number OPP–301007, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance under FFDCA section 408. 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) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); 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 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 FIFRA section 18 petition under FFDCA section 408, such as the 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. 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 FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

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: June 2, 2000.

Peter Caulkins,

Acting Director, Registration Division, 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), 346(a) and 371.

§ 180.516 [Amended]

2. In § 180.516, amend the table in paragraph (b) by changing the date ''5/31/00'' to read ''5/31/01''.

[FR Doc. 00–17075 Filed 7–5–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[CC Docket No. 92–97; FCC 00–223]

Removal of LMDS Eligibility Restriction

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allows to sunset as of June 30, 2000, the Local Multipoint Distribution Service (LMDS) eligibility restriction. That restriction prohibits incumbent local exchange carriers and cable companies from having an attributable interest in the LMDS A block license that overlaps with ten percent or more of the population in their service areas. The action is taken to complete the Commission's review of this restriction.

EFFECTIVE DATE: Effective June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Peter Wolfe, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order and Memorandum Opinion and Order (Third R&O/MO&O) in CC Docket No. 92–97; FCC 00–00–223, adopted June 20, 2000, and

released June 27, 2000. The complete text of this Third R&O/MO&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, S.W., Washington, DC.

Synopsis of the Third R&O/MO&O

1. This Third R&O/MO&O completes the Commission's review of the Local Multipoint Distribution Service (LMDS) eligibility restriction, which prohibits incumbent local exchange carriers (LECs) and cable companies from having an attributable interest in the LMDS A block license that overlaps with ten percent or more of the population in their service area. As a result of that review, the Commission allows the scheduled sunset of that restriction to occur as of June 30, 2000. The eligibility restriction was adopted in the Second Report and Order in this proceeding (62 FR 23148, April 29, 1997), subject to an expiration date of June 30, 2000. The Commission, in adopting the restriction, noted that it would undertake a review of the restriction prior to its sunset. (47 CFR 101.1003(a).)

2. In adopting the LMDS eligibility restriction, the Commission considered four factors. First, that LMDS was a likely vehicle for the provision of local telephony, multi-channel video distribution (MVPD) service, or both. Second, the Commission found that the incumbent local exchange carriers (LECs) and incumbent cable companies were dominant in their respective markets, would have a strong incentive to obtain an LMDS license in order to prevent a new entrant from obtaining the license and competing directly in the incumbent's current market, and would have no incentive to use the LMDS spectrum to offer services that would compete with their own services. Third, the Commission determined that a short-term eligibility restriction, with an opportunity for review, would be the best means to increase competition in the local and telephony and MVPD markets, in light of the Commission's belief that there would be sufficient entity and increases in competition to permit sunset within three years. Fourth, the Commission found that efficiencies arising from ownership of an LMDS system by an incumbent LEC or incumbent cable provider had not been shown.

3. As a result of its review, the Commission first concludes that the standard for determining whether to sunset the eligibility restriction should be whether open eligibility poses a significant likelihood of substantial competitive harm in specific markets, and, if so, whether eligibility restrictions are an effective way to address that harm. The Commission determines that the record does not support a conclusion that open eligibility poses such a significant threat of substantial competitive harm in specific markets; indeed, open eligibility may improve the availability of services, especially in rural areas.

4. The Commission, as discussed more fully in the complete text of the Third R&O/MO&O, therefore finds that the LMDS eligibility restriction should be allowed to sunset because open eligibility (1) will not pose a significant likelihood of substantial competitive harm in any market; (2) is likely to provide access to additional capital to fully develop LMDS; (3) will treat LMDS similarly to substitutable spectrum; and (4) should help make services more available in rural areas.

Administrative Matters

Final Regulatory Flexibility Analysis

5. This is a summary of the Final Regulatory Flexibility Analysis. The full Final Regulatory Flexibility Analysis may be found at Appendix D of the complete Third Report and Order and Memorandum Opinion and Order.

6. In order to ensure compliance with the requirements contained in the Regulatory Flexibility Act (RFA) and to alert all affected entities of the repercussions of the Commission's action, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix B of the Sixth Notice of Proposed Rulemaking (Sixth NPRM), 64 FR 71373, December 21, 1999, in this proceeding. Additionally, a Final Regulatory Flexibility Analysis was included in Appendix D of the Second Report and Order in this proceeding. The Commission sought written public comment on the proposals in the Fifth NPRM (62 FR 16514, April 7, 1997), including comment on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA), contained in the Third Report and Order and Memorandum Opinion and Order (Third R&O), conforms to the RFA.

Need for, and Objectives, of the Third R&O

7. The Commission allows to sunset the Local Multipoint Distribution Service (LMDS) eligibility restriction which prohibits incumbent local exchange carriers (ILECs) and cable companies from having an attributable interest in the LMDS A-block license that overlaps with ten percent or more of the population in their service areas. This restriction was initially imposed because of concern the ILECs and the cable companies would use LMDS spectrum to eliminate the threat of competitive entry in the local exchange telephone and cable markets, in which they are dominant. The Third R&O finds that the LMDS A-block eligibility restriction is no longer necessary to protect LMDS as a source of competition with ILECs and incumbent cable companies, and that the benefits of removing the restriction outweigh any benefits of retaining the restriction.

