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Before the
Federal Communications Commission
Washington, D.C. 20554DISPATCHED BY
MM Docket No. 93-133

In the Matter of

Amendment of Part 80 of the Commission's
Rules Concerning the General Exemption
for Large Oceangoing Cargo Vessels and
Small Passenger Vessels

REPORT AND ORDER

Adopted: October 27, 1995; Released: November 8, 1995

By the Commission:

I. INTRODUCTION

1. On May 12, 1993, the Commission released a *Notice of Proposed Rule Making (Notice)*,¹ which sought to revise and update the requirements of two of the general exemptions from the radiotelegraph equipment requirements of the Communications Act of 1934, as amended (Communications Act) described in Part 80 of the Commission's Rules, 47 C.F.R. Part 80, for large oceangoing cargo vessels and small passenger vessels.² This *Report and Order (Order)* adopts rules substantially as proposed in the *Notice* and implements specific rule changes requested by commenters in this proceeding.

II. BACKGROUND

2. The Communications Act specifies that all passenger vessels and large oceangoing cargo vessels must carry a radiotelegraph installation.³ This requirement was introduced over fifty years ago in order to facilitate distress communications, via international Morse code symbols, between vessels at sea. Section 352(b) of the Communications Act, 47 U.S.C. § 352(b), however, provides the Commission with the authority to exempt a ship or class of ships from the requirement to carry a radiotelegraph installation un-

der certain conditions.⁴ Initially, the Commission implemented this authority by granting individual exemptions to vessels on a case-by-case basis. Then, in order to reduce the regulatory burden of granting numerous individual exemptions, the Commission elected to provide general exemptions for certain large cargo vessels and small passenger vessels.⁵

III. DISCUSSION

A. General Exemption for Large Cargo Vessels

3. In the *Notice*, we proposed to broaden the applicability of the general exemption for cargo ships by allowing voyages through the Panama Canal Zone, voyages to Alaska, voyages to Puerto Rico, as well as the existing exemption for voyages along the coast of the 48 contiguous states, not more than 150 nautical miles from the nearest land.⁶ In addition to the modern radio communications equipment already required under the current general exemption, we proposed to add a Category 1, 406 MHz emergency position indicating radio beacon (EPIRB) to the terms of the general exemption. Finally, we proposed several editorial changes in order to clarify and simplify this exemption.

4. Comments regarding the general exemption for large cargo vessels are sharply divided. Several commenters supporting the shipping, fishing, and tourism industries support our proposal, noting that the proposed rules will reduce regulatory and economic burdens while promoting the use of state-of-the-art radio communications equipment.⁷ The American Radio Association (ARA), a labor union for ship radiotelegraph officers, and several environmental groups, however, object to our proposal.⁸ The opposing comments generally fall into three categories as follows: (1) granting a general exemption would decrease safety of ships at sea; (2) the Commission will be unable to enforce the terms of the proposed exemption; and, (3) the Commission does not have authority under the International Convention for the Safety of Life at Sea (Safety Convention) to grant a general exemption to ships navigating in international waters. The first two arguments were addressed by the Commission in previous proceedings where we concluded that the Commission has means to enforce the terms of such an exemption and that exemptions similar to those proposed in the *Notice* would not have an adverse impact on maritime safety.⁹

5. *Safety at Sea*. ARA contends that the special skills of radiotelegraph officers dedicated to the operation, maintenance and repair of the radio equipment are needed to

¹ See *Notice*, PR Docket No. 93-133, 8 FCC Rcd 3158.

² This proceeding is limited to the following two classes of vessels: cargo vessels of 1,600 gross tons and over (cargo vessels) and passenger vessels of less than 100 gross tons (small passenger vessels). See 47 U.S.C. §§ 351-364.

³ Section 351 of the Communications Act, 47 U.S.C. 351, requires all passenger vessels that carry more than 12 passengers and cargo ships over 1600 gross tons to carry a manual Morse code radiotelegraph installation. Passenger vessels are required to carry two radio officers and cargo ships are required to carry at least one radio officer to operate the radiotelegraph equipment.

