

Federal Communications Commission

§ 19.735-101

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: E.O. 11222, 3 CFR, 1965 Comp., 5 CFR 735.104, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 19 appear at 45 FR 39850, June 12, 1980.

Subpart A—General Provisions

§ 19.735-101 Purpose.

The effectiveness of the Commission in serving the public interest depends upon the extent to which the Commission holds the confidence and esteem of the Nation's citizens. To hold the public confidence, unusually high standards of honesty, integrity, impartiality, and conduct must be maintained within the Commission and all officers and employees must not only obey the literal requirements of the Federal laws and orders governing official conduct, but also show by their conduct that they support the ethical principles which underlie these laws and regulations. The avoidance of misconduct and conflicts of interest on the part of Commission employees through informed judgment is indispensable to the maintenance of these standards. In accordance with these concepts, this part sets forth the Commission's regulations prescribing standards of conduct and responsibilities and governing

statements of employment and financial interests for employees and special Government employees. 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.

(Secs. 4(i) and 303(r), Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r); 18 U.S.C. 207(j))

[31 FR 2722, Feb. 15, 1966, as amended at 48 FR 44802, Sept. 30, 1983]

§ 19.735-102 Definitions.

Commission means the Federal Communications Commission.

Employee means an officer or employee of the Commission including the Commissioners, but does not include a special Government employee or member of the uniformed services.

Executive Order means Executive Order 11222 of May 8, 1965.

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.

Special Government employee means a special Government employee, as defined in section 202 of title 18 of the United States Code, that is, one appointed to serve with or without compensation, for not more than 130 days during any period of 365 days on a full-time or intermittent basis, who is employed in the Commission, but does not include a member of the uniformed services.

Uniformed services has the meaning given that term by section 101(3) of title 37 of the United States Code.

Office of Personnel Management Regulations mean the regulations (5 CFR part 735) on employee responsibilities and conduct issued by the Office of Personnel Management on October 1, 1965, in implementation of Executive Order 11222.

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

[31 FR 2722, Feb. 15, 1966]

§ 19.735-103 Cross reference; former Commissioners and employees.

For provisions pertaining to former Commissioners and employees, see § 1.25 of this chapter.

[41 FR 32891, Aug. 6, 1976]

§ 19.735-104 Issuance and availability of Commission regulations.

(a) The regulations in this part have been prepared in accordance with 5 CFR parts 734, 735, and 737 in order to:

(1) Implement the requirements of the Executive order and parts 734, 735, and 737 of Title 5 CFR.

(2) Prescribe additional standards of ethical and other conduct and reporting requirements that are appropriate to the particular functions and activities of the Commission and are not inconsistent with the Executive order and parts 734, 735, and 737 of Title 5 CFR.

(b) The Commission shall furnish each new employee and special Government employee with a copy of the Commission's regulations in this part, as revised, at the time of his or her entrance on duty. 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 revised order and regulations in this part, and to advise the Managing Director that all persons have stated they are familiar with the revised order and regulations in this part. Each new employee shall execute a similar statement at the time of entrance on duty. Periodically, and at least once a year, the Managing Director shall take appropriate action to insure 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 this part.

(c) Copies of laws, the Executive order, and this agency's regulations and instructions relating to ethical and other conduct shall be available in the office of the Designated Agency Ethics Official for review by employees and

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special Government employees. (See 47 CFR 0.231(i).)

(Secs. 4(i) and 303(r), Communications Act of 1934, as amended at 47 U.S.C. 154(i) and 303(r); 18 U.S.C. 207(j))

[48 FR 44802, Sept. 30, 1983]

§ 19.735-105 Interpretation and advisory service.

(a)(1) The head of the Internal Control and Security Office is designated as the agency's ethics official for purposes of 5 CFR parts 734 and 737. The General Counsel is designated as legal counselor for the Commission to provide guidance on matters relating to ethical conduct. The General Counsel is to serve as the Commission's designee to the Office of Personnel Management on matters covered by 5 CFR part 735.

(2) The Office of the General Counsel is responsible for coordination of the Commission's legal counseling services provided under paragraph (b) of this section and for assuring that legal counseling and interpretation on questions of conflict of interest and other matters covered by this part are available.

(b) The counseling services provided by the Office of the General Counsel include the giving of advice and guidance to each employee and special Government employee who seeks advice and guidance on questions of conflicts of interest and other matters covered by this part.

