

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

In the Matter of
Radiotelephone Requirements for Vessels
on the Great Lakes
WT Docket No. 23-357

ORDER

Adopted: October 30, 2023

Released: October 31, 2023

By the Commission:

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I. INTRODUCTION

1. In this Order, we take action to ensure the continued safety of vessels navigating the Great Lakes by amending part 0 and part 80 of the Commission’s rules to retain the radiotelephone requirements for vessels subject to the current Great Lakes Agreement (GLA or Agreement).1 The GLA is a treaty between the United States and Canada that, among other things, established requirements regarding the “usage and maintenance of radiocommunications equipment for safety purposes aboard” certain vessels navigating on the Great Lakes.2 These requirements are codified primarily in subpart T of

1 Agreement Between Canada and the United States for the Promotion of Safety on the Great Lakes by Means of Radio, U.S.-Canada, April 26, 1973, 25 UST 935, T.I.A.S. 7837, amended 30 UST 2523, T.I.A.S. 9352 (GLA).

2 Id. art. II.

part 80 of the Commission's rules (subpart T).³ Because the GLA will cease to be effective on November 2, 2023, pursuant to Canada's notice of termination on November 2, 2022,⁴ we must take expedited action to amend subpart T and certain other rules in part 0 and part 80 to remove the references to the GLA and maintain the applicability of rules in the Great Lakes. This will ensure that our rules continue to promote the safety of life and property on the Great Lakes, provide regulatory stability going forward, and accurately reflect the GLA's status.

2. Further, after careful consideration of information we have recently received from the U.S. Coast Guard (USCG), which also contains information from the Canadian government,⁵ we find it to be necessary and in the public interest to amend one of the subpart T rules requiring an inspection of the required radiotelephone installation at least once every 13 months by extending the time period to once every 48 months.⁶ As described in further detail herein, we take this action to align our rules with the Canadian inspection interval that will apply upon termination of the GLA and to more closely conform to the current needs of the industry given improvements in maritime safety and equipment.⁷ The USCG supports this change, noting that the GLA's termination was prompted after "a three-year unsuccessful effort by the Canadian Government through diplomatic efforts to renegotiate the Agreement" concerning the terms of the inspection requirement.⁸

II. BACKGROUND

3. Ensuring the availability of critical maritime communications has been one of the Commission's fundamental obligations since the earliest days of the Communications Act. The Act not only charges the Commission generally with making available wire and radio service for the purpose of promoting safety of life and property, but it also specifically entrusts us with obligations relating to maritime radio communications. Today, similar to the terrestrial emergency 911 system, the maritime services provide for the unique distress, as well as the operational and personal communications, needs of vessels at sea and on inland waterways.⁹ While the maritime community has pioneered the use of radio for

³ 47 CFR §§ 80.951–971. These requirements were also codified in other scattered sections of part 0 and part 80 of the Commission's rules. *Id.* §§ 0.131(s)(2), 0.491, 80.1(a), 80.5, 80.59, 80.161, 80.308, 80.401, 80.409(f), 80.411(b), 80.1005, 80.1065(b).

⁴ See Letter from the Department of Foreign Affairs, Trade and Development, Canada, to the Embassy of the United States of America to Canada, Note No. JLI-0061, dated Nov. 2, 2022 (*Termination Notice*); see also GLA art. XXI (providing that either the United States or Canada may unilaterally terminate the GLA by providing written notification and that the termination will take effect twelve months after the date of that notification).

⁵ See Letter from Jerry L. Ulcek, Chief, Spectrum Management and Communications Policy Division, USCG, to Scott S. Patrick, Executive Director, Office of Spectrum Management, NTIA (Oct. 11, 2023) (USCG Oct. 11 Letter); Letter from Jerry L. Ulcek, Chief, Spectrum Management and Communications Policy Division, USCG, to Scott S. Patrick, Executive Director, Office of Spectrum Management, NTIA (Sept. 29, 2023) (USCG Sept. 29 Letter).

⁶ See 47 CFR § 80.953(a) (requiring that "[e]ach U.S. flag vessel subject to the Great Lakes Agreement . . . have an inspection of the required radiotelephone installation at least once every 13 months").

⁷ See *infra* paras. 17–20.

⁸ USCG Oct. 11 Letter at 1; see also *id.*, Encl., at 6 (discussing Canada's termination of the GLA and its change to the frequency of the required radio inspection).

⁹ For additional description of the maritime services, see *Amendment of the Commission's Rules Concerning Maritime Communications*, Second Report and Order and Second Further Notice of Proposed Rule Making, 12 FCC Rcd 16949, 16953–54, paras. 4–6 (1997).

safety purposes,¹⁰ maritime services also provide a wide range of communications services to vessels to support a multibillion-dollar industry.¹¹ Along with other applicable rule parts, part 80 of the Commission's rules contains the requirements for stations in the maritime services, and specifically states that the rules are promulgated under the provisions of the Communications Act of 1934, "which vests authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations," and in accordance with various applicable statutes, treaties, and agreements, including the GLA.¹² It also notes that the USCG also has rules that affect radiotelecommunication equipment carriage and power source requirements on certain ships.¹³ This extensive history and these requirements reflect the importance of having radio equipment aboard vessels to facilitate communication and promote maritime safety without causing harmful interference to each other or to other spectrum users.

A. The Great Lakes Agreement

4. The GLA was signed on February 26, 1973, entered into force on May 6, 1975, and was amended in 1978 and 1988.¹⁴ The GLA is generally intended to promote the safety of life and property and efficiency of navigation on the Great Lakes and their connecting and tributary waters¹⁵ by coordinating the use of radiocommunications equipment for distress, safety, and navigational purposes.¹⁶ The purposes of the GLA include not only "provid[ing] the highest practicable standards in matters concerning use of radiocommunication and associated equipment for maritime distress, safety and efficiency of navigation on the Great Lakes," but also "provid[ing] uniformity of regulations on radiocommunications for safety purposes" to all ships operating on the Great Lakes.¹⁷ Both the United States and Canada agreed to cooperate to maintain similar rules "to the highest practicable degree."¹⁸

5. The GLA provides that vessels of all countries are "subject to the requirements of this Agreement and the Technical Regulations while being navigated on the Great Lakes" if they fall within

¹⁰ *Amendment of the Commission's Rules Concerning the Inspection of Radio Installations on Large Cargo and Small Passenger Ships*, Notice of Inquiry, 10 FCC Rcd 5424, 5424, para. 3 (1995).

¹¹ *Amendment of the Commission's Rules Regarding Maritime Radio Equipment and Related Matters et al.*, Notice of Proposed Rulemaking, 29 FCC Rcd 2516, 2518, para. 3 (2014).

¹² 47 CFR § 80.1.

¹³ *See id.* § 80.2.

¹⁴ *See generally* GLA. The GLA, upon entry into force on May 6, 1975, terminated the treaty between the United States and Canada—i.e., the Agreement for the Promotion of Safety on the Great Lakes by Means of Radio, Can.-U.S., Feb. 21, 1952, 3 U.S.T. 4926. *See* GLA art. XIX. Although the 1952 and 1973 treaties generally addressed the same subject matter, the 1973 treaty set forth different criteria for its applicability. *See Amendment of Part 83 of the Rules to Implement the Mandatory VHF Requirements of the Agreement Between the United States of America and Canada for Promotion of Safety on the Great Lakes by Means of Radio, 1973*, Docket No. 20273, Notice of Proposed Rulemaking, 50 F.C.C.2d 83, 83–85, para. 2 (1974) (comparing the criteria for the 1952 and 1973 treaties).

¹⁵ The GLA defines the "Great Lakes" as "all waters of Lakes Ontario, Erie, Huron (including Georgian Bay), Michigan, Superior, their connecting and tributary waters and the River St. Lawrence as far east as the lower exit of the St. Lambert Lock at Montreal in the Province of Quebec, Canada." GLA art. I(d); *accord* 47 CFR § 80.951. However, the definition does "not include any connecting and tributary waters . . . other than: the St. Marys River, the St. Clair River, Lake St. Clair, the Detroit River, and the Welland Canal. GLA, Technical Regulations, reg. 8; *accord* 47 CFR § 80.951.

¹⁶ GLA art. II.

¹⁷ *Id.* art. II(b)–(c).

