

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 416

[CMS-1885-CN]

RIN 0938-AM02

#### Medicare Program; Update of Ambulatory Surgical Center List of Covered Procedures Effective July 1, 2003; Final Rule Correction

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction of final rule.

**SUMMARY:** This document corrects technical errors that appeared in the final rule with comment period published in the *Federal Register* on March 28, 2003 entitled "Medicare Program; Update of Ambulatory Surgical Center List of Covered Procedures Effective July 1, 2003; Final Rule."

**EFFECTIVE DATE:** July 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Bob Cereghino, (410) 786-4645.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In FR Doc. 03-7236 of March 28, 2003 (68 FR 15268), there were a number of technical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction notice are effective as if they had been included in the document published March 28, 2003. Accordingly, the corrections are effective March 28, 2003.

The errors involve the phone number of the agency contact and 5 HCPCS codes: 21365, 36819, 42415, 52355 and 54512. These codes either have incorrect payment groups or incorrect status indicators.

##### II. Correction of Errors

In FR Doc. 03-7236 of March 28, 2003 (68 FR 15268), make the following corrections:

1. On page 15268, in the 2nd column, the **FOR FURTHER INFORMATION CONTACT** section the phone number is corrected as follows: 410-786-4645.

2. On page 15280, HCPCS code 21365, the 2nd column, the status indicator is corrected to read as follows: "D".

3. On page 15296, HCPCS code 36819 is corrected as follows:

a. The payment group in the 4th column is "3".

b. The payment amount in the 5th column is "\$510".

4. On page 15298, HCPCS code 42415 is corrected as follows:

a. The payment group in the 4th column is "7".

b. The payment amount in the 5th column is "\$995".

5. On page 15303, HCPCS code 52355, the 2nd column, the status indicator is corrected to read as follows: "A\*".

6. On page 15304, HCPCS code 54512 is corrected as follows:

a. The payment group in the 4th column is "2".

b. The payment amount in the 5th column is "\$446".

##### III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the *Federal Register* to provide a period for public comment before the provisions of a notice take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the rule. Therefore, we find good cause to waive notice and comment procedures.

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

Dated: May 12, 2003.

**Ann Agnew,**

*Executive Secretary to the Department.*

[FR Doc. 03-13182 Filed 5-29-03; 8:45 am]

**BILLING CODE 4120-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 25, 74, and 78

[ET Docket No. 98-142; FCC 03-69]

#### Mobile-Satellite Service Above 1 GHz

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** This document denies two petitions for reconsideration of the *Report and Order* ("R&O"), which allocated spectrum for certain satellite "feeder links" and provided rules for sharing these feeder links with certain incumbent terrestrial operations. These petitions, filed by Globalstar, L.P. and Globalstar USA, LLC ("Globalstar") and by the Society of Broadcast Engineers,

Inc. ("SBE"), request reconsideration of the Commission's decisions in the R&O with respect to the 6700-7075 MHz ("7 GHz") band. Globalstar requests that the 6700-7025 MHz Non-Geostationary Satellite Orbit Mobile-Satellite Service ("NGSO MSS") feeder downlink band in the Fixed Satellite Service ("FSS") be extended from 6700-7025 MHz to 6700-7075 MHz, and SBE requests various rule changes pertaining to share use of the 7 GHz band between television broadcast auxiliary service ("TV BAS") and NGSO MSS.

**FOR FURTHER INFORMATION CONTACT:** Rodney Small, Office of Engineering and Technology, (202) 418-2452, TTY (202) 418-2989, e-mail [rsmall@fcc.gov](mailto:rsmall@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order*, ET Docket No. 98-142, FCC 03-69, adopted March 27, 2003 and released April 2, 2003. The full text of this document is available on the Commission's Internet site at [www.fcc.gov](http://www.fcc.gov). It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 863-2893; fax (202) 863-2898; e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### Summary of the Memorandum Opinion and Order

