104 provides that employee supplemental statements are treated confidentially (see 5 CFR 2634.103(a)(2) and 2634.601(b)) and sets forth the basis for their disclosure. The Commission's responsibilities and conduct regulations, at 47 CFR 19.735-410 which is now being revoked, have long required confidential treatment of such employee statements and the Commission has found this rule useful in obtaining the necessary financial information in fulfillment of its statutory responsibilities under section 4(b) of the Communications Act, at 47 U.S.C. 154(b).

III. Repeal and Revision of Federal Communications Commission Standards of Conduct Regulations

The final rules repeal many of the FCC regulations in 47 CFR part 19. Most of the repealed provisions were superseded by the executive branch-wide Standards at 5 CFR part 2635, or were superseded or rendered unnecessary by the interim rules regarding public and confidential financial disclosure reports at 5 CFR part 2634. Section 19.735-203(b) of 47 CFR is superseded by the requirement for prior approval of the private practice of a profession at 5 CFR part 3901.102. Other repealed provisions are unnecessary for inclusion in 47 CFR part 19 because they duplicate the executive branch-wide employee responsibilities and conduct regulations at 5 CFR part 735. The Commission is replacing the repealed provisions with a cross-reference to the executive branch-wide Standards of Ethical Conduct and

financial disclosure regulations at 5 CFR parts 2634 and 2635, the Commission's supplemental standards of ethical conduct and supplemental financial disclosure regulations at 5 CFR parts 3901 and 3902, and the executive branch-wide regulations regarding Employee Responsibilities and Conduct at 5 CFR part 735. In addition, the remaining, un superseded provisions in 47 CFR part 19 have been reorganized and edited for clarity and consistency with other authorities.

The executive branch-wide Standards do not supersede regulations that an agency has authority, independent of 5 CFR part 2635, to issue. Nor would an agency have to include in its supplemental standards of ethical conduct an instruction or other issuance the purpose of which is to delegate to an agency designee authority to make any determination, give any approval or take any other action required or permitted by part 2635 or by supplemental agency regulations; or establish internal agency procedures for documenting or processing any determination, approval or other action required or permitted by part 2635 or by supplemental agency regulations, or for retaining any such documentation. Such regulations, instructions and other issuances may be promulgated separately from the agency's supplemental regulations.

The Communications Act, at 47 U.S.C. 303(r), authorizes the Commission to make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of that Act. Further, the Act, at 47 U.S.C. 154(b), prohibits the Commissioners and employees of the Commission from having certain financial interests and from engaging in certain outside employment and activities. Accordingly, the Commission is retaining in 47 CFR part 19 regulations implementing the Communications Act's prohibitions on financial interests and on outside employment and activities, and identifying certain information that is nonpublic (see newly designated subpart B of part 19).

IV. Matters of Regulatory Procedure

Administrative Procedure Act

These revisions apply to internal rules of agency management, personnel organization, practice and procedure for which notice and comment is not required. The Commission is, for the most part, simply removing those portions of part 19 that have been superseded by the OGE regulations. The

new supplemental regulations are essentially similar to rules previously contained in part 19 of the Commission's rules. 5 U.S.C. 553(a)(2), (b)(3)(A)), and (d).

List of Subjects

5 CFR Part 3901

Conflict of interests, Government employees, Outside activities.

5 CFR Part 3902

Conflict of interests, Government employees, Financial interests.

47 CFR Part 19

Conflicts of Interests, Government employees.

Adopted: October 16, 1996.

Released: October 29, 1996.

By the Commission.

William F. Caton,

Acting Secretary, Federal Communications Commission.

Approved: October 23, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Federal Communications Commission, with the concurrence of the Office of Government Ethics, is amending title 5 and title 47 of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter XXIX, consisting of parts 3901 and 3902, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER XXIX—FEDERAL COMMUNICATIONS COMMISSION

PART 3901—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL COMMUNICATIONS COMMISSION

Sec.

3901.101 General.

3901.102 Prior approval for practice of a profession.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 47 U.S.C. 303(r); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

§ 3901.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Federal Communications Commission (FCC) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and this part,

employees are subject to the Executive Branch Financial Disclosure Regulations contained in 5 CFR part 2634, the FCC's regulations at 5 CFR part 3902 supplementing 5 CFR part 2634, and to FCC regulations regarding their responsibilities and conduct in 47 CFR part 19.

§ 3901.102 Prior approval for practice of a profession.

(a) *Prior approval requirement.* A professional employee of the FCC shall obtain approval before engaging in the outside practice of the same profession as that of the employee's official position, whether or not for compensation. As used in this section, "profession" has the meaning set forth in § 2636.305(b)(1) of this title, and "professional employee" means an employee whose official FCC position is in a profession as defined in § 2636.305(b)(1) of this title.

(b) *Procedures for requesting approval.* (1) A request for approval shall be in writing and shall be submitted, through the following Commission officials, to the Designated Agency Ethics Official or his designee:

(i) For Heads of Bureaus and Offices, through the Chairman;

(ii) For employees in the immediate Office of a Commissioner, through the Commissioner; or

(iii) For all other employees, through the Head of the Bureau or Office to which the employee is assigned.

