

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Lancaster .....	City of Lancaster ..	July 25, 2000, August 1, 2000, <i>Intelligencer Journal</i> .	The Honorable Charles W. Smithgall, Mayor of the City of Lancaster, P.O. Box 1599, 120 North Duke Street, Lancaster, Pennsylvania 17603-1599.	July 5, 2000 .....	420552 B
Lancaster .....	Township of Manheim.	July 25, 2000, August 1, 2000, <i>Intelligencer Journal</i> .	Mr. Thomas Woodland, President, Manheim Township Board of Commissioners, 1840 Municipal Drive, Lancaster, Pennsylvania 17601-4162.	July 5, 2000 .....	420556 C
Montgomery ..	Township of Plymouth.	July 18, 2000, July 25, 2000, <i>Times Herald</i> .	Ms. Joan Mower, Township of Plymouth Manager, 700 Belvoir Road, Plymouth Meeting, Pennsylvania 19462.	July 7, 2000 .....	420955 E
Rhode Island: Kent .....	City of Warwick ....	August 18, 2000, August 25, 2000, <i>The Kent County Daily Times</i> .	The Honorable Scott Avedisian, Mayor of the City of Warwick, 3275 Post Road, Warwick, Rhode Island 02886.	November 24, 2000.	445409
Virginia: Brunswick .....	Unincorporated areas.	September 13, 2000, September 20, 2000, <i>Lake Gaston Gazette</i> .	Mr. J. Grady Martin, Chairman of the Brunswick County Board of Supervisors, County Courthouse, P.O. Box 399, Lawrenceville, Virginia 23868.	September 6, 2000.	510236 B
Independent City.	City of Winchester	August 30, 2000, September 5, 2000, <i>Winchester Star</i> .	Mr. Edwin C. Daley, City of Winchester Manager, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia 22601.	November 20, 2000.	510173 B
Independent City.	City of Winchester	July 5, 2000, July 12, 2000, <i>Winchester Star</i> .	Mr. Edwin C. Daley, City of Winchester Manager, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia 22601.	June 23, 2000 .....	510173 B
Wisconsin: Calumet .....	City of Brillion .....	June 8, 2000, June 15, 2000, <i>The Brillion News</i> .	The Honorable Robert Mathiebe, Mayor of the City of Brillion, 130 Calumet Street, City Hall, Brillion, Wisconsin 54110.	September 14, 2000.	550036 C
Calumet .....	Unincorporated areas.	June 8, 2000, June 15, 2000, <i>Chilton Times-Journal</i> .	Ms. Allison Blackmer, Calumet County Board of Commissioners, Courthouse, 206 Court Street, Chilton, Wisconsin 53014.	September 14, 2000.	550035 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: October 30, 2000.

**Margaret E. Lawless,**  
Deputy Associate Director for Mitigation.  
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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 0 and 19**

[FCC 00-365]

**Nonpublic Information**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is amending its rules to establish a procedure to deal with the improper release of nonpublic

information. The current rules prohibit the unauthorized release of nonpublic information by Commission officials. The revised rules add language requiring persons regulated by or practicing before the Commission who receive written nonpublic information to return it to the Commission's Office of the Inspector General without further distribution or use of the material. The amended rules also highlight the sanctions available to the Commission to address willful violation of the rules by either employees of the Commission or individuals who are regulated by or practicing before it.

**DATES:** Effective December 4, 2000.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Carney, Office of General Counsel, (202) 418-1720.

**SUPPLEMENTARY INFORMATION:**

1. Recent unauthorized disclosures of nonpublic internal Commission draft orders and documents in market-

sensitive proceedings prompt us to adopt this order to amend § 19.735-203 of our rules, 47 CFR 19.735-203. Section 19.735-203 currently governs the disclosure and misuse by Commission personnel of nonpublic information that is contained in Commission records or obtained in connection with Commission employment. The purpose of the amendment is to emphasize the responsibilities of Commission employees in this area and to provide guidance to persons who receive nonpublic documents under circumstances where it appears that the release of the documents was either inadvertent or otherwise unauthorized.

