

shall use the Federal medical assistance percentage (FMAP) as defined in section 457(c)(3) of the Act in computing the Federal share of collections under title IV-A and the FMAP in effect for the fiscal year in which the amount is distributed for amounts under title IV-E.

(b) If an incentive payment is made to a jurisdiction under § 304.12 of this chapter for the enforcement and collection of support obligations, the payment shall be made from the Federal share of collections computed in paragraph (a) of this section.

(c) If a hold harmless payment is made to a jurisdiction pursuant to section 457(d) of the Act, the payment shall be made from the remaining Federal share of collections following the incentive payment made in paragraph (b) of this section.

§ 304.29 [Amended]

48. Section 304.29 is amended by removing, "Regional Representative" which refers to the Regional Representatives of the Office of Child Support Enforcement and replacing with, "Regional Administrator" which refers to the Regional Administrator of the Administration for Children and Families.

§ 304.40 [Amended]

49. In § 304.40, paragraph (a)(2) is amended by removing "Representative" and adding "Office" in its place, and paragraph (b)(2) is amended by removing "OCSE-OA-25" and adding "required financial reports" in its place, and by removing "(as shown on the latest OCSE-OA-25)".

PART 305—[REMOVED AND RESERVED]

50. Part 305 is removed and reserved.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[FCC 98-296]

Waiver of GMDSS Rules for Small Passenger Vessels and Fishing Vessels

AGENCY: Federal Communications Commission.

ACTION: Partial waiver of rules.

SUMMARY: On November 20, 1998, the Commission issued an Order waiving certain of its Rules implementing the

Global Maritime Distress and Safety System (GMDSS) as applied to fishing vessels until it can conclude a rule making proceeding to determine what GMDSS equipment is appropriate for fishing vessels. In the same order, the Commission waived certain of its Rules implementing the GMDSS as applied to small passenger vessels until the United States Coast Guard has notified the Commission that Sea Areas A1 and A2 have been established.

DATES: Waiver is effective February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Wilhelm, or Jim Shaffer, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, NW, Washington, DC 20554 or by telephone at (202) 418-0680 or by e-mail to, respectively, mwilhelm@fcc.gov or jshaffer@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* released November 20, 1998.

I. Introduction and Executive Summary

1. By this *Order* we grant temporary, conditional waivers pursuant to Part II of Title III of the Communications Act of certain Commission rules implementing the provisions of the Safety of Life at Sea (SOLAS) Convention for small passenger vessels and fishing vessels.¹ The waivers affect fishing vessels² and small passenger vessels that make short voyages in certain narrowly-defined waters. Absent the action taken herein, fishing vessels and small passenger vessels would be required to fully implement the Global Maritime Distress and Safety System (GMDSS) on February 1, 1999.³ We are granting the waiver for small passenger vessels *inter alia* because the short-based stations necessary for GMDSS short-range and medium-range digital selective calling (DSC) communications are not yet fully implemented in the United States. Consequently, were small passenger vessels required to fully conform to the GMDSS rules, those vessels would have to install the equipment necessary for long-range communication. The long-range equipment would be costly and

unnecessary from a safety standpoint for small passenger vessels. In the case of fishing vessels, at the behest of representatives of the fishing industry, we are granting a temporary, conditional waiver from compliance with certain of the Commission's GMDSS rules pending completion of a rule making proceeding addressed to the issue of whether fishing vessels should be required to comply fully with the Commission's GMDSS rules. The waivers herein affect only rules that were to take effect on February 1, 1999. As a result, nothing herein should be construed as a waiver of GMDSS rules which already are in effect.

II. Background

2. *GMDSS Implementation.* In the *GMDSS R&O*,⁴ the Commission established a schedule, consistent with the one adopted internationally, under which the GMDSS would be phased-in for United States vessels. The current GMDSS rules require that all United States compulsory vessels⁵ must be equipped with a full GMDSS installation for alerting and communications purposes by February 1, 1999.⁶ The Commission's GMDSS rules require all compulsory vessels to carry a complement of basic GMDSS equipment which includes a VHF installation with digital selective calling (DSC), a NAVTEX receiver, a float-free satellite EPIRB, one or more search and rescue radar transponders (SARTs), and two or more VHF portable radios. In addition, these vessels must carry certain other communications equipment depending on the "Sea Area" in which a vessel operates.⁷ There are four possible Sea Areas (designated Sea Areas A1-A4).⁸ Sea Areas A3 and

⁴ See Amendment of Parts 13 and 80 of the Commission's Rules to Implement the Global Maritime Distress and Safety System to Improve the Safety of Life at Sea, PR Docket No. 90-480, Report and Order, 7 FCC Rcd 951 (1992) (GMDSS R&O), petition for reconsideration denied, Memorandum Opinion and Order, FCC 98-180 (released August 10, 1998), 63 FR 49870 (September 18, 1998).

