

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 189**

[Docket No. 27778; Amendment No. 189-3]

RIN 2120-AE68

Use of Federal Aviation Administration Communications Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Federal Aviation Regulations (FAR) relating to the use of FAA communications systems by removing outdated fee provisions and services. Due to enhanced commercial communications (i.e., telecommunications, satellites, etc.) the FAA has determined that the need to accept messages (and to charge fees for this service) that address such topics as lost baggage, hotel reservations, crew assignments, and other commercial matters (Class B messages) no longer exists. This action does not affect the FAA's transmission of messages relating to flight safety, flight plans, and weather (Class A messages). Also, this rule will not alter the current practice of relaying messages received from an FAA Flight Service Station (FSS) outside of the 48 contiguous States and the District of Columbia, or received from a foreign station of the Aeronautical Fixed Telecommunications Network (AFTN).

EFFECTIVE DATE: September 18, 1995.

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SUPPLEMENTARY INFORMATION:**Background**

The predecessor of part 189 (part 612—Aeronautical Fixed Communications, published in the August 25, 1950, **Federal Register**) became effective on September 1, 1950. Part 612 specified that airlines could send certain messages over specific Government circuits. The specific circuits were established between several Pacific Islands. The United States government made this communications network available, at the users expense, to transmit Class B messages since there were few other communication systems established.

Subsequent amendments to part 612 accomplished the following: (1) Expanded the service to any station services by the Integrated International Aeronautical Network (now AFTN); (2) defined the specific messages that would be accepted free of charge and those for which fees would be charged; (3) established the priority given to two categories of messages; and (4) limited the Government's liability in the handling of all messages accepted under these provisions.

Concurrent with the evolution of part 612, similar International Civil Aviation Organization (ICAO) procedures were developed. Beginning in 1951, ICAO procedures were implemented whereby each country would: (1) Accept, free of charge, messages that were meant for “* * * ensuring safety of air navigation and regularity of air traffic between aeronautical fixed stations of the different States * * *;” (2) accept other messages that did not fall in the above category provided there was an “* * * absence of rapid commercial telecommunications * * *;” and (3) determine the acceptability of messages.

Communication systems and the air traffic control system have improved greatly in the last several decades. Consequently, users have elected to transmit Class B messages through communications systems other than the FAA's.

The FAA has previously considered the need for, and removal of, part 189 of the FAR. In 1981, all FAA Regional offices were queried regarding what operational effect, if any, the complete removal of part 189 would have. At that time, only the Alaska region objected to this action. The International Flight Service Station (IFSS) in Anchorage, Alaska, handled a high volume of Class B messages, and the Region felt strongly that complete removal of part 189 would preclude them from continuing this service. In 1992, the Regions were again queried regarding their positions with respect to the proposed amendment to part 189. All of the Regions concurred with this proposal. Since the IFSS in Anchorage, Alaska was decommissioned in 1984, aircraft that had previously utilized its communications services are now using a private communications company; therefore, the prior concerns of the Alaska Region are no longer relevant.

Current Requirements

Part 189 stipulates that domestic FSS's may accept for transmission only messages related to distress and distress traffic, safety of human life, flight safety (including air traffic control messages), weather, aeronautical administration,

and Notices to Airmen (NOTAM's) (Class A messages). The acceptance and transmission of these messages is completed without charge. This amendment will not alter that service.

In addition to accepting Class A messages, IFSS's and those FSS's located outside the 48 contiguous States and the District of Columbia, may accept messages originated by and addressed to aircraft operating agencies, or their representatives, that directly bear on the efficient and economic conduct of day to day operations. These messages (Class B messages) include such things as new or revised passenger or cargo rates and train or hotel reservations. The current rule provides for a fee of 25 cents for each group of 10 words. FSS acceptance of these messages is based on the absence of adequate non-USA communication facilities.

In recent years additional means of communication have been developed, including satellites, computer networks, and cellular telephones. Therefore, the need to use the FAA AFTN system for the transmission of Class B messages has been greatly reduced. In January, 1988, a communication network called National Airspace Data Interchange Network (NADIN) was commissioned in the United States. The capability to segregate Class B messages, which required payment from the user, was intentionally omitted from the system because the need for such a capability is negligible. However, part 189 was not amended when NADIN was commissioned; consequently the rule still contains outdated provisions for the collection of fees for the transmission of Class B messages.