⁴ See 47 U.S.C. §§ 352(b)(1)-(3).

⁵ See 47 C.F.R. §§ 80.836 and 80.933.

⁶ See *Notice* at ¶¶ 4-6. Currently, the general exemption for

large cargo vessels only applies to ships operating in waters along the 48 contiguous states.

⁷ Supporting comments filed by the American Institute of Merchant Shipping (AIMS), Del Mar Electronics (Del Mar), the Kelly Fleet (Kelly), and Tropicomm Associates (Tropicomm).

⁸ Opposing comments filed by ARA, the Center for Marine Conservation (CMC), Clean Ocean Action (COA), Mr. Charles E. Nehrer, the Society for Animal Protective Legislation (SAPL), and the Wilderness Society.

⁹ See *Requests of 22 large oceangoing cargo ships for exemption from radiotelegraph requirements*, 3 FCC Rcd. 4127 (1988), *aff'd*, 4 FCC Rcd. 1521 (1989) (*Ship Exemptions I*) and *Requests of 25 large oceangoing cargo ships for exemption from radiotelegraph requirements*, 5 FCC Rcd. 594 (1990) (*Ship Exemptions II*).

ensure safety at sea.¹⁰ Additionally, several environmental groups support ARA's opinion, claiming that radio officers are invaluable in emergency situations, often averting environmental disasters.¹¹ The American Institute of Merchant Shipping (AIMS) points out, however, that half of the world's shipping fleet sails without licensed radio officers. Further, AIMS asserts that the equipment required under the terms of the general exemption is reliable, time-tested, has multiple alerting methods, and provides a greater level of safety than radiotelegraph equipment.¹²

6. Like the current general exemption, the proposed rules would require ships to have the capability to operate and maintain all the systems used for safety and distress and to carry a licensed operator holding at least a general radiotelephone operator permit.¹³ Such operators have passed examinations that test their basic knowledge of marine radio operating procedures, microelectronics, and equipment maintenance. Further, we note that the same systems used for safety and distress communications are used for ship business communications generally, so compliance with this requirement is in the ship operator's self interest. Therefore, we reaffirm our previous decision that a licensed general radiotelephone operator is capable of adequately operating and maintaining ship radio communications equipment during voyages permitted under the general exemption.¹⁴

7. *Enforcing the general exemption.* Several commenters question whether the Commission has the ability to enforce the 150 mile limitation.¹⁵ AIMS, however, notes that severe penalties for violations are sufficient to ensure compliance.¹⁶ Further, AIMS points out that the Commission's rules require the ship's crew to keep an accurate log of each voyage. According to AIMS, three crew members, including the ship's master, would have to conspire in order to falsify log entries.¹⁷ We agree with AIMS. Large cargo ships must have an annual inspection by the Commission, and generally make calls at United States ports, at which time a routine inspection of the ship's log would reveal any nonconforming voyages. Further, as a practical matter, the ship owner's potential liability where the ship is not properly certificated would so greatly outweigh the cost of hiring a radio officer that it would be unlikely that the ship's captain would undertake a voyage outside the 150 nautical mile limit without a radio officer. Therefore, we reaffirm our previous finding that the Commission has the ability to enforce the proposed 150 nautical mile limitation.¹⁸

8. *Safety convention authority.* The ARA and Mr. Charles Nehrer, a former radio officer, both assert that the Commission cannot grant a general exemption to cargo ships which pass through the Panama Canal Zone. These commenters note that, according to the Safety Convention, such vessels are considered to be on international voyages.¹⁹ Specifically, the commenters point out that the Commission cannot exempt classes of ships from the Safety Convention, but instead, must consider such exemptions on a case-by-case basis. AIMS states that, while vessels traveling through the Panama Canal usually make port at either end of the Panama Canal Zone, the cargo and crew do not clear customs in Panama, and therefore the voyages are domestic.²⁰

