

Adopt Saf-C 7002.04 and renumber the remaining sections in Part Saf-C 7002 so that, for example, existing Saf-C 7002.04 becomes Saf-C 7002.05, to read as follows:

Saf-C 7002.04 “Commercial mobile radio service” means “commercial mobile radio service,” as defined in RSA 106-H:2, III-a.

Adopt Saf-C 7002.08 and renumber the remaining sections in Part Saf-C 7002 so that, for example, existing Saf-C 7002.07 becomes Saf-C 7002.09, to read as follows:

Saf-C 7002.08 “Consumer” means “consumer” as defined in RSA 106-H:9, I-a(a)(1).

Adopt Saf-C 7002.09 and renumber the remaining sections in Part Saf-C 7002 so that, for example, existing Saf-C 7002.08 becomes Saf-C 7002.11, to read as follows:

Saf-C 7002.09 “Division” means the division of emergency services and communications of the department of safety.

Adopt Saf-C 7002.20 and renumber the remaining sections in Part Saf-C 7002 so that, for example, existing Saf-C 7002.17 becomes Saf-C 7002.22, to read as follows:

Saf-C 7002.20 “Prepaid commercial mobile radio service” means “prepaid commercial mobile radio service” as defined in RSA 106-H:2, VIII-b.

Adopt Saf-C 7002.21, to read as follows:

Saf-C 7002.21 “Prepaid commercial mobile radio service provider” means a natural person or any other person, including any firm, corporation, partnership, or business organization, that provides prepaid commercial mobile radio service pursuant to a license issued by the federal communications commission.

Adopt Saf-C 7002.25 and renumber the remaining sections in Part Saf-C 7002 so that, for example, existing Saf-C 7002.21 becomes Saf-C 7002.27, to read as follows:

Saf-C 7002.25 “Retail transaction” means “retail transaction” as defined in RSA 106-H:9, I-a(a)(6).

Adopt Saf-C 7002.26, to read as follows:

Saf-C 7002.26 “Seller” means “seller” as defined in RSA 106-H:9, I-a(a)(7).

Amend and renumber existing Saf-C 7002.26 as Saf-C 7002.33, effective 2-21-08 (Doc. #9091), to read as follows:

Saf-C 7002.33 “Telephone company” means any local telephone service provider and any entity providing within the state commercial mobile radio service.

Amend Saf-C 7007.01, effective 2-21-08 (Doc. #9091), cited and to read as follows:

PART Saf-C 7007 FUNDING OF THE ENHANCED 911 SYSTEM

Saf-C 7007.01 Imposition of the Surcharge.

(a) The surcharge, set forth in RSA 106-H:9, shall be assessed by each local exchange telephone carrier and other telecommunication service provider to any customer or subscriber which is capable of accessing, connecting with, or interfacing with enhanced 911 by dialing or initializing or otherwise activating the enhanced 911 system through the numerals "911" by means of a landline local telephone exchange device, cellular telephone device, wireless communications device, radio, or any other communications devices or means.

(b) Notwithstanding the provisions of (a) above, the surcharge set forth in RSA 106-H:9 shall be collected by each seller of prepaid commercial radio service from a consumer with respect to each retail transaction sourced to New Hampshire.

(c) For purposes of (b) above, a retail transaction is sourced to New Hampshire:

(1) If the transaction occurs in person at a seller's location in New Hampshire; or

(2) If (1) does not apply, the prepaid commercial mobile radio service is evidenced by a physical item, such as a card, and the purchaser provides a New Hampshire delivery address for such item; or

(3) If (1) and (2) do not apply, the consumer gives a New Hampshire address during the consummation of the sale, including the address associated with the consumer's payment instrument if no other address is available, and the address is not given in bad faith; or

(4) If (1)-(3) do not apply, the consumer's mobile telephone number is associated with a postal zip code, telephone area code, or location within New Hampshire.

Amend Saf-C 7007.03, effective 2-21-08 (Doc. #9091), cited and to read as follows:

Saf-C 7007.03 Exemptions.

(a) Notwithstanding Saf-C 7007.01 above, no such surcharge shall be imposed upon more than 25 business telephone lines capable of voice transmission per customer billing account, including PBX trunks and Centrex lines.

(b) For the purposes of this section, a PBX trunk or a Centrex line physically located in a local exchange area shall be counted as one unit.

(c) If a minimal amount of prepaid commercial mobile radio service is sold with a prepaid mobile device for a single, non-itemized price, then the seller may elect not to apply the surcharge to such transaction.

(d) For purposes of (c) above, an amount of service denominated as 10 minutes or less, or 5 dollars or less, is minimal.

