

State/location	Community No.	Effective date of eligibility	Current effective map date
Region VI			
Oklahoma: Marshall County, unincorporated areas	400511	Sept. 30, 1997, Suspension Withdrawn	Sept. 30, 1997.
Region VII			
Nebraska: Howard County, unincorporated areas	310446do	Do.
Region VIII			
Colorado: Broomfield, city of, Adams, Boulder, and Jefferson Counties.	085073do	Do.
Montana: Bull Creek, village of, Taney County	290916do	Do.

¹ The Town of Long Island has adopted the City of Portland (CID #230051) Flood Insurance Rate Map dated July 15, 1992, panels 0003, 0004, 009 and 0010.

² The Town of Cornelius has adopted the Mecklenburg County (CID #370158) Flood Insurance Rate Map dated February 3, 1993, panels 005, 0015, and 0020.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

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

Issued: October 24, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97-28997 Filed 10-31-97; 8:45 am]

BILLING CODE 6718-05-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 96-220; FCC 97-370]

Non-Voice, Non-Geostationary Mobile Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rules and policies to govern the second processing round for the non-voice, non-geostationary mobile satellite service ("NVNG MSS") also referred to as the "Little LEO" service. The Commission's rules adopted include a spectrum sharing plan that permits licensing five NVNG MSS applicants; financial qualification rules; rules requiring NVNG MSS licensees to time-share spectrum with existing commercial and government licensees; and a rule requiring second processing round applicants to file amendments to their applications to conform their applications to the rules adopted in the Report and Order.

EFFECTIVE DATE: January 2, 1998.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Daniel Connors, International Bureau, Satellite Policy Branch, (202) 418-0755; or Kathleen Campbell, International Bureau, Satellite Policy Branch (202) 418-0753.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in IB Docket No. 96-220; FCC

97-370, adopted October 8, 1997, and released October 15, 1997. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W. Washington, D.C., and from the Commission's world-wide-web page on the Internet (<http://www.fcc.gov>), and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Because this Report and Order contains information collections that affect less than 10 persons and, therefore, is not subject to the Paperwork Reduction Act of 1995, Public Law No. 104-13. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared a Regulatory Flexibility Analysis ("RFA") of the expected impact on small entities of the proposals suggested in this document.

Summary of the Report and Order

1. This Report and Order ("R&O") reflects the Commission's commitment to licensing applicants in the second processing round to provide Little LEO service and the Commission's continued efforts to promote competition in the U.S. satellite services market. With this R&O, we adopt a spectrum sharing plan and service rules and policies for the licensing of five applicants in the second processing round.

2. Because the second processing round applicants filed a mutually agreed upon spectrum sharing plan with the Commission that accommodates all of their proposed systems, we decline to adopt our proposed new entrant rule. The spectrum sharing plan that we adopt achieves the same pro-competitive objectives as our proposed new entrant rule with the additional benefit of permitting the licensing of all five second processing round applicants. Therefore, our proposed new entrant rule is unnecessary.

3. As a result of the spectrum sharing plan agreed to by the second processing round applicants, all applicants can be accommodated in the available spectrum being licensed. Consequently, our proposed strict financial qualification standard is unnecessary to prevent an under-financed applicant from preventing a fully capitalized applicant from going forward. Therefore, we adopt a relaxed financial qualification standard that requires that second processing round applicants demonstrate finances sufficient to construct and launch two satellites in their proposed systems and to operate two satellites in their system for one year after their launch.

4. We adopt a spectrum sharing plan that permits licensing five second processing round applicants: three new Little LEO systems and two existing Little LEO licensees. One new Little LEO applicant ("System 1") can operate a system in the 148-150.05 MHz uplink band and the 137-137.025 MHz, 400.15-401 MHz downlink bands. A second new Little LEO applicant ("System 2") can operate a system in the 148-150.05 MHz uplink band and in parts of the 400.15-401 MHz and 137-138 MHz downlink bands. A third new Little LEO applicant ("System 3") can operate a system in the 148-148.905 MHz uplink band and the 137.0725-137.9275 MHz downlink band. Orbital Communications Corporation, an existing Little LEO licensee ("Orbcomm"), can expand its Little LEO system by sharing approximately 355 kHz of spectrum in the 148-148.855 MHz uplink band with Systems 1, 2 and 3. Orbcomm will also operate in parts of the 137-138 MHz downlink band not being used by Systems 1 or 2. Finally, Volunteers in Technical Assistance, Inc. ("VITA"), also an existing Little LEO licensee, can expand its authorized Little LEO system to operate in the 400.5983-400.645 MHz downlink band on a time-shared basis with System 2. In the 137-138 MHz band, System 2 will

be required to time-share spectrum with meteorological satellites of the National Oceanic and Atmospheric Administration ("NOAA"). In the 400.15–400.505 MHz and 400.645–401 MHz bands, System 1 will be required to time-share the spectrum with meteorological satellites of the Department of Defense ("DoD").