¹⁸ *Id.* art. III, para. 1.

certain specific categories.¹⁹ The GLA requires, among other things, that all vessels 65 feet or over in length, most towing vessels, and vessels carrying more than six passengers for hire be equipped with a marine VHF radiotelephone installation.²⁰ In order to further the purposes of the GLA, applicable vessels also need to comply with certain other requirements, such as meeting listening and frequency requirements, having at least one certified radio operator, and retaining certain records on the use of the radiotelephone station for safety purposes, among others.²¹

6. The GLA also requires that radiotelephone stations be inspected at least once every thirteen months either by officers of the United States or Canada or by persons nominated for that purpose or organizations recognized by either the United States or Canada.²² Following inspection, the inspector must certify that the relevant provisions of the GLA have been complied with, and that certification must be kept on board the vessel and available for inspection.²³

¹⁹ *Id.* art. V. Article V provides that a vessel “which falls in any of the following specific categories of paragraphs (a), (b) or (c), and not excepted by paragraphs (b) and (d), shall be subject to the [GLA]”:

- (a) Every vessel 65 feet or over in length (measured from end to end over the deck exclusive of sheer), except that [Canada and the United States], each with respect to its own vessels, may specify a smaller dimension;
- (b) Every vessel engaged in towing another vessel or floating object, except:
 - (i) where the maximum length of the towing vessel, measured from end to end over the deck exclusive of sheer, is less than twenty-six (26) feet and the length or breadth of the tow, exclusive of the towing line is less than sixty-five (65) feet;
 - (ii) where the vessel towed complies with the requirements of this Agreement and the Technical Regulations annexed thereto;
 - (iii) where the towing vessel and tow are located within a booming ground; or
 - (iv) where the tow has been undertaken in an emergency and neither the towing vessel nor the tow can comply with this Agreement and the Technical Regulations annexed thereto;
- (c) Any vessel carrying more than six passengers for hire;
- (d) A vessel shall not be subject to the requirements of this Agreement if such vessel falls in any of the following specific categories:
 - (i) Ships of war and troop ships;
 - (ii) Vessels owned and operated by any government and not engaged in trade.

Id. art. V. Article III also provides that “any vessel which is not subject to the [GLA], and which is permitted by [Canada or the United States] to use any radio frequency designated by [the GLA], shall be required, while on the Great Lakes, to use such radio frequency in the same manner as a vessel subject to [the GLA].” *Id.* art. III, ¶ 4.

²⁰ *Id.*, Technical Regulations, regs. 1, 2. The Technical Regulations appended to the GLA describe detailed obligations and conditions that must be met to satisfy the GLA requirements. *See* GLA art. III, ¶ 2. The GLA also has other requirements involving communications and electrical equipment, such as where it needs to be placed on the vessel and what frequencies it uses. *See id.*, Technical Regulations, regs. 1, 2.

²¹ GLA arts. VII, X, XI; *id.*, Technical Regulations, regs. 1, 2, 4, 5.

²² GLA art. XII; *see also* *Amendment of Part 80 of the Commission's Rules Regarding the Inspection of Great Lakes Agreement Ships*, Report and Order, 11 FCC Rcd 18661, 18662, para. 2 (1996) (*Inspection R&O*).

²³ GLA art. XIII.

B. Commission Rules Implementing the Great Lakes Agreement

7. The Commission adopted rules implementing the GLA primarily in subpart T of part 80 and in other scattered sections of part 0 and part 80.²⁴ The subpart T rules apply to “vessel[s] to which the Great Lakes Radio Agreement applies” that fit into the specific GLA categories—i.e., all vessels 20 meters (65 feet) or over in length, most towing vessels, and vessels carrying more than six passengers for hire—“while navigated on the Great Lakes,”²⁵ unless they have received an exemption from the Commission.²⁶ Subpart T not only incorporates the GLA requirements for use of VHF equipment, but also mandates, consistent with the GLA, the frequencies to be used and other technical requirements, including reserve power, operator, maintenance and inspection requirements.²⁷

8. Besides the rules in subpart T, the GLA is mentioned in and effectuated by other sections of part 80 and part 0 of the Commission’s rules. In part 0, sections 0.131(s)(2) and 0.491 specifically mention the GLA in delegating authority to the Wireless Telecommunications Bureau to grant emergency exemption requests, extensions or waivers of inspection to ships and in providing filing instructions for exemption requests, respectively.²⁸ Apart from subpart T, the following rules in part 80, in most cases, contain references to the GLA that need to be replaced, but, in some cases, augment subpart T by clarifying technical and other requirements applicable to Great Lakes vessels. These rules are as follows: 80.1(a) (referencing the GLA in a list of documents providing the basis for the Commission’s maritime rules),²⁹ 80.5 (referencing the GLA in the definition of passenger carrying vessel in the categories of ships section and the Great Lakes definition and defining compulsory ships in the categories of ships section),³⁰ 80.59 (identifying the inspection requirements for the various categories of compulsory vessels and referencing the GLA),³¹ 80.161 (referencing the GLA in an operator requirement rule),³² 80.308 (referencing the GLA in a watch requirement rule),³³ 80.401 (referencing the GLA in a station document requirement rule),³⁴ 80.409(f) (providing how different categories of vessels must comply with requirements for station log entries and referencing the GLA),³⁵ 80.411(b) (identifying the certificate posting requirements of various vessels and referencing the GLA),³⁶ 80.1005 (referencing the GLA in the inspection rule in subpart U, which applies to Bridge-to-Bridge Act vessels),³⁷ and 80.1065(b)

²⁴ See *supra* note 3.

²⁵ 47 CFR § 80.951(a)–(d).

²⁶ *Id.* § 80.951(e) (“The Commission may if it considers that the conditions of the voyage or voyages affecting safety (including but not necessarily limited to the regularity, frequency and nature of the voyages, or other circumstances) are such as to render full application of the Great Lakes Agreement unreasonable or unnecessary, exempt partially, conditionally or completely, any individual vessel for one or more voyages or for any period of time not exceeding one year.”); see also GLA art. IX (exemptions from the GLA).

²⁷ See 47 CFR §§ 80.953–971.

²⁸ *Id.* §§ 0.131(s)(2), 0.491.

²⁹ *Id.* § 80.1(a).

³⁰ *Id.* § 80.5.

³¹ *Id.* § 80.59.

³² *Id.* § 80.161.

³³ *Id.* § 80.308.

³⁴ *Id.* § 80.401.

³⁵ *Id.* § 80.409(f).

³⁶ *Id.* § 80.411(b).

³⁷ *Id.* § 80.1005.

(referencing the GLA in the applicability rule in subpart W, which applies to vessels that must carry the Global Maritime Distress and Safety System).³⁸

9. With regard to inspection and certification, section 80.953 describes the requirements that apply to each “vessel subject to the Great Lakes Agreement.”³⁹ As described in further detail below, “[e]ach 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.”⁴⁰

C. Termination of the Great Lakes Agreement

10. Article XXI of the GLA provides that the Agreement may be terminated unilaterally by either the United States or Canada upon written notice, with termination taking effect twelve months after the date of such notification.⁴¹ As noted above, on November 2, 2022, Canada provided written notice to the United States of the termination of the GLA.⁴² Accordingly, the GLA will cease to be effective on November 2, 2023. The Commission and the USCG have been working diligently during this time to arrive at a solution that will maintain safety and regulatory certainty for how maritime radio equipment aboard vessels in the Great Lakes operates to permit communications, including but not limited to during emergencies.

III. DISCUSSION

A. Reinstatement of the Commission’s Rules for the Great Lakes

11. The Commission’s rules promoting the safety of vessels navigating the Great Lakes generally would not be valid and in effect after the termination of the GLA on November 2, 2023, without today’s action to extend these safety measures. The subpart T rules, by their terms, apply only to vessels that are subject to the GLA, not to all vessels that are on voyages in those specific waters. Section 80.951 specifically states: “A vessel *to which the Great Lakes Radio Agreement applies* . . . must comply with this subpart while navigated on the Great Lakes.”⁴³ Other rules in part 0 and part 80 use similar terminology to establish their applicability to vessels that are subject to the GLA.⁴⁴ Furthermore, in

³⁸ *Id.* § 80.1065(b).

³⁹ *Id.* § 80.953. Section 80.59(b) also discusses certain aspects of the inspection requirement, such as who can do inspections and exemption procedures, for vessels subject to the GLA. *Id.* § 80.59(b) (discussing inspection requirements for compulsory ships).

⁴⁰ *Id.* § 80.953(a). Although the rules originally required Commission personnel to conduct inspections, the Commission amended its rules to permit inspections to be performed by qualified licensed or certificated technicians in the private sector, consistent with the GLA. *See Inspection R&O*, 11 FCC Rcd at 18661, 18663–66, paras. 1, 4–12.

⁴¹ GLA art. XXI (providing that either the United States or Canada may unilaterally terminate the GLA “at any time after the expiration of 5 years from the date on which th[e] Agreement comes into force,” i.e., at any time after May 6, 1981).

⁴² *See Termination Notice*.

⁴³ 47 CFR § 80.951 (emphasis added).

