

## IX. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

The Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

## X. Submission to Congress and the General Accounting Office

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 the rule in the **Federal Register**. This 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 record keeping requirements.

Dated: May 21, 1998.

**James Jones,**

Director, Registration Division, Office of Pesticide Programs.

## PART 180 — [AMENDED]

Therefore, 40 CFR chapter I is amended as follows:

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

**Authority:** 21 U.S.C. 346a and 371.

2. In section 180.1001 the table in paragraph (c) is amended by adding alphabetically the following inert ingredient to read as follows:

### § 180.1001 Exemption from the requirement of a tolerance.

(c) \*

Inert ingredients	Limits	Uses
* *	* * *	* *
Polyvinyl chloride (CAS Reg. No. 9002-86-2), minimum number average molecular weight (in amu) 29,000.	.....	Carrier
* *	* * *	* *

\* \* \*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 2

[ET Docket No. 94-45; FCC 98-96]

### Marketing and Equipment Authorizations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** By this *Memorandum Opinion and Order*, the Commission amends its regulations to increase the number of radio frequency products that can be imported, prior to receiving a grant of equipment authorization, for the purpose of testing and evaluation or demonstration at industry trade shows. This increase applies only to products designed to be operated within one of the allocated radio services and under the provisions of license issued by the Commission. In addition, manufacturers operating equipment for demonstration or evaluation purposes will be permitted to operate under the authority of a local FCC licensed service provider on the condition that the licensee gives the manufacturer permission to operate in this manner and accepts responsibility for the operation of the equipment. These amendments to the regulations respond to a Petition for Reconsideration and Clarification, filed by Ericsson, Inc.

**EFFECTIVE DATE:** August 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** John A. Reed, Office of Engineering and Technology, (202) 418-2455.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order* in ET Docket No. 94-45, adopted May 14, 1998, and released May 28, 1998. The complete text of this *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, N.W., Washington, D.C. 20036.

### Summary of the Memorandum Opinion and Order

1. In the *Memorandum Opinion and Order*, the Commission amended part 2 of its rules regarding the importation and operation of radio frequency (RF) devices. Previously, the rules limited the importation of RF products, prior to receiving a grant of equipment authorization, to no more than 200 units for testing and evaluation purposes and to no more than 10 units for demonstrations at trade shows. A greater number could be imported only if written authorization was first obtained from the Chief, Office of Engineering and Technology, FCC.

2. Ericsson, Inc. filed a Petition for Reconsideration and Clarification to the *Report and Order* ("R&O") in this proceeding, 62 FR 10466, March 7, 1997. It requested that the above

importation limits be eliminated, stating that these limits unfairly restrict the ability of foreign manufacturers to compete with domestic manufacturers. Ericsson also requested that the Commission eliminate its requirement that manufacturers obtain a license to operate transmitters for demonstrations at trade shows, demonstrations at exhibitions, or evaluation of product performance. Ericsson adds that the requirement to obtain a license should apply only to entities that intend to provide services using the product.

3. In the *R&O* in this proceeding, the Commission chose not to amend its rules limiting the importation of RF devices that had not yet received a grant of equipment authorization because of the difficulties sometimes associated with identifying the responsible party, e.g., the importer. With many products, especially low-power, unlicensed, consumer devices, the name of the responsible party may not be on the product. Thus, it may not be possible to trace a product to a specific importer or to have a product recalled should it later be found to be a source of harmful interference.

4. The Commission continues to believe that importation limits for unauthorized devices are necessary and that these limits do not impose a significant barrier to foreign trade. However, Ericsson has made a compelling argument that the current limits are inappropriate for equipment intended to be used in the authorized radio services where a license to operate is required to be obtained from the Commission. In some authorized services, there are several hundred licensees, each of which may be interested in evaluating small quantities of sample base and mobile units before making larger purchases. This could result in frequent requests to import larger quantities. In order to reduce administrative burden, the rules are amended to allow the routine importation of up to 2000 units for test and evaluation and up to 200 units for display at trade shows, but only for equipment intended to be operated in an authorized radio service and under a Commission-issued license.

5. The Commission does not agree with Ericsson that the requirement to obtain a license, where currently required, should be eliminated for equipment manufacturers. However, the Commission is amending its regulations to permit a manufacturer to operate its product for demonstration or evaluation purposes under the authority of a local FCC licensed service provider. The licensee must grant permission to the manufacturer to operate in this manner.