9. We agree that the Safety Convention does not permit a general exemption from radio requirements for vessels navigating on international voyages.²¹ The Safety Convention defines an international voyage as sailing between a United States port and a foreign port. According to AIMS, vessels transiting the Panama Canal must make port for administrative purposes, and, therefore, according to the Safety Convention, make an international voyage. Further, cargo vessels routinely load and unload oil at either end of the Trans-Panama pipeline without dropping anchor in a Panamanian port. Nevertheless, these vessels operate between a United States port and Panama, and, thus, undertake international voyages. Therefore, because of the limitations on our authority under the Safety Convention, we will not expand the general exemption to include voyages to the Trans-Panama pipeline or through the Panama Canal Zone. Large cargo vessels navigating these routes must either be equipped with a radiotelegraph installation or seek an individual exemption from the Commission.²²

10. The commenters do not specifically oppose the proposed exemption for voyages to Alaska and United States possessions in the Caribbean. Although certain routes may take vessels near Canada or foreign possessions in the Caribbean, voyages between the West Coast and Alaska and between the East or Gulf Coasts and United States possessions in the Caribbean are clearly not international voyages subject to the Safety Convention, so long as the ships do not make port in a foreign state. Therefore, because the Safety Convention does not apply to United States vessels on domestic voyages, we find that the Commission has authority to extend the general exemption for cargo ships to include voyages to Alaska and United States possessions in the Caribbean.

¹⁰ See ARA comments at 10-13, and ARA reply comments at 3-5.

¹¹ See CMC reply comments at 1, SAPL reply comments at 1-2, and Wilderness Society reply comments at 2.

¹² See AIMS reply comments at iii.

¹³ See 47 C.F.R. § 80.836(c)(10) and *Notice* at Appendix B. In order to obtain a general radiotelephone operator permit, an individual must demonstrate knowledge of the Commission's maritime rules and radio electronics. See 47 C.F.R. § 13.201.

¹⁴ The Commission made a similar determination in *Ship Exemptions II*.

¹⁵ See ARA comments at 6, COA reply comments at 1, SAPL reply comments at 1, and Wilderness Society reply comments at 1.

¹⁶ Violations of the Communications Act can result in license revocation, fines, and/or imprisonment. See 47 U.S.C. §§ 312, 501, and 503.

¹⁷ See AIMS reply comments at ii-iii.

¹⁸ The Commission made the same determination in *Ship Exemptions I*.

¹⁹ See ARA comments at 3 and Nehrer comments at 1. For the purposes of the Safety Convention, ships which travel to foreign ports are considered to be on international voyages.

²⁰ Vessels carrying oil to and from the Trans-Panama pipeline usually drop anchor at Puerto Armuelles or Chiriqui Grande, Panama. Likewise, vessels transiting the pipeline often drop anchor at ports within the Panama Canal Zone, such as Balboa and Cristobol.

²¹ See Safety Convention Reg. IV/3, T.I.A.S. 9700 (1974).

²² We emphasize that this decision is not related to and does not supersede any determination made by the United States Department of Commerce regarding voyages to Panama or the Panama Canal Zone. Rather, this is an interpretation of the Safety Convention as it applies to the large cargo ships in question and is not intended to alter the commercial status of the cargo or crew on such vessels.

11. *Global Maritime Distress and Safety System.* In the *Notice*, we additionally proposed to extend the general exemption for large cargo ships to include vessels equipped with Global Maritime Distress and Safety Systems (GMDSS). In lieu of a radiotelegraph installation, GMDSS vessels carry short range VHF transmitters, long range medium frequency/high frequency (MF/HF) transmitters, satellite communications equipment, and emergency alerting devices. Further, as of February 1, 1999, all cargo vessels over 300 gross tons will be required to carry a GMDSS installation.²³ ARA claims that GMDSS equipped vessels should be limited to case-by-case exemptions, based on individual routes. Specifically, ARA argues that integral parts of the GMDSS, including digital selective calling (DSC) and satellite communications through INMARSAT, are not yet fully operational and that GMDSS ships will be unable to communicate with non-GMDSS ships prior to the full implementation of the GMDSS in 1999.²⁴

