

FCC MAIL SECTION

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

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DISPATCHED BY

CI Docket No. 95-54

In the Matter of

Amendment of Part 80 of the
Commission's Rules Regarding
the Inspection of Great Lakes
Agreement Ships

NOTICE OF PROPOSED RULEMAKING

Adopted: April 24, 1995;

Released: May 16, 1995

Comment Date: July 18, 1995

Reply Comment Date: August 17, 1995

By the Commission:

I. INTRODUCTION

1. In this Notice of Proposed Rule Making (Notice), we propose to allow owners and operators of ships subject to the annual inspection requirements of the Agreement between the United States and Canada for the Promotion of Safety on the Great Lakes by Means of Radio (Great Lakes Agreement)¹ to have the inspection performed by a private sector classification society instead of by Commission staff.² The proposed changes would reduce economic burdens on the public and the Commission by allowing mariners to arrange for an inspection at their convenience. Because of our concern that maritime safety on the Great Lakes not be compromised by this action, we are also proposing a joint study to be conducted with the United States Coast Guard and the Canadian Coast Guard on the effect of this proposal. Further, we are requesting specific comment on whether we should permit other designated private sector entities or persons to perform such inspections.

¹ Agreement Between Canada and the United States for the Promotion of Safety on the Great Lakes by Means of Radio, T.I.A.S. 7837, amended T.I.A.S. 9352 (Great Lakes Agreement).

² Classification societies are organizations formed to, among other things, conduct ship inspections for compliance with international and domestic regulations. In the United States, the American Bureau of Shipping determines the maximum load that may be carried by U. S. vessels for compliance with load line certification. See 46 U.S.C. § 3316.

³ See Appendix C for relevant excerpts of the Great Lakes Agreement.

⁴ The Great Lakes Agreement differentiates between an inspection, which is conducted from time to time to ensure enforcement of the agreement, and a periodic survey, which must be conducted at least once every 13 months. The Commission only conducts the periodic survey (hereafter "annual inspection") on Great Lakes Agreement vessels once every 12 months and allows a one month extension of the certificate. For all practical pur-

II. BACKGROUND

2. The Great Lakes Agreement is intended to promote safety of life and property on the Great Lakes by means of radio.³ It dates back to 1952 and requires, among other things, that all vessels over 20 meters (65 feet), most towing vessels, and vessels carrying more than six passengers for hire be equipped with a marine VHF radiotelephone installation. The Great Lakes Agreement requires that these installations be inspected at least once each year.⁴ The Great Lakes Agreement requires that the inspections be carried out by officers of the Contracting Governments or by either persons nominated for that purpose or organizations recognized by the Contracting Government.⁵ In other words, the Great Lakes Agreement provides specific authority allowing the United States to entrust the annual inspection to either persons or organizations other than the Commission.⁶ Presently, however, the Commission's Rules do not permit a Great Lakes Agreement inspection to be conducted by anyone other than Commission staff.⁷

3. Additionally, the Great Lakes Agreement requires that these vessels be inspected while the vessel is in active service or within one month before the date the vessel is placed in service.⁸ Because almost all vessels on the Great Lakes must be taken out of service over the winter and operators do not wish to interrupt shipping schedules after the shipping season begins, there is a very busy period in the spring when these vessels are being put back in service.⁹

III. DISCUSSION

4. The Commission inspects approximately 490 vessels subject to the Great Lakes Agreement each year. Commission inspectors test the output power, frequency tolerance and availability of reserve power, and conduct an operational radio check of the radiotelephone installation during the inspection. Any failure of these critical items results in the vessel failing the annual inspection and not receiving a safety certificate until the failure is corrected. An integral part of the annual inspection is to examine the connecting transmission lines, electrical cabling and control circuitry that make up the entire radiotelephone installation to ensure that the individual components operate satisfactorily when connected together.