Further, the licensee continues to remain responsible for complying with all of the operating conditions and requirements associated with its license.

6. The changes to the regulations shown in this document incorporate the changes adopted in this proceeding as well as the changes to 47 CFR 2.1204(a)(3) and (a)(4) that were adopted by the Commission on May 18, 1998 in CI Docket No. 98-69, FCC 98-97. The changes to these paragraphs were made in separate orders adopted in close proximity to each other. For clarity, we are showing all of the resulting rule changes.

7. *Final Regulatory Flexibility Analysis.* As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making (Notice)* in ET 94-45. The Commission sought written Comments on the proposals in the *Notice* including the IRFA. No commenting parties raised issues specifically in response to the IRFA and a Final Regulatory Flexibility Analysis (FRFA) as included in the *Report and Order* in this proceeding. The rules adopted in this Memorandum Opinion and Order (MO&O) provide clarification and further relaxation of the marketing regulations adopted in the *Report and Order*. We therefore certify, pursuant to section 605(b) of the RFA, that the rules adopted in this MO&O do not have a significant economic impact on a substantial number of small entities.

8. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this final certification, along with this Memorandum Opinion and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 605(b).

9. *It Is Further Ordered* that this proceeding is *Terminated*.

#### List of Subjects in 47 CFR Part 2

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Magalie Roman Salas,**  
Secretary.

#### Rule Changes

For the reasons discussed in the preamble part 2 of title 47 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302, 303, 307 and 336, unless otherwise noted.

2. Section 2.803 is amended by revising paragraph (e)(3) to read as follows:

#### § 2.803 Marketing of radio frequency devices prior to equipment authorization.

\* \* \* \* \*

(e)(3) The provisions of paragraphs (e)(1)(i), (e)(1)(ii), (e)(1)(iii), (e)(1)(iv), and (e)(1)(v) of this section do not eliminate any requirements for station licenses for products that normally require a license to operate, as specified elsewhere in this chapter.

(i) Manufacturers should note that station licenses are not required for some products, e.g., products operating under part 15 of this chapter and certain products operating under part 95 of this chapter.

(ii) Instead of obtaining a special temporary authorization or an experimental license, a manufacturer may operate its product for demonstration or evaluation purposes under the authority of a local FCC licensed service provider. However, the licensee must grant permission to the manufacturer to operate in this manner. Further, the licensee continues to remain responsible for complying with all of the operating conditions and requirements associated with its license.

\* \* \* \* \*

3. Section 2.1204 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

#### § 2.1204 Import conditions.

(a) \* \* \*

(3) The radio frequency device is being imported in limited quantities for testing and evaluation to determine compliance with the FCC Rules and Regulations or suitability for marketing. The devices will not be offered for sale or marketed. The phrase "limited quantities," in this context means:

(i) 2000 or fewer units, provided the product is designed solely for operation within one of the Commission's authorized radio services for which an operating license is required to be issued by the Commission; or

(ii) 200 or fewer units for all other products.

(iii) Prior to importation of a greater number of units than shown above, written approval must be obtained from the Chief, Office of Engineering and Technology, FCC.

(iv) Distinctly different models of a product and separate generations of a particular model under development are considered to be separate devices.

(4) The radio frequency device is being imported in limited quantities for demonstration at industry trade shows and the device will not be offered for

sale or marketed. The phrase "limited quantities," in this context means:

(i) 200 or fewer units, provided the product is designed solely for operation within one of the Commission's authorized radio services for which an operating license is required to be issued by the Commission; or

(ii) 10 or fewer units for all other products.

(iii) Prior to importation of a greater number of units than shown above, written approval must be obtained from the Chief, Office of Engineering and Technology, FCC.

(iv) Distinctly different models of a product and separate generations of a particular model under development are considered to be separate devices.

