

that the entries for this value that appear in the “wage index” column of the table itself, as well as the corresponding entry for CBSA 16300 in Table 8 (“FY 2009 Wage Index for Urban Areas Based on CBSA Labor Market Areas,” which appeared as an addendum to the August 8, 2008 final rule), both correctly reflect this value as 0.8919.

In addition, in the addendum to the August 8, 2008 final rule, we are revising an entry in Table 9 (“FY 2009 Wage Index Based on CBSA Labor Market Areas for Rural Areas”) in order to correct a technical error made to the wage data for one inpatient hospital provider in rural New Hampshire. We are revising the wage index value displayed in Table 9 for rural New Hampshire from “1.0182” to the corrected value of “1.0219”. Since this revision involves only a single entry in Table 9, we are not republishing the table in its entirety in this notice; however, we note that the corrected version of this table is available on the SNF PPS Web site, which can be accessed online at <http://www.cms.hhs.gov/SNFPPS/>.

### III. Correction of Errors

In FR Doc. E8–17948 (73 FR 46416), make the following corrections:

1. On page 46430, in Table 10, the wage index value “0.8924” displayed in the title is revised to read “0.8919”.
2. On page 46462, in Table 9, in the wage index column for New Hampshire, State code 30, the wage index value “1.0182” is revised to read “1.0219”.

### IV. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a proposed rule in the **Federal Register** to provide a period for public comment before the provisions of a rule such as this take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that a notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons for it in the notice.

We find for good cause that it is unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the regulations. We are not making substantive changes to our

payment methodologies or policies, but rather, are simply implementing correctly the payment methodologies and policies that we previously proposed, received comment on, and subsequently finalized. The public has already had the opportunity to comment on these payment methodologies and policies, and this correction notice is intended solely to ensure that the FY 2009 SNF PPS final rule accurately reflects them. Therefore, we believe that undertaking further notice and comment procedures to incorporate these corrections into the final rule is unnecessary and contrary to the public interest.

Further, we believe a delayed effective date is unnecessary because this correction notice merely corrects inadvertent technical errors. The changes noted above do not make any substantive changes to the SNF PPS payment methodologies or policies. Moreover, we regard imposing a delay in the effective date as being contrary to the public interest. We believe that it is in the public interest for providers to receive appropriate SNF PPS payments in as timely a manner as possible and to ensure that the FY 2009 SNF PPS final rule accurately reflects our payment methodologies, payment rates, and policies. Therefore, we find good cause to waive notice and comment procedures, as well as the 30-day delay in effective date.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 29, 2008.

**Ashley Files Flory,**

*Deputy Executive Secretary to the Department.*

[FR Doc. E8–23253 Filed 9–30–08; 8:45 am]

**BILLING CODE 4120–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 25

#### Satellite Communications

##### CFR Correction

In title 47 of the Code of Federal Regulations, parts 20 to 39, revised as of October 1, 2007, in § 25.208, on page 239, in Table 1G in paragraph (g) and, on page 240, in Table 1H in paragraph (h) make the following change:

For each entry in the tables, remove the number “40” from the third column, “Percentage of time during which EPPF<sub>down</sub> level may not be exceeded”

and add it to the fourth column, “Reference bandwidth (kHz)”.

[FR Doc. E8–23115 Filed 9–30–08; 8:45 am]

**BILLING CODE 1505–01–D**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[FCC 08–192]

#### Network Affiliated Stations Alliance (NASA) Petition for Inquiry Into Network Practices and Motion for Declaratory Ruling

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of petition for inquiry.

**SUMMARY:** NASA and the Networks request that the Commission affirm a number of basic principles relating to the Commission rules governing network/affiliate relationships to avoid future disputes. Since that time, each of the Networks engaged in constructive discussions with its respective affiliates and revised its current standard affiliation agreement to address the central issues raised by NASA. Accordingly, NASA and the Networks agree that a Commission ruling with respect to those particular contract provisions is no longer necessary. Pursuant to the Commission’s rules, we grant NASA’s request for declaratory ruling in part and grant the Joint Request in full.

**DATES:** October 1, 2008.

**ADDRESSES:** You may submit comments, identified by FCC 08–192, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission’s Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, please contact Holly Saurer, *Holly.Saurer@fcc.gov*, of the Policy Division, Media Bureau, (202) 418–2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Declaratory Ruling in FCC 08-192, adopted August 20, 2008, and released September 3, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## Summary of the Final Rule

### I. Introduction

1. The Commission has before it a Petition for Inquiry into Network Practices (Petition), a Motion for Declaratory Ruling (Motion), and a Joint Request of Network Affiliated Stations Alliance (NASA) and the ABC, CBS, NBC and Fox Television Networks (Networks) to Resolve NASA Petition. NASA and the Networks request that the Commission affirm a number of basic principles relating to the Commission rules governing network/affiliate relationships to avoid future disputes. Pursuant to § 1.2 of the Commission's rules, we grant NASA's request for declaratory ruling in part and grant the Joint Request in full.