12. Based on the comments supporting our proposal, we will include GMDSS equipped vessels under the general exemption. As AIMSpoint out, a radiotelegraph station does not provide an advantage over the GMDSS because the Coast Guard no longer monitors 500 kHz (international telegraphy distress frequency). And, as a practical matter, GMDSS equipped vessels will carry non-DSC VHF radio installations in order to communicate with coast stations during the transition period. Regarding long range communications compatibility, vessels operating under the current general exemption utilize both satellite and HF communications, as recommended by the International Chamber of Shipping. Further, both radiotelegraph and GMDSS equipped ships are capable of transmitting and receiving on 2,182 kHz, and thus may continue to use this radio link throughout the full implementation of the GMDSS in 1999. In addition to the compatible short range and long range radio installations, GMDSS equipped vessels carry a Category 1, 406 MHz EPIRB which not only provides automatic satellite distress alerts, but advises authorities of the vessel's position, thus providing a greater level of safety at sea than telegraphy installations. Therefore, because the current GMDSS provides an equivalent, if not increased level of safety for ships at sea, GMDSS equipped vessels will be eligible to operate under the general exemption.

13. Although not specifically addressed in the *Notice*, vessels which operate under the terms of the general exemption must also comply with the GMDSS implementation dates set forth in 47 C.F.R. § 80.1065. In order to clarify these requirements, the final rules will require cargo ships operating under the general exemption to carry a Category 1, 406 MHz EPIRB, a NAVTEX receiver,²⁵ three

two-way VHF radiotelephone apparatus, and two radar transponders. This action does not impose new requirements on vessels currently operating under the general exemption; instead, this serves to clarify the implementation schedule for the GMDSS.

14. *Equipment.* In addition to comments supporting the Commission's proposal, Del Mar Electronics (Del Mar) suggests eliminating the requirement to provide emergency power for the 2,182 kHz watch receiver because ships that lose main power are unlikely to provide assistance to other ships in distress. Additionally, Del Mar asks the Commission to allow vessels to fulfill the satellite communications requirement by carrying either an INMARSAT A terminal or both an INMARSAT C and an INMARSAT M terminal.²⁶ Further, because the Coast Guard no longer monitors 500 kHz, Del Mar requests the Commission remove the requirement to carry a 500 kHz autoalarm receiver.²⁷ ARA objects to each of these three changes. First, ARA claims that the 2182 kHz watch receiver may serve as a back-up for the main MF receiver. Second, ARA argues that the INMARSAT C and M terminals, used together, cannot provide real-time satellite telex messaging and may delay rescue operations. Third, ARA notes that, even though the Coast Guard does not stand watch on 500 kHz, the autoalarm receiver should be required until the GMDSS is fully implemented in 1999.²⁸

15. First, regarding the 2,182 kHz watch receiver, we agree that ships that lose main power are generally in a distress situation and are unlikely to provide assistance to other vessels. Further, in emergency situations, such exempted vessels will most likely be standing close watch on 2,182 kHz and would not need to be alerted automatically. Therefore, we will eliminate the emergency power requirement for the 2,182 kHz watch receiver. Second, under both the current and proposed rules, cargo ships are required to carry a satellite earth station capable of transmitting and receiving both voice and telex.²⁹ There is no requirement to provide real-time voice or telex satellite communications. Therefore, in order to clarify this requirement, the final rules will specify that the vessel must be capable of transmitting and receiving voice and telex, via satellite, using GMDSS approved equipment. This requirement may be fulfilled using multiple satellite terminals, at the option of the ship operator. Third, we agree with ARA that the 500 kHz autoalarm is necessary until 1999 in order to accommodate vessels which rely on ship-to-ship radiotelegraph distress alerting, rather than the ship-to-shore methods of the GMDSS. Therefore, we will continue to require cargo vessels operating under the terms of the general exemption to carry a 500 kHz autoalarm.

²³ See 47 C.F.R. §§ 80.1065-1135. During the period between February 1, 1992, and February 1, 1999, large cargo vessels may equip with a GMDSS installation. The Communications Act, however, still requires these vessels to carry a radiotelegraph installation. See 47 U.S.C. § 351.

²⁴ ARA notes that the Coast Guard has indicated that full implementation of DSC will not occur until 1997 or 1998. Additionally, ARA claims that allowing ships to operate under different safety systems will heighten the potential for a lapse in distress communications. See ARA comments at 13-14. ARA also quotes the International Chamber of Shipping as advising, "... shipowners to retain high frequency radio equipment... rather than depend solely on satellite communications." See ARA reply comments at 6.

²⁵ NAVTEX is a single frequency international broadcast service for the promulgation of maritime safety information including meteorological forecasts, warnings, and other urgent safety information. A dedicated NAVTEX receiver monitors 518 kHz and prints the maritime safety information.

²⁶ An INMARSAT A terminal provides real-time voice and telex communications via the INMARSAT satellite system. An INMARSAT C terminal provides store-and-forward telex communications and an INMARSAT M terminal provides store-and-forward voice communications.

²⁷ See Del Mar comments at 1-2.

²⁸ See ARA reply comments at 8-10.

²⁹ See 47 C.F.R. § 80.836(c)(2) and *Notice* at Appendix B.

16. In summary, we are promulgating the general exemption for large cargo vessels, substantially as proposed in the *Notice*, by expanding the permitted routes to include voyages to Alaska and United States possessions in the Caribbean. In light of the comments received, however, we will continue to consider voyages to the Trans-Panama pipeline and through the Panama Canal Zone on a case-by-case basis. Further, we are eliminating the requirement to provide reserve power to the 2,182 kHz watch receiver and clarifying the satellite communications requirement.

B. General Exemption for Small Passenger Vessels

17. In the *Notice*, we proposed to expand the general exemption for small passenger ships to include short international voyages along the coast of Baja, California; Mexico; the Pacific Northwest; and the Caribbean Sea, so long as the vessels carry a VHF radio installation, a Category 1, 406 MHz EPIRB, remain within radio range of a VHF Coast Guard or public coast station, and navigate not more than 20 nautical miles from the nearest land or, alternatively, not more than 200 nautical miles between two consecutive ports. Further, we proposed several editorial changes to this general exemption in the interest of greater clarity and simplicity.³⁰

18. Although not specifically addressed in the *Notice*, small passenger vessels which operate under the terms of the general exemption must also comply with the GMDSS implementation dates set forth in 47 C.F.R. § 80.1065. In order to clarify these requirements, small passenger vessels currently operating under the general exemption are required to carry a Category 1, 406 MHz EPIRB, a NAVTEX receiver, three two-way VHF radiotelephone apparatus, and two radar transponders. We are not imposing new requirements on vessels currently operating under the general exemption; instead, this serves to clarify the implementation schedule for the GMDSS.

19. The Kelly Fleet (Kelly) and Tropicomm Associates (Tropicomm) strongly support our proposal, noting that recent improvements in communications technology and safety equipment have rendered some of the current requirements unnecessary.³¹ Additionally, both commenters urge the Commission to make minor changes to the proposed rules. Kelly asks that the general exemption include voyages between Florida and the Bahamas, not more than 50 nautical miles from land, and among the Bahamian Islands, while equipped with VHF and MF radio installations.³² Tropicomm requests that small passenger vessels which navigate less than three nautical miles from land not be required to carry a Category 1, 406 MHz EPIRB and NAVTEX receiver.³³

20. We agree with Kelly's suggestion. The Commission normally grants requests for specific exemptions for ships navigating between Florida and the Bahamas, carrying both VHF and MF radio installations and ships navigating

among the Bahamian Islands, operating in accordance with the proposed rules. Such short international voyages involve virtually identical routes and conditions as those normally authorized by specific exemptions and the Commission's Rules and do not present safety concerns greater than the domestic voyages already authorized by the Commission's Rules.³⁴

21. Additionally, we agree with Tropicomm's suggestion. Ferries and vessels on day trips that navigate less than three nautical miles from land make port daily, maintain contact with shore stations, and are not as likely to be affected by swiftly approaching inclement weather. Because the voyages in question are close to and make frequent visits to ports where accurate weather information is readily available we assume the NAVTEX receiver is unnecessary. Also, because the voyages in question are most likely of short duration between ports, the approximate position of the vessel is well known by those on land, making the Category 1, 406 MHz EPIRB and the two-way VHF radiotelephone apparatus unnecessary. Further, because the vessels do not navigate in shipping lanes or near large cargo vessels equipped with 9 GHz band radar, the radar transponders are an unnecessary requirement. Therefore, we agree that it is unnecessary to require these vessels to carry a Category 1, 406 MHz EPIRB, NAVTEX receiver, and the other emergency equipment required under the GMDSS implementation schedule. For the reasons stated above, we intend to include these changes in our final rules.

22. According to the terms of the Safety Convention, however, we may not provide a blanket exemption for these vessels.³⁵ Instead, the Safety Convention permits each Administration to designate alternative equipment to be carried, in lieu of the equipment required by the Safety Convention, in cases where the Administration is satisfied that the alternative equipment is at least as effective at providing distress and safety communications as that required by the Safety Convention.³⁶ This type of provision is referred to as an "equivalent."

23. It is clear to us that passenger vessels navigating on the short international voyages described above equipped with a VHF radio installation and, when navigating more than three nautical miles from nearest land, additionally equipped with a Category 1, 406 MHz EPIRB, NAVTEX receiver, radar transponders, and three two-way VHF radiotelephone apparatus, have safety communications at least as effective as if they carried the Safety Convention mandated equipment. Additionally, these voyages do not present a greater safety concern than those already authorized under the current general exemption. Further, by eliminating unnecessary regulatory burdens, this action may stimulate growth of the small businesses that operate

³⁰ See *Notice* at ¶¶ 7-9. Currently, this general exemption only applies to ships navigating in waters contiguous to the Hawaiian Islands, the US Virgin Islands, and from Southern California to the Mexican border, including certain islands off the California coast.

³¹ See Kelly Fleet (Kelly) comments at 1 and Tropicomm Associates (Tropicomm) reply comments at 1.

³² See Kelly comments at 1.

³³ See Tropicomm comments at 1-2.

³⁴ 47 C.F.R. § 80.836(a) exempts small passenger vessels on

domestic voyages from the radiotelegraph requirements of the Communications Act, so long as they comply with, among other things, 47 C.F.R. § 80.905(a). According to this section, vessels navigating within 20 nautical miles of land must carry a VHF radio installation. Further, vessels navigating between 20 and 100 nautical miles from land must additionally carry a MF radio installation. Hence, voyages from Florida to the Bahamas would be permitted under this section if they were domestic.

³⁵ See Safety Convention, Reg. IV-5(a), T.I.A.S. 9700 (1974).

³⁶ See *Id.* at Reg I-5(a), T.I.A.S. 9700 (1974).

these vessels.³⁷ Therefore, because this action will eliminate unnecessary burdens placed on the public and government, while providing for the safety of these vessels, it is in the public interest to allow small passenger vessels operating on the short international voyages described above to carry radiotelephone equipment as an equivalent to the radiotelegraph equipment currently mandated by the Safety Convention.³⁸

24. In summary, we will promulgate a general exemption for small passenger vessels substantially as proposed in the *Notice*. We intend, however, to amend our proposal to include short international voyages to the Bahamas. Further, we will not require small passenger vessels that navigate less than three nautical miles from land to equip in accordance with the GMDSS implementation dates set forth in 47 C.F.R. § 80.1065(b).

IV. CONCLUSION

25. By this action, we amend the Commission's Rules to broaden, update and clarify general exemptions from the radiotelegraph equipment requirements of the Communications Act for large cargo vessels and from the radiotelegraph and radio communication requirements of the Communications Act and Safety Convention, respectively, for small passenger vessels. By updating the general exemptions, the final rules will eliminate unnecessary regulatory burdens on several sectors of the marine community while promoting the carriage of state-of-the-art, redundant communication systems which may improve safety at sea.

V. PROCEDURAL MATTERS

26. *Regulatory Flexibility Analysis.* The analysis pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. Section 608, is contained in Appendix B.

27. *Ordering Clauses.* Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 4(i), 303(r), 352(b)(2) and (3) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), 352(b)(2) and (3), Part 80 of the Commission's Rules, 47 C.F.R. Part 80 IS AMENDED as set forth below.

28. IT IS FURTHER ORDERED that this Report and Order will be effective thirty days after publication in the Federal Register.

29. IT IS FURTHER ORDERED that a copy of this Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

30. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

³⁷ Currently, small passenger vessels on short international voyages must either bear the costs associated with a radiotelegraph installation or regularly apply for waivers of the Commission's Rules. Almost all of the small businesses in question opt for the waiver process which places unnecessary administrative and economic burdens on both the licensee and the Commission.

³⁸ When operating within radio range of a VHF coast station,

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
William F. Caton
Acting Secretary

Attachments

APPENDIX A: FINAL RULES

Title 47 of the Code of Federal Regulations, Part 80, is amended as follows:

Part 80 - Stations in the maritime services

1. The authority citation in Part 80 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1968, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. In Section 80.836, the section heading is revised and paragraphs (a) and (c) are revised to read as follows:

§ 80.836 General exemptions.

(a) General small passenger vessel exemptions, applicable to certain U.S. passenger vessels of less than 100 gross tons, are contained in Subpart S of this Part.

* * *

(c) Prior to February 1, 1999, cargo ships of 1600 gross tons and upward are exempt from the radiotelegraph requirements of Part II of Title II of the Communications Act, if the following criteria, (1), (2) and either (3) or (4) are met:

(1) The ship operates on domestic voyages only. For purposes of this paragraph, the term domestic voyages includes ports in Alaska, U.S. possessions in the Caribbean, and along the coasts of the 48 contiguous states, so long as the vessel does not make port at a foreign destination;

(2) The routes of the voyage are never more than 150 nautical miles from the nearest land; and,

(3) The ship complies fully with the requirements for the Global Maritime Distress & Safety System (GMDSS) contained in Subpart W of this Part; or,

(4) The ship complies fully with all of the following conditions. The ship must:

vessels equipped with a VHF radio installation and Category 1, 406 MHz EPIRB have distress alerting capabilities which are at least as effective as those of radiotelegraph equipped ships. Therefore, the Commission will notify the International Maritime Organization of the particulars of this equivalent, as required by the Safety Convention. See Safety Convention, Reg. I-5(b), T.I.A.S. 9700 (1974).

(i) Be equipped with a satellite ship earth station providing both voice and telex, which has been type accepted for GMDSS use;

(ii) Be equipped with a VHF and MF radiotelephone installation which complies fully with Subpart R of this part and has the additional capability of operating on the HF frequencies listed in Section 80.369(b) for distress and safety communications (this capability may be added to the MF radiotelephone installation);

(iii) Be equipped with a narrow-band direct-printing radiotelegraph system with SITOR meeting the requirements of Section 80.219;

(iv) Be equipped with at least two VHF transceivers capable of being powered by the reserve power supply (one of the VHF transceivers may be the VHF required by sub-paragraph (b)(4)(ii) of this paragraph);

(v) Be equipped with a Category 1, 406 MHz EPIRB meeting the requirements of Section 80.1061;

(vi) Be equipped with a NAVTEX receiver meeting the requirements of Section 80.1101(c)(1);

(vii) Be equipped with three two-way VHF radiotelephone apparatus and two radar transponders in accordance with Section 80.1095;

(viii) In addition to the main power source, be equipped with an emergency power source which complies with all applicable rules and regulations of the U.S. Coast Guard (the satellite earth station, the narrow-band direct-printing equipment and the 500 kHz autoalarm receiver must be capable of being powered by the main and emergency power sources);

(ix) Be equipped with a 500 kHz autoalarm receiver and a means of recording or decoding any distress signal received for relay to the Coast Guard or a public coast station;

(x) Participate in the AMVER system when on voyages of more than twenty-four hours and have the capability of operating on at least four of the AMVER HF duplex channels;

(xi) Carry at least one licensed operator to operate and maintain all the ship's distress and safety radio communications equipment in accordance with Sections 80.159(c) and 80.169; and,

(xii) Maintain a continuous watch on 2182 kHz and 156.8 MHz, in accordance with 80.305(b), when navigated.

3. In Section 80.933, the section heading is revised, paragraphs (b) and (c) are redesignated (c) and (e). New paragraphs (b) and (d) are added and newly designated paragraph (c) is revised to read as follows:

§ 80.933 General small passenger vessel exemptions.

(a)***

(b) All U.S. passenger vessels of less than 100 gross tons, not subject to the radio provisions of the Safety Convention, are exempt from the radiotelegraph provisions of Part II of Title III of the Communications Act, provided that the vessels are equipped with a radiotelephone installation fully complying with Subpart S of this Part.

(c) Prior to February 1, 1999, U.S. passenger vessels of less than 100 gross tons are exempt from the radiotelegraph requirements of Part II of Title III of the Communications

Act and the MF radiotelephone requirements of the Subpart as well as Regulations 7 to 11 of Chapter IV of the Safety Convention if the following criteria are fully met:

(1) The ship is equipped with a VHF radiotelephone installation meeting the requirements of this Subpart;

(2) While navigating more than three nautical miles from the nearest land, the ship is equipped with:

(i) A Category 1, 406 MHz EPIRB meeting the requirements of Section 80.1061;

(ii) A NAVTEX receiver meeting the requirements of Section 80.1101(c)(1); and

(iii) Three two-way VHF radiotelephone apparatus and two radar transponders meeting the requirements of Section 80.1095.

(3) The ship remains within communications range of U.S. Coast Guard or public coast stations operating in the band 156-162 MHz;

(4) The routes of the voyage are never more than 20 nautical miles from the nearest land or, alternatively, not more than 200 nautical miles between two consecutive ports, and are limited to the following domestic and international voyages:

(i) In waters contiguous to Hawaii, the Bahama Islands and the islands in the Caribbean Sea, including the Greater Antilles, Lesser Antilles, and the coastal waters of Venezuela between the Mouth of the Orinoco River and the Gulf of Venezuela;

(ii) In waters contiguous to the coast of Southern California from Point conception south to Cape San Lucas, Mexico; the islands of San Miguel, Santa Rosa, Santa Cruz, Anacapa, San Nicolas, Santa Barbara, Santa Catalina, and San Clemente are considered to be within these waters; and,

(iii) In waters of the Pacific Northwest between Tacoma, Washington and the waters of British Columbia, Canada, as far north as Queen Charlotte Strait, never in the open sea.

(d) Prior to February 1, 1999, U.S. passenger vessels of less than 100 gross tons are exempt from the radiotelegraph requirements of Part II of Title III of the Communications Act, as well as Regulations 7 to 11 of Chapter IV of the Safety Convention, if the following criteria are fully met:

(1) The ship is equipped in accordance with (c)(1)-(2) of this section;

(2) The ship is equipped with a MF radiotelephone installation meeting the requirements of this Subpart;

(3) The routes of the voyage are never more than 20 nautical miles from the nearest land or, alternatively, not more than 100 nautical miles between two consecutive ports, and are limited to international voyages between Florida and the Bahama Islands.

4. In Section 80.1065, paragraph (b) is revised to read as follows:

§ 80.1065 Applicability.

(b)***

(5)***

(iii) The requirements of either Section 80.836 or Section 80.933 of this Part.

**APPENDIX B: FINAL REGULATORY
FLEXIBILITY ANALYSIS**

Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action:

This *Report and Order* seeks to broaden, update and clarify the general exemptions found in the Commission's maritime service rules for large oceangoing cargo vessels and small passenger vessels. This action will reduce unnecessary economic and administrative burdens on vessel operators, while maintaining the current level of access to maritime safety communications.

II. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant alternatives considered:

No significant alternative to this action was contained in the *Notice* or suggested by commenters. The action represents the best means to decrease economic and administrative burdens on vessel operators.