(c) If an employee is in doubt about any matter covered by this part, or if he has a question as to the propriety of a past or contemplated line of conduct, he should discuss his problem with his immediate supervisor, or the Office of General Counsel.

(d) Requests for interpretative rulings concerning the applicability of the new order and regulations in this part in implementation thereof may be submitted through the employee's supervisor to the Office of the General Counsel.

(e) At the time of an employee's entrance on duty and at least once each calendar year thereafter, the Commission's employees and special Government employees shall be notified of the availability of counseling services and

of how and where these services are available.

(Secs. 4(i) and 303(r), Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r); 18 U.S.C. 207(j))

[31 FR 2722, Feb. 15, 1966, as amended at 48 FR 44802, Sept. 30, 1983; 54 FR 15195, Apr. 17, 1989]

§ 19.735-106 [Reserved]

§ 19.735-107 Disciplinary and other remedial action.

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

(b) In carrying out the Commission's Review and Inspection Program with respect to employee conduct, 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 counselor for the Commission.

(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 these rules. Should the Inspector General choose to conduct the investigation, he will promptly notify the Chairman. 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 Pub. L. 100-504 or 5 U.S.C. Appendix 3. The Inspector General will be provided with the results of all investigations in which he chooses not to participate.

(d) When, after consideration of the explanation of the employee or special Government employee provided by § 19.735-405(e), the Chairman decides that remedial action is required, he shall take immediate action to end the conflicts or appearance of conflicts of interest. Remedial action may include, but is not limited to:

- (1) Changes in assigned duties;
- (2) Divestment by the employee or special Government employee of his conflicting interest;
- (3) Action under the Commission's Review and Inspection 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 — 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.
 - (v) 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:

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

(b) *Suspension.* A temporary nonpay status and suspension from duty;

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

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.

(4) Disqualification for a particular assignment.

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

(Secs. 4(i) and 303(r), Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r); 18 U.S.C. 207(j))

[31 FR 2722, Feb. 15, 1966, as amended at 48 FR 44803, Sept. 30, 1983; 54 FR 15195, Apr. 17, 1989]

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 19.735–201 Specific provisions.

The regulations issued under this subpart contain provisions covering the standards of and governing the ethical and other conduct of FCC employees set forth in §§ 735.201a through 735.210 of the Office of Personnel Management Regulations (5 CFR 735.201a through 735.210), as well as those set forth in the Executive order and the Federal Conflicts of Interest statutes and the Federal Communications Act of 1934, as amended. They are not meant to restrict unduly a Commission employee's social activities. Each employee must judge for himself whether his social activities may or may not compromise or appear to compromise his position as a public servant.

[31 FR 2723, Feb. 15, 1966]

§ 19.735–201a Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

- (a) Using public office for private gain;

- (b) Giving preferential treatment to any person;
- (c) Impeding Government efficiency or economy;
- (d) Losing complete independence or impartiality;
- (e) Making a Government decision outside official channels; or
- (f) Affecting adversely the confidence of the public in the integrity of the Government.

[32 FR 13457, Sept. 26, 1967]

§ 19.735-202 Gifts, entertainment, and favors.

- (a) Except as provided in paragraphs (b) and (f) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:
 - (1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;
 - (2) Conducts operations or activities that are regulated by the Commission; or
 - (3) Has interests that may be substantially affected by the performance or nonperformance of his (the employee's) official duty; or
 - (4) Is in any way attempting to affect the employee's official actions at the Commission.
 - (5) Is offering anything of monetary value to an employee because of the employee's official position.
- (b) The prohibitions enumerated in paragraph (a) of this section do not apply in the situations enumerated below:
 - (1) Where obvious family (such as those between the parents, children, or spouse of the employee and the employee) or other personal relationships make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;
 - (2) Food and refreshments, not lavish in kind, may be accepted when (i) offered free in the course of a meeting or other group function, not connected with an inspection or investigation, at which attendance is desirable because it will assist the Commission employee in performing his or her official duties; or (ii) provided to all panelists or speakers when a Commission employee

is participating as a panelist or speaker in a program, seminar or educational conference.

The Commission's Office of General Counsel shall make a prior written determination as to the propriety of accepting invitations from regulated entities or interested persons as described in 47 CFR 19.735-202(a)(1) through (5), and shall keep a log of its decisions. Approval may be requested by any Commission employee or the organizer of the group function;

(3) Loans may be obtained from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans;

(4) Unsolicited advertising or promotional material such as pens, pencils, note pads, calendars and other items of nominal intrinsic value may be accepted, as well as literature relating to the communications field.

