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I. Procedural Matters

A. Regulatory Flexibility Act

1. A Regulatory Flexibility Analysis is not required because this order does not promulgate or revise any rules.

2. This action is taken pursuant to sections 4(i), 303, and 405 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 154(i), 303, and 405.

II. Ordering Clauses

3. The Petition for Reconsideration filed by Real Access Alliance, Inc., is denied.

4. The Petition for Partial Reconsideration filed by the Wireless Communications Association, Inc., is granted.

5. The Petition for Clarification and Partial Reconsideration filed by the Satellite Broadcasting Industry Association and Satellite Industry Association, Broadband and Internet Division, is granted.

6. The Petition for Reconsideration filed by Triton Network Systems, Inc., is granted.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 04-12164 Filed 5-27-04; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[WT Docket No. 98-20; RM-8677; FCC 98-234]

Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission adopted a new rule requiring that each applicant for a unicom license, renewal or modification of frequency assignment at an airport which does not have a control

tower, Remote Communications Outlet or Federal Aviation Administration flight service station must certify in the application that either it has notified in writing the owner of the airport and all aviation service organizations located at the airport, or that such notice is not required because the applicant owns the airport and there are no organizations that should be notified. The rule contains new or modified information collection requirements and was published in the **Federal Register** on December 14, 1998. This document announces the effective date of that published rule.

DATES: The amendment to § 87.215(d) published at 63 FR 68957, December 14, 1998, became effective on February 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, jeff.tobias@FCC.gov, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418-0680, or TTY (202) 418-7233.

SUPPLEMENTARY INFORMATION: On February 19, 1999, the Office of Management and Budget (OMB) approved the information collection requirements contained in section 87.215(d) pursuant to OMB Control No. 3060-0865. Accordingly the information collection requirements contained in this rule became effective on February 19, 1999.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 174, 175, 176, 177, and 178

[Docket No. RSPA-98-4952 (HM-223)]

RIN 2137-AC68

Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage

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

ACTION: Final rule; delay of effective date.

SUMMARY: On October 30, 2003, RSPA published a final rule (68 FR 61905) to clarify the applicability of the Hazardous Materials Regulations to loading, unloading, and storage

operations. RSPA is delaying the effective date of the final rule from October 1, 2004 to January 1, 2005.

DATES: The effective date of the final rule amending 49 CFR Parts 171, 173, 174, 175, 176, 177, and 178 published at 68 FR 61905 on October 30, 2003, is delayed until January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Susan Gorsky (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration; or Donna O'Berry (202) 366-4400, Office of the Chief Counsel, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 2003, the Research and Special Programs Administration (RSPA, we) published a final rule to clarify the applicability of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation (68 FR 61906). The final rule amended the HMR to incorporate the following new definitions and provisions:

- We defined a new term—"pre-transportation function"—to mean a function performed by any person that is required to assure the safe transportation of a hazardous material in commerce. When performed by shipper personnel, loading of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel and filling a bulk packaging with hazardous material in the absence of a carrier for the purpose of transporting it is a pre-transportation function as that term is defined in this final rule. Pre-transportation functions must be performed in accordance with requirements in the HMR.

- We defined "transportation" to mean the movement of property and loading, unloading, or storage incidental to the movement. This definition is consistent with the definition of "transportation" in Federal hazmat law. Transportation in commerce begins when a carrier takes physical possession of a hazardous material for the purpose of transporting it and continues until delivery of the package to its consignee or destination as evidenced by the shipping documentation under which the hazardous material is moving, such as shipping papers, bills of lading, freight orders, or similar documentation.

- We defined "movement" to mean the physical transfer of a hazardous

material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel.

- We defined “loading incidental to movement” to mean the loading by carrier personnel or in the presence of carrier personnel of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel for the purpose of transporting it. For a bulk packaging, “loading incidental to movement” means the filling of the packaging with a hazardous material by carrier personnel or in the presence of carrier personnel for the purpose of transporting it. Loading incidental to movement is regulated under the HMR.

- We defined “unloading incidental to movement” to mean the removal of a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel or the emptying of a hazardous material from a bulk packaging after a hazardous material has been delivered to a consignee and prior to the delivering carrier’s departure from the consignee facility or premises. Unloading incidental to movement is subject to regulation under the HMR. Unloading by a consignee after the delivering carrier has departed the facility is not unloading incidental to movement and not regulated under the HMR.

- We defined “storage incidental to movement” to mean storage by any person of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document. However, in the case of railroad shipments, even if a shipment has been delivered to the destination shown on the shipping document, if the track is under the control of a railroad carrier or track is used for purposes other than moving cars shipped to or from the lessee, storage on the track is storage incidental to movement. We revised the definition of “private track or private siding” to make this clear. Storage at a shipper facility prior to a carrier exercising control over or taking possession of the hazardous material or storage at a consignee facility after a carrier has delivered the hazardous material is not storage incidental to movement and is not regulated under the HMR.

- We amended § 171.1 of the HMR to list regulated and non-regulated functions. Regulated functions include: (1) Activities related to the design, manufacture, and qualification of

packagings represented as qualified for use in the transportation of hazardous materials; (2) pre-transportation functions; and (3) transportation functions (movement of a hazardous material and loading, unloading, and storage incidental to the movement). Non-regulated functions include: (1) Rail and motor vehicle movements of a hazardous material solely within a contiguous facility where public access is restricted; (2) transportation of a hazardous material in a transport vehicle or conveyance operated by a Federal, state, or local government employee solely for government purposes; (3) transportation of a hazardous material by an individual for non-commercial purposes in a private motor vehicle; and (4) any matter subject to U.S. postal laws and regulations.

- We amended § 171.1 of the HMR to indicate that facilities at which functions are performed in accordance with the HMR may be subject to applicable standards and regulations of other Federal agencies or to applicable state or local government laws and regulations (except to the extent that such non-Federal requirements may be preempted under Federal hazmat law). Federal hazmat law does not preempt other Federal statutes nor does it preempt regulations issued by other Federal agencies to implement statutorily authorized programs. The final rule was intended to clarify the applicability of the HMR to specific functions and activities. It is important to note that facilities at which pre-transportation or transportation functions are performed must comply with Occupational Safety and Health Administration (OSHA) and state or local regulations applicable to physical structures—for example, noise and air quality control standards, emergency preparedness, fire codes, and local zoning requirements. Facilities may also have to comply with applicable state and local regulations for hazardous materials handling and storage operations. Facilities at which pre-transportation or transportation functions are performed may also be subject to Environmental Protection Agency (EPA) and OSHA regulations. For example, facilities may be subject to EPA’s risk management; community right-to-know; hazardous waste tracking and disposal; and spill prevention, control and countermeasure requirements, and OSHA’s process safety management and emergency preparedness requirements. Similarly, facilities at which pre-transportation functions are performed may also be

subject to regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) concerning the handling of explosives.

II. Appeals of the Final Rule

We received 14 appeals of the final rule from Ag Processing Inc. (AGP); Akzo Nobel (Akzo); Archer Daniels Midland Company (Archer Daniels); the Association of American Railroads (AAR); the Dangerous Goods Advisory Council (DGAC); the Dow Chemical Company (Dow); DuPont; Eastman Chemical Company (Eastman); the Institute of Makers of Explosives (IME); Norfolk Southern Corporation (Norfolk Southern); the Spa and Pool Chemical Manufacturers’ Association (SPCMA); the Sulphur Institute; the Utility Solid Waste Activities Group (USWAG); and Vermont Railway, Inc. (Vermont Railway).

Appellants raised a number of issues related to the consistency of the final rule with Federal hazardous materials transportation law; state and local regulation of hazardous materials facilities; the relationship of the HMR to regulations promulgated by OSHA, EPA, and ATF; the definitions adopted in the final rule for “unloading incidental to movement,” “transloading,” and “storage incidental to movement;” and the consistency of the HM-223 final rule with security regulations adopted in a final rule issued under Docket No. HM-232.

III. Delay of Effective Date

The issues raised by appellants concerning the October 30, 2003 final rule are detailed and complex. Delaying the effective date will provide us with sufficient time to fully address the issues raised by the appellants. It also provides us with sufficient time to coordinate the appeals document fully with the other Federal agencies that assisted us in developing the HM-223 final rule.

Issued in Washington, DC on May 24, 2004 under authority delegated in 49 CFR part 1.

Elaine E. Joost,

Acting Deputy Administrator, Research and Special Programs Administration.

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