

Commodity	Parts per million	Expiration/Revocation Date
Watermelon .....	1.0	3/31/00

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[FR Doc. 98-3883 Filed 2-17-98; 8:45 am]  
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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR PART 0**

[DA 98-53]

**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 § 0.460(e) or § 0.461 of the Commission's rules, unless such fees are restricted or waived in accordance with § 0.470. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

**EFFECTIVE DATE:** March 20, 1998.

**FOR FURTHER INFORMATION CONTACT:** Judy Boley, Freedom of Information Act Officer, Office of Performance Evaluation and Records Management, Room 234, Federal Communications Commission, 1919 M Street, N. W., Washington, D.C. 20554, (202) 418-0210 or via Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** The FCC 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 effected January 1987. The instant revisions correspond to modifications in the rate of pay recently approved by Congress.

**Regulatory Procedures**

This rule has been reviewed under Executive Order No. 12866 and has been determined not to be a "significant rule" since it will not have an annual effect on the economy of \$100 million or more.

In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 47 CFR Part 0**

Freedom of information.  
Federal Communications Commission.  
**Magalie Roman Salas,**  
*Secretary.*

Part 0 of title 47 of the Code of Federal Regulations is amended 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 table in paragraph (a)(1) and its note, and paragraph (a)(2) to read as follows:

**§ 0.467 Search and review fees.**

(a)(1) \* \* \*

Grade	Hourly fee
GS-1 .....	\$9.06
GS-2 .....	9.86
GS-3 .....	11.11
GS-4 .....	12.48
GS-5 .....	13.96
GS-6 .....	15.56
GS-7 .....	17.29
GS-8 .....	19.15
GS-9 .....	21.16
GS-10 .....	23.29
GS-11 .....	25.58
GS-12 .....	30.67
GS-13 .....	36.47
GS-14 .....	43.10

Grade	Hourly fee
GS-15 .....	50.70

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 1998 and include 20 percent for personnel benefits.

\* \* \* \* \*

[FR Doc. 98-3926 Filed 2-17-98; 8:45 am]  
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**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs Administration**

**49 CFR Part 173**

[Docket HM-200; Amdt. No. 173-259]

RIN 2137-AB37

**Hazardous Materials in Intrastate Commerce; Technical Amendments**

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** On January 8, 1997, RSPA published a final rule which amended the Hazardous Materials Regulations (HMR) to expand the scope of the regulations to all intrastate transportation of hazardous materials. The intended effect of the January 8, 1997 rule was to raise the level of safety in the transportation of hazardous materials by applying a uniform system of safety regulations to all hazardous materials transported in commerce throughout the United States. In this final rule, RSPA is: Correcting a date for States to develop legislation authorizing certain exceptions recognized in the HMR; clarifying packaging requirements for hazardous materials transported for agricultural operations; correcting size requirements for identification number markings; and clarifying that the provisions for use of non-specification cargo tanks apply to transportation of gasoline. The minor technical amendments made by this final rule will

not impose any new requirements on persons subject to the HMR.

**DATES: Effective dates:** This final rule is effective February 18, 1998. The effective date for the final rules published under Docket HM-200 on January 8, 1997 (62 FR 1208) and September 22, 1997 (62 FR 49560) remains October 1, 1997.

**Compliance dates:** Voluntary compliance with the January 8, 1997 final rule has been authorized since April 8, 1997.

Mandatory compliance with the HMR by intrastate motor carriers of hazardous materials is required beginning October 1, 1998, except that the HMR already apply to intrastate motor carriers of hazardous waste, hazardous substances, marine pollutants, and flammable cryogenic liquids in portable tanks and cargo tanks.

**FOR FURTHER INFORMATION CONTACT:** Diane LaValle, (202) 366-8553, Office of Hazardous Materials Standards, RSPA, 400 Seventh Street, SW, Washington, DC 20590-0001.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In 1990, the Federal hazardous material transportation law was amended to require the Secretary to regulate hazardous materials transportation in intrastate commerce. (49 U.S.C. 5103(b)(1)) On January 8, 1997, RSPA issued a final rule under Docket HM-200 (62 FR 1208). The final rule amended the HMR by expanding the scope of the regulations to all intrastate transportation of hazardous materials in commerce. In the final rule, RSPA provided exceptions for agricultural operations (§ 173.5), materials of trade (§ 173.6), non-specification packagings used in intrastate transportation (§ 173.8) and for registered inspectors of small cargo tanks used exclusively for flammable liquid petroleum fuels (§ 180.409).

In a correction document published on September 22, 1997 (62 FR 49560), RSPA changed from July 1, 1998 to October 1, 1998 the deadline in §§ 173.5(a)(2) and 173.8(d)(3) for States to enact legislation that authorizes exceptions for agricultural operations and non-specification cargo tanks, for consistency with the mandatory compliance date of the final rule. This eliminated a potential problem of requiring compliance before a State has the opportunity to enact legislation to allow carriers in that state to take advantage of the exceptions. However, the date referenced in § 173.5(b)(3) was inadvertently missed when these changes were made. Therefore, this final

rule revises the July 1, 1998 date referenced in § 173.5(b)(3) to October 1, 1998.

A possible misunderstanding has been brought to RSPA's attention by a State enforcement officer regarding the packaging authorizations adopted in § 173.5(b)(3) for agricultural products transported by farmers who are intrastate private motor carriers. To clarify RSPA's intention, this final rule amends the language in § 173.5(b) and (b)(3) to make it clear that agricultural products transported under the exception provided in § 173.5(b) are excepted from the packaging requirements of the HMR when the movement and packaging of the agricultural product conform to the requirements of the State in which it is transported and are specifically authorized by a State statute or regulation in effect prior to October 1, 1998.

