

EXPERIMENTAL AIRCRAFT ASSOCIATION
CHAPTER 35 NEWSLETTER

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MEETING: 7:00 P.M., SATURDAY, SEPTEMBER 9, 1989
SAN GERONIMO AIRPARK (15474 FM 471W)

PROGRAM: Video presentation by Dr James Babcock

PREZ SEZ:

Our last meeting should not have been missed!! Georgia Ann and the lovely Bill Stratton graciously hosted our pot luck meeting at their home. We all THANK YOU VERY MUCH Family Stratton!! In addition, Bill was kind enough narrate his Brodie Line video for us. By the end of the evening, we all wanted to try this unique experimental take off & landing procedure. About 55 members and guests attended, & several visitors became members. Please welcome new Family 35 members; Jim & Evelyn George, Steve & Ellen Saulnier, and Brent Thompson. Our newest members will be in the new Chapter Roster which will be available at the meeting. I believe we have the best cooks of any EAA Chapter! Chef Extraordinaire, Al Almond, who did such a marvelous job preparing the brisket & sausage, also donated same to the Chapter. Many thanks, Al - what are you doing next week?!

Our Meeting Day is also WORK DAY for the Kerrville Fly-In. We need to meet at Kerrville Airport by 9:00 to set up snow fencing (no we're not expecting weird weather again!) communication lines & poles, mark chalk lines, set up signs, tents etc. A free chicken box lunch will be provided for volunteers. If weather permits, I'll be flying up...Y'ALL COME PLEASE!! The more Volunteers we have, the sooner we can get home and out of the heat!!

OUR SILVER ANNIVERSARY!! Everything is coming together for the 25th Anniversary of the Kerrville Fly-in on the 15th, 16th, 17th. Sign-up sheets will be available at the meeting...I'll need to know the hours and the days you prefer. As you know, our main job will be aircraft parking & greeting. If you would like to help with that, or aircraft judging, and/or our lemonade booth...please let me know ASAP. Thank you in advance...come & help make your Fly-In a success! WE NEED YOU!

EAA Air Adventure Day: September 23, 8:30 am - 5:00 pm @ Kerrville Aviation. We will be participating with Kerrville Chapter 747 in teaching young people to cut, sand & assemble the "FLIP", a balsa model, and to build a wood rib. We'll need to be in Kerrville by 8:00 am. More about this at the meeting.

FROM HEADQUARTERS:

SMITHSONIAN Aircraft Restoration and Technology Seminar and community events, September 21-24, @ Oshkosh! Seminar Fee \$240.00. I will have registration forms and detailed info at the meeting - or call me if you can't wait!

EAA CHAPTER ADVISORY COUNCIL; Headquarters is considering the formation of a 10 member Chapter Advisory council, familiar with Chapter organization & experienced in chapter activities, to assist HQ and provide insight into our Chapter organization. A position on the council would require someone to donate both their time and financial expenses to attend meetings. Do you want to volunteer For this very important position - or nominate someone?

NEW NPRM; Docket 25958, NPRM 89-19, Implementation of Equal Access to Justice Act in effect puts the FAA in a position of investigator, prosecutor, judge and jury as regards the Civil Penalty Assesment Program. A civil penalty program must promote aviation safety & provide safeguards of the adversarial system to which we are accustomed, & entitled.

Copies of this NPRM and HQ's response will be available at the meeting. (Paul has another NPRM later in this newsletter that makes more sense.

See you at the meeting!

- Sept 15-17 SILVER ANNIVERSARY, SW REGIONAL FLY-IN '89, KERRVILLE TX sponsored by all the TX Chapters. Contact B. Martin, 4951 Woodstone #1524, SA TX 78230 512)690-9960
- Sept 21-24 SMITHSONIAN Seminar & Community events @ Oshkosh (414)426-4800 or your Chapter President.
- Sept 22-23 32nd Annual Tulsa Fly-In & 9th Annual Bucker Fly-In @ Talequah OK - contact Charles W. Harris @ (918)742-7311
- Sept 23 SUPER SATURDAY Kerrivlle Chapter 747, & San Antonio Chapter 35 at Kerrville Aviation - 8:30 am - 5:00 pm
- Oct 6-7 Deer Pasture - 10th Annual Fly-In, Lampassas, TX, call John or Glenna Bowden at 556-6873
- Oct 12-15 Harlingen, Confederate Air Show '89. Contact 512 425-1057