⁴⁴ *See, e.g., id.* §§ 80.5 (defining the term “passenger carrying vessel” “when used *in reference to . . . the Great Lakes Radio Agreement*” (emphasis added)), 80.59(b) (setting forth the rules for the “inspection and certification of a ship *subject to the Great Lakes Agreement*” (emphasis added)), 80.59(c)(1) (listing the requirements for “[a]pplications for exemption *from the radio provisions of . . . the Great Lakes Radio Agreement*” (emphasis added)), 80.161 (stating the operator requirements for “[e]ach ship *subject to the Great Lakes Radio Agreement*” (emphasis added)), 80.308 (setting forth the watch requirements for “[e]ach ship of the United States that is equipped with a radiotelephone station *for compliance with the Great Lakes Radio Agreement*” (emphasis added)), 80.401 (establishing station documents requirements for certifications of a “*Great Lakes Agreement inspection*”

(continued....)

adopting many of these rules, the Commission stated that its purpose was to implement the GLA.⁴⁵ Accordingly, given that the applicability of the current subpart T rules and certain other rules in part 0 and part 80 is predicated on the continued existence of the GLA, the effective date of termination of the GLA on November 2, 2023, would render those rules a nullity with no practical effect on any vessels, leaving the Commission with no means of carrying forward the enforcement of important Great Lakes-specific radiotelephone installation requirements in the absence of replacement rules. To remedy a situation that could negatively impact safety on the Great Lakes, we find it necessary and in the public interest to amend the subpart T rules and certain other rules in part 0 and part 80—i.e., to remove the references to the GLA and clarify some rules given the termination of the GLA—to ensure the continued applicability of the substantive requirements governing vessels that are currently subject to the GLA.⁴⁶ By continuing the effectiveness of these rules, we will maintain the important public safety requirements that have been in place for decades applicable to certain vessels navigating the Great Lakes.

12. We find that these rules are necessary and in the public interest, first and foremost, to preserve safety of life and property on the Great Lakes. As noted above, the rules at issue implemented the GLA requirements to install, use, and maintain basic equipment (marine VHF radio) as a means of serving safety, as well as operational and business, purposes for vessel operators.⁴⁷ The installation and maintenance of VHF radios are critical to navigation safety on the Great Lakes for purposes including intership navigation, port safety, and operation in vessel traffic areas.⁴⁸ Due to limits on coverage from land-based mobile networks over the Great Lakes waters, the USCG operates an extensive network of towers to listen to distress calls, and in addition, “commercial ships, the Rescue 21 network, bridge tenders, and countless others rely on the VHF marine radio.”⁴⁹ VHF radios operating in compliance with the GLA rules are essential to Search and Rescue proceedings and other important emergency and non-emergency safety functions including “navigation, Vessel Traffic Service (VTS), port operations, port safety,” and the dissemination of Urgent Marine Information Broadcasts and weather warnings.⁵⁰ For example, vessels entering the Great Lakes traffic areas need radios to check into the VTS centers.⁵¹ VTS, the primary tool used by operators to communicate with mariners in a VTS operating area, provides a

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(emphasis added)), 80.409(f)(2) (setting forth station log requirements for “[r]adiotelephony stations *subject to the Great Lakes Agreement*” (emphasis added)), 80.411(b) (establishing posting requirements for “[s]hips *subject to the Great Lakes Agreement*” (emphasis added)).

⁴⁵ See, e.g., *Amendment of Part 83 of the Rules to Implement Changes in the Technical Regulations Annexed to the Agreement Between the United States of America and Canada for Promotion of Safety on the Great Lakes by Means of Radio, 1973*, Report and Order, 70 F.C.C.2d 1071, 1071–72, 1073, paras. 2, 7 (1979); *Amendment of Part 83 of the Rules to Implement the Mandatory VHF Requirements of the Agreement between the United States of America and Canada for Promotion of Safety on the Great Lakes by Means of Radio, 1973*, Report and Order, 52 F.C.C.2d 947, 949, para. 11 (1975).

⁴⁶ With the exception of the amendment to the inspection requirement, described in detail herein, the substance of the requirements in subpart T will be retained in its entirety. The only difference will be the removal of references to the GLA and clarifying some rules given the termination of the GLA. Appendix A includes all the subpart T rule amendments adopted herein, as well as any other Commission rules that require amendment in order to remove references to the GLA or clarify technical and other requirements applicable to Great Lakes vessels. See *supra* para. 8; see *infra* Appx. A.

⁴⁷ GLA art. II.

⁴⁸ USCG Oct. 11 Letter at 2.

⁴⁹ *Id.*, Attach., at 1.

⁵⁰ *Id.* at 2.

⁵¹ *Id.* at 3.

wide range of techniques and capabilities aimed at preventing vessel collisions, rammings, and groundings in the harbor, expedites ship movements, increases transportation systems efficiency, and improves operating capability.⁵² While it is unlikely that vessel operators would stop carrying and using basic VHF radio equipment immediately upon the effective date of the GLA's termination on November 2, 2023, over time, it is possible that some vessels would stop installing or maintaining VHF radio equipment if it is not required, affecting the efficiency of navigation and making essential communications challenging. We find that, as a result, safety would be compromised in both emergency and non-emergency situations.

13. Existing rules also provide for inspections of required equipment, maintenance contracts, reserve power, use of licensed operators, or maintenance of a continuous watch on certain frequencies.⁵³ The USCG demonstrates that, if the pending termination of the GLA is not immediately addressed, there will be “an inherent risk to mariner’s safety.”⁵⁴ While the GLA has been successful in promoting safety on the Great Lakes, USCG data demonstrates that there are a few vessels that are not in compliance. Not only do some of these vessels not have VHF radios or FCC licenses, but some also have faulty equipment or do not have reserve power, the required certifications, or radio logs.⁵⁵ These failures were discovered during USCG inspections, demonstrating the general importance of inspection requirements as a vital means of maintaining safety and ensuring compliance with rules.⁵⁶ Thus, the amendment of subpart T and certain part 0 and part 80 rules is necessary to maintain these important safety requirements.

14. Further, one of the primary purposes of the GLA—and, thus, of our implementing rules—is to provide “uniformity of regulations on radiocommunications for safety purposes to ships of all nationalities operating on the Great Lakes.”⁵⁷ Uniformity is important not only for distress situations, but also to “facilitate and improve maritime safety and efficiency of navigation on the Great Lakes.”⁵⁸ Canada has recently adopted rules that are similar to the GLA requirements and, therefore, the equipment carriage requirements will remain the same even after the GLA terminates.⁵⁹ Accordingly, with the exception of a modification to the inspection interval explained below,⁶⁰ as of November 2, 2023, the substance of the current GLA requirements would continue to apply to vessels in Canadian waters of the Great Lakes, but not to vessels in U.S. waters, if these rules are not amended. Amending our rules to retain the existing requirements is necessary to ensure the uniformity of rules in the United States and Canada.

15. Maintaining uniformity in regulations between the United States and Canada simplifies the obligations of vessel operators on the Great Lakes and prevents unnecessary confusion, delay, and

⁵² USCG Sept. 29 Letter, Attach., at 2.

⁵³ See GLA arts. VII, X, XII, Technical Regulations.

⁵⁴ USCG Sept. 29 Letter at 1.

⁵⁵ *Id.*, Attach., at 4.

⁵⁶ The Commission has imposed penalties for non-compliance with the inspection and certification requirements of subpart T, stating that “[n]avigation without a valid GLA certification increases the risk to the safety of life and, therefore, is a significant violation.” *Shepler’s Inc.*, Forfeiture Order, 16 FCC Rcd 14547, 14549, para. 11 (EB 2001); *accord KYS, Inc.*, Forfeiture Order, 17 FCC Rcd 5815, 5817, para. 9 (EB 2002).

⁵⁷ GLA art. II(c).

⁵⁸ *Id.* art. III, para. 1.

⁵⁹ USCG Oct. 11 Letter at 1; *id.*, Encl. at 2; Navigation Safety Regulations, 2020, SOR/2020-216, at Part 2 (Can.) (NSR 2020), <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2020-216/>.

⁶⁰ *Id.* See *infra* paras. 17–20.

cost. If we were not to maintain the GLA rules in the same way as implemented under the GLA, vessel operators subject to current GLA requirements could be confused about which rules apply as they voyage on the Great Lakes—the Canadian rules that are based on the GLA, or different, non-GLA rules in the United States that apply to some U.S. vessels in the Great Lakes.⁶¹ As the USCG explains, “[t]here will be Flag State/Port State Control issues and confusion with different requirements and inspection criteria between the two countries.”⁶² For example, a U.S. vessel that is not subject to the GLA rules in U.S. waters and may no longer be in compliance with existing GLA rules, could be detained or subject to penalties for violations of the radio and inspection requirements in Canadian waters where the Canadian GLA rules do apply. Indeed, because there is no “innocent passage” in the Great Lakes, a vessel navigating the Great Lakes passes through both U.S. and Canadian waters multiple times, subjecting that vessel to multiple rule violations.⁶³ Vessels would need to be cognizant of which set of rules they need to follow and what equipment needs to be on board based on whether they are in the U.S. or Canadian waters of the Great Lakes or if they are going to a port in the other country.⁶⁴ By amending our rules to retain generally the requirements already applicable to these vessels, we promote clarity, certainty, and ultimately safety while minimizing burdens on operators.