5. Although the inspections are relatively simple and generally take no more than an hour to complete, they are conducted to ensure that Great Lakes Agreement ships

poses, inspections and surveys are the same. See Article 11, Great Lakes Agreement and section 80.953 of the Commission's Rules, 47 C.F.R. § 80.953.

⁵ *Id.*

⁶ *Id.*

⁷ See Section 80.953 of the Commission's Rules, 47 C.F.R. § 80.953, which states in part, "Each U.S. flag vessel subject to the Great Lakes Agreement must have an inspection of the required radiotelephone installation not less than once every twelve months. ... A Great Lakes Radiotelephone Certificate will be issued to vessels in compliance. ..."

⁸ See Article XII of the Great Lakes Agreement.

⁹ The Commission's Saint Paul office reports that 73 per cent of the 490 inspections conducted annually are inspected in a four month period. See facsimile message from Albert S. Jarratt, Jr., Federal Communications Commission to George Dillon (February 23, 1995).

have a reliable means of distress communications in an emergency. We note, however, that improvements in the reliability of radiotelephone equipment and the industry practice of a preinspection examinations have resulted in an inspection failure rate for Great Lakes Agreement vessels of only one per cent.¹⁰

6. The majority of the inspections are done by five Commission offices: Buffalo, New York; Saint Paul, Minnesota; Chicago, Illinois; Detroit, Michigan; and Allegan, Michigan. In order to conserve resources, these offices have attempted to schedule Great Lakes Agreement inspections at specific dates and times. We are now faced with an even greater need to conserve resources and to provide more efficient and better service to our customers. We believe that one way to accomplish this is to permit owners and operators of Great Lake Agreement vessels to have their vessels inspected by the private sector, specifically a classification society, instead of by the Commission.¹¹

7. The International Maritime Organization (IMO) has adopted a resolution setting forth the minimum standards for nongovernment organizations that conduct inspections on behalf of an administration, *IMO Assembly Resolution A.739(18), Appendix 1, "Minimum Standards for Recognized Organizations Acting on Behalf of the Administration."* There are more than 40 Classification societies worldwide that inspect passenger and cargo vessels for compliance with the myriad of domestic and international regulations that vessels must comply with before leaving port. Additionally, 11 classification societies are members of the International Association of Classification Societies (IACS).¹² The IACS grants membership status to classification societies that meet the IACS's Quality System Certification Scheme. The use of classification societies to conduct inspections on behalf of an administration is widespread. The United States, for example, is statutorily required to use the American Bureau of Shipping, or a similar United States classification society, to class vessels owned by the Federal Government.¹³ Additionally, some of IACS' members operate in the United States.

8. We propose, therefore, to permit any United States ship subject to the Great Lakes Agreement to arrange for an inspection of the radiotelephone installation by a classification society that is a member of the IACS, such as the American Bureau of Shipping. We further propose that the classification society issue a radiotelephony certificate on behalf of the Commission to the ship upon successful completion of the inspection. Because the Commission is ultimately responsible for guaranteeing that an inspection meets the requirements of the Great Lakes Agreement inspection we request specific comment on the following questions related to this proposal.

i. Should the Commission permit such inspections by persons or organizations other than classification societies?

ii. Should the Commission require membership in the IACS as a minimum requirement?

iii. What, if any, oversight should the Commission exercise over inspections? For example, should we conduct:

- (1). Random inspections,
- (2). Follow-up inspections.

iv. Should we require that Great Lakes Agreement inspections be conducted by the private sector and not give owners or operators the option of requesting a Commission inspection?

v. What will the costs and benefits to the maritime industry be if the Commission requires that Great Lakes Agreement inspections be conducted only by the private sector?

vi. What will the cost and benefits to the maritime industry be if the Commission permits Great Lakes Agreement inspections to be conducted by the private sector as an alternative to a Commission inspection?