TAILS OF THE GOLD MONKEY (By the editor, Paul McKinley)

Last newsletter I had spoken about '250 having a bent wing resulting from catching a chughole in the taxiway at Mustang Island. I just sent off the release Tuesday, so should have the check to pay for the damages soon. I've reserved a wing to replace the bent one-- just have to send off the check to buy it. The salvage yard I'm getting it from doesn't even have it yet -- won't be available until the end of September. In the meantime I'll take all the stuff (aileron, flap, etc.) off the old wing in preparation for the switch.

I spoke to Tex Allen today, who had recommended a friend to get a newsletter (prospective member). Tex says he's going into the hospital soon to have some repair surgery done. I told him people die in those places, but he is going nevertheless. Anyway, let's keep him in our thoughts. He also said he's looking for instruments for his project, so dust out your boxes, and see if you have anything he can use.

I just put Ann on the flight to London this afternoon for a 3 week vacation in G.B. I'll either get lots done because of more time, or nothing done because of moping.

EAA HQ SUGGESTS:

ADOPT AN OFFICIAL: We see many of our Chapters around the US and in foreign countries, asking their local officials to join them at their monthly meetings, participate in a Chapter Picnic, enjoy a cookout, or a Chapter Fly-in. These are great ideas. People that we can target to invite to our events and our meetings are the local councilpeople, mayors, community leaders, airport board members, state and county officials, as well as the state department of transportation, division of

aeronautics people. Bringing these people into our organization enlightens them as to what EAA and sport aviation is all about. We encourage Chapters to do this so that when we need these people as our allies in an effort to keep the airports open, keep airport operators providing service for the sport aviation community, and to rally the forces against the intrusion into airspace by the construction of tall towers, then we have these people already aware of our cause and understanding our concerns.

OSHKOSH '89:

840,000+ Attendees
 15,000+ Airplanes
 1,730 Showplanes
 51175 Hamburgers
 42978 Hotdogs
 233,723 Soft drinks
 51175 French Fries
 25006 cartons milk
 53159 cups coffee
 746 portapotties
 12,780,000 sheets toilet paper
 (keep your comments to yourself)

8.3 miles snowfence
 350 business & payphones
 192 tents
 454 commercial exhibitors
 54900 air operations logged
 37000 campers at Camp Scholler

But I want to know... how many faces washed at the terminal building?

Air Law Notes

Timothy J. Healey has been active in aviation since 1954 when he became a Naval Aviator. He is an attorney whose practice has been limited to aviation litigation for 25 years, representing both plaintiffs and defendants in aviation negligence and product suits. He has logged more than 8,000 hours and his ratings include ATP, SMELS, Helicopter, CFII, Flight Engineer, as well as type ratings in the DC-3, DC-4 and Cessna Citation.

Airman's Rights

The FAA's "get tough" policy, which has been the subject of numerous recent articles and editorials, has severely eroded the former role of the FAA of both fostering the development of aviation, and enforcing minimum safety standards. The partnership in aviation safety which once existed between FAA Safety Inspectors and airmen, is history. Inspectors have essentially become the meter maids of aviation, with a requirement to fulfill an unwritten quota of violations.

Although recent efforts by groups like AOPA have apparently gotten FAA to rethink the current policy, that's no guarantee that it's going to change. And even if it does, pilots are still going to be faced with the ever-present threat of certificate action from the "friendly" FAA.

While no reasonable person can condone violations of the "minimum safety standards" which Congress authorized the FAA to promulgate, there are many circumstances which give rise to reasonable doubt as to whether in fact a violation occurred, and if so, what the penalty ought to be.

To that end, each airman must fully understand his or her rights at various levels of an investigation.