16. Additionally, if we were not to maintain the current Great Lakes rules that are consistent with the GLA and Canada’s requirements, commerce and travel could be adversely affected as a result of the lack of certainty to vessels navigating the Great Lakes and going between ports in the United States and Canada. After the effective date of termination of the GLA, unless we maintain the existing GLA rules to match Canada’s rules, vessels on the Great Lakes may have the burden and cost of complying with two different and possibly conflicting sets of requirements. Vessels may be refused access to or detained at the foreign port if they are not in compliance with the other country’s rules. Not only is detention and delay of vessels a possibility, but also vessels could be subject to monetary fines for violations of rules governing VHF radio installations and inspections, along with other GLA requirements.⁶⁵ This scenario could hinder trade if vessels cannot freely travel on the Great Lakes between ports in the United States and Canada in the absence of a certain, uniform set of applicable rules.

⁶¹ Other Commission rules applicable to some U.S. vessels in the Great Lakes differ from the GLA rules and could contribute to the potential confusion. For example, if our GLA rules were no longer in effect, the Canadian rules would still reflect the GLA, but certain U.S. vessels in the Great Lakes would have to comply with rules implementing the Vessel Bridge-to-Bridge Radiotelephone Act (B2BA). 47 CFR §§ 80.1001–1023. While the B2BA rules require certain vessels to have VHF radio installations, the definition of which vessels need these radios is different from the definition of vessels in the GLA, meaning some vessels required to carry VHF radios under the GLA would not be required to under the B2BA. *Compare* 47 CFR § 80.951 *with* § 80.1001. Further, the rules also differ in regard to reserve power, inspection, and some frequency requirements, among others. *Compare* 47 CFR § 80.965 *with* § 80.1015, § 80.953 *with* § 80.1005, § 80.956 *with* §§ 80.1011, 80.1013. Owners and operators would need to know these differences to comply with the applicable rules depending on whether they were in U.S. or Canadian waters.

⁶² USCG Oct. 11 Letter, Attach., at 1.

⁶³ *Id.*

⁶⁴ *See supra* note 61. We expect that, even during a period when there is no Great Lakes Agreement, vessels would continue to have radio equipment on board, and we find that the public interest, convenience, and necessity requires this Commission to regulate the kind of apparatus to be used, to prevent interference between stations, and otherwise to maintain rules about how that radio equipment may be operated. *See* 47 U.S.C. § 303.

⁶⁵ USCG Oct. 11 Letter, Attach., at 2.

B. Update to the Commission’s Inspection Requirement for the Great Lakes

17. Although we are amending subpart T and certain part 0 and part 80 rules to retain the existing requirements in their entirety, we hereby amend the inspection requirement in section 80.951 by changing the required inspection interval from at least once every 13 months, to at least once every 48 months.⁶⁶ Certifications of inspection that are valid on the effective date of the GLA termination—therefore, dated between October 2, 2022 and November 2, 2023—will be valid for 48 months from the date of inspection, as opposed to 13 months.⁶⁷ We take this action to align our requirement with Canada’s inspection interval currently applicable to inland waterways that will be applicable to GLA vessels upon the effective termination of the GLA.⁶⁸ This alignment will promote uniformity and more closely conform to the current needs of the industry and the realistic practices of both the United States and Canada in maintaining safety and beneficial commerce for vessels navigating on the Great Lakes.

18. This inspection requirement change is supported by the USCG, which has had extensive conversations with Great Lakes mariners regarding concerns about the 13-month-inspection requirement, and has stated that changing the inspection requirement will not hinder the safety of life and property.⁶⁹ As the USCG explains, improvements in maritime safety and equipment have resulted in the GLA’s inspection interval requirement becoming “antiquated” and in need of revision to allow a longer period of time between required inspections.⁷⁰ Specifically, although the original 13-month-inspection interval may have been necessary decades ago when the GLA was first executed and vessels used “crystal radios” requiring more frequent monitoring and adjusting, improvements in VHF radio technology mean that the equipment is reliable for a significantly longer period of time.⁷¹ More specifically, “VHF radios today use low cost, highly stable, highly reliable frequency synthesizers and integrated circuitry.”⁷² Thus, the USCG concludes that “due to the increase in the reliability and stability of today’s modern VHF marine radio compared to the old vacuum tube counterparts from the 1970s,” changing the inspection interval from 13 months to 48 months “will not impact safety.”⁷³

19. We note that a 48-month inspection interval for Great Lakes vessels that are likely within range of VHF radio communications, and therefore available for quicker safety response according to the USCG, is appropriate in contrast to vessels subject to the Safety Convention (SOLAS) and subpart W of

⁶⁶ We also amend rules in section 80.401 note 4 and 80.953(d) to update the requirement that vessels must retain a log entry or issuance of a Great Lakes certificate from two years until the date of the next radio inspection. *See* 47 CFR §§ 80.401 note 4, 80.953(d); *see also infra* Appx. A. We make this rule change so that the log retention rule is consistent with a 48-month inspection requirement.

⁶⁷ Vessels with valid certifications on the effective date of the GLA termination that wish to use that inspection for 48 months from the date of inspection to comply with the Great Lakes inspection requirement should keep a copy of this Order with the inspection documentation.

⁶⁸ *See* USCG Oct. 11 Letter at 2; NSR 2020, Part 2, Div. 2, § 240; Marine Safety Management System – TP 13585 E: Tier 1 – Policies – Validity Period of a Radio Inspection Certificate issued under the Navigation Safety Regulations, 2020, § 2.1, <https://tc.canada.ca/en/marine-transportation/marine-safety-management-system-tp-13585-e-tier-i-policies/tier-i-policy-validity-period-radio-inspection-certificate-issued-under-navigation-safety-regulations-2020>.

⁶⁹ USCG Oct. 11 Letter, Attach., at 3–4.

⁷⁰ *Id.* at 1.

⁷¹ *Id.*, Attach., at 3.

⁷² USCG Sept. 29 Letter, Attach., at 2–3.

⁷³ *Id.* at 1.

the Commission's rules.⁷⁴ These SOLAS and subpart W vessels have an annual inspection requirement, but they travel further offshore, navigate the oceans and typically are outside of VHF range, and travel for longer time periods.⁷⁵ In contrast to Great Lakes vessels that solely navigate the Great Lakes and are specifically exempt from SOLAS, SOLAS vessels must carry longer range communications and more complex navigation equipment.⁷⁶ Accordingly, SOLAS vessels are subject to a more stringent annual inspection interval, which will continue to apply separate from vessels navigating the Great Lakes.

20. By lengthening the inspection interval for Great Lakes vessels, we intend to lessen the costs and burdens for applicable vessel owners and operators, but without any decrease in safety. Inspections of Great Lakes vessels cost on average \$300 per vessel.⁷⁷ Accordingly, as an example, if a company operates 20 vessels, it would be required to pay \$6,000 (20x\$300) for the 13-month inspection, and \$24,000 (4x\$6,000) over the course of 48 months. By changing the inspection interval to once every 48 months, that vessel company would only be required to pay \$6,000 over the course of 48 months, saving \$18,000 (\$24,000–\$6,000).⁷⁸ This burden reduction will not negatively impact safety because, as noted above, technological advances in radio installations have translated to a reduced need for frequent inspections. We note that in 1996, when the Commission privatized the inspection of GLA vessels, it stated that “[i]n the past five years the Commission has inspected almost 2,500 Great Lakes Agreement vessels and in only 25 instances, or one percent, did the vessel fail inspection because of radio problems.”⁷⁹ Earlier in that proceeding, in 1995, the Commission explained that “improvements in the reliability of radiotelephone equipment and the industry practice of a preinspection examination[]” have resulted in this extremely low failure rate.⁸⁰ As stated above, USCG data supports that, while some vessels fail inspection, there is a low failure rate of the equipment.⁸¹ Still, we continue to believe that inspections are an integral part of our rules and necessary to ensure that vessels navigating the Great Lakes have a reliable means of communications to support efficient and safe navigation and to notify others when in distress.

C. Notice and Comment

21. The Administrative Procedure Act (APA) and the Commission's rules permit the amendment of rules without public notice and comment “when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”⁸²

⁷⁴ Safety of Life at Sea annex Chap. IV, part A, reg. 3(b), Nov. 1, 1974, T.I.A.S. 9700, 32 U.S.T. 47 (SOLAS); 47 CFR §§ 80.1065–1135 (implementing GMDSS requirements).

⁷⁵ See USCG Oct. 11 Letter at 2; USCG Sept. 29 Letter at 1–2, Attach., at 1.