9. We are concerned that any change to existing ship inspection procedures not decrease safety. We propose, therefore to conduct a study prior to making a final determination in this matter in cooperation with the United States Coast Guard and the Canadian Coast Guard on the effect of using private sector inspectors to make Great Lakes Agreement inspections. We will use the results of that study and the comments we receive in this proceeding to determine any future action.

10. We believe in the principle that government should be responsive to user needs and began this proceeding to promote flexibility, remove unnecessary and inimical regulations and, most importantly, provide better service to the public. In a companion Notice of Inquiry, we are requesting comments on how inspections of large cargo vessels and small passenger vessels can be streamlined to better serve the public and to make government operations more efficient.¹⁴ We are proposing a significant change to the current rules and procedures regarding safety inspections and request comment on these proposals.

IV. CONCLUSION

11. For these reasons, we are proposing to amend the Rules to permit the use of classification societies to conduct inspections of radiotelephone installation of Great Lakes Agreement vessels on behalf of the Commission and to issue certificates to such vessels. Under our proposal ships would be inspected by a classification society, such as the American Bureau of Shipping, and the classification

¹⁰ The Chicago field office reports that in the past 5 years only 25 Great Lakes Agreement vessels have failed the annual inspection. E-mail dated February 17, 1995, from Williford Gray, Chicago field office.

¹¹ Generally, the Commission must conduct inspections of ship radio stations required by the Communications Act to carry radio equipment. See Sections 362 and 385 of the Communications Act, 47 U.S.C. §§ 360, 385.

¹² See Appendix D for a list.

¹³ Classing a vessel means, among other things, determining the maximum load that may be carried. The American Bureau of Shipping, or any other american classification society, is required by law to make such measurements on U. S. vessels. See 46 U.S.C. § 3316.

¹⁴ See Notice of Inquiry, CI Docket No. _____, FCC Rcd _____.

society would issue the certificate. We are also proposing to increase the annual inspection interval to 13 months to conform our Rules to the Great Lakes Agreement.

V. PROCEDURAL MATTERS

INITIAL REGULATORY FLEXIBILITY ANALYSIS

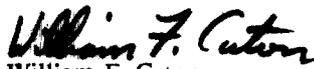
12. An Initial Regulatory Flexibility Analysis is contained in Appendix A to this Notice.

13. Accordingly, we adopt this Notice under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r). Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested persons may file comments on or before **July 18, 1995** and may file reply comments on or before **August 17, 1995**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you should file an original and nine copies. You should send your comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

14. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.206(a).

15. For further information, contact George R. Dillon, Compliance and Information Bureau, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554; telephone 202-418-1100.

FEDERAL COMMUNICATIONS COMMISSION



William F. Caton
Acting Secretary

Attachments

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals contained in this Notice. We request written public comment on the IRFA, which follows. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in paragraph 13, *supra*. The Secretary shall send a copy of this Notice, including the

IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601-612 (1981).

A. Reason for Action

2. The Commission proposes to permit ships subject to the Great Lakes Agreement to have the annual inspection conducted by a classification society.

B. Objectives

3. We seek to promote efficiency in the Commission's service to the public and to encourage the use of private sector organizations to take over government operations wherever possible.

C. Legal Basis

4. The proposed action is authorized under Sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. §§ 154(i) and 303(r), and the Great Lakes Agreement, Article XII.

D. Reporting, Recordkeeping and Other Compliance Requirements

5. Our proposed amendment to 47 C.F.R. § 80.953 would permit owners and operators of vessels subject to the Great Lakes Agreement to use a classification society to meet a current annual inspection requirement.

E. Federal Rules Which Overlap, Duplicate or Conflict with These Rules

6. None.

F. Description, Potential Impact, and Small Entities Involved

7. Use of private sector classification societies to inspect Great Lakes Agreement vessels would allow better service to the owners and operators of such vessels, many of which are small businesses, and more efficient use of scarce government resources. It would additionally encourage the creation of jobs to inspect approximately 490 vessels each year.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

8. None.

APPENDIX B

PROPOSED RULES

Chapter I of Title 47 of the Code of Federal Regulations, Parts 0 and 80 are proposed to be amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.311 is amended by revising paragraph (f) to read as follows:

COMPLIANCE AND INFORMATION BUREAU

§ 0.311 Authority delegated.

