

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 7,500 feet upstream of the confluence with Early Winters Creek	*2,200
Approximately 690 feet upstream of the confluence with Gate Creek	*2,250
Approximately 2,380 feet upstream of the confluence with McGee Creek	*2,300
At the confluence with Lost River	*2,359
Maps are available for review at Okanogan County Office of Planning and Development, Administration Building, 237 Fourth North, 2nd Floor, Okanogan, Washington.	

WYOMING

Cheyenne (city), Laramie County (FEMA Docket No. 7070)

Crow Creek:	
700 feet above confluence with Dry Creek	*5,885
1,440 feet above confluence with Dry Creek	*5,887
38,325 feet above confluence with Dry Creek	*6,009
Dry Creek:	
At the confluence with Crow Creek ...	*5,886
3,240 feet above confluence with Crow Creek	*5,904
5,400 feet above confluence with Crow Creek	*5,916
9,100 feet above confluence with Crow Creek	*5,921
18,900 feet above confluence with Crow Creek	*5,971

Maps are available for review at the City Engineer's Office, 2101 O'Neill Avenue, Cheyenne, Wyoming.

Laramie County (unincorporated areas) (FEMA Docket No. 7070)

Crow Creek:	
1,000 feet below confluence with Dry Creek	*5,882
1,440 feet above confluence with Dry Creek	*5,887
14,175 feet above confluence with Dry Creek	*5,919
28,097 feet above confluence with Dry Creek	*5,977
37,750 feet above confluence with Dry Creek	*6,000
Dry Creek:	
At the confluence with Crow Creek ...	*5,886
2,850 feet above confluence with Crow Creek	*5,895
9,400 feet above confluence with Crow Creek	*5,938
16,300 feet above confluence with Crow Creek	*5,953
18,120 feet above confluence with Crow Creek	*5,962

Maps are available for review at Laramie County Engineering Office, 2503 East Fox Farm Road, Cheyenne, Wyoming.

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Mitigation Directorate, FEMA.
ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazards Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the *Federal Register*.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part

10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Directorate has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows.

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 7, 1993.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 93-31259 Filed 12-22-93; 8:45 am]

BILLING CODE 6718-03-P

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
East Branch Boxwood Ditch:		MISSISSIPPI		NORTH CAROLINA	
At mouth	*440	City of Richland, Rankin County (FEMA Docket No. 7066)		Charlotte (city), Mecklenburg County (FEMA Docket No. 7063)	
Just downstream of Cane Run Road	*443	Richland Creek:		Taggart Creek:	
Cane Run Ditch:		Just upstream of Illinois Central Railroad	*272	Approximately 1,100 feet upstream of the confluence with Sugar Irwin Creek	*604
Approximately 1,000 feet downstream of Teaneck Lane	*439	Just upstream of U.S. Highway 49	*272	Approximately 300 feet downstream of Mulberry Church Road	*687
Just downstream of Camp Ground Road	*440	Pearl River:		Maps available at Charlotte City Hall, 600 East 4th Street, Charlotte, North Carolina 28202.	
Lynnview Ditch:		About 9.1 miles downstream of Illinois Central Railroad	*267		
Just upstream of Martin Avenue	*440	Just upstream of Interstate 20 East Bound	*274		
Approximately 2,000 feet upstream of Hartlage Road	*449	Pearl River Tributary 1:			
Black Pond Creek:		About 0.9 mile downstream of Old U.S. Highway 49	*268	Gastonia (city), Gaston County (FEMA Docket No. 7066)	
At mouth	*433	About 1,900 feet downstream of Old U.S. Highway 49	*268	Duharts Creek:	
Just upstream of Lower Hunters Trace	*447	Pearl River Tributary 2:		Downstream side of Beaty Road	*649
Maps available for inspection at the Metropolitan Sewer District Office, 400 South 6th Street, Louisville, Kentucky.		About 2,000 feet downstream of Neely Road	*270	Approximately 500 feet upstream of Oakdale Street	*746
		Just upstream of Old U.S. Highway 49	*271	Duharts Creek Tributaries:	
Louisville (city), Jefferson County (FEMA Docket No. 7048)		Squirrel Branch:		Tributary D-1:	
Greasy Ditch:		About 900 feet downstream of Illinois Central Railroad	*271	At the confluence with Duharts Creek	*655
Approximately 275 feet downstream of Fern Valley Road	*460	About 400 feet downstream of U.S. Highway 49	*271	Approximately 950 feet upstream of confluence with Duharts Creek	*656
Approximately 1,000 feet upstream of Fern Valley Road	*461	Conway Slough:		Tributary D-2:	
South Fork Beargrass Creek:		About 1,600 feet downstream of Illinois Central Railroad	*273	At the confluence with Duharts Creek	*666
At mouth	*448	Just landward of East Jackson Levee	*263	Approximately 510 feet upstream of confluence with Duharts Creek	*666
Approximately 1,375 feet upstream of Breckenridge Lane	*513	Maps available for inspection at Richland City Hall, 371 Scarborough Street, Richland, Mississippi.		Tributary D-3:	
Maps available for inspection at the Metropolitan Sewer District Office, 400 South 6th Street, Louisville, Kentucky.				At the confluence with Duharts Creek	*673
				Approximately 65 feet downstream of upstream Extraterritorial Limits	*707
Shively (city), Jefferson County (FEMA Docket No. 7048)		NEW YORK		Tributary D-4:	
Upper Mill Creek:		Canton (Village), (FEMA Docket No. 7070)		At the confluence with Duharts Creek	*673
Approximately 640 feet upstream of Wilkie Road	*439	Grass River:		Approximately 100 feet upstream of confluence with Duharts Creek	*673
Approximately 1,300 feet upstream of Memorial Gardens Road	*453	Approximately 1.02 miles downstream of Main Street	*323	Tributary D-6:	
Lynnview Ditch:		Approximately 0.6 mile upstream of Conrail	*352	Approximately 625 feet upstream of confluence with Duharts Creek	*689
At mouth	*440	Maps available for inspection at the Canton Municipal Building, 60 Main Street, Canton, New York.		At Aberdeen Road	*708
Just upstream of Farnsley Road	*449			Tributary D-8:	
Boxwood Ditch:				At the confluence with Duharts Creek	*711
At mouth	*439	Ellicottville (village), Cattaraugus County (FEMA Docket No. 7057)		Approximately 625 feet upstream of Aberdeen Boulevard	*734
Just downstream of Rockford Lane	*440	Great Valley Creek:		Tributary D-9:	
City Park Ditch:		Approximately 670 feet downstream of confluence of Holiday Valley Creek	*1,519	At the confluence with Duharts Creek	*717
At mouth	*452	Approximately 0.2 mile upstream of Mill Street	*1,542	Approximately 0.5 mile upstream of Remount Road	*747
Approximately 800 feet upstream of Hardesty Avenue	*452	Elk Creek:		Maps available at the City Engineer's Office, 181 S. South Street, Gastonia, North Carolina.	
Heatherfield Ditch:		At confluence with Great Valley Creek	*1,536		
Just downstream of Interstate 264	*448	Approximately 400 feet upstream of Parkside Drive	*1,548		
Approximately 1,000 feet upstream of Crums Lane	*448	Plum Creek:			
Maps available for inspection at the Metropolitan Sewer District Office, 400 South 6th Street, Louisville, Kentucky.		At confluence with Great Valley Creek	*1,532		
		Approximately 0.8 mile upstream of confluence with Great Valley Creek	*1,598		
MAINE		Holiday Valley Creek:		PENNSYLVANIA	
Clifton (town), Penobscot County (FEMA Docket No. 7058)		Approximately 160 feet upstream of corporate limits	*1,521	Hawley (borough), Wayne County (FEMA Docket No. 7066)	
Chamo Pond:		Approximately 140 feet upstream of upstream corporate limits	*1,525	Lackawaxen River:	
Entire shoreline within community	*129	Maps available for inspection at the Ellicottville Village Hall, 1 W. Washington, Ellicottville, New York.		Approximately 1,200 feet downstream of Church Street Bridge	*683
Maps available for inspection at 24 Airline Road, Clifton, Maine.				Approximately 1,830 feet upstream of U.S. Route 6 and State Route 590 Bridge	*895
				Maps available for inspection at the Borough Office, Main Avenue, Hawley, Pennsylvania.	
				Palmyra (township), Wayne County (FEMA Docket No. 7070)	
				Lackawaxen River:	
				Approximately 100 feet upstream of U.S. Route 6 and State Route 590 Bridge	*891
				Approximately 990 feet downstream of Park Street Bridge	*925