(e) A seller of prepaid commercial mobile radio service having less than 150 retail transactions in a calendar quarter and who has not collected the surcharge on such transactions shall not be required to remit the surcharge on those transactions, provided that the seller submits to the bureau a certification on form DESC 4 "NH Prepaid Commercial Mobile Radio Service Quarterly Exemption Certification," (rev 12/15), not later than the 15th day following such quarter, that the seller had less than 150 retail transactions in such quarter, along with such certification copies of invoices, receipts, or other similar documentation establishing the number of retail transactions in such quarter.

(f) The prepaid commercial mobile radio service surcharge shall not be subject to any other state or local tax.

Amend Saf-C 7007.04, effective 2-21-08 (Doc. #9091), cited and to read as follows:

Saf-C 7007.04 Collection of the Surcharge.

(a) All local exchange telecommunication service providers and other telecommunication service providers shall bill each access line or telephone number the surcharge imposed by this part and shall remit such surcharge revenue to the bureau on a monthly basis within 30 days of the last day of each month.

(b) The surcharge imposed by this chapter shall be stated as a distinct item on the subscriber's bill. The surcharge shall be construed as a debt of the subscriber to the local exchange telecommunication service provider or other telecommunication service provider who provides such telecommunication services, until paid, and, if unpaid, is recoverable at law in the same manner as the original charge for such telecommunication services.

(c) In the instances in which a local exchange telecommunication service provider or other telecommunication service provider resells its services through other entities, and if the local exchange telecommunication service provider or other telecommunication service provider collects the surcharge revenue from any of its resellers, the local exchange telecommunication service provider or other telecommunication service provider shall transmit such surcharge revenue on behalf of its reseller(s), identifying the name of each reseller(s), and the respective amounts of surcharge revenue being transmitted on behalf of the respective reseller(s).

(d) The amount of the surcharge collected by a seller of prepaid commercial mobile radio service from the consumer with respect to each retail transaction sourced to New Hampshire shall be either separately stated on an invoice, receipt, or other similar document that is provided by the seller to the consumer, or otherwise disclosed to the consumer.

(e) The seller shall be liable to remit all surcharge collected from consumers to the bureau on a monthly basis within 30 days of the last day of each month, including all such surcharge that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or other similar document provided by the seller to the consumer.

Adopt Saf-C 7007.05 and renumber the remaining sections in Part Saf-C 7007 so that, for example, existing Saf-C 7007.05 becomes Saf-C 7007.06, to read as follows:

Saf-C 7007.05 Registration of Sellers of Prepaid Commercial Mobile Radio Service for Accounting, Remittance and Auditing Purposes.

(a) To implement the bureau's statutory function to collect surcharge on prepaid commercial mobile radio service retail transactions sourced to New Hampshire, each seller of commercial mobile radio service shall register with the bureau, no later than 30 days after the end of the month in which such seller completes its first retail transaction sourced to New Hampshire following the effective date of this section.

(b) Sellers shall register by completing form DESC 3, "NH Prepaid Commercial Mobile Radio Service Seller Registration Form," which requires sellers to provide the following information:

- (1) The name of the seller;
- (2) Its employer identification number;
- (3) Its complete mailing address;
- (4) Its e-mail address, if any;
- (5) The name of the person, if any, whom it designates as a contact person;
- (6) The complete address of its business location within the state;
- (7) The location of its books and records;
- (8) The contact person and telephone number at the location where its books and records are maintained;
- (9) Its legal structure, whether an individual, a partnership, a corporation or other entity;
- (10) Identification of its legal structure, if it is not an individual, partnership, or corporation;
- (11) The state and date of its creation, if it is a legal entity;
- (12) The date of onset of its business in the state;
- (13) The name, address, telephone number and employer identification number of an agent, if any, designated to file reports with the bureau.

(c) If a seller of prepaid commercial mobile radio service designates an agent to file reports with the bureau, it shall attach to the application form a copy of the agent's power of attorney. Such seller shall notify the bureau within 5 business days if any such power of attorney lapses or is revoked. A copy of any new power of attorney granted by a seller of prepaid commercial mobile radio service following registration shall be sent to the bureau.

Amend and renumber existing Saf-C 7007.05 as Saf-C 7007.06, effective 2-21-08 (Doc. #9091), cited to read as follows:

Saf-C 7007.06 Reporting Forms.

(a) Each local exchange telecommunication service provider or other telecommunication service provider shall remit such surcharge revenue along with a completed surcharge reporting form, DSEC 1.