##### *Globalstar Petition for Reconsideration*

1. We find Globalstar's concerns regarding the possibility of NGSO MSS systems being constrained by a shortage of feeder downlink spectrum to be unfounded for the reasonably foreseeable future. Globalstar's NGSO MSS system in the 1610-1626.5/2483.5-2500 MHz bands ("Big LEO" system) is authorized to use the 6875-7055 MHz band for feeder downlinks. At the time Globalstar filed its petition, its feeder downlink band was potentially subject to significant sharing with other NGSO MSS systems that were authorized overlapping feeder downlink spectrum. The need to share the majority of that band with those NGSO MSS systems in the foreseeable future has been reduced as a result of license cancellations. Thus, Globalstar's Big LEO system, which previously faced the immediate need to share the 6875-6975 MHz band with three competing NGSO MSS systems, is currently the only feeder downlink user of that 100 megahertz of spectrum. In addition, Globalstar will

have the option of using the 6975–7025 MHz band on a shared basis with ICO Global Communications (Holdings) Ltd.'s ("ICO's") NGSO MSS system in the 1990–2025/2165–2200 MHz bands ("2 GHz MSS" system), along with Globalstar's grandfathered use of the 7025–7055 MHz band from its two currently-operational gateways. Under these circumstances, we affirm our statement in the *R&O*, 67 FR 17288, April 10, 2002, that "325 megahertz of primary spectrum, along with 50 megahertz of primary spectrum limited to grandfathered systems, will accommodate the existing need for feeder downlink spectrum."

2. Thus, we deny Globalstar's reconsideration petition to allocate the 7025–7075 MHz band to FSS downlink operations and its request for use of the 7025–7075 MHz band for any purpose other than gateway use by Globalstar's two existing earth stations, particularly given the availability of spectrum allocated for gateway use below 7025 MHz. We further find no need to permit ICO's 2 GHz MSS system to use the 7025–7075 MHz band for any purpose other than gateway use by its one existing earth station.

#### *SBE Petition for Reconsideration*

3. In the *R&O*, we concluded that NGSO MSS gateway earth stations could share part of the 7 GHz band with TV BAS operations because such earth stations would be limited in number and because coordination between those co-primary operations should ensure successful spectrum sharing. The *R&O* noted that parts 74 and 78 of the Commission's rules, which govern TV BAS, do not have coordination procedures for sharing with satellite operations, but concluded that parts 25 and 101 coordination procedures would serve to protect such earth stations from fixed BAS operations as an interim measure until uniform coordination procedures could be adopted in a separate proceeding. The *R&O* further noted that, while existing coordination procedures are inadequate to address NGSO MSS gateway earth station sharing with mobile TV pickup ("TVPU") BAS operations, sharing is nonetheless possible because gateway earth station and TVPU use of the 7 GHz band are both limited, and because TVPU stations can use two BAS channels that are not overlapped by the new NGSO MSS allocation. Therefore, the *R&O* placed *ad hoc* coordination requirements on NGSO MSS gateway earth stations with both fixed and mobile TV BAS operations, until completion of a Commission proceeding

to establish coordination rules specific to TV BAS/gateway sharing.

4. In seeking reconsideration, SBE requests that the Commission: (1) Require use of the part 101 frequency coordination protocol by a 7 GHz TV BAS fixed station with an NGSO MSS gateway earth station only if that TV BAS station is located within 145 kilometers ("km") of the earth station; (2) require 7 GHz TV BAS stations to protect only the portion of the 7 GHz feeder downlink band that is being used by an NGSO MSS provider at the time of frequency coordination; and (3) establish the release date of the *R&O* (February 7, 2002) as the benchmark date to grandfather 7 GHz TVPU stations; *i.e.*, provide that TVPU stations authorized by February 7, 2002 would not be required to protect the three incumbent NGSO MSS gateway earth stations. SBE also challenges the *R&O*'s Final Regulatory Flexibility Certification ("Certification").

5. *Coordination Distance.* The record indicates that different coordination distances are required to protect each existing NGSO MSS gateway earth station from harmful interference caused by 7 GHz TV BAS fixed stations. Further, we agree with ICO's assertion that the necessary coordination distance between TV BAS stations and earth stations depends on a number of parameters particular to each earth station. According to ICO, these include rain climatic zone, the gain of the earth station antenna toward the horizon, and the maximum permissible interference that the earth station will tolerate for a given percentage of the time. To specify in this proceeding the same coordination distance for existing and future earth stations without examining the particulars of each earth station would be arbitrary and could lead to instances of inadequate interference protection or unnecessarily large coordination distances. Indeed, we intend to explore further issues relating to the appropriate coordination distances and procedures for TV BAS stations and NGSO MSS gateway earth stations in a forthcoming *Notice of Proposed Rule Making* in ET Docket No. 98–206. Accordingly, only as an interim measure pending a final decision in our forthcoming proceeding, we are specifying for 7 GHz TV BAS fixed stations coordination with the three existing NGSO MSS gateway earth stations, but do so using the maximum coordination distances found to be required by the Comsearch studies presented in the record of this proceeding; *i.e.*, we specify a maximum coordination distance of 145 km from Globalstar's Clifton, TX earth station, a

maximum coordination distance of 519 km from Globalstar's Finca Pascual, PR earth station, and a maximum coordination distance of 319 km from ICO's Brewster, WA earth station.

