

DELEGATION STATUS PART 63 STANDARDS—STATE OF WASHINGTON—Continued

Subpart	Ecology ²	BCAA ³	NNWAPA ⁴	OAPCA ⁵	PSCAA ⁶	SCAPCA ⁷	SWAPCA ⁸	YRCAA ⁹
XXX. Ferroalloys Production: Ferromanganese & Silicomanganese			X		X			

¹ General Provisions authorities which may not be delegated include: §§ 63.6(g); 63.6(h)(9); 63.7(e)(2)(ii) and (f) for approval of major alternatives to test methods; § 63.8(f) for approval of major alternatives to monitoring; § 63.10(f); and all authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated. For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies."

² Washington Department of Ecology (July 1, 2000).

Note: Delegation of Subpart M to Ecology applies to Part 70 sources only.

³ Benton Clean Air Authority (July 1, 2000).

⁴ Northwest Air Pollution Authority (July 1, 1999).

⁵ Olympic Air Pollution Control Authority (July 1, 2000).

⁶ Puget Sound Clean Air Agency (July 1, 1999).

⁷ Spokane County Air Pollution Control Authority (July 1, 2000).

⁸ Southwest Air Pollution Control Authority (August 1, 1998).

⁹ Yakima Regional Clean Air Authority (July 1, 2000).

Note: Delegation of Subpart M to YRCAA applies to Part 70 sources only.

¹⁰ Subpart S of this Part is delegated to The Washington Department of Ecology and these local agencies as it applies to all applicable facilities and processes defined in 40 CFR 63.440, except kraft and sulfite pulping mills. The Washington Department of Ecology (Ecology) retains the authority to regulate kraft and sulfite pulping mills in the State of Washington, pursuant to Washington Administrative Code (WAC) 173-405-012 and 173-410-012.

¹¹ Subpart LL of this Part cannot be delegated to any local agencies in Washington because Ecology retains the authority to regulate primary aluminum plants, pursuant to WAC 173-415-010.

Note to paragraph (a)(47): Dates in parenthesis indicate the effective date of the federal rules that have been adopted by and delegated to the state or local air pollution control agency. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 99-363; FCC 01-229]

Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity

AGENCY: Federal Communications Commission.

ACTION: Final rule; order on reconsideration.

SUMMARY: This document resolves petitions for reconsideration filed by US WEST, Inc. ("US WEST") and the Wireless Communications Association International, Inc. ("WCA") of the Commission's First Report and Order in Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity, which adopted regulations and procedures governing the negotiation of agreements in connection with the retransmission of television broadcast station signals by multichannel video programming distributors ("MVPDs"), including satellite carriers and cable systems.

DATES: Effective September 19, 2001.

FOR FURTHER INFORMATION CONTACT:

Steve Broeckaert at (202) 418-7200 or via internet at sbroecka@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, FCC 01-229, adopted August 10, 2001; released August 15, 2001. The full text of the Commission's Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036, or may be reviewed via Internet at <http://www.fcc.gov/csb/>.

Synopsis of the Order on Reconsideration

Burden of Proof

In the First Report and Order, 65 FR 15559 (March 23, 2000), the Commission placed the burden of proof on the MVPD complainant to establish that a broadcaster violated its duty to negotiate retransmission consent in good faith. The Commission found this conclusion to be consistent with labor law precedent, which also places the burden on the complainant. The Commission also found that placing the burden of proof on the MVPD complainant to be consistent with its belief that generally the evidence of a violation of the good faith standard will be accessible by the complainant.

WCA and US WEST assert that the Commission should reconsider its decision to impose the burden of proof exclusively on the MVPD complainant, especially in cases in which the Commission presumes that the defendant broadcaster has not acted in good faith. Specifically, petitioners request that the Commission amend its rule to provide that when an MVPD's complaint alleges facts that, if true, would establish a *prima facie* case that a Commission presumption against a broadcaster should apply, the burden of proof will shift to the broadcaster.

We decline to establish the burden-shifting procedure suggested by US WEST and WCA. While we agree with petitioners that the Commission "enjoys express statutory authority to conduct its proceedings in such a manner as will best conduce to the proper dispatch of business and to the ends of justice," US WEST and WCA have not persuaded us that reconsideration in this instance is warranted or appropriate. US WEST and WCA correctly state that the Commission, in the First Report and Order, determined that certain bargaining proposals, including proposals based on the exercise of market power by a broadcast station or other MVPDs in the market or proposals that result from agreements not to compete or to fix prices, are presumptively not consistent with the good faith negotiation requirement. We fail to see, however, how the establishment of such presumptions would lead to the shifting of the burden of proof for merely alleging facts that, if

true, would establish a *prima facie* case of such presumption. Under such a framework, any complainant would be able to shift the burden of proof merely by alleging that a retransmission consent proposal demonstrates the exercise of market power by the broadcaster or another MVPD in the market. We do not see such a result intended in either the language or the legislative history of the statute, and despite petitioner's argument to the contrary, we fail to perceive a sensible way to interpret Congress' silence on this issue as a reason to shift the burden of proof to the broadcaster in such cases. Nor do we believe that our procedures will allow a broadcaster to be other than vigorous in its defense. As the Commission noted in the First Report and Order, placing the burden of proof on the complainant:

* * * should not be interpreted as permitting a broadcaster to remain mute in the face of allegations of a [good faith] violation. After service of a complaint, a broadcaster must file an answer as required by Section 76.7 [of the Commission's rules], which advises the parties and the Commission fully and completely of any and all defenses, responds specifically to all material allegations of the complaint, and admits or denies the averments on which the party relies. In addition, where necessary the Commission has discretion to impose discovery requests on a defendant to a [good faith] complaint. However, in the end, the complainant must bear the burden of proving that a violation occurred.

Petitioners have failed to demonstrate that the burden of proof of establishing a good faith violation should rest elsewhere. Accordingly, US WEST and WCA's request for reconsideration on this issue is denied.

Limitations Period

In the First Report and Order, the Commission established a one year limitations period within which a complainant must bring any complaint related to a violation of the good faith retransmission consent negotiation requirement, holding, in part, that a good faith:

complaint filed pursuant to section 325(b)(3)(C) must be filed within one year of the date any of the following occur * * * (b) a broadcaster engages in retransmission consent negotiations with a complainant MVPD that the complainant MVPD alleges violate one or more of the rules adopted herein, and such negotiation is unrelated to any existing contract between the complainant MVPD and the broadcaster * * *.

US WEST and WCA are concerned that, in certain circumstances, this provision of the limitations period could be applied to retransmission consent

renewal negotiations thereby barring claims for good faith violations occurring during any renewal negotiations. Petitioners request that the Commission clarify that negotiations between an MVPD and a broadcaster to renew an existing retransmission consent agreement are not related to the parties' existing contract for purposes of the one-year limitations period, and that such negotiations trigger a new one-year filing period.

We grant US WEST and WCA's request for clarification. Section 325(b)(3)(C) imposes an affirmative duty on broadcasters to negotiate retransmission consent in good faith until 2006. This duty applies to all retransmission consent negotiations during this period, including renewal negotiations. The intent in adopting § 76.65(e)(2) of the Commission's rules was to ensure that complainants do not sit on grievances and that they bring good faith complaints in a timely manner. For example, if a broadcaster and MVPD negotiate a five-year retransmission consent agreement in Year 1 and subsequently encounter a dispute regarding the proper interpretation of a provision of such agreement in Year 3, § 76.65(e)(2) would bar a good faith complaint based upon the negotiations and contract executed in Year 1. On the other hand, if a broadcaster and MVPD negotiate and execute a five-year retransmission consent agreement in Year 1 and subsequently commence negotiations to renew or extend such consent in Year 4, any alleged violations of the good faith requirement stemming from such Year 4 negotiations are subject to complaint for a one-year period. An MVPD may not, however, use the commencement of such renewal or extension negotiations to raise good faith allegations solely related to the negotiations and contract executed in Year 1.

Effect of the Good Faith Rules on Pre-Existing Negotiations

US WEST asks the Commission to clarify that a broadcaster's obligation to negotiate after the effective date of the rules established in the First Report and Order attaches regardless of any negotiations that took place between the broadcaster and MVPD prior thereto. We grant US WEST's request for clarification. A broadcaster's duty to negotiate retransmission consent in good faith commenced upon the effective date of our good faith rules regardless of any prior course of negotiations.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-01-10636]

RIN 2127-AH24

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA); Department of Transportation.

ACTION: Correcting amendments.

SUMMARY: This rule corrects an error in the neck injury criteria that are specified for the alternative unbelted sled test included in our occupant protection standard. We revised certain of the neck injury criteria in a final rule; correcting amendment published in the **Federal Register** (63 FR 71390) on December 28, 1998. However, we have become aware that, as a result of that final rule; correcting amendment, portions of the neck injury criteria that were not revised were inadvertently deleted from the standard as published in the Code of Federal Regulations. This document reinstates the inadvertently deleted criteria.

DATES: This final rule is effective September 19, 2001.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Dr. Roger A. Saul, Director, Office of Crashworthiness Standards, NPS-10. Telephone: (202) 366-1740. Fax: (202) 493-2739. E-mail: Roger.Saul@NHTSA.dot.gov.

For legal issues, you may contact Edward Glancy or Rebecca MacPherson, Office of Chief Counsel, NCC-20. Telephone: (202) 366-2992. Fax: (202) 366-3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC, 20590.

SUPPLEMENTARY INFORMATION: Standard No. 208, *Occupant Crash Protection*, includes among its requirements certain neck injury criteria for the unbelted sled test. On December 28, 1998, we published in the **Federal Register** (63 FR 71390) a final rule; correcting