(5) Gifts given for participation in a program, seminar or educational conference may be accepted only when such gifts are (i) of nominal intrinsic value; (ii) in the nature of a remembrance traditional to the particular sponsoring entity; (iii) provided to all participants in the program.

NOTE: These situations are elaborated upon in an October 23, 1987, Refreshments by Executive Branch Employees.

(c) [Reserved]

(d) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(e) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in Pub. L. 89-673, 80 Stat. 952.

(f) Neither this section nor § 19.735-203 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel

and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967.

[31 FR 2723, Feb. 15, 1966; 31 FR 4834, Mar. 23, 1966, as amended at 32 FR 13457, Sept. 26, 1967; 52 FR 7578, Mar. 12, 1987; 53 FR 28227, July 27, 1988]

§ 19.735-203 Outside employment and other activity.

(a) The Commissioners are prohibited from engaging in any other business, vocation, profession, or employment. (47 U.S.C. 154(b)) No Commissioner or employee of the Commission is permitted to be in the employ of or hold any official relation to any person subject to any of the provisions of the Communications Act. (47 U.S.C. 154(b)) In addition, no Commissioner or employee of the Commission may engage in outside employment or other outside activity, with or without compensation, which is in conflict with or otherwise not compatible with the full and proper discharge of his duties and responsibilities as a Commission employee. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of a conflicts of interest situation; or

(2) Outside employment which tends to impair his mental or physical capacity to perform his Commission duties and responsibilities in an acceptable manner; or

(3) Outside employment or activities (excluding the publication of articles) which reasonably might be regarded as official actions or bring discredit upon the Commission.

(b) No professional employee of the Commission shall engage in the private

practice of his profession unless specifically authorized by the Commission. Requests for such authorizations shall, in the case of employees generally, be submitted to the Head of the Office or Bureau to which the employee is assigned; in the case of Heads of Offices and Bureaus to the Chairman; and in the case of an employee in the immediate office of a Commissioner to the Commissioner. All pertinent facts regarding the proposed employment, such as the name of the employer, the nature of the work to be performed, and the amount of time involved shall be set forth.

(c) Employees of the Commission are encouraged to engage in teaching, lecturing and writing that is not prohibited by law, the Executive Order, the Office of Personnel Management Regulations or the provisions of this chapter. However, an employee shall not, either with or without compensation, engage in teaching, lecturing or writing (including such as is involved in the preparation of a person or class of persons for a Office of Personnel Management or Foreign Service examination) that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Chairman gives written authorization for the use of non-public information on the basis that its use is in the public interest. Except in the case of a Commissioner, articles which identify the author as a Commission employee shall include the following disclaimer:

The views expressed are those of the author and do not necessarily reflect the views of the Commission.

Documents prepared in the course of, and publications relating to, an employee's official duties shall not be used for his private gain. In addition, the Commissioners shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission, or which draws substantially on official data or ideas which have not become part of the body of public information. (See also 47 U.S.C. 154(b) and § 735.203(b)(2)).

(d) [Reserved]

(e) This section does not preclude a Commission employee from:

(1) [Reserved]

(2) Participation in the activities of national or State political parties not proscribed by law.

(3) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

[31 FR 2723, Feb. 15, 1966, as amended at 32 FR 13457, Sept. 26, 1967; 33 FR 11821, Aug. 21, 1968; 44 FR 9755, Feb. 15, 1979]

§ 19.735–204 Financial interests.

(a) An employee of the Commission shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities.

(b) An employee of the Commission shall not engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

(c)(1) Section 4(b) of the Communications Act provides in pertinent part as follows:

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. * * *

(47 U.S.C. 154(b)(2)(A))

(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 section 4(b)(3) criteria. 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.

(See 47 U.S.C. 154(b)(3))

(3) Section 4(b)(2)(B)(i)–(ii) of the Act permits the Commission to waive the conflict of interest provisions for employees (but not Commissioners) if it is determined that the financial interests are minimal. The Act's waiver provision, which is subject to 18 U.S.C. 208, provides essentially as follows:

(i) 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) In any case in which the Commission exercises the waiver authority established in section 4(b), 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 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.

