

applicable constitutional standard for classifications regarding gender. In *United States v. Commonwealth of Virginia*,⁷⁵ the Court affirmed and applied its pre-existing standard for reviewing gender classifications—intermediate scrutiny—to hold that a state male-only military college violated the Equal Protection Clause.⁷⁶ Under intermediate scrutiny, a government's justification for gender-based classifications must be "exceedingly persuasive" and specifically, the government must show at least that the classification serves important governmental objectives and is substantially related to those objectives.

154. The record in this proceeding, including comments on the Market Entry Barriers Notice of Inquiry and the testimony at the Market Entry Barriers Forum, supplemented by the record in various other proceedings, strongly indicates that minorities and women have experienced tremendous obstacles in participating in the telecommunications industry. To satisfy our statutory obligations under both Section 257 and Section 309(j), we are commencing a comprehensive study to further examine the role of small businesses and businesses owned by minorities or women in the telecommunications industry and the impact of our policies on access to the industry for such businesses. In addition to furthering the requirements of Section 257, the study will assist us in fulfilling our Section 309(j) mandates and in determining whether there are constitutionally-sound bases for adopting licensing incentives for women or minorities.

155. As to Section 257, the study will provide data and information to help us identify and eliminate market entry barriers for small businesses in the telecommunications market as the statute requires. In addition, the study will assist the Commission in reporting to Congress on our implementation of Section 257, as the statute also requires.⁷⁷ As to Section 309(j), the study will be useful in comparing the effectiveness of auction and non-auction methodologies, and in assessing entry of new companies into the market, prompt delivery of service to rural areas, and

the participation and success of small businesses and businesses owned by minorities or women in the competitive bidding process, as well as reporting to Congress on the auction process as required.

156. The study will be conducted by an external contractor. It will focus on two types of communications services, the oldest and the newest—broadcast and wireless.⁷⁸ Specifically, the study will develop a profile of applicants and participants in broadcast licensing and the licensing of certain wireless services, both by auction and other previously used methods. It will analyze participation rates of small businesses, minority-owned businesses, women-owned businesses, and the difference between participants and potential participants. The study will identify and evaluate the effect of any market entry barriers and other impediments on participation and attainment of licenses, the impact of incumbency in the telecommunications industry, the effect of previous FCC licensing proceedings, the effect of the presence, absence and removal of race and gender-based provisions, and the effect of past employment or management experience in the communications industry on auction participation and success.

V. Conclusion

This Report, we believe, demonstrates our implementation of Section 257. As described above, the Commission has taken numerous steps to eliminate regulatory and other impediments to entry for small businesses in the telecommunications market and will continue to do so.

VI. Ordering Clauses

158. The motion of Blab Television to accept late-filed comments in this proceeding is *Granted*.

159. The motion of National Association of Black Owned Broadcasters to accept late-filed comments in this proceeding is *Granted*.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

[FR Doc. 97-16868 Filed 6-26-97; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 172

[Docket No. HM-224A]

RIN 2137-AD02

Hazardous Materials: Shipping Description and Packaging of Oxygen Generators; Delay of Effective Date, Technical Amendments and Corrections

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

ACTION: Final rule; delay of effective date, technical amendments and corrections.

SUMMARY: On June 5, 1997, RSPA published a final rule which amended the Hazardous Materials Regulations by adding a specific shipping description to the Hazardous Materials Table for chemical oxygen generators. In this revision to the final rule, RSPA is delaying the effective date of the final rule for one month, authorizing permissive compliance immediately, correcting the identification number for chemical oxygen generators and a typographic error in the Hazardous Materials Table entry for them, and revising Special provision 60 for clarity and to provide additional time to conform to additional approval procedures.

DATES: Effective dates: The effective date for the final rule published at 62 FR 30767 under Docket HM-224A on June 5, 1997, is delayed from July 7, 1997 to August 7, 1997. The amendments and corrections in this final rule are effective August 7, 1997.

Applicability: The provisions of § 172.101(l)(1)(ii), which otherwise would allow up to one year after a change in the Hazardous Materials Table to use up stocks of preprinted shipping papers and to ship packages that were marked prior to the change, do not apply to these amendments and corrections.

Permissive compliance date: Compliance with the requirements adopted in this final rule and in the final rule published at 62 FR 30767 is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, Office of Hazardous Materials Standards, 202-366-8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001.

⁷⁵ 116 S.Ct. 2264 (1996).

⁷⁶ *United States v. Virginia*, 116 S.Ct. 2264, 2274-2276 (citing *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 136-137 & n.6 (1994) and *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982)).

⁷⁷ 47 U.S.C. § 257(c). Section 257(c) requires the Commission to report to Congress every three years following completion of the proceeding on regulations that have been issued to eliminate barriers and any statutory barriers that the Commission recommends be eliminated.

⁷⁸ An analysis of broadcast licensing also will assist the Commission's analysis of auction participation. Many auction participants and investors are broadcast licensees. For example, the study will examine the impact of incumbency and the regulatory structure the FCC established for the licensing of broadcast spectrum on auction bidding.

