

and in accordance with good agricultural practices.

IX. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of 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, 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) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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.*, 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).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the exemption from the requirement of a tolerance 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.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does

not 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).

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).

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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: July 15, 2007.

Debra Edwards,

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 180.1278 is added to subpart D to read as follows:

§ 180.1278 Quillaja saponaria extract (saponins); exemption from the requirement of a tolerance.

Residues of the biochemical pesticide *Quillaja saponaria* extract (saponins) are exempt from the requirement of a tolerance in or on all food commodities. [FR Doc. E7-14894 Filed 7-31-07; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 00-230; FCC 07-52]

Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: In this document, the Federal Communications Commission ("Commission") determines that, at this time, no further revisions are necessary with regard to the existing policies and rules relating to secondary markets in radio spectrum usage rights.

DATES: Effective August 1, 2007.

FOR FURTHER INFORMATION CONTACT: Paul Murray, Wireless Telecommunications Bureau, at (202) 418-7240, or via the Internet at Paul.Murray@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order (hereinafter *Third Report and Order*) in WT Docket No. 00-230, adopted on April 6, 2007, and released on April 11, 2007. This order addresses comments filed in response to the Commission's Second Further Notice of Proposed Rulemaking (*Second Further Notice*) 69 FR 77560, December 27, 2004, in this docket. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Best Copy & Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or 863-2893, facsimile (202) 863-2898, or via e-mail at <http://www.bcpweb.com>. The full text is also available on the Commission's Web site at <http://www.fcc.gov>.

Paperwork Reduction Act

This *Third Report and Order* does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Synopsis of the Third Report and Order**I. Introduction**

1. In the *Third Report and Order*, the Commission affirms the Commission's policies and rules regarding "private commons" arrangements. We decline to adopt additional technical requirements regarding devices that might be used within a private commons, finding that such requirements are both premature and unnecessary. In addition, we determine that the proposal for licensing underutilized spectrum to equipment manufacturers for development of private commons is beyond the scope of this proceeding.

II. Background

2. In the *Second Report and Order* portion of the *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking* in WT Docket No. 00-230, (*Second Report and Order, Order on Recon, and Second Further Notice*, respectively), the Commission took additional steps to facilitate the development of robust secondary markets in spectrum usage rights involving Wireless Radio Services. In particular, in the *Second Report and Order*, 69 FR 77521, December 27, 2004, the Commission established additional policies intended to facilitate the use of advanced technologies, including "smart" or "opportunistic" devices, which have the potential to increase access and use of unused licensed spectrum. First, the Commission clarified that its spectrum leasing rules permit "dynamic" spectrum leasing arrangements, whereby licensees and spectrum lessees may enter into more than one spectrum leasing arrangement involving the shared use of the same spectrum. Second, the Commission expanded the spectrum licensing framework to include a new "private commons" option. The "private commons" was intended as a means of allowing a licensee or spectrum lessee to make spectrum available to individual users or groups of users that do not fit squarely within the existing spectrum leasing framework or within the traditional end-user arrangements associated with the licensee's or lessee's network infrastructure. The Commission stated that it sought to provide for opportunistic uses of spectrum pursuant to the terms and conditions that licensees (and spectrum lessees) agree upon so long as these terms and conditions fall within the licensee's spectrum usage rights and are not inconsistent with applicable technical and other regulations imposed by the

Commission to prevent harmful interference to other licensees.

3. By establishing a private commons a licensee (or spectrum lessee) may permit peer-to-peer communications by other users employing devices in a non-hierarchical network arrangement that does not utilize the licensee's (or spectrum lessee's) network infrastructure. The licensee (or lessee) authorizes other users to operate on the licensed frequencies employing particular devices that meet technical parameters specified by the licensee (or lessee). The technical parameters for these devices, in turn, enable users to operate in a manner designed to minimize interference concerns relating to other users in the licensed band. The Commission stated that the licensee (or lessee) must retain both *de facto* control of the use of the spectrum within the private commons and "direct responsibility" for the users' compliance with the Commission's rules. Further, as manager of the private commons, the licensee (or lessee) is required to notify the Commission about the private commons, and particular features associated with it, prior to permitting users to operate. Requirements pertaining to private commons arrangements are set forth in § 1.9080 of the Commission's rules.

