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UNITED STATES CHAMBER OF SHIPPING

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
July 15, 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendments of the Commission's :
Rules Concerning the Inspection : CI DOCKET No. 95-55
of Radio Installations on Large :
Cargo and Small Passenger Ships :

To: The Commission

**REPLY COMMENTS OF THE UNITED STATES
CHAMBER OF SHIPPING (USCS)**

These reply comments are submitted on behalf of the United States Chamber of Shipping (USCS), formerly the American Institute of Merchant Shipping (AIMS). USCS represents 20 U.S.-based companies which own, operate or charter oceangoing tankers, containerships, and other merchant vessels engaged in both the domestic and international trades. USCS also represents other entities which maintain a commercial interest in the operation of such oceangoing vessels.

We have carefully reviewed the record concerning 95-55 and have specific reply comments respecting the comments submitted by the American Radio Association and the U.S. Coast Guard. Before making those specific comments, we re-state our previously made comment that the FCC may comfortably rely on annual inspections performed by persons holding a SOLAS and Radio Convention recognized certificate as a GMDSS Maintainer. The system, which would use a FCC licensed inspector, provides the necessary oversight for the federal government.

Those who disagree seem to be unaware of the major changes brought about by the GMDSS and other changes to SOLAS which place additional liabilities on the shipowner. It should be remembered that a GMDSS system requires the shipowner to elect two out of three maintenance options. The ship may not leave port unless all GMDSS equipment is in good operating condition. On some vessels owned by U.S. interests, this means an inspection on a weekly basis or on weekly intervals. For all vessels, it means multiple inspections in any one year, in addition to the one FCC required inspection.

The GMDSS is a ship-to-shore system using equipment for normal commercial purposes which would also be used in a distress situation. This daily use by licensed operators ensures a high degree of reliability and immediately notifies the user of any problem which would occasion change to another GMDSS subsystem than the one in present use.

SOLAS Chapter IX is a requirement for adherence to the ISM Code. Shipowners are required to be in compliance with a safety management system which includes monitoring of compliance with all regulations, including GMDSS.

Shipowners recognize the increased liability associated with vessel operations today. They must adhere to requirements and must document their actions. If an owner makes a mistake, in an inspection for example, his liability is increased. If a government sanctioned inspector makes a mistake, there is equally no change in the owner's liability for the safe operation of his vessel. Thus we continue to contend that a shipowner's burden is a quantum level beyond that occasioned by a government required annual inspection and, in today's government downsizing, this may be relied upon by the FCC when it fashions its Final Rule.

Specific reply comments to American Radio Association:

We have had many discussions and correspondence with the ARA over the past 10 years and we agree that some of their members are well trained. In fact, some of our companies utilize electronics personnel and have documented that 95% of the time is spent on engine room matters, 3% on deck equipment and 2% on communications/navigation equipment. Much of the ARA comments are a thinly-veiled statement that only their members can provide for a continuously safe ship. We disagree. Here are some specific comments relative to certain of their suggestions/statements.

1. Page 4 -- We do not agree that a GMDSS maintenance license is inadequate. These licensed individuals, who are responsible to the FCC for their inspection activities, may be relied on to perform GMDSS maintenance functions on ships. If they are deemed qualified to maintain the equipment, we contend they are qualified to assess the correct operation of the system. As noted in our general comment above, the shipowner is the final inspector and must assure the system is operating in good order whether it has been inspected by a GMDSS maintainer, installed by a vendor, looked at by a radio officer or even inspected by FCC personnel.
2. Page 5 -- USCS (formerly AIMS) does not contend self-test features are a sole-element in an inspection process. We clearly stated the satisfactory operation of certain GMDSS elements is verified by making contact between the ship and a shore station.
3. Pages 6 & 7 -- We reviewed the "GMDSS exemption certificate" submitted with the comments. It is very clear that the ship is in complete compliance. You will note that the ship is radiotelegraphy equipped with a licensed radio officer on board. It has much of the equipment required of a GMDSS ship although it does not have to meet GMDSS requirements. If it were a GMDSS ship, it would be required to

have two types of maintenance stipulated. In fact, on February 1, 1996, the U.S.-flag vessel could not declare itself a GMDSS ship as the Communications Act then required radiotelegraphy. We do not characterize the commentor's point as a gross error although we note even the most knowledgeable people are capable of making errors.

4. Page 7 -- The U.S. Coast Guard has developed a process for determining that GMDSS is in good operating order. This is stipulated by the FCC Report and Order giving the FCC's response to changes in the Communications Act.
5. Page 7 -- SOLAS is being complied with. The initial FCC inspection determines the proper type-accepted equipment is in place. The shipowner, under ISM, documents watches and maintains records as required.
6. Page 7 -- We agree that a poorly done annual inspection could be a problem. Even more important are the more frequent departure inspections performed by the shipowner.
7. Page 8 -- We believe the Radio Regulations (4013) is complied with by the inspector holding the license issued by the FCC.
8. The commentor questions recognition of "surveyors" and "organizations." It is a simple step to note a "surveyor" is an individual, however, there is a more basic point which is alluded to by Coast Guard comments which we will address later. When looking at the total ship, including engine room, life-saving appliances, hull conditions, safety equipment, etc., it is sensible and necessary to refer to an "organization" which will have persons skilled in the various areas of expertise. GMDSS is one area. Reference to a single person is appropriate.

9. Page 9 -- A secondary certification does serve a purpose. The shipowner or master is not a disinterested, unknowledgeable party. They can attest an inspection was performed and even a review of paperwork can find errors. For example, the commentor claimed to find an error (3 above) yet our secondary review found the actual error.

10. Page 10 -- Why can't a vendor perform an inspection? Part of installing a piece of equipment is to operate it to ensure it is working. The ship must have the equipment in proper working condition so we will rely on vendors to do their jobs. Isn't the real conflict of interest that the vendor will find "problems" rather than overlook them?

11. Page 10 -- We agree with the commentor that a thorough review of SOLAS and the Radio Regulations is necessary before inspections as envisioned in the Notice are permitted. Our difference with the commentor is we believe SOLAS and the Radio Regulations are being complied with under the proposed inspection process.

Specific comments to those made by the U.S. Coast Guard:

USCS (formerly AIMS) has high regard for the U.S. Coast Guard and agrees very much with the course of action they have embarked upon by recognizing ABS in the Alternate Compliance Program (ACP). With respect, we suggest the detailed description of ACP is an appropriate response by a large organization which is shifting an inspection burden over to another large organization. The principles are established by the organizations so that complex inspection processes can be established under a consistent paradigm. The principles of oversight and audit are very important at a macro level. Their importance can shift as the complete ship inspection is broken down into subsets, systems and individual pieces of equipment. Audits and oversight may take on a different characteristic depending on what is being inspected.

Communications equipment is in a class by itself for several reasons. One is that manufacturers build to a detailed specification. Frequency tolerances are not only stipulated but also policed by those building and operating equipment using frequency bands on either side of the frequency of the equipment in question. Two, communication equipment is easily tested by a qualified user, and, three, because of its nature the equipment is verified by the person being contacted who may be the Coast Guard.

When viewed as a micro system, which because of the FCC authority it must, we believe the Coast Guard's concern with oversight and audit should be taken in a different perspective and the FCC should feel comfortable with their proposed inspection process. Here are some specific comments relative to Enclosure 1. For convenience, we consecutively numbered each of the paragraphs in this enclosure and will refer to them by number below.

Paragraph 5: The "demonstration of qualifications" makes sense for a person analyzing steel wastage via ultrasound. A communications equipment inspection includes noting the equipment is type-approved (it is on the FCC list), it functions (one can hear traffic and make a call), records are kept (refer to logs), etc. All the requisite skills may be found in a GMDSS maintenance license holder.

Paragraph 7: We question the acceptance of "radio checks" for small passenger vessels (our emphasis) while maintaining large oceangoing ships have "sophisticated telecommunications equipment." We have equipment for the A3 area while smaller vessels, which do not go into that area do not have, although we have the same equipment as they do for A1 and A2 areas.

Paragraph 8: "Equivalent to the current level . . ." is a phrase which must be understood in light of the GMDSS, a much simpler system to inspect than telegraphy. The foundation of this rule is precisely why the "current level" is not necessary.

Paragraph 9: We question the validity of requiring exclusive surveyors. While we do not argue that a class society is necessary or not, we doubt the stipulation of allowing exclusive surveyors would survive a legal test.

Paragraph 10: We agree with the development of a list of specific tasks. We do not agree such a list need be formally codified in regulations. The needs of various types of vessels would have to be considered. We suggest an all-encompassing generic list which would be useful in any circumstance and would be willing to work with the FCC, Coast Guard, and others in its development.

Paragraph 12: Owners participation is not a "desirable aspect," it is the primary level of ensuring continual communications. Note our comments elsewhere about the duty to ensure the ship is in compliance whenever leaving port.

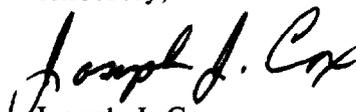
Paragraph 13: Tying the communications inspection into the ISM system is not just advantageous. We see it as a requirement. As support for our contention, we attach the relevant pages from Enclosure (2) to NVIC 2-94. This clearly spells out shipowner responsibilities which we believe responds to much of the concern expressed by the Coast Guard.

Paragraph 14: We believe the sentence beginning with "In such cases . . ." established our SOLAS based programs as meeting the concerns of the Coast Guard. We cannot speak on behalf of other operators. It seems sensible that a requirement to adhere, similar to ours, is appropriate.

USCS appreciates the opportunity to present reply comment to the FCC. If there are any questions concerning this submission, we would be pleased to respond.

The undersigned certifies that copies of this Reply were sent by first class mail, dated this day, to the American Radio Association and the U.S. Coast Guard at the addresses stipulated in their respective comments.

Sincerely,


Joseph J. Cox
Vice President

vessels should also have written procedures to address failures of cargo control apparatus, cargo spillages, deployment of containment apparatus, and notification of shore based spill response organizations. Passenger vessels should have written procedures for evacuating the passengers in the event of an emergency.

Procedures should identify the duties and responsibilities of all shipboard personnel, the specific actions to be taken to regain control over the situation, the communications methods to be employed, and the procedures for notifying the company and relevant authorities.

The company should document that emergency drills and training in emergency procedures are conducted on a regular basis.

9. REPORTS AND ANALYSIS OF NON-CONFORMITIES, ACCIDENTS AND HAZARDOUS OCCURRENCES

The company should have written instructions for reporting non-conformities which identify the party responsible for taking action on, and resolving the nonconformity.

For the purpose of this paragraph, an accident means a reportable marine casualty as identified in Title 46 Code of Federal Regulations, Sections 4.05-1(a) through (f). Companies should have written procedures which identify the person(s) responsible, and procedures used, for making the notification and preparing a written report of a marine casualty.

The company should have written procedures which describe how it complies with the post-casualty mandatory chemical testing requirements of Title 46 Code of Federal Regulations, Section 4.06.

Also, for the purpose of this paragraph, a hazardous occurrence means a hazardous condition as defined in Title 33 Code of Federal Regulations, Section 160.203. Hazardous condition means any condition that could adversely affect the safety of any vessel, bridge, structure, or shore area or the environmental quality of any port, harbor, or navigable water of the United States. This condition could include but is not limited to, fire, explosion, grounding, leaking, damage, illness of a person on board, or a manning shortage. The company should have written procedures which identify the person(s) responsible, and procedures used, for making the immediate notification required by Title 33 Code of Federal Regulations, Section 160.215.

10. MAINTENANCE OF THE SHIP AND EQUIPMENT

The vessel should be provided with adequate reference material to enable it to be maintained and operated in accordance with

Enclosure (2) to NVIC

applicable domestic and international regulations, classification rules, applicable standards, and pertinent industrial codes which are relevant to its route and service.

Vessels should have on board sufficient maintenance manuals, technical publications, or equipment operating instructions which describe the procedures to properly operate and maintain all vessel systems and equipment, the failure of which would adversely impact upon the safe operation of the vessel, pose a safety hazard to vessel personnel, or create a potential environmental hazard. These vessel systems include, but are not limited to: firefighting and fire protection, lifesaving, navigation, propulsion, electrical generation, pollution prevention, and cargo control systems.

Vessels should have on board procedures for contacting qualified shore based personnel to carry out equipment servicing or repairs which are beyond the capacity of the vessel's crew to successfully complete.

Special consideration should be given to those vessels which operate on limited routes and have convenient access to a designated shore side facility where the above materials may be referenced. The company should identify the designated shore side facility.

Vessels should have a system to record the tests, inspections, and periodic maintenance called for above. The system should indicate the date the action was performed, results, corrective actions taken, and next due dates

11. DOCUMENTATION

Proper document control is critical to the effectiveness of the SMS. Companies should have a system to ensure that all material relevant to the SMS is distributed promptly and accurately to all affected parties. Document control procedures should allow individuals to readily identify the revision status of the document to preclude the use of outdated or superseded reference material.

The documents used to describe and implement the SMS may be referred to as the "Safety Management Manual." Documentation may be in the form most convenient to the company. Some companies may have already addressed the SMS functional requirements in a variety of acceptable documents. Therefore, a "Safety Management Manual," which describes the SMS may include an index which directs the interested person to the substantive source document which specifically addresses the particular functional requirement under consideration

For example, under ISM Code paragraph 6.3, companies should have procedures by which they confirm that shipboard employees are properly licensed and qualified for service on the particular vessel to which they are assigned. If the company's personnel manual adequately addresses this requirement, the "Safety Management Manual" need only say, "refer to Chapter 2, pages 5-9 of XYZ Company Personnel Manual dated 15 January 1991 for information on this requirement." Similarly, equipment maintenance procedures, discussed in ISM Code paragraph 10.1, might be cited in the "Safety Management Manual" as, "refer to XYZ Company Technical Pub No. 123, Chapter 5, dated 1 March 1987, for procedures for periodic maintenance of the ship's service generator."

12. VERIFICATION, REVIEW AND EVALUATION

The company should have an audit plan for all departments and the vessel. The audit plan should address the specific areas and activities to be audited, the qualifications of the personnel conducting the audits, and the procedures for reporting findings, conclusions, and recommendations to appropriate senior management.

The audit plan should identify the means by which the audit results are evaluated. The evaluation should indicate any need for additional familiarization, or any modifications which might be needed in regards to the vessel, documentation, reports, or record keeping.

The audit plan should include provisions for monitoring corrective actions and maintaining reports for review by certifying agencies or regulatory authorities.

Management should review accident analyses, hazardous occurrences and non-conformities, the audit findings, and any recommendations following inspections by regulatory authorities.