

Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 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.

#### X. 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 22, 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), 346a and 371.

■ 2. Section 180.1249 is added to subpart D to read as follows:

#### § 180.1249 Hygromycin B phosphotransferase (APH4) marker protein and the genetic material necessary for its production in all plants; exemption from the requirement of a tolerance.

Hygromycin B phosphotransferase (APH4) and the genetic material necessary for its production in all plants are exempt from the requirement of a tolerance when used as a plant-incorporated protectant inert ingredient in cotton. "Genetic material necessary for its production" means the genetic material which comprise genetic material encoding the APH4 protein and its regulatory regions. "Regulatory regions" are the genetic material that control the expression of the genetic material encoding the APH4 protein, such as promoters, terminators, and enhancers.

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#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 2 and 25

[IB Docket No. 00-185, FCC 03-162]

#### Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** This document announces the effective date of the rule published on August 12, 2003. Those rules permitted certain mobile-satellite service (MSS) providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands to integrate ancillary terrestrial components (ATCs) into their MSS networks.

**DATES:** Effective April 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Peggy Reitzel, Policy Division, International Bureau, (202) 418-1460.

**SUPPLEMENTARY INFORMATION:** On July 3, 2003, the Commission released an Order on Reconsideration, a summary of which was published in the **Federal Register**. See 68 FR 47856 (August 12, 2003). Although the rule changes in the Order on Reconsideration became effective on September 11, 2003, several rule sections contained modified information collection requirements, which required approval by the Office of Management and Budget (OMB). The information collection requirements

were approved by OMB. See OMB No. 3060-0994.

#### List of Subjects in 47 CFR Parts 2 and 25

Radio, Satellites,  
Telecommunications.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AT65

#### Endangered and Threatened Wildlife and Plants; Establishment of an Additional Manatee Protection Area in Lee County, FL

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

**ACTION:** Emergency rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), take emergency action to establish an additional manatee protection area in Lee County, Florida. This action is authorized under the Endangered Species Act of 1973, as amended (ESA), and the Marine Mammal Protection Act of 1972, as amended (MMPA), based on our determination that there is substantial evidence of imminent danger of taking one or more manatees and the emergency designation of a manatee refuge is necessary to prevent such taking. In evaluating the need for emergency designation of an additional manatee protection area, we considered the biological needs of the manatee, the level of take at these sites, and the likelihood of additional take of manatees due to human activity. Within 10 days after establishing a protection area in accordance with this section, the Service will begin proceedings to establish these areas in accordance with 50 CFR 17.103. The area established by this rule will be a manatee refuge as defined by 50 CFR 17.102 and watercraft will be required to proceed at either "slow speed" or at not more than 25 miles per hour, on an annual or seasonal basis, as marked. While adjacent property owners must comply with the speed restrictions, the designation will not preclude ingress and egress to private property.

We anticipate making a final determination of these sites in a final

rule within the 120-day effective period unless State or local governments implement measures at these sites that would, in our view, make such establishment unnecessary to prevent the taking of one or more manatees.

**DATES:** In accordance with 50 CFR 17.106, the effective date for this action will be April 7, 2004, which will also be the date of posting of the sites, and publication in the following newspapers: Ft Myers News-Press, Cape Coral Daily Breeze, and Naples Daily News. This emergency action will remain in effect for 120 days after publication in the **Federal Register** or until August 5, 2004.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

**FOR FURTHER INFORMATION CONTACT:** David Hankla or Chuck Underwood (see **ADDRESSES** section), telephone 904/232-2580 or visit our Web site at <http://northflorida.fws.gov>. In the event that our Internet connection is not functional, please contact the Service by mail (see **ADDRESSES**) or telephone (904/232-2580), for alternative methods to obtain further information related to this issue.

#### SUPPLEMENTARY INFORMATION:

##### Background

The West Indian manatee (*Trichechus manatus*) is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and the population is further protected as a depleted stock under the MMPA (16 U.S.C. 1361-1407). Manatees reside in freshwater, brackish, and marine habitats in coastal and inland waterways of the southeastern United States. The majority of the population can be found in waters of the State of Florida throughout the year, and nearly all manatees winter in peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm water temperatures generally above 20° Celsius (68° Fahrenheit) to survive during periods of cold weather. During the winter months, most manatees rely on warm water from natural springs and industrial discharges for warmth. In warmer months, they expand their range and are seen rarely as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Recent information indicates that the overall manatee population has grown since the species was listed (U.S. Fish

and Wildlife Service 2001). However, in order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA.

Human activities, and particularly waterborne activities, can result in the take of manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass includes intentional or negligent acts or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium, with certain exceptions, on the take and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) Has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased dramatically as a function of residential growth and increased visitation. This phenomenon is particularly evident in the State of Florida. The population of Florida has grown by 124 percent since 1970 (6.8 million to 15.2 million, U.S. Census Bureau) and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a report by the Florida Office of Economic and Demographic Research (2000), it is