⁷⁶ Even vessels otherwise subject to the Global Maritime Distress and Safety System (GMDSS) requirements in subpart W of the Commission's rules imposed under SOLAS, 47 CFR § 80.1065–1135, do not have to comply with those requirements while navigating the Great Lakes. See SOLAS, Annex Chap. IV, Part A, Reg. 1(b); 47 CFR § 80.1065.

⁷⁷ USCG Sept. 29 Letter, Attach., at 3.

⁷⁸ *Id.*

⁷⁹ *Inspection R&O*, 11 FCC Rcd at 18663, para. 5.

⁸⁰ *Amendment of Part 80 of the Commission's Rules Regarding the Inspection of Great Lakes Agreement Ships*, Notice of Proposed Rulemaking, 10 FCC Rcd 5418, 5419, para. 5 (1995).

⁸¹ See *supra* para. 13.

⁸² 5 U.S.C. § 553(b)(B); accord 47 CFR § 1.412(c). Additionally, notice and comment is not required when an agency is implementing “interpretive rules, general statements of policy, or rules of agency reorganization, procedure, or practice.” 5 U.S.C. § 553(b)(A); accord 47 CFR § 1.412(b)(3)–(5). Therefore, the revisions to 47 CFR § 0.131(s)(2) (Functions of the Bureau) and 47 CFR § 0.491 (Application for exemption from compulsory ship

(continued....)

Additionally, notice and comment procedures do not apply to matters involving the “military or foreign affairs function of the United States.”⁸³ While the prior notice and public comment procedure is ordinarily an essential part of our rulemaking process, we find, in this instance,⁸⁴ that it is appropriate to take today’s action without public notice and comment, as such procedure would be impracticable, unnecessary, and contrary to the public interest.⁸⁵

22. We find good cause to conclude that prior notice and comment are unnecessary before adopting these amendments because the amended rules will simply retain existing legal requirements,⁸⁶ except for the amendment to the inspection requirement adopted herein. Notice and comment are “unnecessary” when “the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.”⁸⁷ The “unnecessary” prong is met when the rule amendments do not “substantively alter the existing regulatory framework” or produce any “detrimental impact on the rights of the parties regulated.”⁸⁸ In this Order, we are maintaining rules that have been in place for decades without change and simply make minor, technical amendments—such as deleting references to the GLA, which will no longer be in effect—to ensure their continued applicability.⁸⁹ The same rules will apply to the same vessel owners and operators as they have in the past, and therefore, vessel owners and operators on the Great Lakes will experience no additional burdens and no effect on their substantive rights or obligations. In fact, the burdens would increase on vessel owners if we initiated a notice and comment proceeding that would continue beyond November 2, 2023, because stakeholder confusion could ensue about what rules apply when operating on the Great Lakes, especially in the absence of uniform applicable regulations with Canada during the pendency of such proceeding, as discussed above.⁹⁰

(Continued from previous page) _____

radio requirements) do not require notice and comment, as they deal with agency organization – the delegation of authority to the Bureau to consider emergency exemption, extensions or waivers of ship inspections requests – and filing procedures for exemptions.

⁸³ 5 U.S.C. § 553(a)(1); accord 47 CFR § 1.412(b)(1).

⁸⁴ See, e.g., *Sorenson Commc’ns Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014).

⁸⁵ See 5 U.S.C. § 553(b)(B); 47 CFR § 1.412(c); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 10347, 10354, para. 21 (WCB 2020) (*Schools and Libraries ULS Order*); *Bendix Aviation Corp. v. FCC*, 272 F.2d 533, 536 (D.C. Cir. 1959), cert. denied sub nom. *Aeronautical Radio, Inc. v. U.S.*, 361 U.S. 965 (1960). We also note that this matter does arise due to a foreign affairs matter of the United States, an independent basis for permitting the adoption of rules without notice and comment. See 5 U.S.C. § 553(a)(1); 47 CFR § 1.412(b)(1).

⁸⁶ Cf. *Application of Generally Accepted Accounting Principles for Federal Agencies and Generally Accepted Government Auditing Standards to the Universal Service Fund, Application of Generally Accepted Accounting Principles for Federal Agencies and Generally Accepted Government Auditing Standards to the Telecommunications Relay Services Fund*, CC Docket Nos. 96-45, 03-123, Order, 18 FCC Rcd 19911, 19914, para. 8 (2003).

⁸⁷ *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001) (internal quotation marks omitted); accord *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 94 (D.C. Cir. 2012).

⁸⁸ *Nat’l Helium Corp. v. Fed. Energy Admin.*, 569 F.2d 1137, 1146 (Temp. Emer. Ct. App. 1977); see also *Amendment of Subpart S and T of Part 90 of the Rules to Permit Licensing of Channels in the 896–901/935–904 MHz and 220–222 MHz Bands in the U.S./Mexico Border Area*, Order, 7 FCC Rcd 7154, 7154, para. 5 (1992).

⁸⁹ See *infra* Appx. A.

⁹⁰ See *supra* paras. 14–16.

23. Moreover, given the safety concerns, we find good cause to conclude that prior notice and comment would be contrary to the public interest. We are faced with a potential emergency situation where serious harm could result if the rules ensuring the safety of vessels navigating the Great Lakes were suddenly not applicable and enforceable beginning on November 2, 2023. Good cause has been found to exist in emergency situations in which a rule responds to an immediate threat to safety or physical property.⁹¹ As explained above, these rules were put in place to ensure the safety of life and property on the Great Lakes and to ensure communications when vessels are in distress or facing emergency situations, including with the USCG and their Canadian counterparts.⁹² The USCG stresses the importance of maintaining the requirements beyond November 2, 2023, particularly because properly placed and operating VHF radiocommunications “not only provides a means for immediately contacting search and rescue authorities and other ships” in emergency situations, but also allows authorities and other vessels in the vicinity to facilitate the assistance of nearby vessels in distress.⁹³ The USCG also notes that there is limited cell phone coverage on the Great Lakes, making VHF radios the only reliable means to make contact if vessel is in distress.⁹⁴ We, therefore, find good cause to forgo notice and comment to ensure, in particular, that these communications and public safety rules designed to address distress situations are effective and continue to be applicable to vessels on the Great Lakes after the effective date of termination of the GLA.

24. Additionally, the Commission had limited time to coordinate a joint regulatory response to Canada’s termination of the GLA, making public participation impracticable in this case. Good cause has been found to exist when a rule is necessary, due to circumstances beyond the agency’s control, to avoid or ameliorate expected harm to important public interests.⁹⁵ On November 2, 2022, Canada unilaterally terminated the GLA in a letter to the U.S. Department of State.⁹⁶ Since the date of Canada’s termination letter, the Commission has expended considerable time and effort in coordinating with the various interested stakeholders, including the U.S. Department of State, USCG, and Canada, to determine the appropriate regulatory paradigm going forward.⁹⁷ These events, including the termination of the treaty, were largely beyond the Commission’s control. Once that coordination process was completed, there was insufficient time for public participation in this rulemaking proceeding. Doing so would have significantly delayed our effort to ensure that there will be rules in place beginning on the effective date of termination of the GLA. Allowing the GLA to terminate without having rules in place would not be in the public interest, as it would endanger public safety, cause commercial harm, and cause confusion for vessel owners and operators as to what regulations applied in the Great Lakes.

25. This Order substantively amends only one existing rule by relaxing the inspection requirement for applicable vessels on the Great Lakes from once every 13 months to once every 48

⁹¹ See, e.g., *Jifry v. FAA*, 370 F.3rd 1174, 1179–80 (D.C. Cir. 2004).

⁹² See GLA art. II; *supra* paras. 12–13.

⁹³ USCG Sept. 29 Letter, Attach., at 1. While the current GLA rules have been mostly successful, the information provided by the USCG demonstrates that there are some vessels that are not in compliance with our rules. In the past five years, the USCG has found vessels without the appropriate certifications, lacking FCC licenses, and even some with no radios. See *id.*, Attach., at 4. Therefore, it is necessary to ensure that our rules are in place to protect the safety of the people and vessels on the Great Lakes. See *id.*, Attach., at 1.

⁹⁴ USCG Oct. 11 Letter, Attach., at 1.

⁹⁵ See, e.g., *Nat’l Fed’n of Fed. Emps v. Devine*, 671 F.2d 607, 611 (D.C. Cir. 1982); *Am. Fed’n of Gov’t Emps. v. Block*, 655 F.2d 1153, 1157 (D.C. Cir. 1981); see also *Petry v. Block*, 737 F.2d 1193, 1200–02 (D.C. Cir. 1984).

⁹⁶ See *Termination Notice*.