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Maps available for inspection at the Township Office, Oak Street, Hawley, Pennsylvania.		Approximately 75 feet upstream of Interstate Route 26 and U.S. Route 76		Approximately 800 feet upstream of Planters Lane	*209
Valley (township), Montour County (FEMA Docket No. 7071)		Approximately 800 feet upstream of Piney Woods Road	*214	Gillis Creek:	
Mahoning Creek:		Smith Branch:		At upstream side of Southern Railway	*142
At downstream corporate limits	*478	Approximately 50 feet downstream of Clement Road	*176	Approximately 800 feet downstream of State Route 12	*162
Approximately 300 feet upstream of the most upstream crossing of State Route 642	*569	Approximately 325 feet upstream of Clement Road	*178	Maps available for inspection at the Planning and Zoning Department, County Administration Building, 220 Hampden, Columbia, South Carolina.	
Mausies Creek:		Bay Branch:		TENNESSEE	
At confluence with Mahoning Creek.		Approximately 75 feet downstream of Shaw Street	*245	Anderson County, Unincorporated Areas (FEMA Docket No. 7063)	
Downstream of State Routes 45 and 642	*480	Approximately 0.4 mile upstream of Northeastern Expressway	*263	Hinds Creek:	
Maps available for inspection at the Township Building, 1305 Continental Boulevard, Valley, Pennsylvania.	*488	Tributary C-5:		Approximately 0.83 mile downstream of confluence of Buffalo Creek	*836
SOUTH CAROLINA		At the confluence with Crane Creek ..	*202	At downstream side of Mountain Road	*848
Columbia, City (Richland County) (FEMA Docket No. 7042)		Approximately 900 feet upstream of the confluence with Crane Creek ..	*203	Buffalo Creek:	
Smith Branch:		Crane Creek:		At confluence with Hinds Creek	*840
Approximately 175 feet downstream of downstream corporate limits	*178	Upstream side of U.S. Route 321	*202	Approximately 0.48 mile upstream of Park Road	*971
Approximately 0.2 mile upstream of Preston Drive	*239	Approximately 0.9 mile upstream of confluence of Sorghum Branch	*322	Maps available for inspection at the Planning and Zoning Office, Anderson County Courthouse, 100 North Main Street, Clinton, Tennessee.	
Bay Branch:		Cumbees Creek:		Norris (city), Anderson County (FEMA Docket No. 7063)	
At the confluence with Smith Branch ..	*220	At the confluence with Crane Creek ..	*243	Buffalo Creek:	
Approximately 0.4 mile upstream of Northeastern Expressway	*263	Approximately 50 feet upstream of Southern Railway	*324	At a point approximately 0.4 mile downstream of U.S. Route 441	*905
Reeder Point:		Roberts Branch:		Approximately 225 feet upstream of State Route 61	*930
At Richard Street	*169	At the confluence with Crane Creek ..	*253	Maps available for inspection at the Norris Community Building, 20 Chestnut Drive, Norris, Tennessee.	
At the Greenlawn Drive	*219	Approximately 200 feet upstream of Long Town Road	*378	VIRGINIA	
Pen Branch:		Sorghum Branch:		Chesterfield County (Unincorporated Areas) (FEMA Docket No. 7071)	
At the confluence with Gillis Creek	*159	At the confluence with Crane Creek ..	*312	Proctors Creek:	
Approximately 250 feet upstream of Budon Court	*216	Approximately 400 feet upstream of Green Spring Drive	*363	Approximately 600 feet downstream of confluence of Great Branch	*92
Gillis Creek:		Tributary RB-1:		Approximately 0.31 mile upstream of State Route 145	*106
Approximately 1 mile upstream of CSX Transportation	*145	At the confluence with Roberts Branch	*287	Great Branch:	
Approximately 700 feet upstream of Quail Lane	*162	Approximately 0.4 mile upstream of Sunny Acres Pond Dam	*333	At confluence with Proctors Creek	*94
Tributary RP-1:		North Branch Crane Creek:		At downstream side of State Secondary Route 717	*105
Approximately 200 feet downstream of Southern Railway	*161	At the confluence with Crane Creek ..	*221	Maps available for inspection at the Environmental Engineering Office, 9701 Lucy Corr Drive, Chesterfield, Virginia.	
Approximately 600 feet downstream of Planters Lane	*202	At the confluence of Beasley Creek and Swygert Creek	*270	(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")	
Maps available for inspection at the City Zoning Department, 1212 Laurel, Columbia, South Carolina.		Beasley Creek:		Dated: December 7, 1993.	
Richland County (unincorporated areas) (FEMA Docket No. 7042)		At the confluence with North Branch Crane Creek	*270	Robert H. Volland,	
Griffins Creek:		Approximately 2.9 miles upstream of Turkey Farm Road	*430	Acting Deputy Associate Director, Mitigation Directorate,	
Approximately 0.6 mile downstream of CSX Transportation	*166	Rice Creek:		[FR Doc. 93-31264 Filed 12-22-93; 8:45 am]	
Approximately 0.6 mile upstream of CSX Transportation	*179	Approximately 150 feet downstream of downstream County boundary ..	*258	BILLING CODE 6716-03-P	
Nicholas Creek:		Approximately 1.2 miles upstream of Rimer Road	*429		
Approximately 0.5 mile upstream of confluence with Broad River	*193	Bridge Creek:			
Approximately 0.4 mile upstream of confluence of Moccasin Branch	*237	Approximately 500 feet downstream of downstream County boundary ..	*259		
Swygert Branch:		Approximately 50 feet upstream of most upstream Legion Lake dam ..	*328		
At the confluence with Nicholas Creek	*193	Sandy Branch:			
Approximately 0.6 mile upstream of Bob Dem Road (Abandoned)	*238	At the downstream County boundary	*281		
Moccasin Branch:		Approximately 0.4 mile upstream of Briarcliff East	*321		
At the confluence with Nicholas Creek	*220	Spears Creek:			
At the western lane	*301	At downstream County boundary	*209		
Stopp Creek		Approximately 0.8 mile upstream of Spears Creek Church Road	*344		
		Tributary SP-1:			
		At the confluence with Spears Creek	*210		
		Approximately 1.8 miles upstream of confluence with Spears Creek	*248		
		Reeder Point Branch:			
		At the confluence with Black Lake	*129		
		Approximately 1,900 feet upstream of Burnside Pond Dam	*178		
		Tributary RP-1:			
		At the confluence with Reeder Point Branch	*143		

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 93-501]

Commission Organization

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Order amends the Commission's Rules regarding the authority of the Chief, Field Operations Bureau to issue administrative subpoenas in the investigations of cases involving a violation of section 301, which prohibits the transmission of radio energy without an authorization, and section 302a which prohibits the marketing of unauthorized radiofrequency devices. This delegation of the authority will enable the Chief, Field Operations Bureau to subpoena the production of books, records, correspondence, memoranda and other records deemed relevant to the investigation of alleged violations.

EFFECTIVE DATE: December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Pamela D. Hairston, Esq. at (202) 632-7059 or Mary Beth Richards, Esq. at (202) 632-7090.

Order

Adopted: November 19, 1993; Released: December 17, 1993.

By the Commission:

1. Section 409(e) of the Communications Act of 1934, as amended (Act), 47 U.S.C. 409(e), grants the Commission express authority to require by subpoena information relating to any matter under investigation. This authority may be delegated in accordance with section 5(c)(1) of the Act, 47 U.S.C. 155(c)(1). Subpoenas may be issued to, among others, private entities not subject to an administrative agency's jurisdiction.¹

2. We find that the delegation of authority to the Chief, Field Operations Bureau, to issue administrative subpoenas in the investigations of cases involving a violation or violations of sections 301 (unlicensed operation) or 302a (illegal marketing of radiofrequency devices capable of causing interference) of the Act, 47 U.S.C. 301 and 302a, will facilitate investigations of illegal activity and, therefore, is in the public interest.

3. Accordingly, it is ordered, That, pursuant to section 5(c)(1) of the

Communications Act of 1934, as amended, 47 U.S.C. 155(c)(1), authority is delegated to the Chief, Field Operations Bureau to require by administrative subpoena the production of books, papers, correspondence, memoranda, and other records deemed relevant to the investigation of an alleged violation or violations of section 301 or 302a of the Act, 47 U.S.C. 301 and 302a.

4. It is further ordered That § 0.311 of the Commission's rules, 47 CFR 0.311, be amended to add a paragraph (f) to reflect this delegation of authority. This amendment of the Commission's rules is set forth below. The requirement for notice and comment rule making contained in 5 U.S.C. 553(b) and the effective date provisions of 5 U.S.C. 553(d) do not apply since this amendment concerns matters of agency organization, procedure, or practice. See 5 U.S.C. 553(b)(A), 553(d).

5. It is further ordered That this amendment of § 0.311 as set forth below is effective upon the date of publication in the Federal Register.

List of Subjects in 47 CFR Part 0

Organization and functions.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Rule Change

Title 47 of the Code of Federal Regulations, Part 0, is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat 1068, as amended; 47 U.S.C. 155.