⁵ Compulsory vessels are cargo ships of 300 gross tons or over travelling in the open sea, and all passenger ships, irrespective of size, that carry more than 12 passengers when travelling in the open sea. See 47 CFR 80.1065(b).

⁶ See 47 CFR 80.1065.

⁷ See 47 CFR 80.1089-80.1093.

⁸ The GMDSS Sea Areas are defined as follows: *Sea Area A1*—an area within the radiotelephone coverage of at least one VHF coast station in which continuous DSC alerting is available (this would normally extend approximately 20-30 miles from shore); *Sea Area A2*—an area, excluding *Sea Area A1*, within the radiotelephone coverage of at least one MF coast station in which continuous DSC alerting is available (this would normally extend up to 75-150 miles from shore); *Sea Area A3*—an area, excluding *Sea Areas A1* and *A2*, within the coverage of an INMARSAT geostationary satellite in

Continued

¹ See Consolidated Text of the International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1978: Articles, Annexes and Certificates, Incorporating all Amendments in Effect from 1 July 1997, International Maritime Organization, London, 1997 (*SOLAS Convention*).

² "Fishing vessels" for the purposes of this *Order* are commercial vessels that catch and/or process fish and other marine life. *C.f.* *SOLAS Convention*, Part A, Regulation 2(i).

³ See 47 CFR Subpart W.

A4 are currently established and in use world-wide and rely, for their operation, on ship borne DSC-equipped high frequency (HF) transceivers or INMARSAT satellite terminals. In the United States, Sea Areas A1 and A2 are not established because the requisite shore-based VHF and MF DSC equipment is not in place. Accordingly, absent a waiver, compulsory ships in United States waters must be fitted with Sea Area A3 or A4 equipment in order to participate in the ship-to-shore and shore-to-ship portion of the GMDSS. The Sea Area A3 and A4 equipment, intended for long ocean-going voyages, is significantly more expensive than the Sea Area A1 and A2 equipment.

III. Discussion

3. Permitting small passenger vessels to defer GMDSS compliance until Sea Areas A1 and A2 are established serves the public interest by avoiding the need for short-range vessels to unnecessarily purchase and install the equipment appropriate for long-range communication. The public interest is likewise served by not finalizing the GMDSS equipment requirements for fishing vessels until the Commission has had the opportunity to consider, in a rule making context, whether there are characteristics of fishing vessels that dictate making special provisions for fishing vessels in the GMDSS rules.

4. The general exemption rule for small passenger vessels, § 80.933 of the Commission's Rules, provides that, prior to February 1, 1999, certain small passenger vessels are exempt from: (a) the radiotelegraph carriage requirements of the Communications Act; (b) the MF radiotelephone requirements of the Commission's Rules; and (c) Regulations 7 through 11 of Chapter IV of the *SOLAS Convention*.⁹ The general exemption, § 80.933(c),¹⁰ is narrowly drawn in geographic terms¹¹ and applies only to United States small passenger vessels that operate not more than 20 nautical miles from land, or alternatively, 200 nautical miles between consecutive ports. The current exemption expires on January 31, 1999 because, effective February 1, 1999, the Commission's GMDSS rules, only portions of which

are currently in effect, would be fully implemented for all compulsory vessels.¹²

5. We note that the expiration date set for the small passenger vessel exemption in § 80.933 of the Commission's Rules was premised on the shore-based terrestrial portions of the GMDSS being in place by February 1, 1999.¹³ Accordingly, it was anticipated that on February 1, 1999, small passenger vessels would be fully in compliance with the GMDSS rules if they were fitted with VHF-DSC and/or MF-DSC equipment in addition to the GMDSS equipment already required. However, because Sea Areas A1 and A2 have not been established, small passenger vessels would require Sea Area A3 or A4 equipment to comply with the GMDSS rules unless the small passenger vessel exemption *supra* is extended pending establishment of Sea Areas A1 and A2 in the United States.