6. *Frequencies Protected.* We find that fixed TV BAS and mobile TV BAS (TVPU) require distinct considerations. As pointed out by ICO, the Commission recently addressed the issue of protecting earth stations from potential harmful interference caused by fixed TV BAS use by deciding that such protection should be based on the earth station spectrum assignment, rather than the spectrum actually used by earth stations. In IB Docket No. 00–203, the Fixed Wireless Communications Coalition ("FWCC") argued that the Commission was according FSS earth stations preferential access to several bands, including 6425–7125 MHz, that are shared with terrestrial fixed services. Specifically, FWCC argued that interference protection to FSS earth stations should be based upon FSS spectrum use, just as interference protection to fixed services is based upon fixed spectrum use. However, the Commission denied FWCC's petition, finding that fixed and satellite services have significantly different requirements for access to the spectrum in order to meet their business needs, and further finding that there was insufficient evidence that terrestrial fixed users have been harmed by frequency sharing with the FSS. We find no need to revisit that recent decision, as we see no evidence that circumstances have changed since that time. Accordingly, regarding fixed TV BAS use, we deny SBE's request that coordination and protection of NGSO MSS gateway earth stations be based upon current spectrum use.

7. With regard to protecting the entire NGSO MSS gateway earth station spectrum assignment from potential harmful interference caused by mobile TV BAS use, rather than the spectrum actually used by the earth stations, we find it necessary that mobile TV BAS users protect the entire NGSO MSS gateway earth station spectrum assignment as an interim measure, pending the outcome of the forthcoming *Notice of Proposed Rule Making* referenced in paragraph 5, herein. We note that certain characteristics of mobile TV BAS may permit some flexibility in coordination and interference protection. Specifically, we note that mobile TV BAS is often used to cover "breaking news" on a short-term, temporary basis. While a NGSO MSS gateway earth station licensee may resist giving up a portion of its authorized spectrum for a new

permanent TV BAS operation, we expect that the NGSO MSS gateway earth station licensee will be able to accommodate a temporary mobile TV BAS operation if it is not operating across the whole authorized bandwidth at the time of the request. As long as the temporary mobile TV BAS does not cause interference to the gateway earth station, TV BAS use would not constrain the growth and long-term functionality of the gateway earth station. Accordingly, regarding mobile BAS use, we deny here SBE's request that coordination and protection of NGSO MSS gateway earth stations be based on current spectrum use, but we will explore whether, and under what circumstances, temporary mobile TV BAS use of the 7 GHz band within interference range of such earth stations could be permitted in the *Notice of Proposed Rulemaking* referenced in paragraph 5, herein.

8. *Grandfathered TVPU*. Grant of SBE's request to permit TVPU stations authorized after Globalstar's and ICO's three existing NGSO MSS gateway earth stations to operate without regard to harmful interference to those earth stations would disregard the Commission's long-standing policy that authorized and coordinated stations have rights to protection from subsequently authorized stations of the same status (primary or secondary). SBE's request appears to be based on the premise that, because Globalstar's and ICO's NGSO MSS feeder downlink spectrum assignments were conditioned on the outcome of the allocation decision in this proceeding, their earth stations' interference protection rights do not commence until the date of release of the *R&O*. However, the waiver grants to Globalstar and ICO authorized primary feeder downlink use of the 6875–7055 MHz and 6975–7075 MHz bands, respectively, as of the dates of the waivers, which are November 18, 1996 and July 17, 2001, respectively. Subsequently, Globalstar's and ICO's earth stations were individually authorized. The *R&O* allocated the 6700–7025 MHz band for NGSO MSS feeder downlinks and grandfathered the three existing Globalstar and ICO earth stations in the 7025–7075 MHz band, including facilities in the process of being built, but did not modify the waiver grants or earth station authorizations. Accordingly, those earth stations have maintained primary status since the grant of the waivers. Therefore, we deny SBE's petition for reconsideration with respect to this issue.