(2) A request for approval shall include, at a minimum:

(i) A full description of the services to be performed in practicing the profession;

(ii) The name and address of the person or organization for which services are to be provided; and

(iii) The estimated total time that will be devoted to practicing the profession.

(3) Upon a significant change in the nature or scope of the employee's FCC position or the services to be provided in practicing the profession, the employee shall submit a revised request for approval.

(c) *Standard for approval.* Approval shall be granted only upon a determination that the proposed outside practice of the employee's profession is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR 2635.

PART 3902—SUPPLEMENTAL FINANCIAL DISCLOSURE REQUIREMENTS FOR EMPLOYEES OF THE FEDERAL COMMUNICATIONS COMMISSION

Sec.

3902.101 General.

3902.102 Employees required to submit FCC Form A54A, "Confidential Supplemental Statement of Employment and Financial Interests."

3902.103 Submission and review of employees' statements.

3902.104 Confidentiality of employees' statements.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 47 U.S.C. 154(b), (j), (i) and 303(r); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2634.103, 2634.601(b), 2634.901(b).

§ 3902.101 General.

The regulations in this part apply to employees of the Federal Communications Commission (FCC) and supplement the Executive Branch Financial Disclosure Regulations contained in 5 CFR part 2634.

§ 3902.102 Employees required to submit FCC Form A54A, "Confidential Supplemental Statement of Employment and Financial Interests."

All employees, including special Government employees, who are required to file a Standard Form (SF) 278, "Public Financial Disclosure Report," or a SF/OGE Form 450, "Confidential Financial Disclosure Report," are also required to file FCC Form A54A, "Confidential Supplemental Statement of Employment and Financial Interests." The purpose of FCC Form A54A is to require disclosure of income and interest in property and assets valued below the minimum reporting limits for the SF 278 and SF/OGE Form 450 in order to meet the separate requirements of section 4(b) of the Communications Act of 1934, at 47 U.S.C. 154(b).

§ 3902.103 Submission and review of employees' statements.

(a) An employee required to submit a statement of employment and financial interests will be notified individually of his or her obligation to file.

(b) An employee required to submit an FCC Form A54A, "Confidential Supplemental Statement of Employment and Financial Interests" pursuant to § 3902.102 shall submit such statement to the Designated Agency Ethics Official, on the prescribed form, not later than 30 days after his or her entrance on duty, and annually thereafter at the time the employee

submits his or her SF 278 or SF/OGE Form 450.

(c) Financial statements submitted under this subpart shall be reviewed by the Designated Agency Ethics Official.

(d) When a statement submitted under this subpart or information from other sources indicates a potential violation of applicable laws and regulations, such as a conflict between the interests of an employee or special Government employee and the performance of his or her services for the Government, the employee concerned shall be provided an opportunity to explain and resolve the potential violation.

(e) When, after explanation by the employee involved, the potential violation of law or regulation is not resolved, the information concerning the potential violation shall be reported to the Chairman by the Designated Agency Ethics Official for appropriate action.

§ 3902.104 Confidentiality of employees' statements.

Each supplemental statement of employment and financial interests shall be held in confidence and shall be retained in the Office of the Designated Agency Ethics Official. Each employee charged with reviewing a statement is responsible for maintaining the statements in confidence and shall not allow access to or allow information to be disclosed from a statement except to carry out the purpose of this part or as otherwise required by law. Information from these statements shall not be disclosed except as the Chairman may determine in accordance with law or regulation.

TITLE 47—[AMENDED]

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

2. Part 19 of 47 CFR chapter I is revised to read as follows:

PART 19—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

Sec.

- 19.735–101 Purpose.
- 19.735–102 Cross-reference to ethics and other conduct related regulations.
- 19.735–103 Definitions.
- 19.735–104 Delegations.
- 19.735–105 Availability of ethics and other conduct related regulations and statutes.
- 19.735–106 Interpretation and advisory service.
- 19.735–107 Disciplinary and other remedial action.

Subpart B—Employee Responsibilities and Conduct

- 19.735–201 Outside employment and other activity prohibited by the Communications Act.
- 19.735–202 Financial interests prohibited by the Communications Act.
- 19.735–203 Nonpublic information.
Authority: 5 U.S.C. 7301; 47 U.S.C. 154 (b), (i), (j), and 303(r).

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 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 governmental 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.

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. As is the case with section 2635.703, this part is intended only to cover knowing unauthorized disclosures of nonpublic information.

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1901, 1924, 1944

RIN 0575-AC06

Davis-Bacon Act *C*

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS) is removing its regulation that contains procedures and requirements for complying with the Davis-Bacon and related Acts. Under the reorganization of the Department of Agriculture, RHS is the successor to the former Farmers Home Administration (FmHA) for the administration of rural housing programs under title V of the Housing Act of 1949. Regulations regarding