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

(e) An employee of the Commission is also subject to the provisions of Federal conflicts of interest statutes, which are generally applicable to Government employees, but which do not supersede the provisions of section 4(b) of the Communications Act. In summary, the main conflict of interest provisions applying to financial interests are:

(1) An employee may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

(i) This prohibition does not extend to (a) representation of another person, without compensation, in a disciplinary, loyalty, or other personnel matter; or (b) the giving of testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(ii) This prohibition may be waived under the express approval of the Government official responsible for his appointment in the case of an employee who represents, with or without compensation, his own parents, spouse or child or a person or estate he serves as a fiduciary, but only as to matters in which the employee has not participated personally and substantially as a

Government employee and which are not the subject of his official responsibility.

(2) An employee may not participate in his governmental capacity in any matter in which he, his spouse, minor child or outside business associate has a financial interest (18 U.S.C. 208).

(i) This prohibition shall not apply if the employee advises the Government official responsible for his appointment of the nature of the matter, makes full disclosure of the financial interest, and receives in advance a written determination that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services.

(3) An employee may not participate in his governmental capacity in any matter in which a person from whom he has accepted employment, or with whom he is negotiating for employment, has a financial interest. At the outset of negotiations with such a prospective employer, the employee shall notify his immediate supervisor. The supervisor shall review the employee's current assignments and responsibilities and discharge him from any that could affect the interests of the prospective employer. The employee shall thereupon file a statement of disqualification and non-participation pursuant to § 19.735-412(b)(7). The statement shall continue in effect until such time (if any) as the negotiations are unsuccessfully terminated.

(4) An employee may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (18 U.S.C. 209).

(i) This prohibition will not prevent an employee from continuing to participate in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer.

(ii) This prohibition is not applicable to anyone serving the Government without compensation or to contributions, awards, or other expenses under the terms of the Government Employees Training Act (5 U.S.C. 2301-2319).

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(f) Procedures for requesting a waiver of the applicability of the above conflict of interest statutes appear at § 19.735–412 of this part.

(Secs. 4, 303, 48 Stat. as amended, 1066, 1082; 47 U.S.C. 154, 303; 18 U.S.C. 207(j))

[31 FR 2724, Feb. 15, 1966, as amended at 44 FR 50842, Aug. 30, 1979; 48 FR 38242, Aug. 23, 1983; 48 FR 44803, Sept. 30, 1983; 51 FR 37022, Oct. 17, 1986]

§ 19.735–205 Use of Government property.

An employee of the Commission shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him.

[31 FR 2725, Feb. 15, 1966]

§ 19.735–206 Misuse of information.

Except as provided in § 19.735–206(c), or as authorized by the Commission, an employee shall not, directly or indirectly, disclose to any person outside the Commission any information, or any portion of the contents of any document, which is part of the Commission's records or which is obtained through or in connection with his Government employment, and which is not routinely available to the public and, with the same exceptions, shall not use any such documents or information except in the conduct of his official duties. Conduct intended to be prohibited by this section includes, but is not limited to, the disclosure of information about the content of agenda items (except for compliance with the Government in the Sunshine Act), 5 U.S.C. 552b or other staff papers to persons outside the Commission and disclosure of actions or decisions made by the Commission at closed meetings or by circulation, prior to the public release of such information. This section does not prohibit the release 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

release of information about the scheduling of Commission agenda items.

[44 FR 29072, May 18, 1979]

§ 19.735–207 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the Commission determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Commission to determine the validity or amount of the disputed debt.

[31 FR 2725, Feb. 15, 1966]

§ 19.735–208 Gambling, betting, and lotteries.

An employee of the Commission shall not participate, while on Government-owned or leased property or while on duty for the Commission, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927 and similar agency-approved activities.

[31 FR 2725, Feb. 15, 1966]

§ 19.735–209 General conduct prejudicial to the Government.

An employee of the Commission shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Commission or to the Government.

[31 FR 2725, Feb. 15, 1966]

§ 19.735-210 Miscellaneous statutory provisions.

In addition to the statutes referred to in § 19.735-204, each employee shall acquaint himself with the following provisions that relate to his ethical and other conduct as an employee of the Commission.

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in

the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(r) The Ethics in Government Act of 1978 (92 Stat. 1824 (1978)), as amended (see 93 Stat. 37 and 76 (1979)).

(s) The prohibitions applicable to former Commissioners and employees and their partners. (18 U.S.C. 207) Cross-reference §§ 1.25 and 1.29 of this chapter.