⁹⁷ See, e.g., *Council of the S. Mountains, Inc. v. Donovan*, 653 F.2d 573, 581–82 (D.C. Cir. 1981).

months, at the request of the USCG.⁹⁸ As stated above, Canada terminated the GLA because of concerns about the frequency of a 13-month inspection requirement,⁹⁹ which Canada will replace with a 48-month inspection requirement currently applicable to inland waterways.¹⁰⁰ If we do not amend our inspection interval to mirror Canada's interval, then there will be an inconsistency between Canada's requirement and the United States's current 13-month requirement. We, therefore, make this same change to our rules to maintain uniformity in the inspection interval rules between the United States and Canada, which will benefit international relations between the two countries.

26. If the United States and Canada maintain different inspection requirements, vessel owners and operators could be fined or detained for unwittingly following the wrong rules when unknowingly crossing into U.S. or Canadian waters or when entering the other country's port.¹⁰¹ Both the USCG and Canadian government have stated that they will fully enforce their rules.¹⁰² Therefore, as the USCG explains, a vessel traveling from Cleveland, Ohio to Duluth, Minnesota will pass between the countries' waters numerous times, potentially resulting in multiple violations for each transit which could lead to excessive fines or being detained.¹⁰³ Such enforcement actions by the United States and Canada involving the other country's flagged vessels could harm commerce by raising prices and halting the transport of goods, travel, and foreign relations between the countries.¹⁰⁴ The USCG states that "[i]n the spirit of cooperation with our Canadian counterparts over the shared coverage of the Great Lakes, we implore that our requirements are in sync with Canada."¹⁰⁵ Requiring notice and comment for this rule change would result in excessive delay and prevent the maintenance of uniformity and international stability, and we therefore find additional good cause to conclude that following notice-and-comment procedures would be contrary to the public interest. For these reasons, we also find that the amendment to the inspection requirement falls under the foreign affairs exception for notice and comment procedures.¹⁰⁶

D. Effective Date

27. For similar reasons, we find good cause to make these rules effective immediately upon publication in the Federal Register. While rules issued by the Commission generally must be published at least 30 days before they become effective, the APA and the Commission's rules make an exception "for good cause found and published with the rule."¹⁰⁷ Given that the imminent lapse of the GLA rules on November 2, 2023, would pose a risk to the safety of life and property on the Great Lakes, it is necessary that we have these rules adopted and effective prior to the GLA's termination date. Further, because we are by and large simply retaining rules that are in existence today, vessels on the Great Lakes should

⁹⁸ See amended rule section 80.953, 47 CFR § 80.953, in Appx. A hereto; USCG Oct. 11 Letter at 1–2.

⁹⁹ See *supra* para. 2.

¹⁰⁰ See *supra* para. 17.

¹⁰¹ USCG Oct. 11 Letter, Attach., at 1.

¹⁰² USCG Sept. 29 Letter, Attach., at 3; USCG Oct. 11 Letter, Encl. 2, at 1.

¹⁰³ USCG Oct. 11 Letter, at 2.

¹⁰⁴ See *id.*

¹⁰⁵ USCG Sept. 29 Letter, Attach., at 3.

¹⁰⁶ 5 U.S.C. § 553(a).

¹⁰⁷ *Id.* § 553(d)(3); 47 CFR § 1.427(b); see, e.g., *Schools and Libraries ULS Order*, 35 FCC Rcd at 10354, para. 22; *Amendment of Part 2 of the Commission's Rules to Allocate the Band 33–36 GHz to the Fixed-Satellite Service for Federal Government Use*, Memorandum Opinion and Order, 16 FCC Rcd 2799, 2801, para. 6 (2001).

already be equipped with the requisite VHF radios and meet the other communications requirements maintained by today's action, and, therefore, vessel owners and operators do not need time to come into compliance with these rules.¹⁰⁸

28. We also conclude that the revised inspection requirement should likewise become effective immediately upon publication in the Federal Register. This rule change relieves a burden on industry by permitting vessels to be inspected every 48 months, instead of every 13 months. Because our action relieves a restriction, it is exempt from the requirement that the rule be published for at least 30 days in the Federal Register before becoming effective.¹⁰⁹ Further, this rule change ensures that the U.S. and Canadian rules remain uniform, thereby avoiding a disruption in trade or international disputes regarding what rules apply to various vessels. To maintain uniformity, this rule change needs to be effective as of November 2, 2023.¹¹⁰ As with the retention of the other Great Lakes rules, the only way to accomplish this is to make this rule effective upon publication in the Federal Register.

IV. PROCEDURAL MATTERS

29. *Regulatory Flexibility Act.* Because this rule change is being adopted without notice and comment, the Regulatory Flexibility Act¹¹¹ does not apply.

30. *Paperwork Reduction Analysis.* This document does not contain any new or substantively modified information collection requirements subject to the Paperwork Reduction Act of 1985 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.¹¹² This document may contain non-substantive modifications to approved information collections. Any such modifications will be submitted to the Office of Management and Budget (OMB) for approval pursuant to OMB's non-substantive modification process.

31. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office, pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

32. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 301, 303, and 321 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, 303, and 321, this Order IS ADOPTED.

33. IT IS FURTHER ORDERED that part 0 and part 80 of the Commission's rules ARE AMENDED as set forth in Appendix A. These amendments shall become effective upon publication of this Order in the Federal Register, pursuant to 5 U.S.C. § 553(d)(3) and section 1.427(b) of the Commission's rules, 47 CFR § 1.427(b).

¹⁰⁸ See, e.g., *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996).

¹⁰⁹ 5 U.S.C. § 553(d)(1).

¹¹⁰ *Id.* § 553(d)(3).

¹¹¹ *Id.* § 601 *et seq.*; see *id.* § 601(2).

¹¹² See 44 U.S.C. § 3506(c)(4).

34. IT IS FURTHER ORDERED that the Office of Management and Budget, Performance Program Management, SHALL SEND a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

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

PART 0—COMMISSION ORGANIZATION

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

AUTHORITY: 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 409, unless otherwise noted.

2. Section 0.131 is amended by revising paragraph (s)(2) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(s)(1) * * *

(2) Grants emergency exemption requests, extensions or waivers of inspection to ships in accordance with applicable provisions of the Communications Act, the Safety Convention, or the Commission's rules.

3. Section 0.491 is revised to read as follows:

§ 0.491 Application for exemption from compulsory ship radio requirements.

Applications for exemption filed under the provisions of sections 352(b) or 383 of the Communications Act; Regulation 4, chapter I of the Safety Convention; Regulation 5, chapter IV of the Safety Convention; or subpart T of Part 80, must be filed as a waiver request using the procedures specified in § 0.482. Emergency requests must be filed via the Universal Licensing System or at the Federal Communications Commission, Office of the Secretary.

PART 80—STATIONS IN THE MARITIME SERVICES

4. The authority citation for part 80 continues to read as follows:

AUTHORITY: 47 U.S.C. 151-155, 301-609; 3 U.S.T. 3450, 12 U.S.T. 2377.

5. Section 80.1 is amended by revising paragraph (a) to read as follows:

§ 80.1 Basis and purpose.

* * * * *

(a) Basis. The rules for the maritime services in this part are promulgated under the provisions of the Communications Act of 1934, as amended, which vests authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations. The rules in this part are in accordance with applicable statutes, international treaties, agreements and recommendations to which the United States is a party. The most significant of these documents are listed below with the short title appearing in parenthesis:

Communications Act of 1934, as amended—(Communications Act).

Communications Satellite Act of 1962, as amended—(Communications Satellite Act).

International Telecommunication Union Radio Regulations, in force for the United States—(Radio Regulations).

International Convention for Safety of Life at Sea, 1974, as amended, and the Annex thereto—(Safety Convention).

Vessel Bridge-to-Bridge Radiotelephone Act—(Bridge-to-Bridge Act).

* * * * *

6. Section 80.5 is amended by revising paragraphs (3) and (6) under the definition of Categories of ships and the definition of Great Lakes to read as follows:

§ 80.5 Definitions.

* * * * *

Categories of ships

* * * * *

(3) The term *passenger carrying vessel*, when used in reference to Part III, Title III of the Communications Act or subpart T of this part, means any ship transporting more than six passengers for hire.

* * * * *

(6) *Compulsory ship*. Any ship which is required to be equipped with radiotelecommunication equipment in order to comply with the radio or radio-navigation provisions of a treaty, statute, or subpart T of this part to which the vessel is subject.

* * * * *

Great Lakes. This term means all of Lakes Ontario, Erie, Huron (including Georgian Bay), Michigan, Superior, their connecting and tributary waters and the St. Lawrence River as far east as the lower exit of the St. Lambert Lock at Montreal in the Province of Quebec, Canada, but does not include any connecting and tributary waters other than: the St. Marys River, the St. Clair River, Lake St. Clair, the Detroit River and the Welland Canal.

* * * * *

7. Section 80.59 is amended by revising paragraphs (a) introductory text, (a)(1) introductory text, (b), and (c)(1) introductory text to read as follows:

§ 80.59 Compulsory ship inspections.