(b) Each reporting local exchange telecommunication service provider or other telecommunication service provider shall submit the following on the surcharge reporting form:

- (1) The reporting period;
- (2) The number of access lines versus telephone numbers on which a surcharge is currently being paid;
- (3) The number of access lines or telephone numbers on which:
 - a. Surcharge collection was paid;
 - b. Surcharge collection was uncollectible;
 - c. Subtotal of a. and b. above; and
 - d. Total of revenue remitted
- (4) If applicable, a sworn attestation that the reporting carrier is a reseller and has remitted the requisite surcharge to an underlying carrier;
- (5) The name of the underlying carrier in (4) above;
- (6) Reporting company's name as shown on the public utilities commission or federal communications commission license/certificate;
- (7) Federal employer identification number;
- (8) Address of the reporting company;
- (9) Contact person completing the form;
- (10) Phone number of contact person;
- (11) Fax number of contact person;
- (12) Email address of contact person; and
- (13) Title of the contact person.

(c) Each seller of prepaid commercial mobile radio service shall submit the following on form DESC 2, "Prepaid CMRS Surcharge Report":

- (1) The reporting period;
- (2) The number of retail transactions sourced to New Hampshire during the reporting period for which the seller collected surcharge;
- (3) The number of retail transactions sourced to New Hampshire for which the seller has elected to not apply the surcharge pursuant to RSA 106-H:9, I-a(g);
- (4) The total amount of gross surcharge owed;
- (5) The total amount of surcharge retained pursuant to RSA 106-H:9, I-a(h);
- (6) The total amount of surcharge currently owed;
- (7) The total amount of revenue remitted;
- (8) Seller's name as registered pursuant to Saf-C 7007.05;
- (9) Federal employer identification number;
- (10) Seller's legal address;
- (11) Seller's mailing address;
- (12) Printed name of authorized person completing the form;
- (13) Phone number of authorized person completing the form;
- (14) Fax number of authorized person completing the form;
- (15) Email address of authorized person completing the form; and
- (16) Title of authorized person completing the form.

(d) The authorized person completing the form shall certify by the person's signature that the information on the form is true and correct to the best of the person's knowledge and belief, subject to the penalty for making unsworn false statements under RSA 641:3.

(e) The authorized person completing the form shall sign and date the form.

Amend and renumber existing Saf-C 7007.06 as Saf-C 7007.07, effective 2-21-08 (Doc. #9091), cited to read as follows:

Saf-C 7007.07 Evidence of Payment Elsewhere. All local exchange telecommunication service providers[and], other telecommunication service providers and sellers of prepaid commercial mobile radio service shall be liable for the surcharge unless they can prove to the bureau that a surcharge has been paid to another state.

Adopt Saf-C 7007.10 and renumber the remaining sections in Part Saf-C 7007 so that, for example, existing Saf-C 7007.09 becomes Saf-C 7007.11, to read as follows:

Saf-C 7007.10 Record Retention By Sellers of Prepaid Commercial Mobile Radio Service. Notwithstanding the provisions of Saf-C 7007.09,

(a) Every seller of prepaid commercial mobile radio service required to report in this State under this part, shall keep books, records, papers, and other documents which are adequate to reflect the information required by RSA 106-H:9.

(b) Without intending to limit (a) above, each seller who remits surcharge to the bureau shall maintain:

(1) Accounting, financial, and general information necessary to establish the amount of the surcharge collected and remitted; and

(2) Information to substantiate:

a. Any surcharge the seller elected not to collect on sales of devices with a minimal amount of prepaid commercial mobile radio service, pursuant to RSA 106:H:9, I-a(g);

b. The amount of surcharge retained by the seller pursuant to RSA 106-H:9, I-a(h); and

c. Any other information required to be shown on any form required by these rules.

(c) Every seller of prepaid commercial mobile radio service that has lawfully not remitted surcharge on less than 150 retail transactions in a calendar quarter pursuant to RSA 106-H:9, I-a(i) shall maintain invoices, receipts, or other similar documentation establishing the number of retail transactions in such quarter.

(d) All books and records and other papers and documents required to be kept by this chapter shall:

(1) Be kept in the English language;

(2) At all times during business hours of the day, be subject to inspection by the bureau upon request; and

(3) Be furnished to the bureau either as hard copy or by electronic or digital media at the option of the bureau.

(e) For the purposes of (d)(3) above, if such information is submitted by electronic or digital media, it shall be in a format that is compatible with the software used by the bureau.

(f) All records and information shall be retained for a period of 3 years from the due date of the return unless notified by the bureau that the retention of the data is required for a longer period of time as a result of:

- (1) The commencement of an adjudicative proceeding involving the parties; or
- (2) The completion of any litigation in which the data may be relevant.