2. Section 0.311 is amended by adding paragraph (f) to read as follows:

§ 0.311 Authority delegated.

* * * * *

(f) The Chief of the Field Operations Bureau is authorized to issue subpoenas for the production of books, papers, correspondence, memoranda, and other records deemed relevant in the investigation of an alleged violation or violations of section 301 (unlicensed operation) or 302a (illegal marketing of radiofrequency devices) of the Communications Act of 1934, as amended.

[FR Doc. 93-31351 Filed 12-22-93; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Parts 2 and 25

[CC Docket No. 92-76; FCC 93-478]

Licensing Policies and Procedures, Domestic Common Carrier Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On October 21, 1993, the Commission adopted a Report and Order establishing rules to govern the licensing and regulation of "non-voice non-geostationary mobile-satellite service" (NVNG MSS) systems. These technical and service rules are intended to facilitate the implementation and regulation of new domestic satellite services.

EFFECTIVE DATE: January 24, 1994.

FOR FURTHER INFORMATION CONTACT: Kristi L. Kendall, Common Carrier Bureau, (202) 634-7058.

SUPPLEMENTARY INFORMATION: Public reporting burden for the collections of information are estimated as follows: Annual reporting requirement: 4 responses; 8 hours per response; 32 hours total. Application filing requirements: 4 applications; 1000 hours per application; 4000 hours total. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project (3060-0539), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060-0539), Washington, DC 20503.

As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis of the expected impact on small entities of the proposals suggested in this document.

Summary of Report and Order

The Commission has allocated certain electromagnetic frequencies below 1 GHz to use by a new "non-voice, non-geostationary mobile-satellite service" (NVNG MSS), and has proposed rules and policies to govern this service. This Report and Order establishes final rules that will allow the licensing and operation of competitive NVNG MSS systems.

¹ See *FCC v. Cohn*, 154 F. Supp. 899 (S.D.N.Y. 1957).

A. Applications for Space Station Authority

System Size

NVNG applicants will be required, as discussed in the Notice of Proposed Rulemaking (Notice), 58 FR 14532 (March 18, 1993), to specify precisely the number of space stations that will be included in their proposed constellations. One party suggested that applicants be granted authority to launch and operate a requested range of satellites, with a minimum of two, alleging that this flexibility in system design will allow a licensee to choose, as its service develops, the number of satellites that most effectively and efficiently reaches its intended customer base. In essence, their proposal would give licensees a predetermined "set aside" for future expansion. While this flexibility could enhance the commercial viability of an NVNG system, it could also hinder the plans of future NVNG MSS providers. System size, particularly when a system has a small number of satellites, will have a decided impact on future entry. For example, the Negotiated Rulemaking Committee noted in its Report that additional NVNG systems could likely be able to share the same orbit(s) with a two satellite system if station keeping and other sharing methods are employed. Such an accommodation would be difficult, if not impossible, if licensees are given carte blanche unilaterally to increase system size, even within preordained parameters. Conversely, if a system operator decides that its customers will be best served by the minimum number of satellites specified in its license, any potential for additional service will lie fallow for the remainder of the license term. We therefore continue to believe that it is prudent to require applicants to specify precisely the number of satellites reasonably anticipated to meet their needs.

Emissions Limitations

At the request of an applicant, we have clarified, and amended the text of, § 25.142(a)(3). As discussed in the Notice, our primary concern in the development and inclusion of this rule has been the control of in-band emission levels. An NVNG satellite, which is designed to receive signals from small, omnidirectional antennae, will receive not only those signals intended for retransmission by the system, but any signals within its broad operating footprint that are transmitted on the same frequencies. In the case of NVNG systems, it is likely, for example, that transmissions from Canadian terrestrial

paging systems operating in the 148–149.9 MHz band will be received by U.S. license NVNG systems, which are authorized to operate in those same frequencies. Retransmission of these "out-of-system" signals by the NVNG satellite at 137–138 MHz could ultimately increase the system's power flux density levels at the earth's surface. This could in turn result in harmful interference to other authorized users of the affected frequency bands. We have therefore amended § 25.142(a)(3) to conform to our expressed intent of protecting in-band services from harmful interference due to unacceptable power flux density levels. Although we originally noted our intent to prohibit entirely the retransmission of any out-of-system signals by an NVNG satellite, we have modified this position and have adopted a method that will allow applicants greater flexibility in the implementation of their systems. Specifically, new § 25.142(a)(3) prohibits the retransmission of signals received by an NVNG satellite from a source outside of the system at power flux density levels exceeding those described by the applicant in response to the preceding § 25.142(a)(2). We thereby will limit the harmful effect of unintended signal retransmission, but will permit the licensee to determine its preferred method of meeting those limits. We believe that this rule is necessary to protect other authorized users in the 137–138 MHz and 400 MHz bands from excessive interference resulting from undesired emission, yet will not reasonable opportunity for system operators to develop various transmission schemes.

Financial Qualification

Section 25.142(a)(4) establishes the financial qualification requirements for applicants in the NVNG mobile satellite service. Specifically, an applicant must demonstrate the current financial ability to construct, launch and operate for one year the first two satellites in its system. An applicant suggested that the Commission adopt a separate financial showing for smaller applicants, noting that it is unfair to require applicants with modest system plans to demonstrate the same financial wherewithal of applicants with larger, more expensive proposals. It was therefore suggested that we require an applicant proposing to launch five or fewer satellites to demonstrate the financial ability to construct, launch and operate for one year only the first satellite in its system. While this rule will require a smaller system applicant to demonstrate a proportionately high percentage of its necessary capital, we

do not believe that it is unfair or unduly harsh. The financial requirements that we are adopting are not as rigorous, for example, as those in the fixed satellite services. Further, there is little reason to distinguish among large and small system proposals, as a small NVNG system may utilize as much of this very limited spectrum resource as a larger system. Accordingly, we believe that adoption of this modification may unduly complicate the rules, and could jeopardize the public interest in the availability of NVNG services and the efficient use of the spectrum allocated to this service.

It has further been suggested that we accept, as meeting the financial qualification requirements of § 25.142(a)(4), copies of grant commitment letters or other evidence of external funding commitments. It is apparent that a binding grant commitment letter would fall well within the intent, albeit not the precise wording, of the existing regulation. We believe that grant commitments in general may provide the same level of financial certainty as those other submissions currently accepted as demonstrating an applicant's financial qualification. As in the case of other acceptable debt or equity financial showings, the grant commitment must be specifically described, and must not rest upon contingencies that require further action by the parties. We therefore amend § 25.140 of our rules to add a new paragraph which specifically permits an applicant to submit evidence of grants, or other external funding commitments, in support of its application.

Replacement Space Stations

Section 25.142(a)(5) will allow operators at their discretion to replace failed or expired space stations with technically identical counterparts at any time during the license term. The commenters urge that, instead of requiring space stations to be technically identical to those replaced, a replacement space station be only "operationally equivalent" to its predecessor in terms of its interference potential. In support of this concept, it has been noted that evolving manufacturing efficiencies and technical advancements are inevitable, and will facilitate greater system utility and efficiency. Thus, state-of-the-art replacement satellites may have different, albeit equivalent, technical parameters. Adoption of this "operationally equivalent" standard, they argue, will promote the continual upgrade of space station systems, to the benefit of the operators and their

customers. While we believe that both technical innovation and operator flexibility serve the public interest, we must, consistent with our statutory obligation, assure the continued compatibility of NVNG systems with those of other licensed spectrum users. If a space station design differs from that initially examined and approved, we are not only obligated, but are also in the best position, to determine neutrally whether the existing and replacement space stations are indeed operationally equivalent. We do not believe, on balance, that it will be unduly burdensome for operators to request license modification if they desire to upgrade or in any other way change their licensed satellite design. This requirement will not impede technical innovation in satellite design, but is necessary to ensure the fulfillment of our statutory mandate. Therefore, absent an accompanying request for license modification, we will require replacement space stations launched during the license term to be technically identical to those replaced.

Intersystem Coordination

The commenters did not object to, or request modification of, our proposed rules §§ 25.142(b) (1) and (2). These subsections require applicants to coordinate their systems with Federal government users prior to authorization. Nor was there any objection to the reminder, expressed in § 25.142(b)(4), that NVNG services may be subject to certain provisions of the Communications Act relating to safety and distress communications. We continue to believe that these portions of § 25.142 are in the public interest, and have adopted them with minor modification. Several commenters have alleged, however, that proposed § 25.142(b)(3) does not place the NVNG licensees under a sufficiently strict obligation to coordinate their systems with those of future licensees. They thus request that (1) each NVNG license bear a condition requiring the licensee to negotiate coordination agreements in good faith with subsequent licensee, (2) the coordinating parties file written progress reports with the Commission every three months detailing their efforts, and (3) these final coordination agreements be publicly available for use by future licensees.