9. *Final Regulatory Flexibility Certification*. We find that SBE has

presented no evidence to contradict our finding that there would be a *de minimis* burden on TV BAS stations in the 7 GHz band. SBE simply cites the number of TV translator, LPTV, Class A TV, and full service TV stations within 145 km of Globalstar's and ICO's three existing NGSO MSS gateway earth stations that *might* use 7 GHz TV BAS stations that *might* be subject to protecting the three earth stations from harmful interference. However, SBE fails to recognize that only those 7 GHz TV BAS stations located in relatively close proximity to an NGSO MSS gateway earth station and that were authorized *after* the earth station would have to bear the cost of frequency coordination with the earth station, nor does SBE recognize that new TV BAS stations must already coordinate with *all* existing primary licensees in the band, including other TV BAS stations and FSS uplinks. SBE does not estimate the number of 7 GHz TV BAS stations likely to be affected by coordination with existing or future NGSO MSS downlinks, nor does it estimate the cost burden on the affected TV BAS stations attributable to such coordination.

10. Because the 7 GHz FSS downlink allocation is limited to serving the feeder link needs of NGSO MSS systems, the number of gateway earth stations constructed will be very small and most likely will be deployed away from major populated areas where the 7 GHz TV BAS band is used most. Further, it is incumbent upon the new entrant in any shared band to perform coordination, so that a coordination burden on TV BAS stations located in the vicinity of an existing NGSO MSS gateway earth station would affect only new TV BAS stations, and SBE has not demonstrated that we should expect a substantial number of small entities to have new TV BAS stations. Moreover, because of the existing co-primary FSS uplink allocation in the 7 GHz band, any new TV BAS station would already have to coordinate with FSS operations and bear the associated costs. Therefore, new 7 GHz TV BAS stations locating near an NGSO MSS gateway earth station will not be confronted with a significant additional satellite coordination requirement as a result of our action.

11. We also note that, typically, a frequency coordinator will charge a fee to a new TV BAS station based on the number of existing station links that must be coordinated. It is unclear how much coordination with an NGSO MSS gateway earth station would add to that cost, but in reply comments in ET Docket No. 01–75, Viacom, Inc. indicates that a single coordination

costs no more than \$1,000 per frequency to a BAS station. This relatively low cost combined with the limiting factors discussed above leads us to affirm our conclusion that the impact of our action is *de minimis* on TV BAS operations as a whole.

12. In summary, we find that only a relatively small number of TV BAS stations in the 7 GHz band will be affected by the *R&O*'s decision to authorize NGSO MSS feeder downlink use of that band because only a new 7 GHz TV BAS station locating in the vicinity of an NGSO MSS gateway earth station will have to protect the earth station from harmful interference attributable to the operation of the new TV BAS station. A 7 GHz TV BAS station authorized prior to the authorization of an NGSO MSS gateway earth station will not be affected. The majority of TV BAS stations are, or will be, located at a sufficient distance from the small number of NGSO MSS gateway earth stations to have no additional burden. Even with respect to the relatively limited number of 7 GHz TV BAS stations in the vicinity of an NGSO MSS gateway earth station authorized, or that will be authorized, subsequent to the authorization of that earth station, it is unclear whether coordination costs attributable to the existence of the earth station will be significant relative to coordination costs attributable to the existence of other authorized 7 GHz stations. Finally, new BAS stations locating in an NGSO MSS gateway earth station area will not be confronted with an unprecedented satellite coordination requirement. Taking into account all of these factors, we find that the *R&O*'s decision authorizing NGSO MSS gateway earth stations in the 7 GHz band does not impose on TV BAS stations as a whole a coordination burden that will be more than *de minimis*, as stated in the Certification.

13. Accordingly, we are persuaded by only one of SBE's contentions set forth in its petition for reconsideration—namely, that 7 GHz TV BAS licensees located in the vicinity of Globalstar's Clifton, TX NGSO MSS gateway earth station need to coordinate with that earth station only if they are located within 145-km of it. That coordination distance, and the other coordination distances specified in paragraph 5, herein, will be used as an interim measure pending a final decision in the forthcoming proceeding. In all other respects, we deny SBE's petition for reconsideration.

**Ordering Clauses**

14. Pursuant to sections 1, 4(i), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 303(g), and 303(r), this *Memorandum Opinion and Order* is adopted.

15. The petitions for reconsideration of the *Report and Order* in the proceeding, filed by Globalstar, L.P. and Globalstar USA, LLC and by the Society of Broadcast Engineers, Inc., are denied, except to the extent that SBE's petition is granted with respect to the coordination distances.

16. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Memorandum Opinion and Order* to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

Secretary.