\* \* \* \* \*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AB94

#### Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Klamath River and Columbia River Distinct Population Segments of Bull Trout

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service (Service) determines threatened status for the Klamath River and the Columbia River distinct population segments of bull trout (*Salvelinus confluentus*), with special rules, pursuant to the Endangered Species Act of 1973, as amended (Act). The Klamath River population segment is limited to seven geographically isolated stream areas representing a fraction of the historical habitat. The distribution and numbers of bull trout have declined in the Klamath River basin due to habitat isolation, loss of migratory corridors, poor water quality, and the introduction of non-native species. The Columbia River population segment is represented by relatively widespread subpopulations that have declined in overall range and numbers of fish. A majority of Columbia River bull trout occur in isolated, fragmented habitats that support low numbers of fish and are inaccessible to migratory bull trout. The few remaining bull trout "strongholds" in the Columbia River basin tend to be found in large areas of contiguous habitats in

the Snake River basin of central Idaho mountains, upper Clark Fork and Flathead Rivers in Montana, and several streams in the Blue Mountains in Washington and Oregon. The decline of bull trout is primarily due to habitat degradation and fragmentation, blockage of migratory corridors, poor water quality, past fisheries management practices, and the introduction of non-native species. The special rules allow the take of bull trout in the Columbia River and Klamath River population segments if in accordance with applicable State and Native American Tribal fish and wildlife conservation laws and regulations and conservation plans approved by the Service.

The listing proposal was restricted by court order to information contained in the 1994 administrative record. This final determination was based on the best available scientific and commercial information including current data and new information received during the comment period. As a result, the threatened listing status for the Columbia River population segment has been retained, however, the listing status for the Klamath River population segment is changed from endangered to threatened. This listing status change occurred because bull trout interagency management and recovery efforts for the Klamath River basin are being implemented and, consequently, threats have been reduced. This rule implements the protection and conservation provisions afforded by the Act for the Klamath River and Columbia River population segments of bull trout. **DATES:** Effective July 10, 1998.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Snake River Basin Field Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709.

**FOR FURTHER INFORMATION CONTACT:** Robert Ruesink, Supervisor, Snake River Basin Office (see **ADDRESSES** section) (telephone 208-378-5243, facsimile 208-378-5262).

#### SUPPLEMENTARY INFORMATION:

##### Background

Bull trout (*Salvelinus confluentus*), members of the family Salmonidae, are char native to the Pacific northwest and western Canada. Bull trout historically occurred in major river drainages in the Pacific Northwest from about 41° N to 60° N latitude, from the southern limits in the McCloud River in northern California and the Jarbidge River in Nevada to the headwaters of the Yukon River in Northwest Territories, Canada

(Cavender 1978; Bond 1992). To the west, bull trout range includes Puget Sound, various coastal rivers of British Columbia, Canada, and southeast Alaska (Bond 1992). Bull trout are wide-spread throughout tributaries of the Columbia River basin, including its headwaters in Montana and Canada. Bull trout also occur in the Klamath River basin of south central Oregon. East of the Continental Divide, bull trout are found in the headwaters of the Saskatchewan River in Alberta and the MacKenzie River system in Alberta and British Columbia (Cavender 1978; Brewin and Brewin 1997).

Bull trout were first described as *Salmo spectabilis* by Girard in 1856 from a specimen collected on the lower Columbia River, and subsequently described under a number of names such as *Salmo confluentus* and *Salvelinus malma* (Cavender 1978). Bull trout and Dolly Varden (*Salvelinus malma*) were previously considered a single species (Cavender 1978; Bond 1992). Cavender (1978) presented morphometric (measurement), meristic (geometrical relation), osteological (bone structure), and distributional evidence to document specific distinctions between Dolly Varden and bull trout. Bull trout and Dolly Varden were formally recognized as separate species by the American Fisheries Society in 1980 (Robins et al. 1980). Although bull trout and Dolly Varden co-occur in several northwestern Washington river drainages, there is little evidence of introgression (Haas and McPhail 1991) and the two species appear to be maintaining distinct genomes (Leary et al. 1993; Williams et al. 1995; Kanda et al. 1997; Spruell and Allendorf 1997).

Bull trout exhibit resident and migratory life-history strategies through much of the current range (Rieman and McIntyre 1993). Resident bull trout complete their entire life cycle in the tributary (or nearby) streams in which they spawn and rear. Migratory bull trout spawn in tributary streams where juvenile fish rear from one to four years before migrating to either a lake (adfluvial), river (fluvial), or in certain coastal areas, to saltwater (anadromous), where maturity is reached in one of the three habitats (Fraleigh and Shepard 1989; Goetz 1989). Resident and migratory forms may be found together and it is suspected that bull trout give rise to offspring exhibiting either resident or migratory behavior (Rieman and McIntyre 1993).

Bull trout have more specific habitat requirements compared to other salmonids (Rieman and McIntyre 1993). Habitat components that appear to influence bull trout distribution and