(a) Inspection of ships subject to part II or III of title III of the Communications Act or the Safety Convention.

(1) The FCC will not normally conduct the required inspections of ships subject to the inspection requirements of part II or III of title III of Communications Act or the Safety Convention.

* * * * *

(b) Inspection and certification of a ship subject to subpart T of this part. The FCC will not inspect vessels that are subject to subpart T of this part. An inspection and certification of a ship subject to subpart T of this part must be made by a technician holding one of the following: an FCC General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, a First Class Radiotelegraph Operator's Certificate, or a Radiotelegraph Operator License. The certification required by § 80.953 must be entered into the ship's log. The technician conducting the inspection and providing the certification must not be the vessel's owner, operator, master, or an employee of any of them. Additionally, the vessel owner, operator, or ship's master must certify that the inspection was satisfactory. There are no FCC prior notice requirements for any inspection under this section.

(c) * * *

(1) Applications for exemption from the radio provisions of part II or III of title III of the Communications Act, the Safety Convention, or subpart T of this part, or for modification or renewal of

an exemption previously granted must be filed as a waiver request using FCC Form 605. Waiver requests must include the following information:

* * * * *

8. Section 80.161 is retitled and revised to read as follows:

§ 80.161 Operator requirements for subpart T vessels on the Great Lakes.

Each ship subject to subpart T of this part must have on board an officer or member of the crew who holds a marine radio operator permit or higher class license.

9. Section 80.308 is retitled and amended by revising paragraph (a) introductory text to read as follows:

§ 80.308 Watch required for subpart T vessels on the Great Lakes.

(a) Each ship of the United States that is equipped with a radiotelephone station for compliance with subpart T of this part must when underway keep a watch on:

* * * * *

10. Section 80.401 is revised to read as follows:

§ 80.401 Station documents requirement.

Licensees of radio stations are required to have current station documents as indicated in the following table:

LEGEND:
R = REQUIRED

Documents:

Station License	Appropriate Operator Authorization	Station Logs	Appropriate Safety Convention Certificate	Communications Act Safety Certificate	Great Lakes Safety Certificate	Bridge-to-Bridge Act Safety Certificate	Part 80; FCC Rules and Regulations	Alphabetical List of Maritime Mobile Call Signs	List of Ship Stations	Manual for Use by Maritime Mobile (M/M) Service and M/M Satellite Service	List of Coast Stations	List of Radiodetermination and Speed Services Stations	Station Equipment Records	GMDSS Master Plan	NGA Publication 117	Admiralty List of Radio Signals	IMO Circ. 7
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	Radio Station Category																		
<i>Ship:</i>	Cargo ships (300 tons and up)	R ¹	R	R	R				R	R ⁶	R ⁶	R	R ⁵	R		R ⁵	R	R ⁵	R ⁵
	Passenger Vessels – SOLAS	R ¹	R	R		R			R	R	R	R	R ⁵	R		R ⁵	R	R ⁵	R ⁵
	Passenger Vessels – Domestic	R ¹	R	R					R										
	Telephone; Subpart T Great Lakes Vessels	R	R	R ⁴					R ⁴										
	Telephone; Bridge-to-Bridge Act	R	R	R					R										
	Radar	R																	
	On Board	R												R					
	Voluntary	R																	
<i>Land:</i>	Public Coast (MF)	R	R	R				R	R ³	R ³	R ³								
	Public Coast (HF)	R	R	R				R	R	R	R								
	Public Coast (VHF)	R	R	R				R											
	Private Coast	R	R																
	Radio Determination	R	R																
	Operational Fixed	R	R																
	Maritime Support	R	R																
	Alaska – Public Fixed	R	R	R															
	Alaska – Private Fixed	R	R																
<i>Ship/Coast</i>	Marine Utility	R	R																

Notes: 1. The expired station license must be retained in the station records until the first Commission inspection after the expiration date.

- 2. Alternatively, a list of coast stations maintained by the licensee with which communications are likely to be conducted, showing watch-keeping hours, frequencies and charges, is authorized.
- 3. Required only if station provides a service to ocean-going vessels.
- 4. Certification of a Great Lakes inspection may be made by either a log entry or issuance of a Great Lakes certificate. The ship’s radiotelephone logs containing entries certifying that a Great Lakes safety inspection has been conducted must be retained on board and available for inspection until the next radio inspection.
- 5. The requirements for having the GMDSS Master Plan, NGA Publication 117, Admiralty List of Radio Signals or IMO Circ. 7 are satisfied by having any one of those four documents.

11. Section 80.409 is amended by revising paragraph (f)(1) introductory text and (f)(2) introductory text and (f)(2)(v) to read as follows:

§ 80.409 Station logs.

* * * * *

(f) * * *

(1) Radiotelephony stations subject to part II or III of title III of the Communications Act and/or the Safety Convention must record entries indicated by paragraphs (e)(1) through (e)(13) of this section. Additionally, the radiotelephone log must provide an easily identifiable, separate section relating to the required inspection of the ship’s radio station. Entries must be made in this section giving at least the following information.

* * * * *

(2) Radiotelephony stations subject to subpart T of this part and the Bridge-to-Bridge Act must record entries indicated by paragraphs (e)(1), (3), (5), (6), (7), (8), (10), (11), and (13), and of this section. Additionally, the radiotelephone log must provide an easily identifiable, separate section relating to the required inspection of the ship’s radio station. Entries must be made in this section giving at least the following information:

* * * * *

(v) The inspector’s signed and dated certification that the vessel meets the requirements for certain vessels operating in the Great Lakes and of the Bridge-to-Bridge Act contained in subparts T and U of this part and has successfully passed the inspection; and

* * * * *

12. Section 80.411 is amended by revising paragraph (b) to read as follows:

§ 80.411 Vessel certification or exemption.

* * * * *

(b) *Posting.* Part II or III of Title III of the Communications Act, Safety Convention, and Great Lakes certificates or exemptions must be posted in a prominent, accessible place in the ship. Ships subject to subpart T of this part may, in lieu of a posted certificate, certify compliance in the station log required by section 80.409(f).

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13. Part 80 – Stations in the Maritime Services, Subpart T – Radiotelephone Installation Required for Vessels on the Great Lakes is revised to read as follows:

Subpart T—Radiotelephone Installation Required for Vessels on the Great Lakes**§ 80.951 Applicability.**

The rules in this subpart apply to vessels of all countries when navigated on the Great Lakes. The Great Lakes are defined as all waters of Lakes Ontario, Erie, Huron (including Georgian Bay), Michigan, Superior, their connecting and tributary waters and the River St. Lawrence as far east as the lower exit of the St. Lambert Lock at Montreal in the Province of Quebec, Canada, but do not include any connecting and tributary waters except the St. Marys River, the St. Clair River, Lake St. Clair, the Detroit River and the Welland Canal. A vessel that falls into a category specified in paragraph (a), (b) or (c) of this section and is not excepted by paragraph (d) or (e) of this section must comply with this subpart while navigated on the Great Lakes.

(a) Every vessel 20 meters (65 feet) or over in length (measured from end to end over the deck, exclusive of sheer).

(b) Every vessel engaged in towing another vessel or floating object, except:

(1) Where the maximum length of the towing vessel, measured from end to end over the deck exclusive of sheer, is less than 8 meters (26 feet) and the length or breadth of the tow, exclusive of the towing line, is less than 20 meters (65 feet);

(2) Where the vessel towed complies with this subpart;

(3) Where the towing vessel and tow are located within a booming ground (an area in which logs are confined); or

(4) Where the tow has been undertaken in an emergency and neither the towing vessel nor the tow can comply with this part

(c) Any vessel carrying more than six passengers for hire.

(d) The requirements of this subpart do not apply to:

(1) Ships of war and troop ships;

(2) Vessels owned and operated by any national government and not engaged in trade.

(e) The Commission may if it considers that the conditions of the voyage or voyages affecting safety (including but not necessarily limited to the regularity, frequency and nature of the voyages, or other circumstances) are such as to render full application of the rules of this subpart unreasonable or unnecessary, exempt partially, conditionally or completely, any individual vessel for one or more voyages or for any period of time not exceeding one year.

§ 80.953 Inspection and certification.

(a) Each U.S. flag vessel subject to this subpart must have an inspection of the required radiotelephone installation at least once every 48 months. This inspection must 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 service.

(b) An inspection and certification of a ship subject to this subpart must be made by a technician holding one of the following: a General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Radiotelegraph Operator License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. Additionally, the technician must not be the vessel's owner, operator, master, or an employee of any of them. The results of the inspection must be recorded in the ship's radiotelephone log and include:

(1) The date the inspection was conducted;

(2) The date by which the next inspection needs to be completed;

(3) The inspector's printed name, address, class of FCC license (including the serial number);

(4) The results of the inspection, including any repairs made; and

(5) The inspector's signed and dated certification that the vessel meets the requirements contained in this subpart and the Bridge-to-Bridge Act contained in subpart U of this part and has successfully passed the inspection.

