

## IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA 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). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). 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) (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: May 24, 2004.

**Jim 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 180.1253 is added to subpart D to read as follows:

### § 180.1253 *Streptomyces lydicus* WYEC 108; Exemption from the Requirement of a Tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide *Streptomyces lydicus* WYEC 108 when used in or on all agricultural commodities when applied/used in accordance with label directions.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 25

[IB Docket Nos. 02-34 and 02-54, FCC 03-102]

### Satellite Licensing Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document corrects errors in the rule changes published in the **Federal Register** of August 27, 2003, regarding reform of space station licensing procedures.

**DATES:** Effective June 3, 2004.

### FOR FURTHER INFORMATION CONTACT:

Stephen Duall, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418-1103 or via the Internet at [Stephen.Duall@fcc.gov](mailto:Stephen.Duall@fcc.gov).

### SUPPLEMENTARY INFORMATION:

### Background

This document corrects errors in § 25.146 of the Commission's rules. The Commission published a document in the **Federal Register** of August 27, 2003,

(68 FR 51499), that, among other things, was intended to eliminate the Commission's space station "anti-trafficking" prohibitions. These "anti-trafficking provisions" proscribed the sale of bare space station licenses for profit and were codified in various sections of part 25 of the Commission's rules. To implement the elimination of the anti-trafficking provisions, the Commission indicated it would remove and reserve paragraph (i) of § 25.146, which contained the anti-trafficking prohibitions for non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) in the 10.7 GHz to 14.5 GHz band (as used herein, "Ku-band").

Prior to this change taking effect, however, the Commission published a separate document in the **Federal Register** of July 25, 2003, (68 FR 43946), that amended § 25.146 by adding a new paragraph (g) and by re-designating paragraphs (g) through (m) as paragraphs (h) through (n). As a result, "old" § 25.146(h) was re-designated as "new" § 25.146(i), and "old" § 25.146(i) was re-designated as "new" § 25.146(j). Therefore, when the Commission subsequently removed and reserved § 25.146(i), it did not eliminate the text of anti-trafficking provisions for the Ku-band NGSO FSS service, but rather erroneously eliminated the text of rules concerning additional informational requirements for the Ku-Band NGSO FSS that had been previously contained in "old" § 25.146(h). The text of the anti-trafficking provisions inadvertently remained a part of the Code of Federal Regulations as "new" § 25.146(j) of the Commission's rules. This document corrects these errors.

#### List of Subjects in 47 CFR Part 25

Satellites.

■ Accordingly, 47 CFR part 25 is corrected by making the following correcting amendments:

#### PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

**Authority:** 47 U.S.C. 701–704. Interprets or applies Sections 4, 301, 302, 303, 307, 309, and 322 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

■ 2. Section 25.146 is amended by revising paragraph (i) and removing and reserving paragraph (j) to read as follows:

#### § 25.146 Licensing and operating authorization provisions for the non-geostationary satellite orbit fixed-satellite service (NGSO FSS) in the bands 10.7 GHz to 14.5 GHz.

\* \* \* \* \*

(i) In addition to providing the information specified in § 25.114, each NGSO FSS applicant shall provide the following:

(1) A demonstration that the proposed system is capable of providing fixed-satellite services on a continuous basis throughout the fifty states, Puerto Rico and the U.S. Virgin Islands, U.S.; and

(2) A demonstration that the proposed system be capable of providing fixed-satellite services to all locations as far north as 70 deg. latitude and as far south as 55 deg. latitude for at least 75 percent of every 24-hour period; and

(3) Sufficient information on the NGSO FSS system characteristics to properly model the system in computer sharing simulations, including, at a minimum, NGSO hand-over and satellite switching strategies, NGSO satellite beam patterns, NGSO satellite antenna patterns and NGSO earth station antenna patterns. In particular, each NGSO FSS applicant must explain the switching protocols it uses to avoid transmitting while passing through the geostationary satellite orbit arc, or provide an explanation as to how the power-flux density limits in § 25.208 are met without using geostationary satellite orbit arc avoidance. In addition, each NGSO FSS applicant must provide the orbital parameters contained in Section A.3 of Annex 1 to Resolution 46. Further, each NGSO FSS applicant must provide a sufficient technical showing to demonstrate that the proposed non-geostationary satellite orbit system meets the power-flux density limits contained in § 25.208, as applicable, and

(4) A description of the design and operational strategies that it will use, if any, to mitigate orbital debris. Each applicant must submit a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the spacecraft.

(j) [Removed and Reserved].

\* \* \* \* \*

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

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#### DEPARTMENT OF TRANSPORTATION

#### Federal Motor Carrier Safety Administration

#### 49 CFR Part 393

[DOT Docket No. FMCSA–02–13589]

RIN 2126–AA80

#### Parts and Accessories Necessary for Safe Operation; Fuel Systems

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FMCSA revises the requirements concerning fuel tank fill rates for gasoline- and methanol-fueled light-duty vehicles contained in Subpart E of the Federal Motor Carrier Safety Regulations (FMCSRs). The purpose of the rule is to: Remove a conflict between the fuel tank fill rate requirements of the FMCSRs and those of the Environmental Protection Agency for gasoline and methanol-fueled vehicles up to 14,000 pounds (lbs) Gross Vehicle Weight Rating (GVWR); and to make permanent the terms of the exemptions previously granted to motor carriers operating certain gasoline-fueled commercial motor vehicles (CMVs) manufactured by Ford Motor Company (Ford) and by General Motors (GM). The FMCSA also incorporates into the FMCSRs previously issued regulatory guidance concerning the applicability of the agency's fuel tank rules to vehicles subject to the National Highway Traffic Safety Administration (NHTSA) fuel system integrity standard at the time of manufacture.

**DATES:** This rule is effective July 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 393.67(c)(7)(ii) of Title 49, Code of Federal Regulations (CFR), requires the fill pipe and vents of a CMV with a fuel tank of more than 25 gallons capacity to permit the tank to be filled at a rate of at least 20 gallons per minute (gpm) without fuel spillage. Section 393.67(f)(2) and (f)(3) require that liquid fuel tanks be marked with the manufacturer's name and display a