(Secs. 4(i) and 303(r), Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r); 18 U.S.C. 207(j))

[31 FR 2725, Feb. 15, 1966, as amended at 32 FR 13457, Sept. 26, 1967; 48 FR 44803, Sept. 30, 1983]

Subpart C—Ethical and Other Conduct and Responsibilities of Special Government Employees

SOURCE: 31 FR 2725, Feb. 15, 1966, unless otherwise noted.

§ 19.735-301 Specific provisions.

The regulations issued under this subpart contain provisions covering the standards of and governing the ethical and other conduct of special Government employees of the Commission as set forth in §§ 735.302 through 735.306 of the Office of Personnel Management Regulations (5 CFR 735.302 through 735.306) as well as those set forth in the Executive order and the Federal Conflicts of Interest Statutes and the Federal Communications Act of 1934, as amended.

§ 19.735-302 Use of Government employment.

A special Government employee shall not use his Government employment

for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 19.735-303 Use of inside information.

(a) A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(b) A special Government employee may teach, lecture, or write in a manner not inconsistent with § 19.735-203(c) in regard to employees.

§ 19.735-304 Coercion.

A special Government employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

§ 19.735-305 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with his agency anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person particularly one with whom he has family, business, or financial ties.

(b) The same exceptions applying to the acceptance of gifts, entertainment, and favors by Government employees which are set forth under § 19.735-202(b) apply to special Government employees of the Commission.

§ 19.735-306 Miscellaneous statutory provisions.

Each special Government employee of the Commission shall acquaint himself with the following major statutory prohibitions relating to his ethical and other conduct as well as those set forth in § 19.735-210 in this part.

(a) Section 4(b) of the Communications Act which is reprinted in pertinent part in § 19.735-204(c)(1) in this part.

(b) Sections 203 and 205 of Title 18 of the United States Code which provide that a special Government employee:

(1) May not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which he has at any time participated personally and substantially for the Government.

(2) May not, except in the discharge of his official duties, represent anyone else in a matter pending before the agency he serves unless he has served there no more than 60 days during the past 365. He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

(3) These prohibitions do not extend to:

(i) Representation of another person without compensation in a disciplinary, loyalty, or other personnel matter; or

(ii) The giving of testimony under oath or from making statements required to be made under penalty for perjury or contempt; or

(iii) Representation, with the approval of the Government official responsible for his appointment, of his own parents, spouse, or child, in matters in which he has not participated personally and substantially and which are not the subject of his official responsibility.

(c) Section 208 of Title 18 of the United States Code which provides that a special Government employee may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is

negotiating for employment has a financial interest.

(1) This prohibition shall not apply if the employee advises the Government officials responsible for his appointment of the nature of the matter, makes full disclosure of the financial interest, and receives in advance a written determination that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services.

(d) Section 207 of Title 18 of the United States Code provides prohibitions relating to special Government employees and their partners respecting appearances before agencies of the United States. See §§1.25 and 1.29 of this chapter.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303; 18 U.S.C. 207(j))

[31 FR 2725, Feb. 15, 1966, as amended at 48 FR 38242, Aug. 23, 1983; 48 FR 44803, Sept. 30, 1983]

Subpart D—Statements of Employment and Financial Interests

SOURCE: 31 FR 2726, Feb. 15, 1966, unless otherwise noted.

§ 19.735-401 Form and content of statements.

The statements of employment and financial interests required under this subpart for use by employees and special Government employees of the Commission are in accordance with the formats prescribed by the Office of Personnel Management in the Federal Personnel Manual.

§ 19.735-402 Specific provisions of agency regulations for employees.

The regulations issued under this subpart are in accordance with the reporting requirements set forth in §§735.403 through 735.411 of the Office of Personnel Management Regulations (5 CFR 735.403 through 735.411).

§ 19.735-403 Employees required to submit statements.

(a) A "Confidential Statement of Employment and Financial Interests" (FCC Form A-54) shall be required from the following employees of the Commission:

(1) Employees who are in Grades GS-13 through GS-15.

(2) Those employees who are in Grades GS-11 through GS-12 who are Heads or Supervisors or Assistant Heads or Supervisors of field offices.

(3) All purchasing agents.

(4) All employees serving as auditors or accountants, with the principal duty of auditing private enterprises.

(5) All employees in the offices of the Commissioners not subject to the reporting requirements of subpart E of this part.

(6) Employees in positions classified below GS-13 may be required to file if the positions they hold meet the criteria established in 5 CFR 735.403 and the requirement to file has been specifically justified by the Commission to the Office of Personnel Management.