(g) Each seller of prepaid commercial mobile radio service shall, upon request, provide the bureau with access to the seller's personnel for interviews during the regular business day.

Amend and renumber existing Saf-C 7009.09 as Saf-C 7007.11, effective 2-21-08, cited and to read as follows:

Saf-C 7007.11 Failure to File. A local exchange telecommunication service provider, other telecommunication service provider and sellers of prepaid commercial mobile radio service shall be assessed overdue surcharge amounts for past due amounts at any time.

Amend and renumber existing Saf-C 7009.10 as Saf-C 7007.12, effective 2-21-08, cited and to read as follows:

Saf-C 7007.12 Audits of Telephone Common Carriers and Telecommunication Services Providers. For telephone common carriers and telecommunication services providers, audits of the surcharge shall be conducted in accordance with the applicable rules of the department of revenue, pursuant to RSA 21-J and RSA 82-A. Any telephone common carrier or telecommunication service provider aggrieved by a determination of liability by the department of revenue may appeal pursuant to RSA 21-J.

Adopt Saf-C 7007.13, to read as follows:

Saf-C 7007.13 Audits of Sellers of Prepaid Commercial Mobile Radio Service.

(a) Audits of sellers of prepaid commercial mobile radio service shall be conducted by the department of safety in accordance with generally accepted auditing standards.

(b) When an audit is completed, the seller shall be notified by certified letter of the results. This letter shall be referred to as the audit findings letter.

(c) When the seller has overpaid the surcharge, the seller shall be notified of a refund within 30 days of the release of the audit findings letter.

(d) When the seller is liable for surcharge, the seller shall be sent a statement of account within 30 days of the release of the audit findings letter.

(e) If a seller disagrees with the results of an audit, the seller may elect to submit his/her objection(s), in writing, within 30 days of receipt of the audit findings letter. The objection(s) shall be submitted to the bureau, along with all evidence in support of the seller's position. Upon receipt, an administrative hearing shall be scheduled and held in accordance with the provisions of Saf-C 200, unless otherwise set forth in these rules. Failure of the seller to comply within the prescribed period of time, or to submit evidence in support of his/her position, shall constitute acceptance of the audit. If an administrative hearing is requested, any collection on the invoice shall be stayed until a decision from the hearings examiner is rendered.

Amend and renumber existing Saf-C 7009.11 as Saf-C 7007.14, effective 2-21-08, cited and to read as follows:

Saf-C 7007.14 Hardship.

(a) If a seller of prepaid commercial mobile radio service does not have the capability to generate the information necessary to submit a reporting form, pursuant to Saf-C 7007.06(c), the seller may request a waiver from the commissioner.

(b) The request for a waiver shall include:

- (1) The name and contact information for the provider;
- (2) A detailed explanation as to what resources are lacking in order to generate the information required for Saf-C 7007.06(c);
- (3) Action the provider is taking to come into compliance with Saf-C 7007.06(c);
- (4) The requested duration of the waiver; and
- (5) A detailed explanation of the information or data that the seller will provide that will be the most comparable to that requested in Saf-C 7007.06(c).

(c) A waiver shall be granted if it complies with this section and if the information provided by the seller demonstrates its diligence in achieving compliance as well as a reasonable likelihood of achieving compliance. No waiver shall be granted for a period greater than 6 months from the effective date of Saf-C 7007.06(c).

APPENDIX

Rule	Statute
Saf-C 7002.04	RSA 106-H:2, III-a
Saf-C 7002.08	RSA 106-H:9, I-a(a)(1)
Saf-C 7002.09	RSA 541-A:7
Saf-C 7002.20	RSA 106-H:2, VIII-b
Saf-C 7002.21	RSA 106-H:9, I-a(a)(4); RSA 106-H:9, I-a(a)(5)
Saf-C 7002.25	RSA 106-H:9, I-a(a)(6)
Saf-C 7002.26	RSA 106-H:9, I-a(a)(7)
Saf-C 7002.33	RSA 541-A:7
Saf-C 7007.01	RSA 106-H:9
Saf-C 7007.03	RSA 106-H:9
Saf-C 7007.04	RSA 106-H:9
Saf-C 7007.05	RSA 106-H:9
Saf-C 7007.06	RSA 106-H:9
Saf-C 7007.07	RSA 106-H:9
Saf-C 7007.10	RSA 106-H:9
Saf-C 7007.11	RSA 106-H:9
Saf-C 7007.12	RSA 106-H:9
Saf-C 7007.13	RSA 106-H:9
Saf-C 7007.14	RSA 106-H:9