At the outset, we reiterate our firm belief that the good faith coordination efforts of all spectrum users are essential to the development and efficient use of the electromagnetic spectrum. We believe, however, that our intersystem coordination rule, in conjunction with existing policy, will provide the relief

requested. New § 25.142(b)(3) requires licensees and permittees, at the Commission's request, to cooperate fully in the coordination and accommodation of future systems. By this rule, we may require licensees to coordinate not only with future licensees, but with future applicants as well. While we will continue initially to rely on the good faith efforts of existing spectrum users to cooperate with new licensees, we have stated our intent to intervene at an early stage if such cooperation is not forthcoming, or if earlier coordination would be particularly helpful. Accordingly, we believe that this proposal will enable us to assure good faith cooperation on the part of all parties providing, or seeking to provide, NVNG MSS.

With regard to the request to file periodic written reports on the status of coordination negotiations, we do not believe that such reports will create greater incentives for licensees to coordinate with each other, and may simply complicate the process with an inconclusive paper trail. If a licensee is not cooperative, we expect to be so informed by the aggrieved party. At that point, we will, as we have stated in the past, assist in the coordination process, or grant such other relief as seems appropriate. Finally, we believe that the relative benefits of making coordination agreements publicly available are unlikely to outweigh the potential damage to licensees through the release of confidential and proprietary data. Data made publicly available by the Commission would unavoidably become accessible to the world at large. This could prejudice the negotiating posture of the licensees in their domestic, and perhaps myriad international, coordination efforts. The existing applicants were able to coordinate their systems without benefit of exact data regarding existing systems. We believe that, in light of our ability to require pre- and post-licensing coordination efforts, and our willingness to provide informal assistance if necessary, future applicants will have ample access to the data necessary to design and implement their systems. Accordingly, we have adopted § 25.142(b)(3) as proposed.

Reporting Requirements

Finally, objection was raised to the reporting requirement set forth in proposed § 25.142(c). One commenter believes that this requirement is unnecessarily burdensome, and unlikely to generate useable information that cannot readily be obtained by the Commission should the need arise. It argues that the potential damage from

disclosure of commercially sensitive information far outweighs any potential benefit to be gained therefrom. We believe that this argument underestimates the value to the Commission of the data submitted by licensees in similar semi-annual reports. For example, review of this information is the primary manner by which we assess the commercial and technical development of a particular satellite service. This assists us in analyzing spectrum utilization matters, such as the availability of service on a common carriage basis and consumer demand for particular service options. Further, we are required by law annually to report on competitive market conditions in the mobile communications marketplace. We thus conclude that the solicitation and review of this type of information is important to fulfilling our responsibilities under the Communications Act. While we understand a licensee's reluctance to file commercially sensitive data, system usage information is intended for use by the Commission and can reasonably be shielded from public dissemination by requests for confidential treatment. To lessen the burden on licensees, we have modified the proposed rule, and now request only the annual submission of that information we believe necessary to enable us to meet our public interest responsibilities and legislative directives.

B. Applications for Transmitting Earth Station Authority

Specific earth station, or transceiver, licensing requirements are set forth in § 25.135. The commenters universally support the concept of the issuance of a blanket license for NVNG user transceivers. Prior to issuance of this blanket transceiver license, an applicant must demonstrate that transceiver operations will not interfere with existing and authorized uses of the affected or adjacent frequencies. Further, as proposed in the Notice, certain transceivers will be required to bear a label prohibiting their use aboard commercial aircraft. This prohibition has been included to preclude potential interference of NVNG transceivers with navigation and other aircraft functions. There was no opposition to these provisions, and we continue to believe that they are appropriate for the protection of existing frequency users. We therefore have adopted § 25.135 (a) and (b) essentially as proposed.

Sections 25.135 (c) and (d) clarify the basic tenets that NVNG transceivers operating in the United States must communicate with or through U.S. authorized space stations only, and that

such communications must be authorized as well by the space station licensee or an authorized vendor. One commenter asked that we devise a rule that will allow domestically authorized user transceivers to access foreign-licensed NVNG space station systems. We do not believe that this type of arrangement should be dealt with by regulation. In the past, arrangements for U.S. licensees to access foreign space stations for either domestic or international use have been made on a bilateral, government-to-government basis. We believe that we will best be able to determine the extent to which such access should be permitted by continuing this approach. The rules that we have adopted will not preclude entering into arrangements for such access with countries that license non-geostationary satellite systems and permit roaming by areas have technically compatible transceivers designed to operate with systems licensed in the United States.

Once authorized to access a U.S.-licensed space station system, a roaming user's transceiver operations will be deemed to fall within the umbrella of the blanket earth station license held by the system operator or service vendor authorized by the system licensee. Because of the large number of technically identical terminals, and the likely short-term use of a roaming unit within the United States, it would be an unnecessarily onerous burden to require issuance of a separate license to each individual transceiver user. By placing the ultimate responsibility for transceiver operations upon the system operator or service vendor as earth station licensee, we believe that the public interest can be well protected without inhibiting the use of these units by unnecessary licensing burdens. Thus, we have adopted § 25.135 (c) and (d) as proposed.

C. License Terms and Renewals

Earth Stations

NVNG subscriber user transceivers will be authorized pursuant to "blanket" earth station licenses, whereby a single licensee will be responsible for the operations of a specific number of technically identical units. As proposed in the Notice, the ten-year license term will commence on the date that the earth station license is granted.

Space Stations

As in the case of NVNG earth stations, we have proposed a blanket licensing approach to the authorization of NVNG space stations. Entire satellite systems

in this service will be licensed to operate for periods of ten years, commencing upon the date that the licensee certifies that its first satellite is successfully placed into orbit and operational. The operating license of all other system satellites launched within the ten year period will expire on that same date. Applications to renew a space station system license must be filed by the end of the seventh year of the existing system license. This period of time will allow the Commission sufficient time to act on replacement applications, will give interested parties adequate notice of an operator's intent, and will not unduly force existing licensees into premature decisions.

In the Notice, we stated that NVNG licensees, like licensees in other satellite services, will generally be given replacement system authority if the frequencies remain available for use by comparable types of systems. Two of the applicants request that we codify this system replacement expectancy, noting that not only are NVNG systems expensive to construct and operate, but that NVNG customers deserve the assurance of continued service availability. Accordingly, they suggest adoption of a rule that will assure system operators of reauthorization so long as they have a record of consistent regulatory compliance. At a minimum, they allege, we should incorporate a rule that embodies our policy generally to authorize replacement systems if the frequencies remain available. As we stated in the Notice, any number of intervening circumstances may inhibit our grant of replacement authority. We are therefore reluctant to attempt to define the exact terms under which we will grant replacement system authority ten years hence. For example, at that time, we may have devised efficiency standards, which could interfere with our ability to reauthorize an existing type or size of system. Rather than attempt to create at this time an exhaustive list of conditions precedent to the grant of replacement authority, which list may alternatively prove to be either too inclusive or too exclusive, we continue to believe that our general policy will most accurately meet the public interest. This policy will provide NVNG operators with assurance that we generally intend to grant replacement system authority, but will not hobble our ability to examine all factors that may ultimately prove relevant to such a grant.

D. System Construction, Milestones

Space station system licensees will be required to notify us when their first system satellite is launched and

operational. Milestone deadlines, which are the dates by which construction of a system must be commenced and completed and satellites launched, will not be codified but will be established in each individual license. This will allow us to consider an individual applicant's circumstances when developing these guidelines. As a general matter, a permittee must commence construction of the first two satellites of its system within one year of grant of the construction permit, and begin construction of all remaining satellites within three years of grant. Construction of the first two satellites must be completed within four years of grant and the entire system must be launched and operational within six years. One commenter has urged the Commission to modify its milestone proposal to reflect the realities of smaller systems, suggesting that it is unduly burdensome to insist that a permittee of a small system be compelled to commence construction of such a proportionately high number of satellites within the first year. Instead, it has been suggested that a system permittee proposing to operate five satellites or fewer be required to commence construction of only a single satellite within the first year. While we decline to create a specific policy regarding system milestones for permittees proposing to operate fewer than six satellites, we agree with this general assessment. It is this type of situation that underlies our determination not to codify absolute milestone limits, but to retain the flexibility to consider all factors involved in their imposition. In light of the expressed concern over the adequacy of the allocated spectrum and the possibility of warehousing this scarce resource, we intend to continue our longstanding policy of equitably imposing, and enforcing, milestone commitments.