6. We do not believe it would further the public interest to require small passenger vessels to be fitted with costly equipment that would be of little or no utility once Sea Areas A1 and A2 are established. Given the route and conditions of the voyages routinely made by these small passenger vessels, we find that it is reasonable to grant these small passenger vessels a temporary, conditional waiver of certain of the Commission's GMDSS rules by extending the termination date of the general exemption *supra*. Thereby we exempt these small passenger vessels both from the carriage of radiotelegraph equipment and certain equipment specified in the Commission's GMDSS rules, provided that these vessels carry the equipment specified in the general exemption rule, § 80.933. In so doing, we are substituting the equipment specified in § 80.933 of the Commission's Rules for that specified in Regulations 7 through 11 of Chapter IV of the *SOLAS Convention*, pursuant to Regulation 5 of Chapter I of the *SOLAS Convention* which permits substitution of equivalent equipment when such equipment will be at least as effective as that specified in the *SOLAS Convention*.¹⁴ The small passenger

vessel waiver will be terminated by the Commission once the Coast Guard has notified the Commission that shore-based Sea Area A1 and A2 coverage is established, at which time, small passenger vessels will be required to fully comply with the Commission's GMDSS rules.¹⁵

7. *Fishing Vessels.* Traditionally, fishing vessels have been treated as cargo vessels for the purposes of the Commission's Rules. They are considered cargo vessels because the Communications Act defines "cargo ship" as "any ship not a passenger ship."¹⁶ Accordingly, fishing vessels have been required to carry the radiotelegraph and radiotelephone equipment, including GMDSS equipment, specified for cargo ships in the Communications Act and in the Commission's Rules.¹⁷ As a result, since August 1, 1993, fishing vessels of 300 gross tons or more have been required to carry a NAVTEX receiver for the reception of maritime safety information and a float-free satellite EPIRB,¹⁸ and, since February 1, 1995, such ships have been required to carry specified survival craft radio equipment.¹⁹ Thus, to date, fishing vessels of 300 gross tons or more have been subject to the Commission's GMDSS rules.²⁰

8. Representatives of the fishing industry²¹ have claimed to the

and Order, FCC 95-447 (released Nov. 8, 1995) at ¶ 22, 60 FR 58243 (November 27, 1995).

¹⁵ The Commission intends to provide at least six months notice before terminating the waiver of certain of the GMDSS rules as they apply to small passenger vessels.

¹⁶ 47 U.S.C. § 153(39)(C).

¹⁷ See 47 U.S.C. 351-363; 47 CFR 80.801-80.879, 80.951-80.1135.

¹⁸ All compulsory ships were required to comply with 47 CFR 80.1085(a)(4) and 80.1085(a)(6) by August 1, 1993, and with 47 CFR 80.1095 by February 1, 1995. See 47 CFR 80.1065(b)(1), 80.1065(b)(2).

¹⁹ See 47 CFR 80.1065(2), 80.1095.

²⁰ See 47 CFR 80.1065(b).

²¹ See Letter dated September 1, 1998, from Fishing Industry Task Force on GMDSS/DSC (Messrs. Thorn Smith, et al.) to William E. Kennard, Chairman, Federal Communications Commission; Letter dated April 21, 1998, to the Hon. Ted Stevens from the Kodiak Vessel Owners' Association, Alaska Groundfish Data Bank, United Catcher Boats, Deep Sea Fishermen's Union, Aleutians East Borough, Alaska Longline Fish Association, Unisea, Inc., Tyson Seafood Group, Inc, NorQuest Seafoods, Inc. Petersburg Vessel Owners, Pacific Seafood Processing Association, United Fishermen's Marketing Association, Inc., Alaska Driggers Association, North Pacific Longline Association, Fishing Vessel Owners' Association, Alaska Crab Coalition, At-Sea Processors Association, and Groundfish Forum (*Stevens Letter*); Letter dated April 20, 1998, to the Hon. Slade Gorton from the North Pacific Fishing Vessel Owners' Association, Yardarm Knot, Inc. and Snopac Products, Inc. (*Gorton Letter*).

which continuous alerting is available (the area between 70° North Latitude and 70° South Latitude, which is within the footprint of the INMARSAT system); Sea Area A4—an area outside Sea Areas A1, A2, and A3 (essentially the polar regions). See 47 CFR 80.1069.

⁹ Regulations 7 through 11 of Chapter IV of the *SOLAS Convention* define the basic radio equipment required for GMDSS-compliant ships and the additional equipment required for operation in Sea Areas A1-A4.

¹⁰ 47 U.S.C. 80.933(c).

¹¹ See 47 CFR 80.933(c)(4)(i)-(iii), (d)(1)-(3).

¹² See 47 CFR 80.1065(b)(3), (4). Note, however, that in the instant Order, the provisions of certain GMDSS rules as they apply to fishing vessels also are waived. See para. *infra*.

¹³ Amendment of Parts 13 and 80 of the Commission's Rules to Implement the Global Maritime Distress and Safety System (GMDSS) to Improve the Safety of Life at Sea, PR Docket No. 90-480, *Notice of Proposed Rule Making*, 5 FCC Rcd 6212, 6214 (1990).