[FR Doc. 03-13513 Filed 5-29-03; 8:45 am]

BILLING CODE 6712-01-P

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Parts 171, 173, 177 and 178**

[Docket No. RSPA-01-10533 (HM-218A)]

RIN 2137-AD44

**Transportation of Hazardous Materials; Unloading of Intermodal (IM) and UN Portable Tanks on Transport Vehicles**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Hazardous Materials Regulations to permit, for an interim period and subject to certain unloading conditions, the unloading of IM and UN portable tanks transporting certain liquid hazardous materials when those tanks are not equipped with a thermal means of remote activation of the internal self-closing stop-valves fitted on the bottom discharge outlets. Permitting such unloading for an interim period affords operators time to bring the portable tanks into conformance with the regulations.

**DATES:** *Effective Date:* June 30, 2003.

*Voluntary Compliance Date:* RSPA is authorizing immediate voluntary compliance, however, RSPA may further revise this rule as a result of appeals that may be received.

**FOR FURTHER INFORMATION CONTACT:** Joan McIntyre, Office of Hazardous Materials Standards, telephone, (202) 366-8553, or Philip Olson, Office of Hazardous Materials Technology, (202) 366-4504, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:****I. Background**

On February 22, 2002, the Research and Special Programs Administration ("RSPA" or "we") published a notice of proposed rulemaking (NPRM) (67 FR 8220) under Docket HM-218A. The NPRM proposed to permit, for an interim period and subject to certain conditions, the unloading of intermodal (IM) portable tanks transporting certain liquid hazardous materials when those tanks are not equipped with a thermal means of remote activation of the internal self-closing stop-valves fitted on the bottom discharge outlets.

The NPRM was based on the appeal of a denial of a petition for reconsideration and a petition for rulemaking regarding the provisions in § 177.834(o) of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180), permitting an IM portable tank to be unloaded while it remains on a transport vehicle. The petitions were in response to a final rule under Docket RSPA-97-2905 (HM-166Y; 63 FR 37454; July 10, 1998) which incorporated miscellaneous changes into the HMR based on petitions for rulemaking and our own initiative. The effective date of the final rule was October 1, 1998. Among other provisions, the HM-166Y final rule allows an IM portable tank transporting a liquid hazardous material that is flammable, pyrophoric, oxidizing, or toxic, to be unloaded while remaining on a transport vehicle with the power unit attached, provided the outlet requirements in 49 CFR 178.345-11 and the attendance requirements in 49 CFR 177.834(i) are met. Section 178.345-11 includes requirements for loading/unloading outlets on cargo tanks to be equipped with self-closing systems with remote means of closure capable of thermal activation at temperatures not exceeding 250 °F. Section 177.834(i) includes requirements for ensuring that cargo tanks are attended by a qualified person during loading and unloading. The intent of the unloading provision in the HM-166Y final rule was to provide regulatory relief for operators of IM portable tanks equipped with a thermal means of remote activation of the internal self-closing stop-valves fitted

on the bottom discharge outlets (known as "fusible links"). The outlet requirement provides an automatic means to shut down unloading in a fire situation when an operator is not able to manually activate the closure.

In response to industry concerns about the need for additional time to equip portable tanks with fusible links, an NPRM in this docket was published on February 22, 2002. The NPRM proposed to permit IM portable tanks not currently equipped with fusible links to be unloaded while remaining on a transport vehicle under certain conditions. Specifically, we proposed that the shipper and the carrier would share responsibility for verifying that the consignee's facility conforms to the Department of Labor's Occupational Safety and Health Administration's (OSHA) fire suppression and emergency shutdown requirements, OSHA's and the Environmental Protection Agency's (EPA) emergency response planning requirements, and an emergency discharge control procedure. Alternatively, conformance to equivalent non-federal requirements would be authorized. The NPRM proposed to permit such unloading operations until October 1, 2003, providing a total of five years from the October 1, 1998 effective date of the July 10, 1998 final rule to equip the portable tanks. Additionally, the shipper and the carrier would be responsible for compliance with the attendance requirements in § 177.834(o), ensuring that public access is denied during unloading, ensuring that persons performing unloading functions are trained in handling emergencies, and ensuring that the operator of the vehicle has determined that all of the above conditions have been met prior to unloading.

**II. Discussion of Comments**

We received comments to the February 22, 2002 NPRM in this docket from the Dangerous Goods Advisory Council (DGAC), the American Chemistry Council (the Council), Air Products and Chemicals, Inc. (Air Products), and Merck & Co., Inc.

DGAC, the Council, and Air Products request that we authorize the proposed interim unloading conditions as a permanent option to retrofitting IM portable tanks. These commenters believe that we should be in alignment with international standards and that a domestic-only requirement would cause "difficult logistic problems for foreign shippers trying to serve the U.S. market." DGAC and the Council ask whether foreign shippers would "be compelled to retrofit part of their fleets