(b) A "Confidential Statement of Employment and Financial Interests" shall be required from Commissioners and employees who are subject to separate reporting requirements under subpart E of this part or section 401 of Executive Order 11222, but such statement shall be filed on FCC Form A-54A.

(Secs. 4(i) and 303(r), Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r); 18 U.S.C. 207(j))

[48 FR 44803, Sept. 30, 1983]

§ 19.735-403a Employee's complaint on filing requirement.

An employee who believes that his position has been improperly included under the Commission's regulations requiring the filing of a statement of employment and financial interests is entitled to seek review of his complaint under the Commission's grievance procedure.

[32 FR 13458, Sept. 26, 1967]

§ 19.735-404 [Reserved]

§ 19.735-405 Submission and review of employees' statements.

(a) An employee required to submit a statement of employment and financial interests pursuant to § 19.735-403 shall submit that statement on the prescribed form not later than thirty days after his or her entrance on duty.

(b) An employee required to submit a statement of employment and financial

interests shall submit that statement to the office of the Managing Director.

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

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

(e) When a statement submitted under subpart D of this part or information from other sources indicates a conflict between the interests of an employee or special Government employee and the performance of his or her services for the Government, the information concerning the conflict or appearance of conflict shall be reported to the Managing Director and the employee or special Government employee concerned shall be provided an opportunity to explain the conflict or appearance of conflict.

(f) When, after explanation by the employee or special Government employee involved, the conflict or appearance of conflict is not resolved, the information concerning the conflict or appearance of conflict shall be reported to the Chairman through the Designated Agency Ethics Official (see 47 CFR 0.231(i)) for appropriate administrative action.

(Secs. 4(i) and 303(r), Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r); 18 U.S.C. 207(j))

[48 FR 44803, Sept. 30, 1983]

§ 19.735-406 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or take an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of Title 18, United States Code, or subpart B of this part.

[32 FR 13458, Sept. 26, 1967]

§ 19.735-407 Interests of employees' relatives.

The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means those blood relations who are residents of the employee's household.

§ 19.735-408 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

§ 19.735-409 Information prohibited.

This subpart does not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 19.735-410 Confidentiality of employees' statements.

Each statement of employment and financial interests, and each supplementary statement, shall be held in confidence and shall be retained in the Office of the Managing Director. 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 Office of Personnel Management or the Chairman may determine for good cause shown.

[54 FR 15195, Apr. 17, 1989]

§ 19.735-411 Effect of employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order or regulation.

§ 19.735-412 Procedure for obtaining waivers of the applicability of section 4(b) of the Communications Act and the Federal conflicts of interest statutes.

(a) Waiver of section 4(b) of the Communications Act. (47 U.S.C. 154(b))

(1) As indicated in § 19.735-204 of this chapter, no member of the Commission or person in its employ shall have any financial interest delineated in 47 U.S.C. 154(b)(2)(A), except that the Commission may waive this prohibition under specific circumstances. (See § 19.735-204 (c)(3))

(2) 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 Office or Bureau, who will endorse the request with an appropriate recommendation and forward the request to the Managing Director. The Managing Director, in consultation with the General Counsel, has delegated authority to waive the applicability of section 4(b) of the Communications Act (47 U.S.C. 154(b)). (See 47 CFR 0.231(e))

(3) All requests for waiver shall be in writing and in the required detail. The dollar value of the financial interest sought to be waived shall be expressed explicitly or in categories of value provided for in OPM's government ethics regulations. (See 5 CFR 734.304)

(4) Before any waiver is granted, the General Counsel shall be furnished a copy of all relevant documents and shall be afforded an opportunity to comment thereon.

(5) Copies of all waiver requests and the action taken thereon shall be maintained in the Office of Managing Director.

(b) Waiver of sections 203, 205 and 208 of the criminal code (18 U.S.C. 203, 205 and 208):

(1) As indicated in § 19.735-204 of this chapter, no employee of the Commission may, except in the discharge of his or her official duties, represent anyone before a court or Government agency in a matter in which the United States is a party or has an interest. (18 U.S.C. 203 and 205). Nor may an employee participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest. (18 U.S.C. 208). These prohibitions may, however, be waived in certain circumstances. (18 U.S.C. 205, 208(b))

(2) Requests for waiver of the applicability of the above Federal conflicts of interest statutes may be submitted as follows:

(i) In the case of employees generally, to the Head of the Office or Bureau to which the employee is assigned;

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

(iii) In the case of employees in the immediate offices of a Commissioner, to the Commissioner.