Annex 10, an International Civil Aviation Organization (ICAO) document, provides guidance to FSS's for handling the operational aspects of international aeronautical telecommunications. The FAA relays Class A or B messages that were originally accepted for transmission at an FAA FSS outside of the 48 contiguous States and the District of Columbia that were received from a foreign station of the AFTN, and that in normal routing would require transit of the 48 contiguous States or the District of Columbia in order to reach an overseas address.

Discussion of Comments

Interested persons were invited to participate in this rulemaking action by submitting written data, views, or arguments. The comment period closed on September 7, 1994. The FAA received one comment, from the Airline Pilots Association, supporting the

proposal. The FAA specifically requested comments and information on the potential use of this service and on any impact from eliminating the acceptance for transmission of Class B messages. No such comment or information was received.

Except for minor editorial changes, this rule is the same as that proposed in the Notice of Proposed Rulemaking published in the **Federal Register** on June 9, 1994 (59 FR 29934).

The Rule

Elimination of Acceptance for Transmission of Class B Messages

Currently, only FAA IFSS's or FSS's located outside the 48 contiguous States and the District of Columbia may accept for transmission Class B messages when adequate commercial communication systems are not available. These facilities have not received any requests to accept Class B messages for transmission in over 5 years.

Communication systems technology has improved and expanded to include private data networks, private line services, telegrams, satellite communications, and cellular telephones. Therefore, the need to use FAA communications systems for transmission of Class B messages has diminished. This rule will not restrict or deny users from utilizing the FAA communications systems for relay of Class B messages when other adequate communications systems are not available. Additionally, this action will align the regulations with current practices by eliminating the authority of FSS's to accept for transmission Class B messages without adversely affecting the users.

Elimination of Charges for Class B Messages

The current rule requires that fees be charged when Class B messages are accepted for transmission over FAA communication systems. However, current communication systems cannot segregate those kinds of messages that require a charge for transmission. In fact, over the last 5 years, there are no records of fees having been collected for transmission of Class B messages, nor does the FAA propose to resume this practice. This change will remove from the regulation all references to the collection of fees and align the regulation with current practices.

Economic Summary

This rule will be neither a significant regulatory action under Executive Order 12866 nor a significant rule under the Department of Transportation

Regulatory Policies and Procedures. The FAA does not expect the amendment to impose a significant cost on society (aviation industry, public, or government). The rule will not cause any diminution of safety.

This action will delete rule language that allows the transfer of certain data. This data includes messages addressing topics such as: lost baggage, hotel reservations, and crew assignments on international or overseas flights (Class B data). At present, only IFSS's and FSS's located outside the 48 contiguous States and the District of Columbia have the authority and capability to accept such information for transmission. In practice, the FAA has not received requests for this service for several years.

The FAA queried FSS's to determine the consequences of this action. The responses indicated that this action would not affect any air carrier operator. Adequate private communications facilities are available to transmit Class B data and, in the past few years, international and overseas carriers have not chosen to avail themselves of the FAA service. However, the FAA recognizes a remote possibility that a future potential user of this service would not have the chance to do so.

International Trade Impact Analysis

This action will have no effect on the sale of foreign products or services in the United States. The action also does not affect the sale of United States products or services in foreign countries. Hence, all foreign and domestic trade will be equally unaffected by this rule.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that government regulations do not needlessly and disproportionately burden small businesses. The RFA requires the FAA to review each rule that may have "a significant economic impact on a substantial number of small entities."

The amendment deletes rule language that allows the transfer of certain data because users have not requested this service for several years. Hence, the rule will not impose a significant cost on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), there are no requirements for information collection associated with this rule.

Federalism Implications

This action will not have substantial effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this action will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization Standards and Recommended Practices (SARP) to the maximum extent practicable. For this action, the FAA has reviewed the SARP of Annex 10. The FAA has determined that this amendment will not present any differences.

Conclusion

For the reasons discussed in the preamble, the FAA has determined that this regulation is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This action is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations.

List of Subjects in 14 CFR Part 189

Air transportation,
Telecommunications.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration revises 14 CFR part 189 to read as follows:

PART 189—USE OF FEDERAL AVIATION ADMINISTRATION COMMUNICATIONS SYSTEM

Sec.

189.1 Scope.

189.3 Kinds of messages accepted or relayed.

189.5 Limitation of liability.

Authority: 49 U.S.C. 106(g), 40101, 40104, 40113, 44502, and 45303; sec. 501, 65 Stat. 290; 31 U.S.C. 9701.

