

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
 RAYMARINE)
)
 Request for Waiver of Section 80.225(a))

ORDER

Adopted: December 7, 2012

Released: December 10, 2012

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* This *Order* denies a request for a temporary waiver of Section 80.225(a) of the Commission’s Rules,¹ pursuant to which the manufacture, importation, sale or installation of non-portable marine digital selective calling (DSC) equipment that does not comply with the current International Telecommunication Union (ITU) standard for such equipment will be prohibited after January 1, 2013. Raymarine, a marine electronics manufacturer, seeks a waiver of the rule until July 1, 2013.² We conclude, for reasons set forth below, that Raymarine has failed to demonstrate adequate justification for a waiver.

2. *Background.* Section 80.225(a) formerly mandated that non-portable DSC equipment had to meet the requirements of ITU-R Recommendation M.493-11.³ In 2010, in connection with a general updating of the Part 80 rules, the Commission amended Section 80.225(a) by changing the referenced ITU standard from ITU-R Recommendation 493-11 to the superseding ITU-R Recommendation M.493-13, in keeping with its stated objective of “maintain[ing] consistency with international maritime standards to the extent consistent with the United States public interest.”⁴ The amended rule, by its terms, prohibits the manufacture, importation, sale or installation of non-portable DSC equipment that does not comply with ITU-R Recommendation M.493-13, beginning March 25, 2011.⁵

3. This rule amendment, which was adopted on June 7, 2010, was expected to take effect well before March 25, 2011, which would give manufacturers and retailers of DSC equipment sufficient time to come into compliance with the new standard. The Federal Register publication of the rule was unexpectedly delayed, however, until November 2, 2011, so the rule amendment did not take effect until

¹ 47 C.F.R. § 80.225(a).

² See Letter dated July 11, 2012, from Tom Surran, General Manager, Raymarine, to Ghassan Khalek, Mobility Division, Wireless Telecommunication Bureau (Request).

³ See 47 C.F.R. § 80.225(a) (2010).

⁴ See Amendment of Parts 13 and 80 of the Commission’s Rules Concerning Maritime Communications, *Fourth Report and Order and Second Memorandum Opinion and Order*, WT Docket No. 00-48, 25 FCC Rcd 7781, 7782 ¶ 1 (2010) (*Fourth Report and Order*) (internal quotation marks omitted). Section 80.225(a)(4) prohibits equipment that is not compliant with standards referenced in Section 80.225(a)(2). The updating was effectuated by amending Section 80.225(a)(2) to reference ITU Recommendation M.493-13 as the applicable standard for non-portable DSC equipment; there was no need to amend the cross-referencing Section 80.225(a)(4).

⁵ See 47 C.F.R. § 80.225(a)(4).

January 3, 2012.⁶ To relieve manufacturers, importers and vendors of non-portable DSC equipment from having to come into compliance with the new standard in just two months, the Wireless Telecommunications Bureau's Mobility Division (Division) granted a waiver, until January 1, 2013, to allow the continued manufacture, importation, marketing and installation of existing non-portable DSC devices that do not comply with the new standard, provided that the devices comply with ITU-R Recommendation M.493-11.⁷ The Division provided this temporary relief in order to "avoid problems of stranded inventory while not unduly delaying the transition to more advanced DSC equipment."⁸

4. Raymarine requests an extension of the temporary waiver. It states that its Ray240 radio cannot be made compliant with ITU-R Recommendation M.493-13, and it has decided to replace this unit in the marketplace.⁹ It states that it is attempting to introduce the new product before January 1, 2013, but the current forecasted introduction date is in the first quarter of 2013.¹⁰ Consequently, Raymarine requests a further waiver of Section 80.225(a) until July 1, 2013, to enable it "to honor customer commitments in the marine industry."¹¹ It asserts that grant of the waiver would "not undercut the underlying purposes of ensuring safe and reliable DSC calling and compatibility with the Rescue 21 System" and "would have no negative effect on public safety."¹²

5. *Discussion.* Section 1.925 of the Commission's Rules provides that we may grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (b) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹³ We conclude that Raymarine has met neither requirement.

6. The purpose of periodically revising the Part 80 rules to require compliance with the most recently adopted international equipment standards is to promote maritime safety by ensuring that mariners are using radios with up-to-date features, advanced functionality, and international interoperability.¹⁴ Raymarine has not explained why prohibiting the continued manufacture, importation, marketing and sale of devices that do not comply with ITU-R Recommendation M.493-13 would not undermine or frustrate the purpose of Section 80.225(a)(4), and has not demonstrated that granting it a further waiver of that prohibition would serve the public interest.

7. As noted, the purpose of the temporary waiver granted by the Division was to relieve manufacturers and vendors from the burden of stranded inventory that might attend what would have been a very rapid transition to a new equipment standard.¹⁵ The waiver was intended to permit them to continue to manufacture, import, sell and install existing devices already in production or in the distribution pipeline while they developed and distributed equipment that complies with the new standard.

⁶ See 76 Fed. Reg. 67604 (Nov. 2, 2011). The rule amendment was effective sixty days after publication in the Federal Register. See *Fourth Report and Order*, 25 FCC Rcd at 7795 ¶ 28.

⁷ See Wireless Telecommunications Bureau Clarifies and Temporarily Waives Requirements for Maritime Digital Selective Calling Equipment, *Public Notice*, 26 FCC Rcd 16782 (WTB MD 2011) (*Public Notice*).

⁸ *Id.* at 16783.

⁹ See Request at 2.

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² *Id.*

¹³ 47 C.F.R. § 1.925(b)(3); see also *WAIT Radio v FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹⁴ See *Fourth Report and Order*, 25 FCC Rcd at 7789 ¶ 15.

¹⁵ See *Public Notice*, 26 FCC Rcd at 16783.

Like other manufacturers, Raymarine has had notice since 2010, when the amendment to Section 80.225(a) was adopted, that the Commission would require compliance with ITU-R Recommendation M.493-13 sixty days after Federal Register publication of the amendment, and was then given the opportunity, by virtue of the Division's waiver, to continue to make and market non-compliant equipment for a year after that effective date. No party other than Raymarine has requested additional waiver relief. Consequently, we conclude that the Division's waiver provided an appropriate period for interested parties to cease manufacturing, importing, selling and installing non-portable DSC equipment that does not comply with ITU-R Recommendation M.493-13.

8. Raymarine has not explained why it cannot replace the Ray240 radio with a device that is compliant with ITU-R Recommendation M.493-13, or why Raymarine is unable to honor its customer commitments through devices that comply with the new standard. Nor has Raymarine attempted to explain why it would be uniquely burdened by the need to comply with amended Section 80.225(a) by January 1, 2013. Thus, Raymarine has failed to demonstrate that, in light of unique or unusual circumstances, application of the rule to it would be inequitable, unduly burdensome, or contrary to the public interest, or that it has no reasonable alternative.

9. *Conclusion.* Raymarine has failed to adequately explain why it needs a waiver of greater duration than the waiver of Section 80.225(a) already granted by the Division to provide relief to manufacturers and vendors of non-portable DSC equipment. Nor has it demonstrated that an additional waiver would serve the public interest, and not undermine or frustrate the purpose of Section 80.225(a)(4). We therefore deny the waiver request.

10. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the waiver request filed by Raymarine on July 11, 2012 IS DENIED.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
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Wireless Telecommunications Bureau