(3) All waiver requests shall be in writing and in the required detail. Before any waiver is granted, the General Counsel shall be furnished a copy of all relevant documents and shall be afforded an opportunity to comment thereon.

(4) Commissioners may grant waivers to employees of their immediate offices.

(5) The Managing Director, in consultation with the general Counsel, has delegated authority to waive the applicability of the conflicts of interest statutes of all other employees. The official to whom the waiver request is submitted will endorse it with an appropriate recommendation and forward

it to the Managing Director for approval. (See 47 CFR 0.231(e))

(6) Copies of all requests for waivers and the action taken thereon shall be maintained in the Office of Managing Director.

(7) An employee who deems him or herself disqualified from participating in any matter pending before the Commission and who does not request a waiver shall file a statement of disqualification and nonparticipation with the Head of the Bureau or Office to which assigned and with the Managing Director.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

[48 FR 38242, Aug. 23, 1983]

§ 19.735–413 Specific reporting requirements for special Government employees.

(a) The reporting requirements for special Government employees are the same as those applying to Government employees which are also set forth in this subpart.

(b) Except as provided in paragraph (c) of this section, special Government employees shall be required to submit a statement of employment and financial interests which reports:

(1) All other employment; and

(2) The financial interests of the special Government employee which relate either directly or indirectly to the duties and responsibilities of the special Government employee.

(c) The Chairman may waive the requirement in paragraph (b) of this section for the submission of a statement of employment and financial interests in the case of a special Government employee who is not a consultant or an expert when the Commission finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, “consultant” and “expert” have the meanings given those terms by Chapter 304 of the Federal Personnel Manual, but do not include:

(1) A physician, dentist, or allied medical specialist whose services are

procured to provide care and service to patients; or

(2) A veterinarian whose services are procured to provide care and service to animals.

(d) A statement of employment and financial interests required to be submitted under this section shall be submitted not later than the time of employment of the special Government employee as provided in the Commission’s regulations. Each special Government employee shall keep his statement current throughout his employment with the Commission by the submission of supplementary statements.

(e) As indicated in § 19.735–306, a special Government employee is subject to certain prohibitions of the Federal conflicts of interest statutes contained in sections 203, 205, and 208 of Title 18 of the United States Code. The procedures for obtaining a waiver of these statutes are the same as those applying to Government employees which are set forth in § 19.735–412.

Subpart E—Financial Reporting Requirements of the Ethics in Government Act

AUTHORITY: Secs. 4(i) and 303(r), Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r); 18 U.S.C. 207(j)).

SOURCE: 48 FR 44803, Sept. 30, 1983, unless otherwise noted.

§ 19.740 General.

Commissioners and certain senior and policymaking employees, as specified in this subpart, must file a Financial Disclosure Report annually or as otherwise required by this subpart. The provisions of this subpart are issued in accordance with the reporting requirements of the “Ethics in Government Act of 1978,” Pub. L. 95–521, 92 Stat. 1824 (Oct. 26, 1978), as amended by Pub. L. 96–19, 93 Stat. 37 (June 13, 1979). See 5 CFR part 734.

§ 19.741 Persons required to file.

(a) *Incumbents.* Individuals who have served in the following positions for more than 60 days during any calendar year must file an “Executive Personnel Financial Disclosure Report” (OPM Standard Form 278) on or before May 15

of the succeeding year with the Designated Agency Ethics Official:

- (1) Commissioners;
- (2) Members of the Review Board;
- (3) Administrative Law Judges;
- (4) All employees (including special Government employees as defined in 18 U.S.C. 202) whose rate of pay (excluding “step” increases) equals or exceeds the base pay of grade GS-16 of the General Schedule; and
- (5) All employees in positions excepted from the competitive service by reason of being of a confidential or policymaking character, such positions to include (but are not necessarily limited to) legal, engineering, confidential and special assistants to the Commissioners and other employees in the excepted service whose positions are policymaking or confidential in character, provided that a person in such position whose rate of basic pay is less than the base pay of grade GS-16 and who has no role in advising or making policy determinations may be excluded from the requirements of this section upon compliance with the requirements of 5 CFR 734.203.

(6) Designated Agency Ethics Official.

(b) The following individuals must file with the Designated Agency Ethics Official an “Executive Personnel Financial Disclosure Report” (OPM Standard Form 278) within the time specified for each:

(1) *Nominees*. Any person nominated to be a member of the Commission must file such report within five days of the transmittal by the President to the Senate of the nomination of the individual.