4. In the *Second Further Notice*, the Commission sought comment on additional policies that could facilitate the development of advanced technologies, including whether additional revisions should be made to the private commons regulatory model. The Commission also sought comment on whether the private commons option established in the *Second Report and Order* sufficiently accommodates the wide variety of ways in which licensees (and spectrum lessees) and other users may wish to enter cooperative arrangements that employ "smart" or "opportunistic" devices. For example, the Commission asked whether it should adopt an approach to private commons that would allow intermediaries to facilitate transactions with users, design and set up communications networks for users or provide value-added services or applications. In addition, the Commission sought comment on the appropriate notification process for licensees or *de facto* transfer lessees that choose to offer a private commons to comply with the requirement that a licensee or spectrum lessee managing the private commons must notify the Commission prior to permitting users to begin operating within the private commons.

5. In response to the *Second Further Notice*, the Commission received comments from Cingular Wireless LLC (Cingular Wireless), CTIA—The Wireless Association (CTIA), and Gateway Communications, Inc. (Gateway). Cingular Wireless and CTIA sought clarification of certain aspects of the requirements pertaining to the licensee's or spectrum lessee's responsibility, as manager of the private commons, to ensure that users and devices used in a private commons arrangement comply with applicable Commission rules. Gateway proposed a new scheme for managing a private commons in cases of "market failure."

6. Cingular Wireless specifically asked for additional clarification regarding the circumstances under which the Commission would hold, and would not hold, the licensee (or lessee) "directly responsible" for users' interference in geographic areas outside of the private commons, in which they were not authorized to operate. For example, in the case of mobile opportunistic devices, Cingular Wireless argued that the Commission should evaluate a licensee's (or lessee's) compliance with its responsibilities based on the terms and conditions it establishes for operation within the private commons, and that non-compliance with these provisions should not result in liability to the licensee (or lessee). In addition, while agreeing that it may be "beneficial or even necessary" to require that smart devices used in the private commons include technologies enabling the private commons managers to shut down the devices if they were causing harmful interference, Cingular Wireless argued that imposing such a requirement at this time would be premature.

7. CTIA urged the Commission to adopt more detailed technical standards concerning private commons arrangements. Specifically, to ensure that a private commons device cannot be used outside of the licensed spectrum and geographic area of the licensee (or lessee) authorizing the use of its spectrum, CTIA recommended adoption of strict rules and suggested that any private commons device should contain an element of positive control, in the form of technical intelligence, that prevents it from operating in unauthorized spectrum or areas.

8. In response to the *Second Further Notice*, Gateway proposed that the Commission go beyond its secondary markets mechanisms and allow equipment manufacturers to file applications for authority to manage private commons using licensed

spectrum in geographic areas where there has been a "market failure" and spectrum is "unwanted" or "underutilized." Gateway suggested that the Commission could issue licenses to equipment manufacturers in exchange for a reasonable one-time payment to the United States treasury, or for a modest spectrum use fee payable on an annual basis to the Commission, or even at no charge, but did not suggest how the Commission would decide among competing parties who might seek to obtain any such license. Gateway asserted that this new licensing mechanism of offering spectrum to equipment manufacturers would create new opportunities for small businesses and others to obtain access to spectrum for a variety of niche uses and services.

9. In reply comments, CTIA asserted that the Commission should reject Gateway's proposal as outside of the scope of the Commission's *Second Further Notice*, which sought comment only on the use of opportunistic devices in licensed spectrum, not comment on new ways to give an interested party an initial spectrum license for a private commons. Accordingly, the Commission cannot consider Gateway's proposal in this proceeding because doing so would violate the requirement for adequate notice under the Administrative Procedures Act (APA). CTIA further asserted that the proposal would create a new licensing scheme in violation of the requirements under section 309(j) of the Communications Act, as amended, which requires that the spectrum be subject to competitive bidding.