E. Frequency Assignments

We have proposed that each applicant specify precisely the frequencies that it intends to use for its service and feeder links. If the proposed operations appear compatible with other authorized uses, we will license the applicant to use the requested frequencies on a non-exclusive basis. This section raised considerable controversy. Arguing that the spectrum sharing scheme proposed by the applicants in the negotiated rulemaking will result in both an undesirable duopoly and spectrum warehousing, one commenter proposed that we instead (1) make frequency assignments based on our assessment of an applicant's "real near term

requirements," and (2) allow system expansion only after a licensee is able to demonstrate a specific level of system usage. However, this is a first generation service. We do not know how quickly, or in what manner, the service will grow. The applicants have presented us with their own best estimates regarding their actual spectrum usage requirements. Different, arbitrarily imposed limits on system size could force a licensee into what may very well be an artificially, and unsupportably, low system capacity.

If inadequate capacity is licensed initially, the problem is not easily resolved. Once LEO satellite systems are placed in orbit, they cannot be expanded to meet demand until the next generation is launched. By that time, expansion may be hindered by other factors. Licensees will have six years to commence operation of their systems. By the time they are launched and filled to the preordained capacity, there may be no room for these first generation systems to expand. Indeed, system capacity may have to be decreased over time as U.S.-authorized NVNG systems coordinate their operations with those of neighboring jurisdictions. If we grant licensees access to only a bare minimum amount of spectrum, it is thus conceivable that their systems will prove too limited to serve customer needs or achieve commercial viability. While maximum entry has always been a major concern in the evolution of this service, it must not take precedence over our ability to license viable systems.

We would be more likely to entertain the notion of imposing our own limits on a licensee's spectrum usage and power levels if we had sufficient information regarding the ultimate commercial and technical development of the NVNG MSS, or if the first round applicants proposed to use all of the available spectrum. However, we are not prescient, and the applicants do not propose to occupy the entire NVNG spectrum resource. Some unassigned NVNG spectrum remains available under the applicants' sharing proposal, additional allocated spectrum should become available for use in 1997 and beyond, and the majority of the spectrum that will be non-exclusively assigned to licensees can be used by future licensees as well. Accordingly, we will continue to leave decisions regarding appropriate system size and configuration to the applicants themselves.

F. Spectrum Efficiency

We have undertaken from the beginning of this rulemaking the

development of rules that will further the efficient use of the NVNG MSS spectrum. During the course of the negotiated rulemaking, the Committee debated at great length the possibility of imposing concise spectrum efficiency requirements upon NVNG space station operators. These discussions failed to elicit a sound, mutually agreeable solution. Accordingly, we proposed in our Notice to defer the imposition of efficiency standards until we can examine the technical and commercial development of the service.

As an initial matter, the commenters unanimously agree that it is inadvisable at this time to mandate a single modulation and accessing technique for this service. There is no current need, and indeed no factual basis upon which, to do so. One applicant continues to urge our reconsideration of an efficiency standard that the company has advanced throughout the course of this rulemaking. Generally, that standard would require system operators to make service available in the United States at least 75% of the time. This proposal as well as others, was discussed at length in the negotiated rulemaking. During those meetings, the Committee was unable even to define the concept of efficiency as it relates to this service. The problems that plagued the Committee during its deliberation of this subject remain. We have no experience with commercial NVNG MSS systems operating in these frequency bands. Without experience, we do not know which technologies will even prove workable, much less preferable, as different services attempt to coexist within this particular spectrum. Further, we do not know how consumer demand for services will evolve in the NVNG MSS. In any event, it is not "efficient" to mandate at this time either use of a technology that may not work, or a level of available service that may not be supported by the market. We do expect to address the issue of efficiency standards in future proceedings.

G. Regulatory Treatment

In the Notice, we proposed that applicants be allowed to request classification as either common or private carriers. In accordance with existing policy, the Commission would then determine whether such classification would be in the public interest. The comments universally supported this proposal. Since adoption of the Notice, section 332 of the Communications Act, 47 U.S.C. 332, has been amended to establish a new category of mobile services called "commercial mobile services" (CMS).

Section 332 now requires that CMS providers be treated as common carriers, but the Commission has authority to forebear from most Title II regulation for CMS providers. Subsection 332(c)(5), however, states that the Commission may continue to determine whether the provision of space segment capacity by satellite systems to CMS providers should be treated as common carriage. Accordingly, we believe that we continue to have the discretion to make determinations regarding the regulatory classification of NVNG space station licensees. As we stated in the Notice, NVNG services are not inherently common carrier in nature under the guidelines of the *NARUC I* decision. Accordingly, we will not require NVNG space station licensees to provide system access to CMS providers on a common carriage basis. However, earth station licensees will be treated as common carriers if their service offerings fall within the new definition of CMS. We also proposed that NVNG licensees operating as common carriers should be subject to streamlined regulation. We have adopted that proposal, as we believe that it will ease the regulatory burden on NVNG licensees, without harm to the public interest. Thus, all NVNG common carrier space and earth station licensees will be subject to streamlined regulation. In addition, we note that the issue of forbearance from tariff regulation of domestic CMS providers is now under consideration in a separate CMS Rulemaking.

H. Application Amendments

In the Notice, we suggested that applicants be given 90 days in which to amend their applications to conform to the new regulations. One applicant argues that it is unrealistic to expect applicants to make all necessary changes in system design and business plans and to secure reasonable financial commitments within ninety days of adoption of final rules. It therefore proposes that applicants be given nine months in which to meet the newly-imposed financial showing. We believe, however, that an applicant's financial arrangements could well have commenced prior to the completion of this rulemaking. While the final rules have only been established herein, their probable substance has been largely apparent for some time. In light of the fact that the financial qualification standard adopted today is not onerous, we do not feel that it will be in the public interest to bifurcate and extend the amendment period, and thus further to delay licensing of these systems. We therefore will allow applicants in this

processing round 90 days from the effective date of these regulations in which to file all conforming amendments and fees for system construction, launch and operation.

An applicant has also requested clarification that all system amendments necessary to bring applications into conformance with these newly-imposed rules will be accepted without procedural disadvantage to the applicants. For example, if certain of these amendments were deemed, under ordinary circumstances, to be "major" amendments, the entire application would be considered newly-filed as of the date of the amendment. The application would then no longer be eligible for consideration in this processing round, because of its failure to be properly on file as of the original application cut-off date. Therefore, we clarify that to the extent that amendments are necessary because of obligations that we have imposed upon applicants after the cut-off date, the amendments will be accepted without adverse consequence. We emphasize, however, that only necessary amendments will be accepted unconditionally. All others will be treated under the existing procedural regulations.

I. International Obligations

It was suggested that we impose license conditions on NVNG MSS service providers, requiring the successful completion of both domestic and international coordination of their systems prior to grant. The International Telecommunication Union (ITU) has established a procedure governing the coordination of mobile satellite systems. That procedure assures that worldwide coordination is accomplished in a manner that places the burden on both the affected administration and the administration seeking coordination to cooperate in the resolution of conflicts. ITU regulations do not, however, require successful coordination of a system prior to licensing by an individual administration. Such a requirement could empower another administration to employ dilatory tactics merely to impede implementation of U.S. systems.

In a similar vein, a second commenter urges the Commission to consult with "appropriate ITU organizations" before the promulgation of final rules that, it alleges, may foreclose competition and promote spectrum inefficiency. While the United States is an active participant in a number of global fora, including the ITU and its Radiocommunications Sector, we believe that it is unnecessary and imprudent to await further global

action on LEO MSS issues prior to the promulgation of wholly domestic regulations. Such a delay would needlessly hamper the efforts of domestic licensees to make available to the U.S. public these innovative services. As we stated in the Notice, we will follow the coordination procedures prescribed for non-geostationary satellite systems; will work with the global community to promote LEO services through discussion of sharing techniques and other technical issues; and will continue to require our licensees to meet both their international obligations and any national requirements imposed by other licensing administrations. Because we will require our licensees to comply with international procedures, including the national requirements of any other licensing administrations, the efforts of these other jurisdictions to implement NVNG service within their own territories will remain within their control.

J. Distress and Safety Communications

The Interagency Committee on Search and Rescue (ICSAR) noted that NVNG offers the potential to greatly improve emergency communications to benefit search and rescue (SAR) and disaster response operations, and recommends that NVNG applications address certain SAR concerns. Specifically, ICSAR suggests that applicants in the NVNG MSS disclose how their systems will: (1) Determine the grid coordinates of any distress signal received; (2) determine and direct messages to the appropriate search and rescue organization for assistance; and (3) design the communications interface with search and rescue organizations to utilize the public switched data network. While we agree with ICSAR that NVNG services have the potential to complement existing safety services, we note that the NVNG services are not intended to replace existing international safety services and cannot be used in lieu of distress beacons, such as emergency locator transmitters or emergency position indicating radio beacons, that are required to be carried by international agreement or statute. We thus believe that ICSAR's proposal to require NVNG applicants to show specific methods of interconnection to route distress communications to SAR organizations is not necessary. System operators have adequate incentives to work to meet demands identified by ICSAR in a timely and cost-effective manner. We therefore do not feel that it is necessary to impose upon NVNG applicants the requirements suggested by ICSAR. We expect, however, that

NVNG system operators who choose to offer distress communications capability will coordinate their efforts with ICSAR and SAR organizations.