### II. Background

2. In its Petition, NASA asked the Commission to institute an inquiry as to whether certain alleged practices of the Networks regarding their affiliates were consistent with the Commission's network rules, the Communications Act, and the public interest. NASA subsequently filed the Motion, in which it sought a declaratory ruling that certain specified practices engaged in by the Networks are inconsistent with the Communications Act and the Commission's rules and policies. In response, the Networks contended that it would be improper for the Commission to involve itself in the

private contractual relationships between networks and affiliates.

3. On January 19, 2005, NASA filed a Third Update of Record and Continued Request that Commission Issue Declaratory Ruling on Basic Principles in which it stated that each of the Networks has reformed its contracts to address the central issues raised by NASA. At the same time, NASA asked the Commission to clarify the meaning of the existing network/affiliate rules, consistent with the reformed affiliation agreements. In response, the Networks asked the Commission to reject NASA's request and to close this proceeding, arguing that there is no longer any basis for Commission action.

4. On June 9, 2008, NASA and the Networks filed the Joint Request, stating that they had revised their standard affiliation agreements to address the issues raised by NASA with respect to particular contractual provisions, and that a Commission ruling regarding the resolved contractual issues is unnecessary. Nevertheless, they state that "NASA and the Networks have a mutual interest in avoiding future controversies regarding the meaning of the Commission's network/affiliate rules and in assuring that the rules of the road for the network/affiliate relationship are clear." The parties thus request that the Commission issue an order ratifying a number of principles "with which both NASA and the Networks agree, consistent with the revisions to the standard affiliation agreements by the Networks and the amendments negotiated by the Networks and their affiliates to their current affiliation agreements."

### III. Discussion

5. Under § 1.2 of the rules, the Commission "may \* \* \* issue a declaratory ruling terminating a controversy or removing uncertainty." The Commission has broad discretion whether to issue such a ruling. We agree with NASA and the Networks that additional guidance concerning licensee control, the right-to-reject rule, and the option-time rule would be helpful to avoid future disputes, and that the principles identified below are consistent with the Act and our rules.

#### A. Licensee Control

6. Section 310(d) of the Communications Act prohibits the direct or indirect transfer of control of any station license to another entity without a Commission finding that "the public interest, convenience, and necessity will be served thereby." We affirm that the following principle identified in the Joint Request is

consistent with the Act and the Commission's rules:

- Affiliates, as the licensees of local television stations, must retain ultimate control over station programming, operations and other critical decisions with respect to their stations, and network affiliations must not undercut this basic control. Retention of this control by Commission licensees is required by section 310(d) of the Communications Act and the Commission's rules.

#### B. Right-to-Reject Rule

7. To ensure that licensees retain sufficient control over programming to fulfill their obligation to operate in the public interest, the Commission's right-to-reject rule prohibits a television broadcast station from entering into "any contract, arrangement, or understanding, express or implied, with a network organization" that prevents or hinders the station from "[r]ejecting or refusing network programs which the station reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest" or from "[s]ubstituting a program which, in the station's opinion, is of greater local or national importance."

8. We affirm that the following principles relating to the right-to-reject rule identified in the Joint Request are consistent with the Act and the Commission's rules:

- Pursuant to § 73.658(e) of the Commission's rules, networks and their affiliates are prohibited from "having any contract \* \* \* which, with respect to programs offered or already contracted for pursuant to an affiliation contract, prevents or hinders the station from: (1) Rejecting or refusing network programs which the station reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest, or (2) Substituting a program which, in the station's opinion, is of greater local or national importance." This language does not give an affiliate the unfettered right to preempt network programs, but where a preemption is made pursuant to one of the two prongs of the right-to-reject rule, the economic consequence to the affiliate is irrelevant.

- Consistent with the Commission's right-to-reject rule, affiliation agreements should not include provisions that limit right-to-reject preemptions for "greater local or national importance" to breaking news events or any other specific type of programming. Affiliation agreements should not include provisions that prevent affiliates from rejecting a program as "unsatisfactory or unsuitable or contrary to the public interest"

because they have carried a similar network program in the past. Affiliation agreements should not include provisions that impose monetary or non-monetary penalties on affiliates based on preemptions protected by the right-to-reject rule. Affiliation agreements should not include provisions that subject right-to-reject preemptions to, or count them against, contractual preemption limits (or "baskets") (though baskets are perfectly appropriate for preemptions not protected by the right-to-reject rule).