III. Third Report and Order

10. We determine that the requirements set forth in the *Second Report and Order* and codified in our rules, 47 CFR 1.9080, provide the right balance in encouraging the development of devices for operation within a private commons arrangement while at the same time placing the appropriate degree of responsibility on licensees (or spectrum lessees) to ensure that the users and devices do not cause harmful interference in areas outside of the private commons and the license authorization. Accordingly, we affirm the general policies and rules the Commission adopted for private commons, including the requirement that licensees (or spectrum lessees) retain both *de facto* control over use of the spectrum and direct responsibility for ensuring that users and the devices used within the private commons comply with the Commission technical and services rules under the license authorization, including those relating to interference. Because the licensees (or

lessees) themselves, in their capacity as managers of private commons, exercise control under the license authorization and are responsible for establishing the technical parameters of the devices that would be used within the private commons, they must exercise their responsibilities so as to ensure compliance with the rules, including bearing direct responsibility for establishing parameters of use that prevent harmful interference beyond the private commons areas and the boundaries of their licenses.

11. Based on the scant record before us and the wide variety of ways in which a private commons could be implemented, we decline to modify our rules at this time to further detail the responsibilities placed on the managers of private commons. We are in no position, based on what is before us, to make any determination by rule, as Cingular Wireless requests, as to whether a particular mechanism may or may not be sufficient for a licensee (or spectrum lessee) to exercise its responsibilities in a given instance. Nor do we conclude that establishing strict technical rules or requirements, as requested by CTIA, is appropriate. We do not want to limit at this time the various means by which a licensee (or lessee) might fulfill its obligations as manager of a private commons. While a "shut down" mechanism may be effective, it is not the only conceivable means to ensure that a licensee (or lessee) exercises *de facto* control over the use of the spectrum and complies with the Commission's rules under the license authorization. We see no need at this time to limit other possible means that might be consistent with the Commission's private commons framework.

12. Finally, because Gateway's proposal is outside the scope of the *Second Further Notice*, and not a logical outgrowth of it, we will not address it in this proceeding. The *Second Further Notice* sought comment on ways to increase spectrum access through opportunistic uses of spectrum specifically within the context of the Commission's spectrum leasing policies and rules set forth in the proceeding addressing the development of secondary markets. The *Second Further Notice* did not contemplate revising the Commission's initial licensing rules. We note that the opportunities that Gateway sees for new uses of spectrum also exist within the private commons framework that the Commission has established in the *Second Report and Order*.

IV. Ordering Clauses

13. Pursuant to sections 1, 4(i), 301, 303(r), and 503 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 301, 303(r), and 503, *it is ordered that this Third Report and Order* is adopted. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the *Third Report and Order*, including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7-14768 Filed 7-31-07; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 03-201; FCC 07-117]

Unlicensed Devices and Equipment Approval

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses two petitions for reconsideration of the rules adopted in this proceeding. It dismisses a petition filed by Warren C. Havens and Telesaurus Holdings GB LLC ("Havens") requesting that the Commission suspend the rule changes adopted for unlicensed devices in the 902-928 MHz (915 MHz) band until such time as it completes a formal inquiry with regard to the potential effect of such changes to Location and Monitoring Service (LMS) licensees in the band. This document also dismisses a petition for reconsideration filed by Cellnet Technology ("Cellnet") requesting that the Commission adopt spectrum sharing requirements in the unlicensed bands, *e.g.*, a "spectrum etiquette," particularly in the 915 MHz band.

DATES: Effective August 31, 2007.

FOR FURTHER INFORMATION CONTACT:

Hugh L. Van Tuyl, (202) 418-7506, e-mail: Hugh.VanTuyl@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, ET Docket No. 03-201, FCC 07-117, adopted June 19, 2007 and released June 22, 2007. 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