In § 173.6, paragraph (c)(2) references identification number marking requirements for bulk packagings. The size requirements for each digit in these markings were incorrectly specified to be at least 25 mm (one inch) high and 6 mm (0.24 inch) wide. This paragraph is revised to provide that the size of the identification number markings must be as required by § 172.332(b)(1) or (c)(1), which state the identification number must be displayed in 100 mm (3.9 inches) black Helvetica Medium, Alpine Gothic or Alternate Gothic No. 3 numerals. RSPA is also clarifying that the identification number may be displayed on Class 9 placards.

In § 173.8, paragraph (b) authorizes non-specification cargo tanks for the transportation of flammable liquid petroleum products that are not hazardous wastes, hazardous substances or marine pollutants (when specifically authorized in State statute or regulation). RSPA overlooked the fact that leaded gasoline is a marine pollutant when transported in a bulk packaging by highway. Because RSPA intended that the provisions of this exception apply to the transportation of gasoline, RSPA is revising § 173.8(d)(5) to allow for the transportation of all gasoline, including leaded gasoline which is a marine pollutant.

This will eliminate any confusion regarding the type of petroleum product that is authorized for transportation in a non-specification cargo tank.

##### II. Regulatory Analyses and Notices

###### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under

section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation was prepared for the January 8, 1997 final rule and is available for review in the Docket. The regulatory evaluation was reviewed and determined not to require updating.

###### B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law (49 U.S.C. 5101-5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This rule concerns the packaging, marking, labeling, placarding and description of hazardous materials on shipping papers. This rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Title 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA determined that the effective date of Federal preemption for the requirements in this rule concerning covered subjects is October 1, 1998.

C. Regulatory Flexibility Act

The regulatory evaluation developed in support of the January 8, 1997 final rule includes a benefit-cost analysis that justifies its adoption, primarily due to the positive net benefits that may be realized by small entities under the materials of trade exception. RSPA has reviewed this regulatory evaluation and determined it was not necessary to update it.

D. Paperwork Reduction Act

There are no information collection requirements in this final rule.

E. Regulations Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR part 173 is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 173.5, the introductory text of paragraph (b) and paragraph (b)(3) are revised to read as follows:

§ 173.5 Agricultural operations.

\* \* \* \* \*

(b) The transportation of an agricultural product to or from a farm, within 150 miles of the farm, is excepted from the requirements in subparts G and H of part 172 of this subchapter and from the specific packaging requirements of this subchapter when:

\* \* \* \* \*

(3) The movement and packaging of the agricultural product conform to the requirements of the State in which it is transported and are specifically authorized by a State statute or regulation in effect before October 1, 1998; and

\* \* \* \* \*

3. In § 173.6, paragraph (c)(2) is revised to read as follows:

§ 173.6 Materials of trade exceptions.

\* \* \* \* \*

(c) \* \* \* (2) A bulk packaging containing a diluted mixture of a Class 9 material must be marked on two opposing sides with the four-digit identification number of the material. The identification number must be displayed on placards, orange panels or, alternatively, a white square-on-point configuration having the same outside dimensions as a placard (at least 273 mm (10.8 inches) on a side), in the manner specified in § 172.332 (b) and (c) of this subchapter. Each digit in the identification number marking must be displayed in 100 mm (3.9 inches) black Helvetica Medium, Alpine Gothic or Alternate Gothic No. 3 numerals.

\* \* \* \* \*

§ 173.8 [Amended]

4. In § 173.8, paragraph (d)(1) is amended by revising the date "July 1, 1998" to read "October 1, 1998".

5. In addition, in § 173.8, paragraph (d)(5) is revised to read as follows:

§ 173.8 Exceptions for non-specification packagings used in intrastate transportation.

\* \* \* \* \*

(d) \* \* \*

(5) Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or a marine pollutant (except for gasoline); and

\* \* \* \* \*

Issued in Washington, DC on February 9, 1998, under authority delegated in 49 CFR, part 1.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 98-3789 Filed 2-17-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. RSOR-6; Notice No. 46]

RIN 2130-AA81

Random Drug and Alcohol Testing: Determination of 1998 Minimum Testing Rate

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Under §§ 219.602 and 219.608 of FRA's regulations on drug and alcohol testing (49 CFR Part 219), each year the Federal Railroad Administrator (Administrator)

determines the minimum annual percentage rate for random drug and alcohol testing for the rail industry. Currently, the minimum rates for both drug and alcohol random testing are set at 25 percent.

After reviewing the rail industry drug and alcohol management information system (MIS) data for 1995 and 1996, as well as data from compliance reviews of rail industry drug and alcohol testing programs, the Administrator has determined that the minimum annual random drug and alcohol testing rates for the period January 1, 1998 through December 31, 1998 will remain at 25 percent of covered railroad employees.

DATES: This notice of determination is effective February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Operating Practices Division, Federal Railroad Administration, 400 7th Street, S.W., Room 8314, Washington, D.C. 20590, (Telephone: (202) 632-3378) or Patricia V. Sun, Trial Attorney (RCC-11), Office of Chief Counsel, FRA, Washington, D.C. 20590 (Telephone: (202) 632-3183).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 1998 Random Drug Testing Rate

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall violation rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this and other program data, the Administrator publishes a Federal Register notice each year, announcing the minimum random drug and alcohol testing rates for the following year (see 49 CFR §§ 219.602 and 219.608, respectively).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program and the findings from program compliance reviews, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

In 1994, FRA set the 1995 minimum random drug testing rate at 25 percent