¹⁴ See Amendment of Part 80 of the Commission's Rules Concerning the General Exemption for Large Cargo Ocean-going Cargo Vessels and Small Passenger Vessels, WT Docket No. 93-133, *Report*

Commission²² and to members of Congress²³ that requiring fishing vessels to comply with the DSC communications requirements of the GMDSS rules by February 1, 1999, would constitute an unnecessary financial burden.²⁴ In this connection, they argue that, because of the lack of shore coverage to support Sea Areas A1 and A2, fishing vessels would be required to carry more expensive Sea Area A3 or A4 equipment.²⁵ Moreover, they urge that the Commission revisit its GMDSS rules, as they apply to fishing vessels, because the *SOLAS Convention* specifically exempts fishing vessels from the SOLAS GMDSS regulations.²⁶ Further, they contend that, if the GMDSS is implemented on compulsory vessels—which then discontinue standing watch on the current distress channels (VHF Channel 16 and MF frequency 2182 kHz)—smaller vessels, lacking DSC capability, will have difficulty contacting the GMDSS-equipped vessels in the event of an emergency.²⁷ In order to more fully examine these issues, we believe it best to issue a temporary, conditional waiver of certain of the Commission's GMDSS rules applicable to fishing vessels until we conclude a rule making proceeding addressing the concerns of the fishing industry and such other parties who may elect to participate. Accordingly, by

this *Order*, we grant a temporary, conditional waiver, until a date to be announced in the future, of the requirement that fishing vessels comply with certain provisions of Part 80, Subpart W of the Commission's Rules requiring installation and use of GMDSS equipment. This waiver is conditioned on the requirement that, during the duration of the waiver, fishing vessels of 300 gross tons or greater shall continue to comply with Commission GMDSS rules currently in effect, namely §§ 80.1085(a)(4) (NAVTEX receiver), 80.1085(a)(6) (EPIRB) and 80.1095 (survival craft equipment) of the Commission's Rules. Moreover, this waiver does not relieve fishing vessels from compliance with the provisions of Subparts Q and R of Part 80 of the Commission's Rules.

9. *Ship Radio Certificates.* Without the relief afforded in this *Order*, the ship radio certificates for small passenger ships on short voyages and fishing vessels would have expired on February 1, 1999, unless GMDSS systems had been installed on those vessels. However, with the relief afforded herein, those radio certificates will remain valid until the expiration dates contained thereon or the expiration of any renewal terms thereof; provided, however, that such ship radio certificates shall expire with respect to a vessel on the date the Commission terminates the waiver granted hereby with respect to such vessel. Moreover, Commission-authorized inspectors will renew ship radio certificates, or issue new ship radio certificates, to small passenger ships and fishing vessels that lack GMDSS installations, provided those vessels meet the conditions imposed herein and otherwise comply with the Commission's Rules.

IV. Ordering Clauses

10. *It is ordered* that, pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), that Subpart W of Part 80 of the Commission's rules *is temporarily waived* as it applies to small passenger vessels on the short voyages defined in § 80.933 of the Commission's Rules,²⁸ *Provided that* such vessels comply with the provisions of § 80.933 of the Commission's Rules, notwithstanding the expiration dates therein. *It is further ordered* that authority is delegated to the Chief of the Wireless Telecommunications Bureau to terminate said temporary, conditional waiver as it applies to small passenger vessels at such time as the Chief of the Wireless Telecommunications Bureau deems appropriate after the Coast Guard has notified the Commission that shore-based Sea Area A1 and A2 coverage is established but no sooner than six months following the establishment of shore-based coverage for Sea Areas A1 and A2.

It is further ordered that Subpart W of Part 80 of the Commission's Rules *is temporarily and partially waived* as it applies to fishing vessels, as discussed herein²⁹ *Provided that* fishing vessels shall abide by the provisions of §§ 80.1085(a)(4), 80.1085(a)(6) and 80.1095 of the Commission's Rules.³⁰ Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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²⁸ 47 CFR 80.933.

²⁹ See n. *supra*.

³⁰ 47 CFR 80.1085(a)(4), 80.1085(a)(6) and 80.1095.

²² See Letter dated July 15, 1998, from the Hon. Frank Murkowski to William E. Kennard, Chairman, Federal Communications Commission.

²³ *Id.* See also Amendment to the Department of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act of 1999, remarks of the Hon. Frank Murkowski, 144 Cong. Rec. S8854.

²⁴ See *Stevens Letter* at 1.

²⁵ *Id.*

²⁶ See *SOLAS Convention*, Chapter I, Regulation 3 (a)(vi).

²⁷ See *Gorton Letter* at 1, 2.