5. Because System 2 will be unable to implement its system fully in the spectrum available in the second processing round, the Commission has adopted a rule that makes the System 2 licensee eligible to apply for and use up to 210 kHz of downlink spectrum subsequently allocated to the Little LEO service on a worldwide and domestic basis, subject to operating conditions and other restrictions imposed by the Commission. This priority will enable the System 2 licensee to implement its proposed system.

6. The R&O requires System 1 and System 2 to time-share parts of their downlink spectrum with the meteorological satellite systems of DoD and NOAA, respectively. Consequently, we have adopted rules permitting System 1 and System 2 to time-share this spectrum with DoD and NOAA, respectively, subject to certain elevation angle, transmission termination, satellite shut-off and frequency demonstration and change requirements imposed by the Commission to protect the DoD and NOAA meteorological satellite systems from harmful interference from the operations of System 1 and System 2, respectively.

7. We also adopted a rule prohibiting a NVNG licensee from entering into exclusive agreements or arrangements with other countries concerning communications to and from the United States. An exclusive agreement or arrangement may foreclose other United States Little LEO licensees from serving a foreign market and preventing that licensee from providing global service.

8. Finally, we adopted a rule requiring second processing round applicants to amend their applications within 15 days after the release of the R&O in order to conform their applications with the rules and policies adopted in the R&O. Ordering Clauses

9. Accordingly, *It Is Ordered* pursuant to sections 1, 4, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 303(r), and 309(j), that Part 25 of the Commission's Rules, 47 CFR 25, and the Commission's policies are amended as specified in this R&O.

10. *It is further ordered* that second round applicants shall file amended applications on or before October 30, 1997. We find good cause to make this

rule effective within 15 days after the release of this R&O. This rule will enable the five second round applicants to expedite the amendment of their second round applications which have been pending for approximately three years. This will enable the Commission to expedite the processing of second round applications in order to issue licenses to qualified applicants. Continued delay in the processing of second round applications will increase the headstarts already given to existing first round licensees and other providers of competitive services. Further delay in issuing second processing round licenses will undermine the public interest by delaying the entry of new competitors in the markets for Little LEO services. Moreover, we find that good cause exists to waive additional notice and comment upon this rule because it is unnecessary and contrary to the public interest. This rule has already been subject to notice and comment in this rulemaking proceeding and the second round applicants that are directly affected by this rule are urging the Commission to take prompt action in this R&O that will expedite the issuance of second round licenses. It would be contrary to the public interest for the Commission to delay further the processing of second round applications now that the second round applicants have mutually agreed upon a spectrum sharing plan and are urging the Commission to expedite the issuance of second round licenses.

11. The analysis required pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 604, is set forth below.

12. The Paperwork Reduction Act does not apply to the rules adopted herein because such rules apply to less than 10 persons.

13. Except for the rule requiring the filing of amended applications by second round applicants within 15 days after the release of this R&O, *It is further ordered* that amendments to Part 25 of the Commission's Rules, 47 CFR part 25, and the Commission's policies, as specified in this R&O, Will Become Effective January 2, 1998.

Final Regulatory Flexibility Act Statement

14. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared a final Regulatory Flexibility Analysis ("FRFA") of the expected impact on small entities of the proposals suggested in this document. The Secretary shall send a copy of this R&O, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in

accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

Final Regulatory Flexibility Analysis

15. As required by RFA, an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Notice of Proposed Rulemaking (the "Notice"). The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. This FRFA, concerning the R&O, conforms to the RFA.