2. Currently, § 19.735-203 prohibits the unauthorized release of nonpublic information, including documents, by Commission officials. Specifically, § 19.735-203(a) states that "[e]xcept as authorized in writing by the Chairman

\* \* \*, 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 nonpublic information clearly includes drafts of Commission orders, memoranda and other documents (such as e-mail) containing internal staff recommendations. See 5 CFR 2635.703 ("nonpublic information is information that \* \* \* has not been made available to the general public" including documents that are "designated as confidential by an agency."). We take this opportunity to emphasize that, pursuant to § 19.735-107 of our rules, employees that disclose such documents (or their contents) are subject to significant disciplinary action up to and including removal for cause, in addition to any other penalty prescribed by law. See 47 CFR 19.735-107. Our amendment of § 19.735-203 cross-references this rule governing the Commission's disciplinary and remedial authority.

3. Our rules prohibiting the disclosure of nonpublic information serve to protect the integrity of the Commission's deliberative processes. Disclosure by Commission staff of draft orders, internal confidential memoranda and nonpublic information violates these rules, and we will vigorously investigate and address violations of these rules by Commission personnel.

4. While our existing rules and our guidance in this order make clear our commitment to ensure that Commission personnel do not disclose nonpublic documents, the existing rules do not address the steps that are to be taken by persons regulated by or practicing before the Commission who receive such documents. The revision to § 19.735-203 adds language requiring such persons who come into possession of written nonpublic information (including written material transmitted in electronic form), the release of which they know or reasonably should know was either inadvertent or otherwise unauthorized, to promptly return such written nonpublic information to the Commission's Office of the Inspector General, without further distribution or use of the material.

5. Persons regulated by or practicing before the FCC may be subject to appropriate sanctions for willful violation of this section. In the case of attorneys practicing before the Commission such sanctions may

include disciplinary action under the provisions of § 1.24 of the Commission's rules. (Cf., D.C. Rules of Professional Conduct, Rule 1.15 and Opinion no. 256, adopted May 16, 1995. See also: ABA Formal Opinion 92-368, Nov. 10, 1992; Florida Bar Op. 93-3, Feb. 1, 1994; and Oregon Bar Formal Op. No. 1998-150, approved Apr. 1998).

6. The revision also adds a cross reference to § 19.735-203 in a new § 0.458 of the Commission's rules, 47 CFR 0.458. New § 0.458 is within the Commission's part 0 rules dealing with public and nonpublic information.

7. The requirements set forth in 5 U.S.C. 553(b) and (d) pertaining to notice and comment and the effective date in rulemaking proceedings do not apply to this amendment because it concerns matters of agency organization, procedure or practice. See 5 U.S.C. 553(b)(A); 553(d).

8. Accordingly, pursuant to sections 4(i), 4(j), 303(r), 47 U.S.C. 4(i), 4(j), 303(r), parts 0 and 19 of the Commission's rules, 47 CFR part 19, ARE AMENDED as set forth, and is effective December 4, 2000.

#### List of Subjects

##### 47 CFR Part 0

Classified information.

##### 47 CFR Part 19

Conflict of interests, Nonpublic information.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 19 as follows:

#### PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

**Authority:** Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.458 is added to read as follows:

##### § 0.458 Nonpublic information.

Any person regulated by or practicing before the Commission coming into possession of written nonpublic information (including written material transmitted in electronic form) as described in § 19.735-203(a) of this

chapter under circumstances where it appears that its release was inadvertent or otherwise unauthorized shall be obligated to return the information to the Commission's Office of Inspector General pursuant to that section. See 47 CFR 19.735-203.

#### PART 19—EMPLOYEE RESPONSIBILITIES AND CONDUCT

3. The authority citation for part 19 continues to read as follows:

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

4. Section 19.735-203 is amended by adding paragraph (d) and a new sentence immediately preceding the second sentence of the note to the section to read as follows:

##### § 19.735-203 Nonpublic information.

\* \* \* \* \*

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

**Note:** \* \* \* Additionally, employees should refer to § 19.735-107 of this part, which provides that employees of the Commission who violate this part may be subject to disciplinary action which may be in addition to any other penalty prescribed by law.

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