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FAR §91.13: Careless or Reckless?

There are hundreds of Federal Aviation Regulations (“FARs”), and a good chunk of them apply to us Part 91 pilots. One of the most ambiguous, and often overlooked FAR, is §91.13, which states in part: *“No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.”* Most of us have a good concept as to what “reckless” means, and hope the FAA keeps those other reckless pilots out of the sky. However, what exactly does “careless” mean? All too often, it’s whatever the FAA says it is.

When does the FAA charge §91.13?

Historically, the FAA’s enforcement counsel would add a charge of a §91.13 violation if a pilot was already being charged with any other operational violation. Even if the FAA didn’t seek any additional penalty under §91.13, pilots were stigmatized with such a violation on their record. Unfortunately, under a long line of NTSB cases, pilots have been consistently denied even a basic opportunity to challenge these charges: *“Our precedent unequivocally establishes when the Administrator proves an operational violation, he also proves a violation of § 91.13(a)”* Administrator v. Smith, NTSB Order No. EA-5646 (2013). Under the FAA’s new kinder and gentler compliance philosophy, fewer violations are being prosecuted for enforcement (many are dealt with by way of informal counseling), so it remains to be seen whether the automatic §91.13 add-on continues.

Of greater concern for pilots is whether the FAA will bring a §91.13 case against them as a stand-alone violation. In other words, there is no clear violation of any other FAR, but the FAA uses §91.13 as a “catch-all” to make sure whatever conduct they feel is either careless or reckless is not ignored. A common example is fuel exhaustion. Which FAR states that is a violation to run out of fuel while operating VFR? Surprisingly, none! Sure, FAR §91.151 establishes the 30-minute (day) and 45-minute (night) reserve. However, section (a) of that FAR narrows the pilot’s obligations: *“No person may begin a flight...”*. Nothing in §91.151 suggests that a pilot must immediately land if the 30 (or 45) minute reserves can no longer be met once en route.

While the FAA might not charge §91.13 if you land with 29 minutes of fuel, you can rest assured they will in cases of fuel exhaustion. As a side note, the FAR dealing with IFR fuel reserves (§91.167) is less flexible: “*No person may operate a civil aircraft in IFR conditions unless it carries enough fuel...*”. Under this language, a pilot who dips below the 45-minute reserve at any time would be in violation of this FAR, even if they are going missed at the alternate.

Do you Love your Wife?

In a rather bizarre case, a pilot was charged with a stand-alone §91.13 violation for asking his wife to remove the nose-wheel chock... with the only engine still running. The pilot started the engine, and after realizing the nose-wheel chock was still in place, asked his wife to remove it without a shutdown. The FAA, lacking any other FAR to charge the pilot with, brought an action under §91.13 and sought to completely revoke his certificate. At the initial hearing, the Administrative Law Judge agreed and granted revocation, but on appeal to the full NTSB, the penalty was reduced to a 60-day suspension. Administrator v. Grzybowski, NTSB Order EA-4045 (1993).

How about taking off with frost on the wings? No specific FAR requires frost removal for smaller aircraft, although basic aerodynamics (and common sense) dictate it be removed before flight. After crashing due to a lack of lift, expect a §91.13 charge. Do you let your non-rated passengers take the stick and experience the freedom of flight? At sufficient altitude, probably fine (although your insurance carrier may disagree). Conversely, letting your buddy with no prior flight instruction actually land the plane is likely a §91.13 violation. When in doubt, play it safe.

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