I. Need for and Objectives of the R&O

16. In this decision, the Commission, adopts a spectrum licensing plan and service rules and policies for second processing round applicants for NVNG MSS systems that will operate in frequency bands below 1 GHz. The purpose of this action is to develop rules and policies for licensing new NVNG MSS systems and existing NVNG licensees seeking to expand the service capability of their systems in order to (a) promote competition in the emerging NVNG MSS service markets and (b) spur the rapid delivery of new services to the public at reasonable prices. NVNG MSS systems provide near real-time data services worldwide and are global systems. In order to ensure the rapid and successful implementation of new NVNG MSS systems, the Commission has worked closely with the National Telecommunications and Information Administration ("NTIA") to develop innovative technical service rules that permit new NVNG MSS systems to time-share the licensed spectrum with existing United States government systems that will be operating in the same downlink spectrum. The R&O adopts rules and policies that promote efficiency in licensing and use of the electromagnetic spectrum. In addition, we expect that the licensing framework we have set out for NVNG MSS systems will aid in the development of competitive and innovative satellite systems.

II. Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis

17. No comments were received specifically in response to the IRFA. However, in order to minimize the entry barriers for new Little LEO systems seeking to provide NVNG MSS systems, the Commission staff spent months working with NTIA and the applicants to fashion a spectrum licensing plan that was proposed in the Notice. Before release of the R&O, we, again, worked

closely with second round applicants and encouraged them to develop a mutually acceptable spectrum licensing plan. All of the second processing round applicants were able to reach agreement regarding a spectrum sharing plan and that plan has been adopted in the R&O. The spectrum sharing plan accommodates the system designs of all second round applicants, including existing NVNG MSS licensees. Therefore, we will not adopt our new entrant eligibility requirements and will apply our relaxed financial standard, rather than the strict financial standard proposed in the Notice. In addition, because all second round applicants can be accommodated in the available spectrum, the spectrum sharing plan we adopt avoids mutual exclusivity. Consequently, it will be unnecessary for the Commission to employ an auction to choose among mutually exclusive applicants. Finally, the R&O adopts eligibility rules for the use of future MSS spectrum and for receiving a second processing round authorization. By licensing all second round NVNG MSS applicants, we enable small entities and start-up companies the opportunity to compete in the capital intensive satellite industry.

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

18. The Commission has not developed a definition of small entities applicable to satellite service licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration rules applicable to Communications Services "Not Elsewhere Classified." This definition provides that a small entity is one with \$11 million or less in annual receipts.¹

19. Of the five applicants in the second processing round, two are small entities: Volunteers in Technical Assistance, Inc. and LEO One USA Corporation. The remaining three second round applicants, Orbital Communications Corporation, Final Analysis Communications, Inc. and E-Sat, are not small entities because they each have revenues in excess of \$11 million annually or have parent companies or investors that have revenues in excess of \$11 million annually.

20. The service rules adopted in the R&O will not apply to other small entities currently providing NVNG MSS types of services. The services rules apply only to second round NVNG MSS

licensees that time-share spectrum in the 400.15–401 MHz and 137–138 MHz frequency bands with existing United States government satellite systems.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

21. The rules adopted in the R&O require that all second processing round applicants file amendments to their pending applications to conform to the rules and policies adopted in the R&O. Such amendments are required in order to provide the Commission with updated technical and financial information about each applicant so that the Commission can determine whether or not an applicant is technically and financially qualified to receive a license to operate in the applied for spectrum.

22. In this R&O, we also adopt certain compliance requirements for second round NVNG MSS licensees that time-share spectrum in the 400.15–401 MHz and 137–138 MHz frequency bands with United States government satellite systems. The Commission may terminate the operations of NVNG MSS licensees determined to be interfering with the operations of United States government satellite systems. NVNG MSS licensees will also be required to comply with technical operational parameters relating to elevation angle, system demonstration requirements and satellite fail-safe procedures.

V. Steps Taken to Minimize Significant Economic Burden on Small Entities, and Significant Alternatives Considered

23. The Commission proposed in the Notice applying a strict financial standard to second round NVNG MSS applicants. In order to minimize any barriers for entry into this new satellite market for small entities, Commission staff spent months encouraging and working with all of the NVNG MSS second round applicants to develop a spectrum sharing plan that could accommodate all second round applicants. As discussed in the R&O, all second round applicants can be accommodated under the spectrum licensing plan that we adopt. Therefore, we will apply the same relaxed financial standard to second processing round applicants that we applied to first processing round licenses. By developing a spectrum sharing plan that accommodates all second round applicants, we enable small entities and start-up companies the opportunity to compete in the capital intensive satellite industry.

VI. Report to Congress

24. The Commission shall send a copy of this FRFA, along with the R&O, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Rule Changes

Part 25 of title 47 of the Code of Federal Regulations is amended as follows:

PART 25—SATELLITE COMMUNICATIONS

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

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744; 47 U.S.C. 554.