#### C. Option-Time Rule

9. The Commission's option-time rule proscribes any clause in an affiliation agreement that "prevents or hinders the station from scheduling programs before the network agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network organization seeks to utilize the time." In its Petition, NASA argued that certain contract provisions, with respect to both analog and digital broadcasting, violated the option-time rule by allowing networks to reserve an option to use an affiliate's broadcast time without committing to supply programming for the optioned time. To clarify the reciprocal obligations of networks and affiliates under the Commission's option-time rule, we affirm that the following principles set forth in the Joint Request are consistent with the Act and our rules:

- Consistent with the option-time rule, affiliation agreements should not include provisions that result in the optioning of the station's time to the network organization or that have the same restraining effect as time optioning. Network affiliation agreements may not, under the Commission's option-time rule, obligate stations to carry a network's programming or other content during certain time periods without reciprocally obligating the network to provide the content for those time periods. Similarly, network affiliation agreements may not require affiliates to carry, at some unspecified future date, unspecified digital content that the network may (or may not) choose to offer.

#### IV. Ordering Clauses

10. Accordingly, *it is ordered* that the Network Affiliated Stations Alliance's Motion for Declaratory Ruling filed June 22, 2001 *is granted in part* as discussed above.

11. *It is further ordered* that the Joint Request *is granted* and that this proceeding *is terminated*.

Federal Communications Commission.

**Marlene H. Dortch**,  
*Secretary*.

[FR Doc. E8-23152 Filed 9-30-08; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**49 CFR Parts 171, 172, 173, 175, 176, 178, 179, and 180**

[Docket No. PHMSA-2008-0227 (HM-244A)]

RIN 2137-AE40

#### Hazardous Materials Regulations: Minor Editorial Corrections and Clarifications

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule corrects editorial errors, makes minor regulatory changes and, in response to requests for clarification, improves the clarity of certain provisions in the Hazardous Materials Regulations (HMR). The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are non-substantive changes.

**DATES:** Effective date: October 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Eileen Edmonson, Office of Hazardous Materials Standards, 202-366-8553, PHMSA, East Building, PHH-10, 1200 New Jersey Avenue, SE., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

PHMSA annually reviews the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) to identify typographical and other errors, outdated addresses or other contact information, and similar errors. In this final rule, we are correcting typographical errors; incorrect CFR references and citations; an incorrect address; inaccurate office names; inconsistent use of terminology; misstatements of certain regulatory requirements; and inadvertent omissions of information. In addition, this final rule revises the address for PHMSA to indicate the new location for the headquarters office. Because these amendments do not impose new requirements, notice and public comment procedures are unnecessary. By making these amendments effective

without the customary 30-day delay following publication, the changes will appear in the next revision of Title 49.

## II. Section by Section Review

The following is a summary by section of the major changes made in this final rule. The summary does not include minor editorial corrections such as punctuation errors, or similar minor revisions.

### Part 171

#### Section 171.3

This section prescribes requirements for transporting hazardous waste under the HMR. Paragraph (b)(1) requires each motor vehicle to be marked in accordance with 49 CFR 390.21 and 1058.2. Because § 1058.2 no longer exists, in this final rule we are removing this reference in paragraph (b)(1).

#### Section 171.7

Paragraph (a) of § 171.7 lists materials incorporated by reference into the HMR. In paragraph (a)(3), we are correcting the mailing address for the American Pyrotechnic Association.

Paragraph (b) of § 171.7 lists information materials that are not incorporated by reference. In a final rule published on January 28, 2008 (Docket No. 05-21812 (HM-218D); 73 FR 4699, effective October 1, 2008), we added in paragraph (b) an entry for the Compressed Gas Association's (CGA's) publication, CGA C-1.1 in § 171.7(b). A new paragraph (g)(6) in § 180.205 listed CGA C-1.1 as an example of training material that may be used by persons who requalify cylinders using the volumetric expansion test method. Following the publication of the HM-215D final rule, we received an appeal from Hydro-Test (PHMSA-2005-21812-0025) asking us to either remove this reference to CGA C-1.1 or add examples of other training materials that may be used. Hydro-Test noted that referencing only the CGA publication in the HMR could suggest that other training materials are not acceptable. We added CGA C-1.1 as an example of guidance material that may be used to assist requalifiers in setting up their cylinder training procedures and recordkeeping requirements. The publication is not a stand alone tool for training persons on how to perform requalification of cylinders using the volumetric expansion test method. However, to alleviate confusion for cylinder requalifiers, in this final rule, we are removing the new entry for CGA C-1.1 from § 171.7(b) and paragraph (g)(6) from § 180.205.