

A HOBBY WITH A DUTY

LEGALITIES OF EMERGENCY COMMUNICATIONS FOR AMATEUR RADIO OPERATORS

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Certainly, Amateur Radio is one of the more interesting of all hobbies. It combines the "people skills" of communication, sharing knowledge, sharing frequencies, and learning the etiquette of operating with the "technical skills" of electricity, resonance, Morse Code (for some), and operating rules.

Compare the hobby of Amateur Radio with other hobbies that require licenses. Nearly all licensed hobbies (fishing, hunting, underwater fossil collecting, operating steam engines, sport falconry, watercraft, crossbowmanship, Amateur Radio, pilotry, & marksmanship) have a variety of rules and regulations that must be followed. Amateur Radio Operators, like the practitioners of the other licensed hobbies, are accustomed to following rules relating to power, safety, use of frequencies, and the like. Under normal operating conditions, Amateur Radio Operators are well-known for their rather strict compliance with operating rules & regulations, and their ability to "self-police" their activities.

But what other hobby also carries with it a legal duty to society? Amateur Radio is unique in the aspect that Amateur Radio Operators are charged with a legal duty to society, name, relating to Emergency Communications.

Amateur Radio Operators are specifically charged with the legally imposed duty or "fundamental purpose" of "providing emergency communications."

Indeed, in the regulations governing Amateur Radio, formally entitled "Title 47 of the Code of Federal Regulations, Part 97 (47 CFR Part 97)," but affectionately known as "Part 97," very first purpose mentioned in paragraph "a" in Section "1," "Basis and Purpose," declares that for Amateur Radio, a "fundamental purpose" is "providing emergency communications."

§97.1 Basis and purpose.

The rules and regulations in this Part are designed to provide an amateur radio service having a fundamental purpose as expressed in the following principles:

(a) Recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications.

Not, however, well understood is the authority given to Amateur Radio Operators in order to meet this duty. Many sections of this Title 47 of the Code of Federal Regulations,

Part 97, give extraordinary authority to Amateur Radio Operators to use not only the Amateur spectrum, but in extreme situations, other spectrums.

Much can be found in §97.111 concerning "Authorized Transmissions." These FCC (Federal Communications Commission) Rules & Regulations authorize, broadly, "transmissions necessary" "while providing emergency communications" [§97.111(a)(2)], along with "transmissions necessary" in "providing communications in RACES ("Radio Amateur Civil Emergency Service") [§97.111(a)(3)].

Further, "one-way communications" are authorized not only for "establishing two-way communications" [§97.111(b)(2)], but also that may be "necessary to providing emergency communications" [§97.111(b)(4)].

§97.111 Authorized transmissions.

(a) An amateur station may transmit the following types of two-way communications:

(2) Transmissions necessary to exchange messages with a station in another FCC-regulated service while providing emergency communications;

(3) Transmissions necessary to exchange messages with a United States government station, necessary to providing communications in RACES; and

(b) In addition to one-way transmissions specifically authorized elsewhere in this Part, an amateur station may transmit the following types of one-way communications:

(2) Brief transmissions necessary to establishing two-way communications with other stations;

(4) Transmissions necessary to providing emergency communications;

So strong is the role of emergency communications in Amateur Radio that there is an entire "Sub-Part" of Part 97 specifically called "SubPart E -- Providing Emergency Communications." This sub-part itself has 4 sections *concerning Operation During a Disaster, Safety of Life and Protection of Property, Station in Distress, and Radio Amateur Civil Emergency Service (RACES).*

Under §97.401, *Operation During a Disaster*, an Amateur Radio Operator may make "transmissions necessary to meet essential communication needs and facilitate relief actions." Here, the focus is on essential communications, which is not specifically defined, and upon relief actions.

§97.401 Operation during a disaster.

(a) When normal communication systems are overloaded, damaged or disrupted because a disaster has occurred, or is likely to occur, in an area where the amateur service is regulated by

the FCC, an amateur station may make transmissions necessary to meet essential communication needs and facilitate relief actions.

(b) When a disaster disrupts normal communication systems in a particular area, the FCC may declare a temporary state of communication emergency. The declaration will set forth any special conditions and special rules to be observed by stations during the communication emergency. A request for a declaration of a temporary state of emergency should be directed to the EIC in the area concerned.

(c) A station in, or within 92.6 km of, Alaska may transmit emissions J3E and R3E on the channel at 5.1675 MHz for emergency communications. The channel must be shared with stations licensed in the Alaska-private fixed service. The transmitter power must not exceed 150 W.