2. Paragraphs (d) and (e) are added to § 25.142 to read as follows:

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

* * * * *

(d) *Prohibition of certain agreements.* No license shall be granted to any applicant for a non-voice, non-geostationary mobile-satellite service system if that applicant, or any companies controlling or controlled by the applicant, shall acquire or enjoy any right, for the purpose of handling traffic to or from the United States, its territories or possessions, to construct or operate space segment or earth stations in the non-voice, non-geosynchronous mobile-satellite service, or to interchange traffic, which is denied to any other United States company by reason of any concession, contract, understanding, or working arrangement to which the licensee or any persons or companies controlling or controlled by the licensee are parties.

(e) *Spectrum priority.* (1) The non-voice, non-geosynchronous mobile-satellite service system that is authorized in the second application processing round to operate in the 148–148.25 MHz, 148.75–148.855 MHz, 148.905–149.81 MHz and 150–150.05 MHz uplink frequency bands and the 400.505–400.5517 MHz, 400.5983–400.645 MHz, 137.025–137.175 MHz, 137.333–137.4125 MHz, 137.475–

¹ 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

137.525 MHz, 137.595–137.645 MHz, 137.753–137.787 MHz and 137.825–138 MHz downlink frequency bands (the “System 2 licensee”) will have a first priority to apply for and use a limited amount of downlink spectrum duly allocated worldwide and domestically to the non-voice, non-geosynchronous mobile-satellite service by the ITU, at WRC-97 or a subsequent World Radiocommunication Conference, and by the Commission, respectively (the “Future Spectrum”). The System 2 licensee will be eligible to apply for and use the first 210 kHz of Future Spectrum plus spectrum sufficient to account for Doppler frequency shift in the Future Spectrum (the “Supplemental Spectrum”) to implement its non-voice, non-geosynchronous mobile-satellite service system. The System 2 licensee’s application for and use of the Supplemental Spectrum is subject to the Commission’s Rules and policies, such reasonable operating conditions as may be imposed by the Commission, and international spectrum coordination requirements. For so long as the System 2 licensee is permitted by the Government of France to operate in the 400.5517–400.5983 MHz band coordinated with the French system S80–1, the Supplemental Spectrum shall be reduced to an amount equivalent to 150 kHz of Future Spectrum plus spectrum sufficient to account for Doppler frequency shift in the Future Spectrum.

(2) The System 2 licensee’s priority to apply for and use the Supplemental Spectrum is conditioned on the System 2 licensee’s compliance with the terms and conditions of its second processing round authorization, including, but not limited to, its system construction, launch and operation milestones, and any modifications thereto, and the Commission’s Rules. The System 2 licensee’s priority to apply for and use the Supplemental Spectrum shall automatically terminate upon the occurrence of any of the following events:

(i) The System 2 licensee being permitted to operate in the Supplemental Spectrum;

(ii) The expiration or revocation of the System 2 licensee’s second processing round authorization;

(iii) The discontinuance of use of the spectrum assigned to the System 2 licensee under its second processing round authorization; or

(iv) The surrender of the System 2 licensee’s second processing round authorization to the Commission.

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

§ 25.201 Definitions.

* * * * *

Protection areas. The geographic regions on the surface of the Earth where United States Department of Defense (“DoD”) meteorological satellite systems or National Oceanic and Atmospheric Administration (“NOAA”) meteorological satellite systems, or both such systems, are receiving signals from low earth orbiting satellites.

* * * * *

4. Add §§ 25.259 and 25.260 to subpart C to read as follows:

§ 25.259 Time sharing between NOAA meteorological satellite systems and non-voice, non-geostationary satellite systems in the 137–138 MHz band.