(c) The vessel owner, operator, or ship's master must certify that the inspection required by paragraph (b) was satisfactory.

(d) The ship's radiotelephone logs containing entries certifying that a Great Lakes safety inspection has been conducted must be retained on board and available for inspection until the next radio inspection.

§ 80.955 Radiotelephone installation.

(a) Each U.S. flag vessel of less than 38 meters (124 feet) in length while subject to this subpart must have a radiotelephone meeting the provisions of this subpart in addition to the other rules in this part governing ship stations using telephony.

(b) Each U.S. flag vessel of 38 meters (124 feet) or more in length while subject to this subpart must have a minimum of two VHF radiotelephone installations in operating condition meeting the provisions of this subpart. The second VHF installation must be electrically separate from the first VHF installation. However, both may be connected to the main power supply provided one installation can be operated from a separate power supply located as high as practicable on the vessel.

(c) This paragraph does not require or prohibit the use of other frequencies for use by the same "radiotelephone installation" for communication authorized by this part.

§ 80.956 Required frequencies and uses.

(a) Each VHF radiotelephone installation must be capable of transmitting and receiving G3E emission as follows:

(1) Channel 16—156.800 MHz—Distress, Safety and Calling; and

(2) Channel 6—156.300 MHz—Primary intership.

(b) The radiotelephone station must have additional frequencies as follows:

(1) Those ship movement frequencies appropriate to the vessel's area of operation: Channel 11—156.550 MHz, Channel 12—156.600 MHz, or Channel 14—156.700 MHz.

(2) The navigational bridge-to-bridge frequency, 156.650 MHz (channel 13).

(3) Such other frequencies as required for the vessel's service.

(4) One channel for receiving marine navigational warnings for the area of operation.

(c) Every radiotelephone station must include one or more transmitters, one or more receivers, one or more sources of energy and associated antennas and control equipment. The radiotelephone station, exclusive of the antennas and source of energy, must be located as high as practicable on the vessel, preferably on the bridge, and protected from water, temperature, and electrical and mechanical noise.

§ 80.957 Principal operating position.

(a) The principal operating position of the radiotelephone installation must be on the bridge, convenient to the conning position.

(b) When the radiotelephone station is not located on the bridge, operational control of the equipment must be provided at the location of the radiotelephone station and at the bridge operating position. Complete control of the equipment at the bridge operating position must be provided.

§ 80.959 Radiotelephone transmitter.

- (a) The transmitter must be capable of transmission of G3E emission on the required frequencies.
- (b) The transmitter must deliver a carrier power of between 10 watts and 25 watts into 50 ohms nominal resistance when operated with its rated supply voltage. The transmitter must be capable of readily reducing the carrier power to one watt or less.
- (c) To demonstrate the capability of the transmitter, measurements of primary supply voltage and transmitter output power must be made with the equipment operating on the vessel's main power supply, as follows:
 - (1) The primary supply voltage measured at the power input terminals to the transmitter terminated in a matching artificial load, must be measured at the end of 10 minutes of continuous operation of the transmitter at its rated power output.
 - (2) The primary supply voltage, measured in accordance with the procedures of this paragraph, must be not less than 11.5 volts.
 - (3) The transmitter at full output power measured in accordance with the procedure of this paragraph must not be less than 10 watts.

§ 80.961 Radiotelephone receiver.

- (a) The receiver must be capable of reception of G3E emission on the required frequencies.
- (b) The receiver must have a sensitivity of at least 2 microvolts across 50 ohms for a 20 decibel signal-to-noise ratio.

§ 80.963 Main power supply.

- (a) A main power supply must be available at all times while the vessel is subject to the requirements of this subpart.
- (b) Means must be provided for charging any batteries used as a source of energy. A device which during charging of the batteries gives a continuous indication of charging current must be provided.

§ 80.965 Reserve power supply.

- (a) Each passenger vessel of more than 100 gross tons and each cargo vessel of more than 300 gross tons must be provided with a reserve power supply independent of the vessel's normal electrical system and capable of energizing the radiotelephone installation and illuminating the operating controls at the principal operating position for at least 2 continuous hours under normal operating conditions. When meeting this 2 hour requirement, such reserve power supply must be located on the bridge level or at least one deck above the vessel's main deck.
- (b) Instead of the independent power supply specified in paragraph (a) of this section, the vessel may be provided with an auxiliary radiotelephone installation having a power source independent of the vessel's normal electrical system. Any such installation must comply with §§ 80.955, 80.956, 80.957, 80.959, 80.961, 80.969 and 80.971, as well as the general technical standards contained in this part. Additionally, the power supply for any such auxiliary radiotelephone must be a "reserve power supply" for the purposes of paragraphs (c), (d) and (e) of this section.
- (c) Means must be provided for adequately charging any batteries used as a reserve power supply for the required radiotelephone installation. A device must be provided which, during charging of the batteries, gives a continuous indication of charging.

(d) The reserve power supply must be available within one minute.

(e) The station licensee, when directed by the Commission, must prove by demonstration as prescribed in paragraphs (e)(1), (2), (3) and (4) of this section that the reserve power supply is capable of meeting the requirements of paragraph (a) of this section as follows:

(1) When the reserve power supply includes a battery, proof of the ability of the battery to operate continuously for the required time must be established by a discharge test over the required time, when supplying power at the voltage required for normal operation to an electric load as prescribed by paragraph (e)(3) of this section.

(2) When the reserve power supply includes an engine driven generator, proof of the adequacy of the engine fuel supply to operate the unit continuously for the required time may be established by using as a basis the fuel consumption during a continuous period of one hour when supplying power, at the voltage required for normal operation, to an electrical load as prescribed by paragraph (e)(3) of this section.

(3) For the purposes of determining the electrical load to be supplied, the following formula must be used:

(i) One-half of the current of the radiotelephone while transmitting at its rated output, plus one-half the current while not transmitting; plus

(ii) Current of the required receiver; plus

(iii) Current of the source of illumination provided for the operating controls prescribed by § 80.969; plus

(iv) The sum of the currents of all other loads to which the reserve power supply may provide power in time of emergency or distress.

(4) At the conclusion of the test specified in paragraphs (e)(1) and (2) of this section, no part of the reserve power supply must have excessive temperature rise, nor must the specific gravity or voltage of any battery be below the 90 percent discharge point.

§ 80.967 Antenna system.

The antenna must be omnidirectional, vertically polarized and located as high as practicable on the masts or superstructure of the vessel.

§ 80.969 Illumination of operating controls.

(a) The radiotelephone must have dial lights which illuminate the operating controls at the principal operating position.

(b) Instead of dial lights, a light from an electric lamp may be provided to illuminate the operating controls of the radiotelephone at the principal operating position. If a reserve power supply is required, arrangements must permit the use of that power supply for illumination within one minute.

§ 80.971 Test of radiotelephone installation.

At least once during each calendar day a vessel subject to this subpart must test communications on 156.800 MHz to demonstrate that the radiotelephone installation is in proper operating condition unless the normal daily use of the equipment demonstrates that this installation is in proper operating condition. If equipment is not in operating condition, the master must have it restored to effective operation as soon as possible.

14. Section 80.1005 is revised to read as follows:

§ 80.1005 Inspection of station.

The bridge-to-bridge radiotelephone station will be inspected on vessels subject to regular inspections pursuant to the requirements of Parts II and III of Title III of the Communications Act, the Safety Convention, or subpart T of this part at the time of the regular inspection. If after such inspection, the Commission determines that the Bridge-to-Bridge Act, the rules of the Commission and the station license are met, an endorsement will be made on the appropriate document. The validity of the endorsement will run concurrently with the period of the regular inspection. Each vessel must carry a

certificate with a valid endorsement while subject to the Bridge-to-Bridge Act. All other bridge-to-bridge stations will be inspected from time-to-time. An inspection of the bridge-to-bridge station on a vessel subject to subpart T of this part must normally be made at the same time as the inspection required under subpart T of this part and must be conducted by a technician holding one of the following: a General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Radiotelegraph Operator License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. Additionally, the technician must not be the vessel's owner, operator, master, or an employee of any of them. Ships subject to the Bridge-to-Bridge Act may, in lieu of an endorsed certificate, certify compliance in the station log required by section 80.409(f).

15. Section 80.1065 is amended by revising paragraph (b) to read as follows:

§ 80.1065 Applicability.

* * * * *

(b) The requirements of this subpart do not modify the requirements for ships navigated on the Great Lakes or small passenger boats. The requirements contained in subpart T of this part continue to apply. The requirements contained in part III of title III of the Communications Act continue to apply (see subpart S of this part).

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