§97.403, relating to safety of life and protection of property, go the extreme of a *de facto* rescission of the other provisions of Part 97, should issues of safety and protection be presented. This section give broad authority to the Amateur Radio Operator to use "any means of radiocommunications" at the operator's disposal:

§97.403 Safety of life and protection of property.

No provision of these rules prevents the use by an amateur station of any means of radiocommunication at its disposal to provide essential communication needs in connection with the immediate safety of human life and immediate protection of property when normal communication systems are not available.

§97.405, Station in Distress, similarly rescinds, *de facto*, all of the provisions of Part 97 in the situation that an Amateur Radio Operator is herself, or another Amateur Radio Operator, in distress:

§97.405 Station in distress.

(a) No provision of these rules prevents the use by an amateur station in distress of any means at its disposal to attract attention, make known its condition and location, and obtain assistance.

(b) No provision of these rules prevents the use by a station, in the exceptional circumstances described in paragraph (a), of any means of radiocommunications at its disposal to assist a station in distress.

Finally, there are extensive and specific regulations concerning the operation and interoperation of *Radio Amateur Civil Emergency Service* (RACES) stations. As would be expected, there are regulations limiting the use of frequencies, and limiting the

participation to stations registered and licensed with RACES and other civil defense organizations. But curiously, there is a legal limitation for drills and tests by these RACES station. §97.407(e)(4) limits drills and tests by law to no more than one hour per week, and for a period of 72 hours no more than twice a year:

§97.407 Radio Amateur Civil Emergency Service (RACES).

(4) Communications for RACES training drills and tests necessary to ensure the establishment and maintenance of orderly and efficient operation of the RACES as ordered by the responsible civil defense organizations served. Such drills and tests may not exceed a total time of 1 hour per week. With the approval of the chief officer for emergency planning in the applicable State, Commonwealth, District or territory, however, such tests and drills may be conducted for a period not to exceed 72 hours no more than twice in any calendar year.

For many years, enforcement of Amateur Radio related activity has been in the hands of Riley Hollingsworth, Esq., K4ZDH, FCC Legal Adviser for Enforcement, Special Counsel for Amateur Radio Enforcement. Mr. Riley has frequently noted that the FCC is a complaint driven organization, meaning that the Enforcement Bureau acts primarily on complaints that it receives.

Given the scope of the duty assigned to Amateur Radio, and the breadth of the authority given to Amateur Radio Operators, it is difficult to imagine a scenario where an Operator could be cited for a violation, while providing emergency communications operations during a disaster, on the basis of a complaint.

APPENDIX 47 CFR PART 97 (EXCERPTS)

47 CFR Part 97

§97.1 Basis and purpose.

§97.111 Authorized Transmissions

§97.403 Safety of life and protection of property.

§97.405 Station in distress.

§97.407 Radio Amateur Civil Emergency Service (RACES).

§97.1 Basis and purpose.

The rules and regulations in this Part are designed to provide an amateur radio service having a fundamental purpose as expressed in the following principles:

(a) Recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications.

§97.111 Authorized transmissions.

(a) An amateur station may transmit the following types of two-way communications:

(1) Transmissions necessary to exchange messages with other stations in the amateur service, except those in any country whose administration has given notice that it objects to such communications. The FCC will issue public notices of current arrangements for international communications;

(2) Transmissions necessary to exchange messages with a station in another FCC-regulated service while providing emergency communications;

(3) Transmissions necessary to exchange messages with a United States government station,

necessary to providing communications in RACES; and

(4) Transmissions necessary to exchange messages with a station in a service not regulated by the FCC, but authorized by the FCC to communicate with amateur stations. An amateur station may exchange messages with a participating United States military station during an Armed Forces Day Communications Test.

(b) In addition to one-way transmissions specifically authorized elsewhere in this Part, an amateur station may transmit the following types of one-way communications:

(1) Brief transmissions necessary to make adjustments to the station;

(2) Brief transmissions necessary to establishing two-way communications with other stations;

(3) Telecommand;

(4) Transmissions necessary to providing emergency communications;

(5) Transmissions necessary to assisting persons learning, or improving proficiency in, the international Morse code;

(6) Transmissions necessary to disseminate information bulletins;

(7) Transmissions of telemetry.

SUBPART E-PROVIDING EMERGENCY COMMUNICATIONS

§97.401 Operation during a disaster.

(a) When normal communication systems are overloaded, damaged or disrupted because a disaster has occurred, or is likely to occur, in an area where the amateur service is regulated by the FCC, an amateur station may make transmissions necessary to meet essential communication needs and facilitate relief actions.