(a) A non-voice, non-geostationary mobile-satellite service system licensee (“NVNG licensee”) time-sharing spectrum in the 137–138 MHz frequency band shall not transmit signals into the “protection areas” of National Oceanic and Atmospheric Administration (“NOAA”) satellite systems. When calculating the protection areas for a NOAA satellite in the 137.333–137.367 MHz, 137.485–137.515 MHz, 137.605–137.635 MHz and 137.753–137.787 MHz bands, a NVNG licensee shall use an earth station elevation angle of five degrees towards the NOAA satellite and will cease its transmissions prior to the NVNG licensee’s service area, based on an elevation angle of zero degrees towards the NVNG licensee’s satellite, overlapping the NOAA protection area. When calculating the protection areas for a NOAA satellite in the 137.025–137.175 MHz and 137.825–138 MHz bands, a NVNG licensee shall use an earth station elevation angle of zero degrees, or less if reasonably necessary, towards the NOAA satellite and will cease its transmissions prior to the NVNG licensee’s service area, based on an elevation angle of zero degrees towards the NVNG licensee’s satellite, overlapping the NOAA protection area. A NVNG licensee is responsible for obtaining the necessary ephemeris data. This information shall be updated system-wide on at least a weekly basis. A NVNG licensee shall use an orbital propagator algorithm with an accuracy equal to or greater than the NORAD propagator used by NOAA.

(b) A NVNG licensee time sharing spectrum in the 137–138 MHz band shall establish a 24-hour per day contact person and telephone number so that claims of harmful interference into NOAA earth station users and other operational issues can be reported and resolved expeditiously. This contact information shall be made available to

NOAA or its designee. If the National Telecommunications and Information Administration (“NTIA”) notifies the Commission that NOAA is receiving unacceptable interference from a NVNG licensee, the Commission will require such NVNG licensee to terminate its interfering operations immediately unless it demonstrates to the Commission’s reasonable satisfaction, and that of NTIA, that it is not responsible for causing harmful interference into the worldwide NOAA system. A NVNG licensee assumes the risk of any liability or damage that it and its directors, officers, employees, affiliates, agents and subcontractors may incur or suffer in connection with an interruption of its non-voice, non-geostationary mobile-satellite service, in whole or in part, arising from or relating to its compliance or noncompliance with the requirements of this paragraph (b). The Commission will not hesitate to impose sanctions on a NVNG licensee time-sharing spectrum in the 137–138 MHz band with NOAA, including monetary forfeitures and license revocations, when appropriate.

(c) Each satellite in a NVNG licensee’s system time-sharing spectrum with NOAA in the 137–138 MHz band shall automatically turn off and cease satellite transmissions if, after 72 consecutive hours, no reset signal is received from the NVNG licensee’s gateway earth station and verified by the satellite. All satellites in such NVNG licensee’s system shall be capable of instantaneous shutdown on any sub-band upon command from such NVNG licensee’s gateway earth station.

§ 25.260 Time sharing between DoD meteorological satellite systems and non-voice, non-geostationary satellite systems in the 400.15–401 MHz band.

(a) A non-voice, non-geostationary mobile-satellite service system licensee (“NVNG licensee”) time-sharing spectrum in the 400.15–401.0 MHz band shall not transmit signals into the “protection areas” of Department of Defense (“DoD”). When calculating the protection areas for a DoD satellite in the 400.15–401 MHz band, a NVNG licensee shall use an earth station elevation angle of five degrees towards the DoD satellite and will shut off its transmissions prior to the NVNG licensee’s service area, based on an elevation angle of zero degrees towards the NVNG licensee’s satellite, overlapping the DoD protection area. A NVNG licensee is responsible for obtaining the necessary ephemeris data. This information shall be updated system-wide at least once per week. A NVNG licensee shall use an orbital

propagator algorithm with an accuracy equal to or greater than the NORAD propagator used by DoD.

(b) A NVNG licensee time sharing spectrum in the 400.15–401 MHz band shall establish a 24-hour per day contact person and telephone number so that claims of harmful interference into DoD earth station users and other operational issues can be reported and resolved expeditiously. This contact information shall be made available to DoD or its designee. If the National Telecommunications and Information Administration ("NTIA") notifies the Commission that DoD is receiving unacceptable interference from a NVNG licensee, the Commission will require such NVNG licensee to terminate its interfering operations immediately unless it demonstrates to the Commission's reasonable satisfaction, and that of NTIA, that it is not responsible for causing harmful interference into the worldwide DoD system. A NVNG licensee assumes the risk of any liability or damage that it and its directors, officers, employees, affiliates, agents and subcontractors may incur or suffer in connection with an interruption of its non-voice, non-geostationary mobile-satellite service, in whole or in part, arising from or relating to its compliance or noncompliance with the requirements of this paragraph (b). The Commission will not hesitate to impose sanctions on a NVNG licensee time-sharing spectrum in the 400.15–401 MHz band with DoD, including monetary forfeitures and license revocations, when appropriate.