(f) The Chief of the Compliance and Information Bureau is authorized to rely on reports, documents and certificates issued by the American Bureau of Shipping or any other classification society that is a member of the International Association of Classification Societies to conduct radio inspections of vessels and to issue certificates in accordance with Regulations 11, 12 and 13 of the Great Lakes Agreement. The Chief, Compliance and Information Bureau is further authorized to delegate this authority.

Part 80 - Stations in the Maritime Services

3. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. Section 80.5 is amended by adding in alphabetical order the following definitions:

§ 80.5 Definitions.

Classification society. A non-profit organization formed to conduct vessel inspections that is affiliated or associated with a particular administration.

*** *International Association of Classification Societies (IACS).* An association representing classification societies.

5. Section 80.59 is amended by revising the section heading, paragraphs (a) and (a)(1), removing paragraph (a)(2), redesignating paragraph (b) as (a)(2), and adding a new paragraph (b) to read as follows:

§ 80.59 Compulsory ship inspections.

(a) *Application for inspection and certification by the FCC.* An application for inspection and certification, and documentation that the appropriate inspection fees have been paid, must be submitted to the FCC field office serving the port where the ship is to be inspected at least three days before the proposed inspection date.

(1) FCC Form 801 must be used to apply for a ship radio inspection on board ships subject to Part II or Part III of Title III of the Communications Act or the Safety Convention. Applications for Great Lakes Agreement inspections must state the reason why a classification society could not inspect the vessel.

(b) *Application for inspection and certification by a classification society.* An inspection of a ship radio station and certification of a ship subject to the Great Lakes Agreement may be made by a classification society that is a member of the IACS or by the FCC.

6. Section 80.953 amended by redesignating the text as paragraph (a), revising its first sentence and removing its second sentence and adding a new paragraph (b) to read as follows:

§ 80.953 Inspection and certification.

(a) Each U. S. flag vessel subject to the Great Lakes Agreement must have an inspection of the required radiotelephone installation at least once every 13 months.

(b) This inspection may be conducted by the FCC or by a classification society that is a member of the International Association of Classification Societies (IACS). A certificate issued by a classification society has the same standing as one issued by the FCC.

APPENDIX C

GREAT LAKES AGREEMENT EXCERPTS

The treaty is titled:
TELECOMMUNICATIONS
 Promotion of Safety on the Great Lakes by Means of Radio
 Agreement Between the UNITED STATES OF AMERICA and CANADA
 Specifically, ARTICLE XII reads:

Annual Inspections and Surveys

1. So far as concerns the enforcement of this Agreement, the radiotelephone stations of all vessels subject to the provisions of this Agreement and the Technical Regulations shall be subject to inspection from time to time. In addition, vessels subject to provisions of this Agreement and to the Technical Regulations of the two countries concerned shall be subject to a periodic survey of the radiotelephone station not less than once every thirteen months. This survey shall be made while the vessel is in active service or within not more than one month before the date on which it is placed in such service.

2. The inspection and survey of radiotelephone stations shall be carried out by the officers of the Contracting Governments for their respective vessels. With respect to any vessel which belongs to any other country, such inspection shall be carried out by officers of the Contracting Governments within whose jurisdiction such vessel first enters, and thereafter by the Contracting Government having jurisdiction as determined by the location of the vessel at least at once each thirteen months or at the time of any inspection deemed necessary by such Government.

3. Each Contracting Government may entrust the inspection and surveys of the radiotelephone stations either to surveyors nominated for this purpose or to organizations

recognized by it. In every case the Contracting Government concerned fully guarantees the completeness and efficiency of the inspection and survey.

APPENDIX D

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