§ 189.1 Scope.

This part describes the kinds of messages that may be transmitted or relayed by FAA Flight Service Stations.

§ 189.3 Kinds of messages accepted or relayed.

(a) Flight Service Stations may accept for transmission over FAA communication systems any messages concerning international or overseas aircraft operations described in paragraphs (a)(1) through (6) of this section. In addition, Flight Service Stations may relay any message described in this section that was originally accepted for transmission at an FAA Flight Service Station outside the 48 contiguous States, or was received from a foreign station of the Aeronautical Fixed

Telecommunications Network that, in normal routing, would require transit of the United States to reach an overseas address:

- (1) Distress messages and distress traffic.
- (2) Messages concerning the safety of human life.
- (3) Flight safety messages concerning—
 - (A) Air traffic control, including—
 - (A) Messages concerning aircraft in flight or about to depart;
 - (B) Departure messages;
 - (C) Flight plan departure messages;
 - (D) Arrival messages;
 - (E) Flight plan messages;
 - (F) Flight notification messages;
 - (G) Messages concerning flight cancellation; and
 - (H) Messages concerning delayed departure;
 - (ii) Position reports from aircraft;
 - (iii) Messages originated by an aircraft operating agency of immediate concern to an aircraft in flight or about to depart; and
 - (iv) Meteorological advice of immediate concern to an aircraft in flight or about to depart.
- (4) Meteorological messages concerning—
 - (i) Meteorological forecasts;
 - (ii) Meteorological observations exclusively; or

(iii) Other meteorological information exchanged between meteorological offices.

(5) Aeronautical administrative messages—

- (i) Concerning the operation or maintenance of facilities essential to the safety or regulatory of aircraft operation;
- (ii) Essential to efficient functioning of aeronautical telecommunications; or
- (iii) Between civil aviation authorities concerning aircraft operation.

(6) Notices to airmen.

(b) The following messages may only be relayed through the FAA communications systems:

- (1) Flight regularity messages—
 - (i) Addressed to the point of intended landing and to not more than two other addressees in the general area of the route segment of the flight to which the message refers, containing information required for weight and balance computation and remarks essential to the rapid unloading of the aircraft;
 - (ii) Concerning changes, taking effect within 72 hours, in aircraft operating schedules;
 - (iii) Concerning the servicing of aircraft en route or scheduled to depart within 48 hours;
 - (iv) Concerning changes in the collective requirements for passengers, crew, or cargo of aircraft en route or about to depart, if the changes are caused by unavoidable deviations from normal operating schedules and are necessary for flight regularity;
 - (v) Concerning non-routine landings to be made by aircraft en route or about to depart;
 - (vi) Concerning parts or materials urgently needed to operate aircraft en route or scheduled to depart within 48 hours; or
 - (vii) Concerning pre-flight arrangement of air navigation services and, in the case of non-scheduled or irregular operations, operational servicing of aircraft scheduled to depart within 48 hours.

(2) Messages originated by and addressed to aircraft operating agencies or their representatives that directly bear on the efficient and economic conduct or day to day operations, if adequate non-United States communications facilities are not available and the messages concern—

- (i) Matter described in paragraph (b)(1) of this section, but not meeting the time limitations described in paragraph (b)(1) of this section;
- (ii) Aircraft parts, equipment, or supplies, air navigation or communications, or essential ground facilities;
- (iii) Train or hotel reservations for passengers or employees;
- (iv) Lost baggage or personal effects;
- (v) Tickets or cargo shipments and payment therefore;
- (vi) Location of passengers and cargo;
- (vii) New or revised passenger or cargo rates;
- (viii) Crew assignments and similar operations personnel matters taking effect within 7 days;
- (ix) Post flight reports for record purposes;
- (x) Publicity and special handling regarding dignitaries; or
- (xi) Reservations, when originated by aircraft operating agencies to secure space required in transport aircraft.

§ 189.5 Limitation of liability.

The United States is not liable for any omission, error, or delay in transmitting or relaying, or for any failure to transmit or relay, any message accepted for transmission or relayed under this part, even if the omission, error, delay, or failure to transmit or relay is caused by the negligence of an employee of the United States.

Issued in Washington, DC on July 11, 1995.

David R. Hinson,

Administrator.

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