(c) Each satellite in a NVNG licensee's system time-sharing spectrum with DoD in the 400.15–401 MHz band shall automatically turn off and cease satellite transmissions if, after 72 consecutive hours, no reset signal is received from the NVNG licensee's gateway earth station and verified by the satellite. All satellites in such NVNG licensee's system shall be capable of instantaneous shutdown on any sub-band upon command from such NVNG licensee's gateway earth station.

(d) Initially, a NVNG licensee time-sharing spectrum with DoD in the 400.15–401 MHz band shall be able to change the frequency on which its system satellites are operating within 125 minutes of receiving notification from a DoD required frequency change in the 400.15–401 MHz band.

Thereafter, when a NVNG licensee constructs additional gateway earth stations located outside of North and South America, it shall use its best efforts to decrease to 90 minutes the time required to implement a DoD required frequency change. A NVNG

licensee promptly shall notify the Commission and NTIA of any decrease in the time it requires to implement a DoD required frequency change.

(e) Once a NVNG licensee time-sharing spectrum with DoD in the 400.15–401 MHz band demonstrates to DoD that it is capable of implementing a DoD required frequency change within the time required under paragraph (d) of this section, thereafter, such NVNG licensee shall demonstrate its capability to implement a DoD required frequency change only once per year at the instruction of DoD. Such demonstrations shall occur during off-peak hours, as determined by the NVNG licensee, unless otherwise agreed by the NVNG licensee and DoD. Such NVNG licensee will coordinate with DoD in establishing a plan for such a demonstration. In the event that a NVNG licensee fails to demonstrate to DoD that it is capable of implementing a DoD required frequency change in accordance with a demonstration plan established by DoD and the NVNG licensee, upon the Commission's receipt of a written notification from NTIA describing such failure, the Commission shall impose additional conditions or requirements on the NVNG licensee's authorization as may be necessary to protect DoD operations in the 400.15–401 MHz downlink band until the Commission is notified by NTIA that the NVNG licensee has successfully demonstrated its ability to implement a DoD required frequency change. Such additional conditions or requirements may include, but are not limited to, requiring such NVNG licensee immediately to terminate its operations interfering with the DoD system.

[FR Doc. 97-28995 Filed 10-31-97; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket RSPA-97-2995, Notice No. 5]

Control of Drug Use and Alcohol Misuse in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations Alcohol Misuse Prevention Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of random drug testing rate.

SUMMARY: RSPA has received and evaluated the 1996 Management

Information System (MIS) Data Collection forms for the drug testing of pipeline industry personnel. The RSPA determined that the random positive drug testing rate for pipeline industry for the period of January 1, 1996, through December 31, 1996, is 0.7 percent.

DATES: Effective January 1, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Catrina Pavlik, Drug/Alcohol Program Analyst, Research and Special Programs Administration, Office of Pipeline Safety, Room 2335, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366-6199, Fax: (202) 366-4566, e-mail: catrina.pavlik@RSPA.dot.gov. Information is also available on the Office of Pipeline Safety's internet home page at "OPS.dot.gov."

SUPPLEMENTARY INFORMATION: In a final rule published on December 23, 1993 (58 FR 68257), RSPA announced that it would require operators of gas, hazardous liquid and carbon dioxide pipelines, and liquefied natural gas facilities, who are subject to 49 CFR parts 192, 193 and 195, to implement, maintain, and submit an annual report of their drug testing program data. Operators with 51 or more covered employees are required to submit this information on an annual basis. Operators with 50 or fewer covered employees are required to maintain this information, and RSPA randomly selected 100 operators in this category to submit their data. The drug testing statistical data is essential for RSPA to analyze its current approach to deterring and detecting illegal drug abuse in the pipeline industry, and, as appropriate, plan a more efficient and effective approach. In 1997, RSPA lowered the random drug testing rate to 25 percent. Since the positive random testing rate continues to be less than 1 percent industry-wide, the RSPA announces in accordance with Section 199.11(c)(3), that the minimum random drug testing rate will be maintained at 25 percent of covered pipeline employees for the period of January 1, 1998, through December 31, 1998.

Submission of MIS reports are due to the Office of Pipeline Safety, Research and Special Programs Administration, DPS-23, Room 2335, 400 7th Street SW., Washington, DC 20590, not later than March 15 of each calendar year. Notice of statistical data will be published in the future to report results of each calendar year's MIS Data Collection results. At that time, the RSPA will also publish whether or not the random rate will be reduced or