SUPPLEMENTARY INFORMATION: A final rule was published in the **Federal Register** on June 5, 1997 (62 FR 30767) under Docket HM-224A. In the final rule, RSPA amended the Hazardous Materials Regulations (49 CFR parts 171-180; HMR) by adding a specific shipping description to the Hazardous Materials Table in § 172.101 for chemical oxygen generators and requiring approval of a chemical oxygen generator, including its packaging, when it is to be transported with its means of initiation attached. In this document, RSPA is making editorial and technical revisions which it believes necessary to correct or clarify the final rule and facilitate compliance with its provisions. The changes respond to telephone and written comments RSPA has received concerning the June 5, 1997 final rule.

Effective Date and Permissive Compliance Date

The effective date for compliance with the June 5, 1997 final rule is delayed from July 7, 1997 to August 7, 1997 and the amendments in this final rule also are made effective August 7, 1997. RSPA believes that this one month delay of the effective date is necessary to provide adequate time for shippers to identify and mark previously packaged chemical oxygen generators and to implement the marking requirement for current production.

RSPA is authorizing permissive compliance immediately and strongly encourages shippers of chemical oxygen generators to comply immediately with the new shipping description requirements. The Federal Aviation Administration has advised RSPA that lack of a shipping description in the HMR is contributing to confusion in the transportation of chemical oxygen generators and has resulted in their unauthorized transportation in certain instances.

Shipping Description

The identification number for oxygen generator, chemical, in the Hazardous Materials Table in § 172.101 was incorrectly identified in the final rule as "UN3353". Therefore, RSPA is correcting the identification number to read "UN3356" consistent with the United Nations Recommendations on the Transport of Dangerous Goods.

RSPA is removing the Packing Group I entry for "Oxygen generators, chemical". Although some of the oxidizing materials used in oxygen generators may be in Packing Group I, RSPA believes the Packing Group II designation adequately identifies the

level of risk posed by these devices and is desirable for consistency with provisions adopted for inclusion in the Technical Instructions for the Safe Transport of Dangerous Goods by Air of the International Civil Aviation Organization (ICAO Technical Instructions). In addition, the table entry under column 10A is corrected to read "D."

Special Provision 60

RSPA is providing for a delay, until October 1, 1997, in mandatory compliance with Special Provision 60 so that persons who offer generators (including company materials) may obtain any new or revised approvals needed to comply with the requirements of the special provision. RSPA is revising the special provision to clarify that a copy of an approval must be maintained at each facility where a chemical oxygen generator is packaged, rather than where it is "prepared for shipment". Also, RSPA is clarifying that the approval requirements apply to any chemical oxygen generator that is shipped with its means of initiation attached and that, if the means of initiation involve use of an explosive (e.g., a primer or an electric match), the approval procedures of § 173.56 must be followed.

Historically, all new explosives, including devices such as chemical oxygen generators which contain an explosive means of ignition (e.g., a primer or an electric match), must be examined by an agency designated by the Associate Administrator for Hazardous Materials Safety (Associate Administrator) and classed and approved by the Associate Administrator before being offered for transportation (see § 173.56). Otherwise the explosive device is a "Forbidden explosive" and may not be offered for transportation or transported, as specified in §§ 173.21 and 173.54. RSPA is aware that some of these past approvals for chemical oxygen generators may not have included a requirement for at least two positive means of preventing unintentional activation as required by the June 5, 1997 final rule, and that some older approvals which were issued by the Bureau of Explosives may not have approval numbers assigned to them. There also may be chemical oxygen generators which are initiated with other than an explosive means, and these generators would not have needed an approval prior to the June 5, 1997 final rule. For these reasons, RSPA believes a delay in the implementation date for the new approval procedures is warranted.

RSPA emphasizes that if the original approval for a chemical oxygen generator specifies a specific packaging configuration as a condition of the approval, any change in the packaging configuration requires a separate approval. RSPA expects strict conformance with the requirements stated above, but also recognizes the burden involved in a complete reexamination each time a generator containing an explosive substance is modified. Accordingly, in administering Special Provision 60, the Associate Administrator will not require a complete reexamination when a modification to an approved device or its packaging is unrelated to the risk being addressed by the regulation (e.g., a change in an oxygen outlet at the end opposite the initiating device).

The reader is referred to the preamble discussion in the June 5, 1997, final rule under Docket HM-224A addressing approval requirements, 62 FR 30768-69.