K. Public Notice Requirement

The Commission has also proposed to modify its rules to specify that its public notice requirements do not apply to assignments or transfers of space station authorization that do not involve a substantial change of control. Because this amendment merely codifies our existing practice, and will in no way adversely impact the public interest, we have adopted § 25.151(c)(5) as proposed.

List of Subjects

47 CFR Part 2

Communications common carriers.

47 CFR Part 25

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Title 47 of the Code of Federal Regulations, parts 2 and 25, are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: Secs. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.1 is amended by adding the following definition, in alphabetical order, to read as follows:

§ 2.1 Terms and definitions.

* * * * *

Non-Voice, Non-Geostationary Mobile-Satellite Service. A mobile-satellite service reserved for use by non-geostationary satellites in the provision of non-voice communications which may include satellite links between land earth stations at fixed locations.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

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

Authority: Sections 101–404, 76 Stat. 419–427; 47 U.S.C. 701–744, sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303.

4. Section 25.201 is amended by adding the following definition, in alphabetical order, to read as follows:

§ 25.201 Definitions.

Non-Voice, Non-Geostationary Mobile-Satellite Service. A mobile-satellite service reserved for use by non-geostationary satellites in the provision of non-voice communications which may include satellite links between land earth stations at fixed locations.

5. Section 25.114 is amended by revising paragraph (c)(18), and adding a new paragraph (c)(27), to read as follows:

§ 25.114 Applications for space station authorizations.

(c) * * *

(18) Detailed information demonstrating the financial qualifications of the applicant to construct and launch the proposed satellites. Applications for domestic, and NVNG MSS, satellite systems shall provide the financial information required by § 25.140(b)-(e) or § 25.142(a)(4). Applications for international satellite systems authorized pursuant to Establishing of Satellite Systems Providing International Communications, 50 FR 42266 (October 18, 1985), 101 FCC 2d 1046 (1985), *recon.* 61 RR2d 649 (1986), *further recon.* 1 FCC Rcd 439 (1986), shall provide the information required by that decision.

(27) Applications to license multiple space station systems in the non-voice, non-geostationary mobile-satellite service under blanket operating authority shall also provide all information specified in § 25.142.

6. Section 25.115 is amended by adding a new paragraph (d) to read as follows:

§ 25.115 Applications for earth station authorizations.

(d) User transceivers in the non-voice, non-geostationary mobile-satellite service need not be individually licensed. Service vendors may file blanket applications for transceiver units using FCC Form 493 and specifying the number of units to be covered by the blanket license. FCC Form 430 should be submitted if not already on file in conjunction with other facilities licensed under this subpart. Each application for a blanket license under this section shall include the information described in § 25.135.

7. Section 25.120 is amended by revising paragraphs (d) and (e) to read as follows:

§ 25.120 License term and renewals.

(d) Space stations.

(1) For space stations in the fixed-satellite services, the license term will begin at 3 a.m. EST on the date the licensee certifies to the Commission that the satellite has been successfully placed into orbit and that the operations of the satellite fully conform to the terms and conditions of the space station radio authorization.

(2) For space station systems in the non-voice, non-geostationary mobile-satellite service, the license term will begin at 3 a.m. EST on the date that the licensee certifies to the Commission that its initial space station has been successfully placed into orbit and that the operations of that satellite fully conform to the terms and conditions of the space station system authorization. All space stations launched and brought into service during the ten-year license term shall operate pursuant to the system authorization, and the operating authority for all space stations will terminate upon the expiration of the system license.

(e) Renewal of licenses. Applications for renewals of earth station license must be submitted on FCC Form 405 (Application for Renewal of Radio Station License in Specified Services) no earlier than 90 days and no later than 30 days, before the expiration date of the license. Applications for space station system replacement authorization in the non-voice, non-geostationary mobile-satellite service shall be filed no earlier than 90 days and no later than 30 days, prior to the end of the seventh year of the existing system license.

8. Section 25.130 is amended by revising paragraph (b) to read as follows:

§ 25.130 Filing requirements for transmitting earth stations.

(b) A frequency coordination analysis in accordance with § 25.203 shall be provided for earth stations transmitting in the frequency bands shared with equal rights between terrestrial and space services, except that transceiver units associated with the non-voice, non-geostationary mobile-satellite service shall instead provide the information required by § 25.135.

9. Section 25.133 is amended by revising paragraph (b) to read as follows:

§ 25.133 Period of construction; certification of commencement of operation.

(b) Each license for a transmitting earth station included in this part shall also specify as a condition therein that upon the completion of construction, each licensee must file with the Commission a certification containing the following information: The name of the licensee, file number of the application, call sign of the antenna, date of the license, a certification that the facility as authorized has been completed, that each antenna facility has been tested and is within 2 dB of the pattern specified in § 25.209, and that the station is operational including the date of commencement of service, and will remain operational during the license period unless the license is submitted for cancellation. For stations authorized under § 25.115 (c) and (d) (Large Networks of Small Antennas operating in the 12/14 GHz bands; User transceivers in the non-voice, non-geostationary mobile-satellite service), a certificate must be filed when the network is put into operation.

10. A new § 25.135 is added to read as follows:

§ 25.135 Licensing provisions for earth station networks in the non-voice, non-geostationary mobile-satellite service.

(a) Each applicant for a blanket earth station license in the non-voice, non-geostationary mobile-satellite service shall demonstrate that transceiver operations will not cause unacceptable interference to other authorized users of the spectrum, based on existing system information publicly available at the Commission at the time of filing, and will comply with operational conditions placed upon the systems with which they are to operate in accordance with § 25.142(b). This demonstration shall include a showing as to all the technical parameters, including duty cycle and power limits, under which the individual user transceivers will operate.

(b) Transceiver units associated with the non-voice, non-geostationary mobile-satellite service may not be operated on civil aircraft. All portable or hand-held transceiver units (including transceiver units installed in other devices that are themselves portable or hand-held) having a receiver operating in the 137-138 MHz band shall bear the following statement in a conspicuous location on the device: "This device may not be operated while on board a civil aircraft. It must be turned off at all times while on board such an aircraft."

This subsection shall not apply to transceiver units whose receivers are incapable of radiating in the 108–137 MHz frequency bands.

(c) Transceiver units in this service are authorized to communicate with and through U.S. authorized space stations only. No person shall transmit to a space station unless the specific transmission is first authorized by the space station licensee or by a service vendor authorized by that licensee.

(d) Any transceiver unit associated with this service will be deemed, when communicating with a particular non-voice, non-geostationary mobile-satellite service system pursuant to paragraph (c) of this section, to be temporarily associated with and licensed to the system operator or service vendor holding the blanket earth station license awarded pursuant to § 25.115(d). The domestic earth station licensee shall, for such temporary period, assume the same licensee responsibility for such transceiver as if such transceiver were regularly licensed to it.

11. Section 25.140 is amended by redesignating paragraph (d)(2)(iii) as paragraph (d)(2)(iv), and by adding a new paragraph (d)(2)(iii) to read as follows:

§ 25.140 Qualifications of domestic fixed-satellite space station licensees.

* * * * *

(d) * * *

(2) * * *

(iii) The terms of any grant, or other external funding commitment intended to be used to finance the proposed construction, acquisition or operation of the requested facilities including such information as the identity of the grantor(s), the amount committed, letters of commitment, and detailed terms of the transaction, including the details of any contingencies;

* * * * *

12. A new § 25.142 is added to read as follows:

§ 25.142 Licensing provisions for the non-voice, non-geostationary mobile-satellite service.

(a) *Space station application requirements.* (1) Each application for a space station system authorization in the non-voice, non-geostationary mobile-satellite service shall describe in detail the proposed non-voice, non-geostationary mobile-satellite system, setting forth all pertinent technical and operational aspects of the system, and the technical, legal, and financial qualifications of the applicant. In particular, each application shall include the information specified in § 25.114, except that in lieu of the

information concerning orbital locations requested in § 25.114(c)(6), the applicant shall specify the number of space stations and applicable information relating to the altitude(s), argument(s) of perigee, service arc(s), right ascension of ascending node(s), eccentricity, and inclination of the space stations (all referenced to the same time) that will comprise its system. Applicants must also file information demonstrating compliance with all requirements of this section, and showing, based on existing system information publicly available at the Commission at the time of filing, that they will not cause unacceptable interference to any non-voice, non-geostationary mobile-satellite service system authorized to construct or operate.

