

or the data on which the Department bases the computations; and

(b) File the protest by the first business day of the calendar year following the end of the fiscal year for which the Department made the payments.

§ 44.57 Can a unit of general local government appeal a rejection of a protest?

Any affected local government may appeal the Department's decision to reject a protest to the Interior Board of Land Appeals under 43 CFR part 4.

43 CFR CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

PART 1880—[AMENDED]

■ 2. Subpart 1881 (§§ 1881.10 through 1881.57) is removed.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 18

[ET Docket No. 98-42; FCC 04-263]

RF Lighting Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses a Joint Petition for Clarification (Joint Petition) filed by XM Radio Inc. and Sirius Satellite Radio Inc. (the Satellite Radio Licensees) requesting clarification of the Commission's *Order* in this proceeding. The Commission determined that there was no need to define out-of-band limits for radio frequency (RF) lights in the 2.45 GHz band. We dismissed the Joint Petition and reject the Satellite Radio Licensees' request to prohibit the operation of RF lights in the 2.45 GHz band. We further affirm our decision to terminate the proceeding without prejudice to its substantive merits.

FOR FURTHER INFORMATION CONTACT: Anh Wride, Office of Engineering and Technology, (202) 418-0577, e-mail: Anh.Wride@fcc.gov, TTY (202) 418-2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, ET Docket No. 98-42, FCC 04-263, adopted November 5, 2004 and released November 9, 2004. The full text of this document is available on the Commission's Internet site at <http://www.fcc.gov>. It is also available for

inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; telephone (202) 863-2893; fax (202) 863-2898.

Summary of the Report and Order

1. In the *Order*, the Commission determined that there was no need to define out-of-band limits for radio frequency (RF) lights in the 2.45 GHz band. The Commission dismissed the Joint Petition and rejected the Satellite Radio Licensees' request to prohibit the operation of RF lights in the 2.45 GHz band. We further affirm our decision to terminate the proceeding without prejudice to its substantive merits.

2. On April 1, 1998, the Commission adopted a *Notice of Proposed Rule Making* (NPRM), 63 FR 20362, April 24, 1998, in this proceeding. In the *NPRM*, the Commission proposed changes to part 18 to update the conducted emission limits for RF lighting devices operating in the 2.2-2.8 MHz band. The Commission also proposed more stringent out-of-band radiated emission limits for consumer and non-consumer RF lights in the 2400-2500 MHz (2.45 GHz) bands. In addition, because the existing regulations for RF lighting devices do not specifically include any radiated emission limits for RF lights operating at frequencies above 1000 MHz, the Commission proposed radiated emission limits for such products that are identical to the limits already in place for digital devices.

3. On June 9, 1999, the Commission adopted a *First Report and Order*, 64 FR 37417, July 12, 1999, in this proceeding that adopted less stringent conducted emission limits for RF lighting devices operating in the 2.51-3.0 MHz band, but deferred action on changes to the rules for RF lighting devices operating in the 2.45 GHz band to a future date. Subsequently, Fusion informed the Commission that it is no longer pursuing development of RF lights that operate in the 2.45 GHz band.

4. On May 27, 2003, the Commission adopted an *Order*, 68 FR 37112, June 23, 2003, terminating this proceeding as it found that with the passage of time, the record of the proceeding had become outdated and, furthermore, that Fusion, the only party that expressed interest in producing RF lights in the 2.45 GHz band, had ceased operations in this area. In the *Order*, the Commission concluded that there did not appear to

be a need for further Commission action in defining out-of-band limits for RF lights in the 2.45 GHz band at that time. The Commission therefore decided to terminate the proceeding without prejudice to its substantive merits and stated that should any party wish to pursue the issues in this proceeding in the future, the Commission would evaluate them in the context of a new proceeding.

5. On July 23, 2003, the Satellite Radio Licensees submitted a Joint Petition for Clarification in this proceeding, in which they seek specific clarification that RF lighting devices will not be permitted to operate in the 2.45 GHz band and that "before the Commission considers permitting any such operations, it will either establish another rulemaking, or provide ample notice to affected parties such as the Satellite Radio Licensees."

6. The Satellite Radio Licensees contend that in terminating the proceeding by the *Order*, the Commission has left satellite radio vulnerable to interference from RF lights that may seek to operate at the ISM miscellaneous out-of-band emission limit in the future. Finally, the Satellite Radio Licensees urge the Commission to clarify that RF lights are prohibited from operating in the 2.45 GHz band, unless and until the Commission concludes a new rulemaking in which a specific out-of-band limit is adopted for 2.45 GHz RF lights. To the extent that this relief is not given, the Satellite Radio Licensees request that the Commission provide potentially affected parties, including the Satellite Radio Licensees, an ample notice and opportunity to comment.

7. We disagree with the Satellite Radio Licensees' argument that by terminating the proceeding by the *Order*, the Commission has left satellite radio vulnerable to interference from RF lights operating in the 2.45 GHz band. There is no reason to believe that future RF lights designed by Fusion or any other party would be produced using the same unsuccessful design, the same operating frequencies or exhibit the same characteristics as evaluated in the Satellite Radio Licensees' Supplemental Comments. Furthermore, Fusion no longer develops or manufactures RF lights in the 2.45 GHz band and we are not aware that any other party is developing RF lights that would operate in this band.

8. We note that RF lights are already covered under our existing Part 18 rules and compliant equipment can be authorized according to our equipment authorization procedures. Although traditional low-frequency RF lights are treated as a distinct class in Part 18,

microwave RF lights are subject to existing out-of-band radiated emission limits applicable to microwave ovens and other miscellaneous ISM equipment operating in the 2400–2500 MHz band. Moreover, we emphasize that RF lights, like all part 18 equipment, must operate under the non-interference restriction of § 18.111(b) of our rules. Under the rules, the operator of such equipment must promptly take all necessary steps to eliminate harmful interference to any authorized radio service, even if the equipment otherwise complies with the rules. Hence we find that there is adequate recourse against potentially harmful interference to satellite radio receivers under the provisions of this section.

9. We therefore decline to provide the requested relief from the Satellite Radio Licensees to prohibit operation of all RF lights in the 2.45 GHz band, as we find

that the requested prohibition is overarching and is not warranted based on the circumstances. If there is evidence that any entity will seek to operate RF lights in the 2.45 GHz band and cause harmful interference to satellite radio receivers as a consequence, and our existing limits prove inadequate, we will at that time take appropriate action.

10. Based on the foregoing, we affirm our decision to terminate the proceeding without prejudice to its substantive merits, and hereby dismiss the Joint Petition for Clarification from the Satellite Radio Licensees.

Ordering Clause

11. Pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(g) and 303(r), the

above mentioned proceeding *Is terminated* without prejudice to its substantive merits, and the Joint Petition for Clarification filed by the Satellite Radio Licensees *Is dismissed*.

Congressional Review Act

12. The Commission will not send a copy of this *Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because we are not adopting any rules at this time. We are affirming our decision to terminate the proceeding without prejudice to its substantive merits, and hereby dismiss the Joint Petition for Clarification from the Satellite Radio Licensees.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–26829 Filed 12–6–04; 8:45 am]

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