ICAO Technical Instructions

Recently, provisions for chemical oxygen generators were adopted for inclusion into the ICAO Technical Instructions. These provisions include: (1) adding a shipping description; (2) forbidding the transportation on passenger-carrying aircraft of chemical oxygen generators; (3) forbidding the transportation on any aircraft of chemical oxygen generators which have passed their expiration date or which have been used; and, (4) adding a packing instruction for chemical oxygen generators intended for transportation on cargo aircraft. The major provisions of the packing instruction are as follows:

Oxygen generator, chemical containing oxidizing substances must meet all the following conditions:

(a) The generator, without its packaging, must be capable of withstanding a 1.8m drop test on to a rigid, non-resilient, flat and horizontal surface, in the position most likely to cause damage, without loss of its contents and without actuation;

(b) When a generator is equipped with an actuating device, it must have at least two positive means of preventing unintentional actuation;

(c) The generator(s) must be transported in a package which will meet the following requirements when one generator in the package is actuated:

(1) Other generators in the package will not be actuated;

(2) Packaging material will not ignite; and

(3) The outside surface temperature of the completed package must not exceed 100 °C

(d) The generator(s) must be tightly packed in steel drums (1A2), aluminum drums (1B2), plywood drums 1(D), fibre drums (1G), plastic drums (1H2), steel jerricans (3A2), plastic jerricans (3H2), metal boxes (4A, 4B), wooden boxes (4C1, 4C2), plywood boxes (4D), reconstituted wood boxes (4F), fibreboard boxes (4G) or solid plastic boxes (4H2).

RSPA expects that this packing instruction will become effective in the ICAO Technical Instructions in the near future. RSPA anticipates that any approval it issues under new Special Provision 60 for a chemical oxygen generator intended for transportation aboard cargo aircraft will require the chemical oxygen generator to be packaged in accordance with the ICAO provisions.

List of Subjects in 49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing 49 CFR Part 172 is amended as follows:

PART 172—[AMENDED]

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Corrected]

2. In the § 172.101 Hazardous Materials Table, as amended at 62 FR 30771, for the entry "Oxygen generator, chemical", in columns (5) through (10B), the first entry PG I is removed, and, for the second entry PG II, the identification number "UN3353" in Column (4) is corrected to read "UN3356" and the number "(1)" in column (10A) is corrected to read "D".

3. In § 172.102(c)(1), Special Provision 60 is revised to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

* * * * *

60 After September 30, 1997, an oxygen generator, chemical, that is shipped with its means of initiation attached must incorporate at least two positive means of preventing unintentional actuation of the generator, and be classed and approved by the Associate Administrator for Hazardous Materials Safety. The procedures for approval of a chemical oxygen generator that contains an explosive means of initiation (e.g., a primer or electric match) are specified in § 173.56 of this subchapter. Each person who offers a chemical oxygen generator for transportation after September 30, 1997, shall: (1) ensure that it is offered in conformance with the

conditions of the approval; (2) maintain a copy of the approval at each facility where the chemical oxygen generator is packaged; and (3) mark the approval number on the outside of the package.

* * * * *

Issued in Washington, DC on June 23, 1997, under the authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 97-16778 Filed 6-26-97; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1152

[STB Ex Parte No. 537]

Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903

AGENCY: Surface Transportation Board; Transportation.

ACTION: Final rules; amendment.

SUMMARY: The ICC Termination Act of 1995 revised the law governing applications by rail carriers to abandon or discontinue service over lines of railroad and related offers of financial assistance that would continue rail service after approval of abandonment or discontinuance by the Surface Transportation Board (Board). Accordingly, by decision served December 24, 1996, the Board revised 49 CFR part 1152 to implement the changes and update the pertinent regulations, and to streamline the abandonment and discontinuance process consistent with the new law. The Board also made conforming changes to the environmental rules at part 1105. These new regulations, which were adopted following a notice and comment rulemaking proceeding, went into effect on January 23, 1997. The Board now makes some clarifying changes to the rules, makes delegations of authority that will permit agency employees to carry out certain responsibilities under these procedures, and corrects one typographical error.

EFFECTIVE DATE: These modifications and clarifying changes are effective July 27, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: The Board's decision adopting these modifications and clarifying changes is

available to all persons for a charge by phoning DC News & Data, Inc., at (202) 289-4357.

The Board certifies that these rules will not have a significant economic effect on a substantial number of small entities. The rules should result in streamlining, improving and updating the abandonment process while ensuring the opportunity for full public participation in our proceedings.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

Decided: June 18, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1152 of the Code of Federal Regulations is amended as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

1. The authority citation for part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; and 49 U.S.C. 701 note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, 10903-10905, and 11161.

§ 1152.24 [Amended]

2. Section 1152.24(e)(2), third sentence, is amended by adding the phrase ", through the Director of the Office of Proceedings," after the phrase "in the **Federal Register** by the Board".

3. Section 1152.25(d)(6)(i) is amended by adding the following two sentences to the beginning of the paragraph:

§ 1152.25 Participation in abandonment or discontinuance proceedings.

* * * * *

(d) * * *

(6) * * *

(i) Any oral hearing request is due 10 days after the filing of the application. The Board, through the Director of the Office of Proceedings, will issue a decision on any oral hearing request within 15 days after the filing of the application.* * *

* * * * *

4. Section 1152.26(b) is amended by adding the following two sentences to the end of the paragraph: