



Federal Communications Commission
Washington, D.C. 20554

June 6, 2008

DA 08-1325

Small Entity Compliance Guide

Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications

WT Docket No. 00-48; RM-9499, PR Docket No. 92-257; FCC No. 06-129

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions— comply with the above-referenced FCC rules. This Guide is not intended to replace the rules and final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may revise this Guide without public notice to clarify or update contents. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

The rules adopted in the *Third Report and Order* are intended to streamline, consolidate and clarify the Commission's Part 80 rules; remove unnecessary or duplicative requirements; address new international maritime requirements; promote flexibility and efficiency in the use of marine radio equipment; and further maritime safety.

II. REGULATIONS AND POLICIES THAT THE COMMISSION ADOPTED OR MODIFIED, INCLUDING COMPLIANCE REQUIREMENTS

In brief, in the *Third Report and Order* the Commission took the following actions:

- Required that digital selective calling (DSC) equipment comply with the most recent international standards for such equipment.
- Added the INMARSAT Fleet F77 earth station to the list of ship earth stations that may be carried in lieu of a single sideband radio by vessels operating more than 100 nautical miles from shore.
- Expanded the types of small passenger vessels that are required to carry a reserve power supply.
- Extended the license terms of Global Maritime Distress and Safety System (GMDSS) Radio Operator's Licenses, Restricted GMDSS Radio Operator's Licenses, GMDSS Radio Maintainer Licenses, GMDSS Operator/Maintainer Licenses, and Marine Radio Operator Permits from five years to the lifetime of the holder.
- Modified the requirement that commercial operator license examination (COLE) managers use only the most recent question pool available to the public.
- Removed regulatory language specifying the specific number of questions to be used for each examination element.
- Adopted rules authorizing COSPAS-SARSAT and INMARSAT D+ equipment for use in the Ship Security Alert System.
- Updated references to international standards.
- Made certain on-board frequencies available for narrowband operations.
- Permitted remote control programming of maritime radio transmitters.
- Declined to eliminate emission designators on non-distress frequencies.

- Declined to remove rules pertaining to Morse code radiotelegraphy.
- Declined to take action on certain proposals regarding frequency allotments and limitations for ship facsimile communications, radiotelephone public correspondence communications, and private maritime communications.
- Adopted a number of non-substantive amendments to update and clarify the maritime radio service rules and correct typographical errors.

A. DSC Equipment Standards

Section 80.225(a) was amended based on a conclusion that DSC equipment should be required to meet the ITU-R M.493-11 and ITU-R M.541-9 standards and, in the case of Class D equipment, the IEC 62238 standard as well. Compliance with IEC 62238 would require Class D VHF DSC radios to incorporate many new safety features and functions, including dual receiver functionality, revised alarming designed to prevent sound interference with ongoing safety communications, and Global Positioning System (GPS) interconnection alarms designed to ensure that distress alerts include a valid position. The Commission concluded that the relatively low retail cost of IEC 62238-compliant radios, coupled with the significant grandfathering protections provided to permit continued manufacture, importation, sale and use of DSC equipment authorized under the earlier standards, will minimize the burden of compliance, and that the maritime safety benefits of the new requirements clearly outweigh the costs.

The Commission will stop accepting requests for certification of non-handheld radios that do not comply with the new standards one year after the effective date of these rule amendments, and it will stop accepting requests for certification of handheld radios that do not comply with the new standards four years after the effective date. The Commission will provide one full year before the Commission stops accepting applications for certification of non-handheld SC101 radios. The Commission believes that the longer transition period better comports with marine radio equipment manufacturers' design cycles, and will ensure that manufacturers' investment in the design and manufacture of new SC101 radios is not stranded, while at the same time providing for a reasonably quick phase-in of equipment meeting the new standards. In addition, the Commission prohibited the manufacture, importation, sale or installation of SC101 radios three years after the effective date of these amendments. This three-year grandfathering period will provide manufacturers and vendors with enough time to exhaust their inventories of non-handheld SC101 equipment, while giving vessel operators a reasonable opportunity to budget for the purchase of equipment meeting the new standards. With respect to handheld, portable DSC radios a longer phase-in period is warranted. It would be appropriate to continue to accept applications for certification of handheld SC101 radios for four years after the effective date of the rule amendments, and to permit the manufacture, importation and sale of handheld SC101 radios until seven years after the effective date. Also, the Commission grandfathered indefinitely the use of any DSC equipment that was properly certified under SC101 and placed in service prior to the expiration of the relevant transition period.

B. INMARSAT Ship Earth Stations

The Commission added the INMARSAT Fleet F77 earth station to the list of ship earth stations that may be carried in lieu of an SSB radio by ships operating more than one hundred nautical miles of shore. Adding the INMARSAT Fleet F77 earth station to the list of acceptable earth stations would therefore facilitate the replacement of older, less efficient earth stations, while providing the maritime community with additional equipment options. The Commission will reference INMARSAT M and Fleet F77 earth stations, as well as INMARSAT A, B and C earth stations in Section 80.310 of the Commission's Rules, 47 C.F.R. § 80.310, and will add IEC 61097-13 to Section 80.1101, 47 C.F.R. § 80.1101, as the applicable standard for the INMARSAT Fleet F77.

The Commission declined to rewrite the rule to generally permit use in lieu of an SSB radio of any earth station meeting IMO GMDSS and IEC certification requirements because it believed listing the specific types of approved earth stations is less likely to engender confusion.

C. Reserve Power Requirements for Small Passenger Vessels

The Commission concluded that the reserve power supply requirement should be broadened in scope. A reserve power supply can make a life-or-death difference for passengers and crew on board a passenger vessel in distress. Without a reserve power supply, a small passenger vessel may be unable to communicate via radiotelephone with search and rescue personnel in an emergency, and that inability to communicate could jeopardize the safety of those on board. The Commission adopted a proposal that would extend the reserve power supply requirement to (a) small passenger vessels of less than one hundred gross tons that carry more than 150 passengers or have overnight accommodations for more than forty-nine persons (this is the class of vessels subject to Subchapter K of the Coast Guard regulations, 46 C.F.R. §§ 114.100-122.910); and (b) other small passenger vessels of less than one hundred gross tons (this is the class of vessels subject to Subchapter T of the Coast Guard regulations, 46 C.F.R. §§ 175.100-185.910) that are required to carry EPIRBs under the Coast Guard's Navigation and Vessel Inspection Circular No. 3-99 (NVIC 3-99), *i.e.*, that operate on the high seas or more than three miles from shore on Great Lakes voyages. The Commission believed this approach appropriately takes into account a vessel's passenger capacity and area of operation in weighing the costs and benefits of imposing the reserve power supply requirement. The Commission concluded that small passenger vessels newly subject to the reserve power requirement must comply with that requirement within one year after the effective date of these rule amendments. A one-year period fairly balances the interest in minimizing the compliance burden against the interest in deploying new maritime safety features expeditiously.

The Commission also concluded that it should not extend the reserve power supply requirement to *all* small passenger vessels. The Commission strongly encouraged the owners and operators of small passenger vessels that are not subject to this reserve power supply requirement to nonetheless install a reserve power supply on such vessels, or to at least take other measures, such as carriage of VHF marine handheld radio equipment, as a means of maintaining the ability to communicate with search and rescue personnel in the event of a disruption to the ship's main power supply.

D. Commercial Operator License Issues

The Commission extended license terms for GMDSS Radio Operator's Licenses, Restricted GMDSS Radio Operator's Licenses, GMDSS Radio Maintainer's Licenses, GMDSS Operator/Maintainer Licenses, and Marine Radio Operator Permits to the lifetime of the holder because the renewal process imposes an unnecessary paperwork and filing fee burden on licensees inasmuch as licensees' continued competency is not assessed in any way upon renewal, and because there appears to be no reason to treat these licenses differently in this connection from those that already have lifetime terms. The lifetime term will apply to existing licenses as well as new licenses, as of the effective date of these rule amendments. The Commission also eliminated both the Section 13.215 requirement that COLE Managers use the most recent question pool available to the public, and the Section 13.203 specifications of the number of questions for each examination element. These rule changes will provide both the Commission and COLE Managers with additional flexibility in managing the examination administration process.

E. Ship Security Alert System (SSAS)

The Commission amended the rules by adding a new Section 80.277 to authorize SSAS using COSPAS-SARSAT or INMARSAT D+ equipment to provide for the certification of COSPAS-SARSAT SSAS units, incorporating by reference SC110 as the governing standard. In addition, the Commission also amended Part 80 to provide for the certification and use of INMARSAT D+ equipment because such equipment is presently available and suitable for the transmission of SSAS alerts. The Commission did not adopt any requirements of general applicability with respect to SSAS message content and format, or the routing of ship security alerts. Other than with respect to COSPAS-SARSAT SSAS equipment, there does not appear to be any need for the Commission to regulate SSAS message content and format, or to augment the SOLAS regulation governing the routing of security alerts, Regulation XI-2/6.2.1. Updated References to International Standards.

F. 2002 Biennial Review

Remote Control Programming of Transmitters. The Commission retained Section 80.203(b)(3) but added to it a provision permitting computerized remote control programming of maritime transmitters, provided that the remote control software is disabled from selecting non-authorized frequencies.

Emission Classes. The Commission declined at this time to amend Section 80.207(d) to remove the list of permissible emission classes and also including various requests to add specific emission designators to Section 80.207(d).

Morse Code Frequencies. There remain a number of valid licenses with Morse radiotelegraphy authorizations. The Commission remained unconvinced that deleting the Morse radiotelegraph frequency tables is necessary or beneficial at this time. The Commission noted that eliminating the Morse rules would not make additional spectrum available to other users in the 4-27 MHz band due to the sharing of this spectrum with facsimile operations. (See 47 C.F.R. §§ 80.357(b)(1), 80.363(a)(2)). Therefore, the Commission declined to delete Section 80.355 or Section 80.357.

Additional Proposals. The Commission deleted note 5 to Section 80.207(d) as obsolete because it grandfathers transmitters that are no longer in use; amended Sections 80.207(d) and 80.313 by replacing references to the 1605-27500 kHz band with references to the 1615-27500 kHz band, because maritime mobile operations are not permitted on the AM expanded band frequencies below 1615 kHz; and removed the ship radiodetermination designation of the 14.00-14.05 GHz band from Section 80.207(d) in light of the absence of any current or anticipated radionavigation use of the band.

G. Other Matters

The Commission adopted corrective amendments. These amendments are not substantive and do not impose a new compliance burden on any entity.

Federal Government Ship Stations. The Commission deleted Section 80.15(d)(4) because it no longer has jurisdiction over any Federal Government-owned ship radio stations. Therefore, Section 80.15(d)(4) of the Commission's rules is, as a consequence, obsolete. **Exemption from Equipment Certification Requirements for Certain Vessels in the Maritime Security Fleet.** The Commission amended Section 80.43 to exempt from its reach those vessels in the Maritime Security Fleet that are deemed to satisfy all Commission equipment certification requirements pursuant to Section 53108(c) of Title 46 of the United States Code.

Ship Earth Station Document Requirements. The Commission amended Section 80.51 to simply state that a ship earth station must display the Commission license.

Implementation of U.S./Canada Agreement. The Commission deleted Section 80.57(d)(5) as obsolete.

INMARSAT Ship Earth Stations. The Commission amended Section 80.203(g) to specify that the subject equipment must be approved for use in the INMARSAT space segment by a notified body (notified bodies are European Union government-designated laboratories and testing organizations that are authorized to make determinations as to whether products comply with specified safety standards, a process termed conformity assessment) in accordance with technical requirements provided by INMARSAT. Also, Section 80.1103(c) of the Rules was amended for the same reason.

Alternative Carrier Frequencies. The Commission added a footnote to Section 80.373(c) and Section 80.371(b)(2) of the Rules to reflect the ITU provision pertaining to 12359 kHz and 16537 kHz.

Frequencies for Automated Systems. The Commission deleted Section 80.385(d).

VHF Maritime Channels 75 and 76. The Commission modified the table of frequencies in Section 80.871(d).

General small passenger vessel exemptions. The Commission removed Section 80.933(c) and removed Section 80.933(d) as obsolete because it provides an exemption that, by its terms, expired on February 1, 1999.

GMDSS Implementation. The Commission amended Section 80.1065 by removing all references to the expired deadlines.

Fishing Vessel Exemption. The cross-referenced provisions of Section 80.1101(c) incorporate by reference international standards that mandate DSC capability. As currently crafted, then, the rules mandate that the subject fishing vessels carry DSC equipment in order to be relieved of the requirement to carry such equipment. The Commission corrected this anomaly by removing the cross-references to Sections 80.1101(c)(2)-(4).

GMDSS Radio Operator Requirements. The Commission amended Section 80.1073(a) by inserting the appropriate cross-references, to Sections 13.7 and 13.203, respectively.

Survival Craft Equipment. The Commission deleted the last sentence of Section 80.1095(a) as obsolete.

References to Type Acceptance. The Commission replaced all obsolete Part 80 references to “type acceptance” with references to “certification.”

INMARSAT-E EPIRBs. The Commission added a note to the rules authorizing INMARSAT-E EPIRBs to advise persons of the scheduled termination of INMARSAT-E EPIRB service. Also, the Commission cautioned any parties that may seek Commission certification of INMARSAT-E EPIRBs that the Commission will closely scrutinize any such applications, and may condition, limit, or even deny any such applications if necessary to ensure that mariners do not rely on such devices for their safety after December 1, 2006.

III. RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

In the *Third Report and Order*, the Commission adopted two rule amendments that may affect reporting, recordkeeping and other compliance requirements for small entities. The other decisions adopted in the *Third Report and Order* remove or relax existing requirements, or do not change existing requirements.

First, the Commission amended Section 80.225 of the Rules to require that DSC equipment comply with more rigorous technical standards adopted by international bodies, ITU-R Recommendation M.493-11, ITU-R Recommendation M.541-9, and, in the case of Class D DSC radio equipment, IEC 62238. This rule amendment could affect small entities that manufacture DSC equipment or that own or operate vessels required to carry DSC equipment.

Second, the Commission amended Section 80.917 of the Rules to extend a pre-existing requirement for carriage of a reserve power supply to (a) small passenger vessels of less than 100 gross tons that carry more than 150 passengers or have overnight accommodations for more than forty-nine persons, and (b) small passenger vessels of less than 100 gross tons that operate on the high seas or more than three miles from shore on Great Lakes voyages. This extension of the reserve power supply requirement could affect small entities that own or operate small passenger vessels newly subject to the requirement.

In deciding to adopt more stringent requirements for DSC radio equipment, the Commission carefully considered the impact of such action on small entities that manufacture or use such equipment. The Commission ultimately concluded that it should not exempt any entities from

compliance with the new DSC technical standards because indefinite reliance on equipment meeting the old standards could jeopardize the safety not only of passengers and crew on vessels using such equipment but also passengers and crew on other vessels. In addition to the undisputed safety benefits of DSC equipment meeting the new standards, the Commission took into account record evidence indicating that the cost of such equipment is not excessive.

The Commission provided affected entities with significant relief through a phase-in of the new requirements plus grandfathering protections. Specifically, the Commission will continue to accept applications for certification of non-handheld DSC equipment meeting the SC101 standard until one year after the effective date of these rule amendments. The Commission will continue to accept applications for certification of handheld DSC equipment meeting the SC101 standard for a full four years after the effective date of the new rules. With respect to grandfathering protection, the Commission permitted the continued manufacture, importation, sale and installation of non-handheld SC101 radio equipment until three years after the effective of the new rules, and the continued manufacture, importation and sale of SC101 handheld units until seven years after the effective date. The Commission also grandfathered indefinitely the use of any DSC equipment that was properly certified under the SC101 standard and placed in service prior to the expiration of the applicable three-year or seven-year grandfathering period; such equipment, therefore, may continue to be used until the end of its useful life. The Commission concluded that these measures effectively mitigate the burden on small entities of complying with the new DSC standards, reasonably further the goals of the RFA, and allow a resolution of this matter that fairly balances the public interest in maritime safety with the public interest in reducing regulatory burdens on small entities.

The Commission also carefully considered the impact on small entities of expanding the Section 80.917 requirement to carry a reserve power supply to additional classes of small passenger vessels. The Commission decided to expand this requirement because it believed that a reserve power supply “can make a life-or-death difference for passengers and crew on board a passenger vessel in distress.” The Commission also considered whether there are less costly alternatives to a reserve power supply that would be equally effective in addressing this safety concern. It was concluded that no such less costly alternatives exist. However, in the interest of minimizing regulatory burdens on small entities, such as small charter boat operators, that own and operate small passenger vessels, the Commission has not expanded the requirement to *all* small passenger vessels. Instead, the Commission expanded the reserve power supply requirement to those vessels where it will provide potentially the greatest value in terms of maritime safety – vessels with a relatively large passenger capacity and vessels that travel relatively great distances from shore – and where the costs can most readily be absorbed. Specifically, the Commission has extended the reserve power supply requirement to (a) small passenger vessels of less than 100 gross tons that carry more than 150 passengers or have overnight accommodations for more than forty-nine persons, and (b) small passenger vessels of less than 100 gross tons that carry not more than 150 passengers or have overnight accommodations for not more than forty-nine persons, *and* that are required to carry EPIRBs under the Coast Guard’s Navigation and Vessel Inspection Circular No. 3-99, *i.e.*, that operate on the high seas or more than three miles from shore on Great Lakes voyages. Finally, to further mitigate the burden on the owners and operators of small passenger vessels newly subject to the reserve power supply requirement, the Commission provided them with up to one year after the effective date of this rule amendment to install the requisite reserve power supply.

For details of other compliance requirements refer to the *Third Report and Order*.

IV. WEBLINK

Third Report and Order, FCC 06-129, 21 FCC Rcd 10282 (2006), adopted August 29, 2006 and released September 8, 2006. Final rules adopted in the *Third Report and Order* became effective on March 25, 2008.

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