

1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 5, 2004.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.1244 is added to subpart D to read as follows:

§ 180.1244 Ammonium bicarbonate; exemption from the requirement of a tolerance.

An exemption from the requirement of tolerance is established for residues of ammonium bicarbonate used in or on all food commodities when used in accordance with good agricultural practices.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 0

[DA 04-683]

Freedom of Information Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission is modifying a section of the Commission's rules that implements the Freedom of Information Act (FOIA) Fee Schedule. This modification pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and the Commission's rules, unless such fees are restricted or waived. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

DATES: Effective March 24, 2004.

FOR FURTHER INFORMATION CONTACT: Shoko B. Hair, Freedom of Information

Act Officer, Office of Performance Evaluation and Records Management, Room 1-A827, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418-1379 or via Internet at *shoko.hair@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission is modifying § 0.467(a) of the Commission's rules. This rule pertains to the charges for searching and reviewing records requested under the FOIA. The FOIA requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidelines issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA Fee Schedule on the grade level of the employee who processes the request. Thus, the Fee Schedule was computed at a Step 5 of each grade level based on the General Schedule effective January 1987 (including 20 percent for personnel benefits). The Commission's rules provide that the Fee Schedule will be modified periodically to correspond with modifications in the rate of pay approved by Congress. See 47 CFR 0.467(a)(1) note.

In an Order adopted on March 10, 2004 and released on March 15, 2004 (DA 04-683), the Managing Director revised the schedule of fees set forth in 47 CFR 0.467 for the recovery of the full, allowable direct costs of searching for and reviewing agency records requested pursuant to the FOIA and the Commission's rules, 47 CFR 0.460, 0.461. The revisions correspond to modifications in the rate of pay, which was approved by Congress.

These modifications to the Fee Schedule do not require notice and comment because they merely update the Fee Schedule to correspond to modifications in rates of pay, as required under the current rules.

Accordingly, pursuant to the authority contained in § 0.231(b) of the Commission's rules, 47 CFR 0.231(b), it is hereby ordered, that, effective on March 24, 2004, the Fee Schedule contained in § 0.467 of the Commission's rules, 47 CFR 0.467, is amended, as described herein.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.

Rule Changes

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

PART 0—COMMISSION ORGANIZATION

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

Authority: 47 U.S.C. 155, unless otherwise noted.

- 2. Section 0.467 is amended by revising the last sentence, the table in paragraph (a)(1) and its note, and paragraph (a)(2) to read as follows:

§ 0.467 Search and review fees.

(a)(1) * * * The fee is based on the grade level of the employee(s) who conduct(s) the search or review, as specified in the following schedule:

Grade	Hourly fee
GS-1	11.66
GS-2	12.71
GS-3	14.32
GS-4	16.07
GS-5	17.99
GS-6	20.05
GS-7	22.27
GS-8	24.67
GS-9	27.25
GS-10	30.01
GS-11	32.96
GS-12	39.52
GS-13	46.99
GS-14	55.52
GS-15	65.32

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a)(1) of this section were computed at Step 5 of each grade level based on the General Schedule effective January 2004 and include 20 percent for personnel benefits.

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[FR Doc. 04-6322 Filed 3-23-04; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 03-102; FCC 04-20]

Above 76 GHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission reallocated spectrum in the 76-81 GHz frequency band and the frequency bands above 95 GHz to conform the United States Table of Frequency Allocations with recent changes to the International Table of Frequency Allocations maintained by the International Telecommunication Union. In order to protect passive services in the 55.78-56.26 GHz band, the Commission also adopted a limit on the maximum power spectral density that can be delivered to a fixed service transmitter antenna.

DATES: Effective April 23, 2004.

FOR FURTHER INFORMATION CONTACT: Shameeka Hunt, Office of Engineering and Technology, (202) 418-2062, email: *Shameeka.Hunt@fcc.gov*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket No. 03-102, FCC 04-20, adopted February 4, 2004, and released February 12, 2004. The full text of this Commission decision is available on the Commission's Internet site at *www.fcc.gov*. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, Room CY-B402, 445 12th Street, SW., Washington, DC 20554. Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

Summary of the Report and Order

1. In the *Report and Order*, the Commission amended part 2 of the Commission's rules to realign spectrum in the 76-81 GHz frequency band and the frequency bands above 95 GHz to conform the United States Table with international allocation changes made at WRC-2000. The Commission also set a maximum power spectral density limit in the 55.78-56.26 GHz band to protect passive services.

2. Above 76 GHz. The Commission found that implementing the allocation changes from WRC-2000 in these bands was necessary to provide EESS and RAS operations with the flexibility to operate in spectrum suited to meet their needs. This action also promoted consistency between the U.S. Table and the International Table.

3. Regarding the 76-77 GHz band, the Commission recognized that vehicular radar operations in this band may be

able to increase the level of safety on highways and benefit the public. The Commission agreed with commenters that sharing between RAS and SRS and vehicular radar operations was possible. Therefore, the 76-77 GHz band was allocated to the RAS on a primary basis and to the SRS on a secondary basis, as proposed.

4. In addition, the Commission found evidence of potential interference conflicts between the amateur-satellite service and vehicular radar systems. On this basis, it was anticipated that an amateur earth station could either receive interference to its operations or cause interference to a passing vehicular radar device. Therefore, the proposed secondary amateur-satellite allocation for the 76-77 GHz band as not implemented. However, the existing secondary amateur service allocation was retained, noting that the existing secondary amateur service allocation in this band was currently suspended and restricted until technical sharing criteria was developed to address potential sharing problems in this band. The Commission also found that not allowing amateur operations in the 76-77 GHz band was not a significant burden on this service because amateurs typically do not operate at these higher frequencies and they are permitted to operate in the adjacent 77-81 GHz band.

5. Regarding the 77-81 GHz segment, the Commission adopted domestically the RAS and SRS allocations as proposed in the *Notice of Proposed Rule Making* (NPRM), 68 FR 33043, June 3, 2003. Also, the Commission adopted the proposal set forth in the *NPRM* to realign spectrum in the bands above 95 GHz. This realignment would have little impact on the small number of systems that are currently implemented in these bands and no parties filed comments opposing these changes. It was found that potential interference conflicts between allocations or development of technical sharing criteria would be addressed, as appropriate, as future applications are developed or through the development of service rules.

6. Finally, the Commission deleted the seven United States footnotes that were adopted in the *Table Clean-up Order* in DA No. 02-1872, 67 FR 59601, September 23, 2002, for the purpose of maintaining the status quo for the U.S. Table, since the Report and Order adopted the realignment of WRC-2000, these footnotes no longer applied.

7. Maximum Power Density in the Band 55.78-56.26 GHz. The Commission found that the current state of the art output power for fixed systems operating in this spectrum was still several dB less than the power that