Summary of Significant Issues Raised By Public Comments in Response to the IRFA or the FRFA

8. The central issue in this proceeding is the continued need for the eligibility restriction. The restriction was adopted subject to an expiration date of June 30, 2000. The expiration date, like the other issues in this proceeding, was the result of notice and comment procedures. The Commission received fourteen comments and eight reply comments in response to the Sixth NPRM.

9. No comments were received directly regarding the IRFA or the FRFA contained in the Second R&O. The Sixth NPRM sought comment on whether the standard for determining whether the restriction is extended should be that the incumbent LECs or cable companies continue to have substantial market power in the provision of local telephone or cable television services, or if a different standard should be used. As discussed in paragraphs 6–7 of the Third R&O, the Sixth NPRM also suggested two alternative standards. Although most of the commenters support allowing the eligibility rule to sunset, those who comment on the standard are somewhat divided. Several commenters argue in favor of using the market dominance standard to decide whether the eligibility should sunset.

10. The Commission agrees with the majority of parties who comment on the standard issue, and either urge the Commission to adopt the 39 GHz standard or at least to reject the ''substantial market power'' standard. Therefore, the Commission adopts the 39 GHz standard. In paragraphs 8–9 of the Third R&O, the Commission details the rationale for selecting the 39 GHz test as the appropriate standard to apply in determining whether the LMDS restriction should sunset.

11. The Sixth NPRM asked what services are likely to be provided on LMDS. The Commission agrees with the

majority of commenters on this issue who contend that the LMDS A block licensees provide or are expected to provide broadband services, instead of local telephone or cable services. Because the Commission believes that the LMDS A block is not being used to provide services which are primarily local exchange or multi-channel video distribution (MVPD), the Third R&O concludes that it is unlikely that the possible use of LMDS spectrum by incumbents will result in the blocking of entry into those services, and thus allows the restriction to lapse. Commenters also generally contend that the broadband market is robust and competitive, and that incumbent cable companies and incumbent LECs could not use LMDS spectrum to dominate the broadband market. The Commission finds that an increasing number of broadband firms and technologies are providing growing competition to incumbent LECs and cable companies, apparently limiting the threat that they will be able to preclude competition in the provision of broadband services. The Commission also finds no evidence that the incumbent LECs or incumbent cable companies have the incentive to warehouse LMDS licenses in order to protect their control of these markets from competition. These issues are discussed at paragraphs 14—21 in the Third R&O.

12. Although the majority of commenters favor the sunset of LMDS eligibility restrictions, some commenters argue that it is premature to terminate the restriction because the first LMDS products are just becoming available in the United States. Paragraphs 23–33 in the Third R&O explain the Commission's rationale for rejecting this contention. Briefly, the Third R&O sunsets the LMDS eligibility restriction because open eligibility (1) will not pose a significant likelihood of substantial competitive harm in any market; (2) is likely to provide access to additional capital to fully develop LMDS; (3) will treat LMDS similarly to substitutable spectrum; and (4) should help make services more available in rural areas. Paragraphs 14–21of the Third R&O find that the record does not support a conclusion that open eligibility poses a significant threat of substantial competitive harm in specific markets, LEC or MVPD, or that eligibility restrictions are an effective way of addressing potential competitive harm. Paragraph 24 of the Third R&O discusses how removal of the restriction may result in access to capital resources to more fully develop LMDS. Paragraphs 26 and 27 detail why LMDS should be treated no differently from other substitutable spectrum.

13. Paragraphs 28–29 discuss allegations by rural commenters that the LMDS in-region eligibility restriction imposes several disadvantages on small, rural telecommunications carriers. The Third R&O, while recognizing that the eligibility restriction was initially imposed on rural markets because the Commission believed that it could stimulate competition to LEC's in these markets, now finds that this has not occurred, and that allowing the eligibility restriction to sunset will remove possible impediments to small and rural carrier LMDS deployment. The negative effects of the eligibility restriction on small and rural entities and consumers, are discussed more fully in paragraphs 28–32 of the Third R&O.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

14. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations.

Common Carrier Services and Related Entities. According to data in the most recent Commission *Carrier Locator Interstate Service Providers* report, there are 3,528 interstate carriers, including *inter alia,* local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

The SBA has defined establishments engaged in providing ''Radiotelephone Communications'' and ''Telephone Communications, Except Radiotelephone'' to be small businesses when they have no more than 1,500 employees. The Commission discusses the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and then attempts to refine further those estimates to correspond with the categories of telephone companies that are commonly used under the rules.

The Commission includes small incumbent LECs in this present RFA analysis. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope.

Total Number of Telephone Companies Affected. The U.S. Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. The Commission finds it reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the action taken in this Third R&O.

Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. The Commission is unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small

ILECs that may be affected by the actions taken in this Third R&O.