(2) Applicants for a non-voice, non-geostationary mobile-satellite must identify the power flux density produced at the Earth's surface by each space station of their system in the frequency bands 137–138 MHz and 400.15–401 MHz, to allow determination of whether coordination with terrestrial services is required under international footnotes 599A and 647B of § 2.106 of the Commission's Rules. In addition, applicants must identify the measures they would employ to protect the radio astronomy service in the 150.05–153 MHz and 406.1–410 MHz bands from harmful interference from unwanted emissions.

(3) *Emission limitations.* (i) Applicants in the non-voice, non-geostationary mobile-satellite service shall show that their space stations will not exceed the emission limitations of § 25.202(f) (1), (2) and (3), as calculated for a fixed point on the Earth's surface in the plane of the space station's orbit, considering the worst-case frequency tolerance of all frequency determining components, and maximum positive and negative Doppler shift of both the uplink and downlink signals, taking into account the system design.

(ii) Applicants in the non-voice, non-geostationary mobile-satellite service shall show that no signal received by their satellites from sources outside of their system shall be retransmitted with a power flux density level, in the worst 4 kHz, higher than the level described by the applicants in paragraph (a)(2) of this section.

(4) *Financial qualifications.* Each applicant for space station system authorization in the non-voice, non-geostationary mobile-satellite service must demonstrate, on the basis of the documentation contained in its application, that it is financially qualified to proceed expeditiously with

the construction, launch and operation for one year of the first two space stations of its proposed system immediately upon grant of the requested authorization. Failure to make such a showing will result in the dismissal of the application. This showing shall include all information described in § 25.140 (c), (d) and (e).

(5) *Replacement of space stations* within the system license term. The licensee need not file separate applications to construct, launch and operate technically identical replacement satellites within the term of the system authorization. However, the licensee shall certify to the Commission, at least thirty days prior to launch of such replacement(s) that:

(i) The licensee intends to launch a space station that is technically identical to those authorized in its system license, and

(ii) Launch of this space station will not cause the licensee to exceed the total number of operating space stations authorized by the Commission.

(b) *Operating conditions.* In order to ensure compatible operations with authorized users in the frequency bands to be utilized for operations in the non-voice, non-geostationary mobile-satellite service, non-voice, non-geostationary mobile-satellite service systems must operate in accordance with the conditions specified in this section.

(1) *Service limitation.* Voice services may not be provided.

(2) *Coordination requirements with Federal government users.*

(i) The frequency bands allocated for use by the non-voice, non-geostationary mobile-satellite service are also authorized for use by agencies of the Federal government. The Federal use of frequencies in the non-voice, non-geostationary mobile-satellite service frequency bands is under the regulatory jurisdiction of the National Telecommunications and Information Administration (NTIA).

(ii) The Commission will use its existing procedures for liaison with NTIA to reach agreement with respect to achieving compatible operations between Federal government users under the jurisdiction of NTIA and non-voice, non-geostationary mobile-satellite service systems (including user transceivers subject to blanket licensing under § 25.115(d)) through the frequency assignment and coordination practices established by NTIA and the Interdepartment Radio Advisory Committee (IRAC). In order to facilitate such frequency assignment and coordination, applicants shall provide the Commission with sufficient information to evaluate electromagnetic

compatibility with the Federal government use of the spectrum, and any additional information requested by the Commission. As part of the coordination process, applicants shall show that they will not cause unacceptable interference to authorized Federal government users, based upon existing system information provided by the Government. The frequency assignment and coordination of the satellite system with Federal government users shall be completed prior to grant of construction authorization.

(iii) The Commission shall also coordinate with NTIA/IRAC with regard to the frequencies to be shared by those earth stations of non-voice, non-geostationary mobile-satellite service systems that are not subject to blanket licensing under § 25.115(d), and authorized Federal government stations in the fixed and mobile services, through the exchange of appropriate systems information.

(3) Coordination among non-voice, non-geostationary mobile-satellite service systems. Applicants for authority to establish non-voice, non-geostationary mobile-satellite service systems are encouraged to coordinate their proposed frequency usage with existing permittees and licensees in the non-voice, non-geostationary mobile-satellite service whose facilities could be affected by the new proposal in terms of frequency interference or restricted system capacity. All affected applicants, permittees, and licensees shall, at the direction of the Commission, cooperate fully and make every reasonable effort to resolve technical problems and conflicts that may inhibit effective and efficient use of the radio spectrum; however, the permittee or licensee being coordinated with is not obligated to suggest changes or re-engineer an applicant's proposal in cases involving conflicts.

(4) Safety and distress communications. Stations operating in the non-voice, non-geostationary mobile-satellite service that are used to comply with any statutory or regulatory equipment carriage requirements may also be subject to the provisions of sections 321(b) and 359 of the Communications Act of 1934, as amended. Licensees are advised that these provisions give priority to radio communications or signals relating to ships in distress and prohibit a charge for the transmission of maritime distress calls and related traffic.

(c) *Reporting requirements.* All operators of non-voice, non-geostationary mobile-satellite service systems shall, on June 30 of each year,

file a report with the Common Carrier Bureau and the Commission's Laurel, Maryland field office containing the following information:

(1) A listing of any non-scheduled space station outages for more than thirty minutes and the cause(s) of such outages;

(2) A detailed description of the utilization made of the in-orbit satellite system. That description should identify the percentage of time that the system is actually used for domestic transmission, the amount of capacity (if any) sold but not in service, and the amount of unused system capacity; and

(3) Identification of any space stations not available for service or otherwise not performing to specifications, the cause(s) of these difficulties, and the date any space station was taken out of service or the malfunction identified.

13. Section 25.151 is amended by revising paragraph (c)(5) to read as follows:

§ 25.151 Public notice period.

* * *

(c) * * *

(5) For consent to an assignment or transfer of control of a space station authorization or a transmitting earth station authorization, where the assignment or transfer does not involve a substantial change in ownership or control; or

* * *

14. Section 25.202 is amended by adding a new paragraph (a)(3), and by revising paragraph (f)(4), to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

* * *

(a) * * *

(3) The following frequencies are available for use by the non-voice, non-geostationary mobile-satellite service:

137-138 MHz: space-to-Earth
148-149.9 MHz: Earth-to-space
149.9-150.05 MHz: Earth-to-space
399.9-400.05 MHz: Earth-to-space
400.15-401 MHz: space-to-Earth
Until January 1, 1997, the allocations in the 149.9-150.05 MHz and 399.9-400.05 MHz bands may be used on a secondary basis only. Since the 399.9-400.05 MHz band is not allocated internationally to the mobile-satellite service, all operations outside the United States will be on a non-interference basis only.

* * *

(f) * * *

(4) In any event, when an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than

specified in paragraphs (f) (1), (2) and (3) of this section.

* * *

[FR Doc. 93-31192 Filed 12-22-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 80, 87 and 94

[PR Docket 93-39; FCC 93-506]

Private Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: The Commission has adopted a Report and Order. The Report and Order is part of a Commission-wide initiative to reexamine burdensome regulations. Accordingly, the Report and Order relaxes or eliminates certain rules that impose unnecessary regulatory burdens in certain private radio services.

EFFECTIVE DATE: December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Sean White, (202) 632-7175, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 93-506, Adopted November 19, 1993; and released December 14, 1993. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, room 246, Washington, DC 20554, telephone (202) 337-1433.

Summary of Notice

1. First, the Report and Order amends §§ 80.25(a) and 87.27 of the Commission's Rules, 47 CFR 80.25(a) and 87.27, to extend the current license term for aircraft and ship station licenses from five years to ten years. Section 307(c) of the Communications Act of 1934 (Communications Act), 47 U.S.C. 307(c) authorizes a ten-year term for such licenses. The current five year term requirement imposes an unnecessary burden both on the licensees, who must prepare and file the application form (there is a \$35 application fee), and on the Commission, which must process the approximately 125,000 ship station and 40,000 aircraft station license applications it receives each year. Accordingly, the Commission modifies Sections 80.25 and 87.27 to provide a

ten-year license term for ship and aircraft station licenses.

2. Second, the Report and Order eliminates the requirement contained in § 94.85 of the Commission's Rules, 47 CFR 94.85, that licensees in the Private Operational Fixed Microwave Service perform specified measurements to ensure that their transmitters are maintained within the frequency tolerances required by § 94.67, 47 CFR 94.67. The records specified in § 94.85, however, are not currently used by the Commission. Licensees must comply with our frequency tolerance rules at all times, so a one-time measurement serves little purpose. There does not appear to be a need, therefore, for a rule that requires licensees to follow a predesignated set of steps to prove compliance.