(b) When a disaster disrupts normal communication systems in a particular area, the FCC may declare a temporary state of communication emergency. The declaration will set forth any special conditions and special rules to be observed by stations during the communication emergency. A request for a declaration of a temporary state of emergency should be directed to the EIC in the area concerned.

(c) A station in, or within 92.6 km of, Alaska may transmit emissions J3E and R3E on the channel at 5.1675 MHz for emergency communications. The channel must be shared with stations licensed in the Alaska-private fixed service. The transmitter power must not exceed 150 W.

§97.403 Safety of life and protection of property.

No provision of these rules prevents the use by an amateur station of any means of radiocommunication at its disposal to provide essential communication needs in connection with the immediate safety of human life and immediate protection of property when normal communication systems are not available.

§97.405 Station in distress.

(a) No provision of these rules prevents the use by an amateur station in distress of

any means at its disposal to attract attention, make known its condition and location, and obtain assistance.

(b) No provision of these rules prevents the use by a station, in the exceptional circumstances described in paragraph (a), of any means of radiocommunications at its disposal to assist a station in distress.

§97.407 Radio Amateur Civil Emergency Service (RACES).

(a) No station may transmit in RACES unless it is an FCC-licensed primary, club, or military recreation station and it is certified by a civil defense organization as registered with that organization, or it is an FCC-licensed RACES station. No person may be the control operator of a RACES station, or may be the control operator of an amateur station transmitting in RACES unless that person holds a FCC-issued amateur operator license and is certified by a civil defense organization as enrolled in that organization.

(b) The frequency bands and segments and emissions authorized to the control operator are available to stations transmitting communications in RACES on a shared basis with the amateur service. In the event of an emergency which necessitates the invoking of the President's War Emergency Powers under the provisions of Section 706 of the Communications Act of 1934, as amended, 47 U.S.C. §606, RACES stations and amateur stations participating in RACES may only transmit on the following frequency segments:

(1) The 1800-1825 kHz, 1975-2000 kHz, 3.50-3.55 MHz, 3.93-3.98 MHz, 3.984-4.000 MHz, 7.079-7.125 MHz, 7.245-7.255 MHz, 10.10-10.15 MHz, 14.047-14.053 MHz, 14.22-14.23 MHz, 14.331-14.350 MHz, 21.047-21.053 MHz, 21.228-21.267 MHz, 28.55-28.75 MHz,

29.237-29.273 MHz, 29.45-29.65 MHz, 50.35-50.75 MHz, 52-54 MHz, 144.50-145.71 MHz, 146-148 MHz, 2390-2450 MHz segments;

(2) The 1.25 m, 70 cm and 23 cm bands; and

(3) The channels at 3.997 MHz and 53.30 MHz may be used in emergency areas when required to make initial contact with a military unit and for communications with military stations on matters requiring coordination.

(c) A RACES station may only communicate with:

(1) Another RACES station;

(2) An amateur station registered with a civil defense organization;

(3) A United States Government station authorized by the responsible agency to communicate with RACES stations;

(4) A station in a service regulated by the FCC whenever such communication is authorized by the FCC.

(d) An amateur station registered with a civil defense organization may only communicate with:

(1) A RACES station licensed to the civil defense organization with which the amateur station is registered;

(2) The following stations upon authorization of the responsible civil defense official for the organization with which the amateur station is registered:

(i) A RACES station licensed to another civil defense organization;

(ii) An amateur station registered with the same or another civil defense organization;

(iii) A United States Government station authorized by the

responsible agency to communicate with RACES stations; and

(iv) A station in a service regulated by the FCC whenever such communication is authorized by the FCC.

(e) All communications transmitted in RACES must be specifically authorized by the civil defense organization for the area served. Only civil defense communications of the following types may be transmitted:

(1) Messages concerning impending or actual conditions jeopardizing the public safety, or affecting the national defense or security during periods of local, regional, or national civil emergencies;

(2) Messages directly concerning the immediate safety of life of individuals, the immediate protection of property, maintenance of law and order, alleviation of human suffering and need, and the combating of armed attack or sabotage;

(3) Messages directly concerning the accumulation and dissemination of public information or instructions to the civilian population essential to the activities of the civil defense organization or other authorized governmental or relief agencies; and

(4) Communications for RACES training drills and tests necessary to ensure the establishment and maintenance of orderly and efficient operation of the RACES as ordered by the responsible civil defense organizations served. Such drills and tests may not exceed a total time of 1 hour per week. With the approval of the chief officer for emergency planning in the applicable State, Commonwealth, District or territory, however, such tests and drills may be conducted for a period not to exceed 72 hours no more than twice in any calendar year.