Local Exchange Carriers, Competitive Access Providers, Competitive Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange service, competitive access providers, or competitive local exchange carriers. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent telecommunications industry revenue data, 1,348 carriers reported that they were engaged in the provision of incumbent local exchange services, and 212 carriers reported that they were providing competitive access or competitive local exchange services. The Commission is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 1,560 providers of local exchange service, or of competitive access or competitive local exchange services are small entities or small entities that may be affected by the actions taken in this Third R&O.

A-Block LMDS Providers. The total number of A-block LMDS licenses is limited to 493, one for each Basic Trading Area. The Commission has held auctions for all 493 licenses, in which it defined ''very small business'' (average gross revenues for the three preceding years of not more than $15 million), ''small business'' (more than $15 million but not more than $40 million), and ''entrepreneur'' (more than $40 but not more than $75 million) bidders. There have been 99 winning bidders that qualified in these categories in these auctions all of which may be affected by the actions taken in this Third R&O

Cable Services or Systems. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.

The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. Based on its most recent information, the Commission estimates that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995, and that there are currently fewer than 1,439 small entity cable system operators.

The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 66 million subscribers in the United States. Therefore, the Commission found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission finds that the number of cable operators serving 660,000 subscribers or less totals 1,450. The Commission does not request or collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total of 66 million subscribers.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The actions taken in the Third R&O entail no new or revised reporting, recordkeeping or other compliance requirements.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

Although the Commission LMDS eligibility restriction was initially intended to stimulate competition between all sorts of entities, including small entities, only two of the 19 comments that were filed ask that the restriction be retained. The restriction was adopted with a June 30, 2000, sunset date to allow sufficient time for the Commission to conduct a thorough review of the effectiveness of the restriction. The Commission first adopts the 39 GHz approach to determine if the restriction should be extended. Two other alternative standards exist. The first alternative allows that the incumbent LECs or cable companies continue to have substantial market power in the provision of local telephone or cable television services. Two commenters urge the Commission to retain the restriction using the market dominance standard and arguing that LECs and cable companies remain dominant in their respective markets. As discussed in paragraphs 10–11 of the Third R&O, the Commission rejects continued use of the market power standard, because the substantial market power test does not address whether the incumbents are able to preclude competition in other markets which LMDS licensees wish to enter. No comments were submitted in support of the second option that would provide that the incumbent companies possess the incentive and ability to purchase the LMDS block to prevent entry of a competitor.

Thus, the Commission, in the Third R&O concludes that the 39 GHz test is the appropriate standard to apply in determining whether the LMDS eligibility should sunset. The 39 GHz test is a more discerning standard than the standard market power test in that it not only considers the broadest set of market facts and circumstances, but it also will allow the Commission to focus on the issues it needs to decide—whether the incumbents are likely to use their market power to cause substantial competitive harm by preventing the use of LMDS spectrum for services that would otherwise be provided by LMDS licensees, and whether the restrictions will prevent such actions. Paragraphs 8–9 of the Third R&O present a complete discussion of the benefits of the 39 GHz standard.

Finally, as discussed in paragraphs 22–33 of the Third R&O, the Commission has considered the benefits of allowing the eligibility restriction to expire as opposed to the benefits of extending it, and determines, with the support of the large majority of commenters, that allowing the restriction to sunset offers the most benefit to the most parties. Small businesses in particular stand to benefit from removal of the eligibility restriction. Paragraphs 28–32 of the Third MO&O, for example, discuss the effect of the LMDS eligibility restriction on small and rural carrier LMDS deployment, finding that the restriction causes undue hardship for rural carriers,

of which many are small entities, possibly in violation of the Telecommunications Act of 1996. Commenters who argue against retaining the restriction contend that application of the restriction to rural telephone companies imposes significant economic and social costs, that communities served by rural ILEC's are often not sufficiently lucrative markets to attract other providers, that competitive concerns are not applicable in a rural market, and that rural carriers lack the resources to warehouse spectrum. For these reasons, the Commission believes that small businesses will benefit from allowing the LMDS eligibility restriction to sunset rather than to retain the restriction.

Report to Congress: The Commission will send a copy of this Third Report and Order and Memorandum Opinion and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Third Report and Order and Memorandum Opinion and Order and this FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

It is ordered, that 47 CFR 101.1003 is removed. This modification shall become effective on June 30, 2000. (This rule modification may become effective on less than 30 days' notice because it relieves a restriction. *See* 5 U.S.C. 553((d))((1). Moreover, the Commission finds good cause to make this modification effective on less than 30 days' notice because the restriction in the previous rule terminates on June 30, 2000. *See* 5 U.S.C. 553(d)(3).)

The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this MO&O and FNPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1980).

List of Subjects in 47 CFR Part 101

Communications, Local multipoint distribution service.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Change

Accordingly, 47 CFR part 101 is amended as follows:

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. § 101.1003 [Removed]

Remove § 101.1003.

[FR Doc. 00–17028 Filed 7–5–00; 8:45 am]
BILLING CODE 6712–01–P