3. Finally, the Report and Order eliminates the requirement contained in §§ 94.113(a), (b), (d), (e) (f), and (g) of the Commission's Rules, 47 CFR 94.113(a), (b), (d), (e), (f), and (g), that licensees in the Private Operational Fixed Microwave Service maintain numerous records on station maintenance, including transmitter measurements and antenna inspections. Because licensees are required to maintain their systems in conformance with our rules, it is unnecessary to require specifically that they retain maintenance records. The purpose of retaining such records is to provide evidence of conformance with equipment specifications. If a station fails Commission inspection, or causes interference due to technical deficiencies, however, past compliance does not rectify current violation of the Commission's Rules. Failure to meet the Commission's technical standards, whether efforts have been made to do so or not, subjects a licensee to consequences such as the imposition of a monetary forfeiture. Therefore, the Commission eliminates the unnecessary and burdensome obligations imposed by §§ 94.113(a), (b), (d), (e), (f), and (g).

4. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection and/or record retention requirements, and will decrease burden hours imposed on the public.

List of Subjects

47 CFR Part 80

Radio.

47 CFR Part 87

Radio.

47 CFR Part 94

Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rule

Part 80 of title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.25 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, by adding new paragraph (a), and revising newly redesignated paragraph (b) to read as follows:

§ 80.25 License term.

(a) Licenses for ship stations in the maritime services will normally be issued for a term of ten years from the date of original issuance, major modification, or renewal.

(b) Licenses other than ship stations in the maritime services will normally be issued for a term of five years from the date of original issuance, major modification, or renewal.

* * * * *

Part 87 of title 47 of the Code of Federal Regulations is amended as follows:

PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.

2. Section 87.27 is amended by redesignating existing paragraphs (a) and (b) as paragraphs (b) and (c), respectively, adding a new paragraph (a), and revising newly designated paragraph (b) to read as follows:

§ 87.27 License term.

(a) Licenses for aircraft stations will normally be issued for a term of ten years from the date of original issuance, major modification or renewal.

(b) Licenses other than aircraft stations in the aviation services will

normally be issued for a term of five years from the date of original issuance, major modification, or renewal.

* * * * *

Part 94 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 94 is revised to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

§ 94.85 [Removed]

2. Section 94.85 is removed in its entirety.

3. Section 94.113 is revised to read as follows:

§ 94.113 Station records.

When a station in this service has an antenna structure which is required to be illuminated, appropriate entries in its station records (logs) shall be made as follows:

(a) The time the tower lights are turned on and off each day, if manually controlled.

(b) The time the daily check of proper operation of the tower lights was made, if an automatic alarm system is not employed.

(c) In the event of any observed or otherwise known failure of a tower light:

(1) Nature of such failure.

(2) Date and time the failure was observed or otherwise noted.

(3) Date, time, and nature of the adjustments, repairs, or replacements made.

(4) Identification of Flight Service Station (Federal Aviation Administration) notified of the failure of any code or rotating beacon light not corrected within 30 minutes, and the date and time such notice was given.

(5) Date and time notice was given to the Flight Service Station (Federal Aviation Administration) that the required illumination was resumed.

(d) Upon completion of the 3-month periodic inspection required by § 94.111(c):

(1) The date of the inspection and the condition of all tower lights and associated tower lighting control devices, indicators, and alarm systems.

(2) Any adjustments, replacements, or repairs made to insure compliance with the lighting requirements and the date such adjustments, replacements, or repairs were made.

[FR Doc. 93-31353 Filed 12-22-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 931223-3323; I.D. #111893C]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The Office of the Solicitor, Department of the Interior, issued a legal opinion on October 4, 1993, which construed the scope of the fishing rights of the Yurok and Hoopa Valley Indian Tribes of the Klamath River Basin, California (Solicitor's Opinion). In that opinion, the Solicitor concluded that the Indian Tribes of the reservations have a Federally protected right to the fishery resource sufficient to support a moderate standard of living or 50 percent of the total available harvest of Klamath-Trinity basin salmon, whichever is less. The Solicitor further concluded that given the current depressed condition of Klamath River basin salmon stocks, and absent any agreement among the parties to the contrary, the Tribes are entitled to 50 percent of the harvest.

The Secretary of Commerce (Secretary) issues this final rule to recognize that the Federally reserved fishing rights of the Yurok and Hoopa Valley Tribes, as acknowledged and quantified in the Solicitor's Opinion, are applicable law for the purposes of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Accordingly, all future fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California approved by the Secretary must provide for harvest allocations to the Yurok and Hoopa Valley Tribes as set out in the Solicitor's Opinion and referenced in the Appendix to the regulations governing the Pacific salmon fishery.

EFFECTIVE DATE: This action becomes effective January 24, 1994.

ADDRESSES: Requests for copies of the Solicitor's Opinion and further information should be addressed to Dr. Gary Matlock, Acting Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT:

Mr. Rodney R. McInnis at (310) 980-4030, or Mr. William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: The ocean salmon fisheries off Washington, Oregon, and California are managed under a framework fishery management plan (FMP) that was approved in 1984. It has been amended four times (52 FR 4146, February 10, 1987; 53 FR 30285, August 11, 1988; 54 FR 19185, May 4, 1989; and 56 FR 26774, June 11, 1991). Management measures recommended by the Pacific Fishery Management Council (Council) under the FMP must be approved by the Secretary before they become effective. Indian fishing on the Hoopa Valley and the Yurok Reservations is regulated by the Department of the Interior under regulations published at 25 CFR part 250.

Although numerous court decisions have confirmed that the Yurok and Hoopa Valley Indians have Federally protected fishing rights to the fishery resource in the rivers running through their reservations, none of the decisions decided whether the Tribes' fishing rights entitle them to a specific allocation or quantified share of the resource. The FMP specifies that, to the maximum extent possible, optimum yield will be set at a level that fulfills the requirements of the Indian fishery for salmon on the Klamath River and that the Council must take the effects of in-river harvest on spawner escapement into account while setting ocean harvest levels. The Klamath Fishery Management Council (KFMC), established by Public Law 99-552, October 27, 1986, produced a Long-term Plan for Management of Harvest of Anadromous Fish Populations of the Klamath River Basin which states that an allocation system will be consistent with the legally defined harvest share allocable to tribal reserved fishing rights, and will allocate the remaining share among ocean and in-river harvesters.

Prior to the Solicitor's Opinion, the Tribes' reserved fishing rights had not been quantified. As a result, the KFMC has not been able to reach the required consensus for making recommendations to the Council regarding ocean harvest levels of Klamath Basin salmon stocks.

The Solicitor's Opinion now provides a clear legal framework for allocating the salmon harvest between the Tribes and various other in-river and ocean commercial and recreational fishermen. Both the Department of Justice and the Department of Commerce reviewed the Solicitor's Opinion. Under section 303 of the Magnuson Act, ocean fishery

management measures must comport with all other applicable laws. By this notice, the Department of Commerce acknowledges that the Federally reserved fishing rights of the Yurok and Hoopa Valley Tribes, as described and quantified in the Solicitor's Opinion, are applicable law for purposes of the Magnuson Act. Subsequently, this action amends 50 CFR part 661 which governs the Pacific salmon fisheries, by referencing the Solicitor's Opinion in the Appendix of the Pacific salmon regulations. The Secretary will only approve ocean salmon management measures recommended by the Council that provide for tribal harvest opportunity consistent with the rights recognized in the Solicitor's Opinion and meet the spawning escapement goal for Klamath River fall chinook salmon. If the Council does not recommend management measures consistent with the Solicitor's Opinion, the Secretary may issue emergency regulations to ensure tribal harvest opportunity consistent with the Solicitor's Opinion.

Classification

This rule does not impose any new requirements on the Government or the public, but merely articulates NMFS' interpretation of what is applicable law for purposes of section 303 of the Magnuson Act.

The Assistant Administrator for Fisheries, NOAA, has determined that this interpretative rule is consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, and California, and the San Francisco Bay Conservation and Development Commission. This determination is being submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

Because notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act for interpretative rules, and because no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act, no initial or final regulatory flexibility analysis is required and none has been prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

This rule does not contain policies with known federalism implications sufficient to warrant preparation of the federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Dated: December 20, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 661 is amended as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

1. The authority citation for part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The appendix to part 661 is amended by renumbering paragraphs II.B.11. and II.B.12. as paragraphs II.B.12. and II.B.13, respectively, and by adding a new paragraph II.B.11. as follows:

Appendix

* * * * *

II * * *

B * * *

11. Yurok and Hoopa Valley Tribal fishing rights. For purposes of section 303 of the Magnuson Act, the Federally reserved fishing rights of the Yurok and Hoopa Valley Indian Tribes as set out in a legal opinion¹ dated October 4, 1993, by the Office of the Solicitor, Department of the Interior, are applicable law. Under section 303, allowable ocean harvest must be consistent with all applicable laws.

* * * * *

[FR Doc. 93-31355 Filed 12-22-93; 8:45 am]

BILLING CODE 3510-22-M

¹ Copies of the Solicitor's Opinion are available from the Office of the Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802-4213.