(2) *New entrants*. Persons who have assumed a position described in paragraph (a) of this section must file such report within 30 days of assuming such position, unless the individual has left another Government position described in 5 CFR 734.202 within 30 days of assuming such new position or has filed such report pursuant to category (1) of this paragraph. This requirement shall not apply to an individual who, as determined by the Designated Agency Ethics Official, is not reasonably expected to perform the duties of his office or position for more than 60 days in a calendar year, except that if such

individual performs the duties of his or her office or position for more than 60 days in a calendar year such report shall be filed within 15 days of the sixtieth day.

(c) *Termination of employment*. Persons who have terminated employment in a position described in paragraph (a) of this section must file an “Executive Personnel Financial Disclosure Report” (OPM Standard Form 278) with the Designated Agency Ethics Official within 30 days of termination of employment, unless such individual has accepted employment in another Government position described in 5 CFR 734.202. Such report shall cover:

(1) The preceding calendar year (if the report required by paragraph (a) of this section has not been filed); and

(2) The portion of the calendar year in which such termination occurs up to the date the individual left such position. This paragraph does not apply to an individual who does not perform the duties of his office or position for more than 60 days in a calendar year.

(d) *Waiver*. The Director of the Office of Government Ethics may grant a publicly available request for a waiver of any reporting requirement under this subsection for an individual who is expected to perform or has performed the duties of his or her office or position fewer than 130 days in a calendar year, but only if the director determines that: such individual is not a full-time employee of the Government; such individual is able to provide services specially needed by the government; it is unlikely that the individual’s outside employment or financial interests will create a conflict of interest; and public financial disclosure of such individual is not necessary in the circumstances. See 5 CFR 734.205.

(e) *Extensions*. The Designated Agency Ethics Official may, for good cause, grant an extension of time for filing the reports required by this section of up to 45 days. Any other extension must have the approval of the Office of Government Ethics. See 5 CFR 734.201(f).

(f) After being reviewed in accordance with §19.742 of this subpart, copies of the reports filed under paragraphs (a)(1), (a)(6), and (b)(1) of this section

shall be transmitted to the Director of the Office of Government Ethics.

§ 19.742 Review of reports.

Each report filed under this subpart shall be reviewed by the Designated Agency Ethics Official (DAEO) within 60 days after such filing. The report filed by the DAEO shall be reviewed by the Chairman (or his or her delegate) prior to transmitting a copy to the Director of the Office of Government Ethics.

(a) If the report is in compliance with applicable laws and regulations, the report shall be so certified by the DAEO.

(b) If additional information is required, the DAEO shall notify the individual of the additional information required and the date by which it must be submitted.

(c) If the DAEO finds reason to believe, based on the information submitted, that the individual may not be in compliance with applicable laws and regulations, the DAEO shall notify the individual and afford him or her a reasonable opportunity for a written or oral response. If, after considering any such response, the DAEO concludes that an individual is not in compliance with applicable laws and regulations, the DAEO shall notify the individual of that opinion and, after an opportunity for personal consultations (if practicable), determine and notify the individual of which steps, if any, would in the DAEO's opinion be appropriate for assuring compliance with such laws and regulations and the date by which such steps should be taken, ordinarily within 90 days. If steps for assuring compliance are not taken by the specified date, the matter shall be referred to the Commission for appropriate ac-

tion (or, in the case of a Commissioner, to the President). See 5 CFR 734.604.

(d) For purposes of assisting employees, the DAEO shall maintain a list, which shall be available to employees, of those circumstances or situations which have resulted or may result in noncompliance with applicable laws and regulations. The absence of a particular circumstance from such list shall not be construed that such circumstance would be in compliance.

§ 19.743 Custody of and public access to reports.

(a) A copy of a position description shall, if available, be attached by the Designated Agency Ethics Official to each report filed pursuant to this subpart.

(b) Any report filed pursuant to this subpart shall be available for public inspection and copying within 15 days after such report is received upon fulfillment of the requirements of § 0.460 of part 0 of this chapter. Such reports shall not be obtained or used: for any unlawful purpose; for any commercial purpose, other than by news and communications media for dissemination to the general public; for determining or establishing the credit rating of any individual; or for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(c) Any report filed pursuant to this subpart shall be retained by the agency and made available to the public for six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation or as otherwise provided by section 205(d) of the Ethics in Government Act of 1978. See also 5 CFR 734.603(f).