First and foremost, pilots must remember that the FAA does not have to Mirandize. In other words, unlike the police who must inform suspects of the right to remain silent, the right to an attorney and so forth, FAA can simply start asking questions and taking action. FAA inspectors don't even have to tell a pilot the purpose of their investigation. But this doesn't mean that the pilot doesn't have any rights when dealing with FAA.

Simply put, the only obligation of any airmen to any representative of the FAA, NTSB or federal, state, or local law enforcement persons is to produce (but not hand over!) any FAA license, medical, logbook or other record containing required flight entries. This would include any record containing information required by FARs 61.3(h) & 61.52. Since only student pilots on cross-country flights are required to carry a flight log book, other airmen may just agree to make such log or other record available for inspection at some later date.

One very important point to remember here is to never lose control of these records. Do not surrender these items. Present them for inspection, but retain possession at all times.

As for maintenance records, only the owner/operator must make those records available for inspection [not copying] to FAA and/or the NTSB. The records that must be turned over are those required to be kept under Part 91 (specifically, FAR 91.173(c)).

That's it for documents and records that FAA inspectors can legally demand. But many airmen, either out of ignorance, or a misguided sense of cooperation, will present every scrap of paper they think might be pertinent. But, making additional documents and records available to FAA is fraught with danger. Those non-required records may afford FAA the opportunity to claim that any variance between the non-required records and those required as the basis for a charge of falsification in the required records.

So, in short, there are only a few items required to be produced on request, and even then it depends on who's asking. For example, pilots must present their license, medical or logbook containing required entries to any FAA inspector, NTSB investigator or local police officer. However, only an FAA inspector or NTSB investigator is entitled to demand to see the maintenance records. (And they can only ask the aircraft owner or operator for those.)

Many pilots have found themselves bushwhacked by FAA. Things start out casual and friendly enough, but the FAA inspector may just be a wolf in cheap clothing.

For example, consider the following scenario—we've seen it happen. A pilot just taxiing in at the conclusion of a flight might be met by an FAA inspector, who has been instructed to conduct random "ramp" checks on arriving aircraft. After a polite greeting, advising that he's Inspector Jones from the local Flight Standards District Office, and he's doing "routine" surveillance, he asks for pilot credentials. The first thing the pilot should do is to require the Inspector to identify himself via his federal ID card, and obtain his business card. Only when the pilot is satisfied that the inspector is genuine should he comply with a request to present a license and medical, and, if a student on a cross country, a logbook.

The inspector might then start quizzing the pilot on such things as place of departure, amount of fuel on board at take off, fuel remaining at destination, weight and balance calculations for both departure and destination, forecast and actual weather at departure airport, enroute and at destination airport, and pre-flight briefing. Wise pilots will politely but firmly decline to provide this or any other information prior to seeking legal advice.

The reason for this is quite simple—this inspector is basically on a fishing expedition. If the information needed to substantiate any violation comes directly from the airman, the inspector's job is done, and the pilot's certificate is cooked.

Airmen are not required to produce any documentation connected with a flight,

such as a load manifest, weight and balance calculations, fuel usage figures, etc. Even the owner or operator of the aircraft is not required to produce the requested records on demand. The only obligation is to make arrangements for such records to be examined at some future date, since none of the records is required to be kept on board the aircraft.

Some pilots might be motivated to say, "I've nothing to hide, so why not just cooperate and keep the inspector happy?" The answer is, that under the regulatory scheme, pilots do not have to prove that they are in compliance with the regulations governing any flight. Quite to the contrary, the FAA has to prove by a preponderance of the evidence that the pilot violated some regulation. Pilots are not required to do the inspector's job for him.

On the other hand, if a pilot refuses to provide any information other than the required presentation of documents, the FAA inspector can recommend a Part 609 check. This is a provision in the FAA Act which in effect authorizes the Administrator, at any time, to retest any pilot to determine if he still retains the requisite skill and knowledge to hold a particular airman's certificates and ratings.

Customarily this type of rechecking is done only after some accident or incident which raises questions about a pilot's competency. But it can be required of any airman, even in the absence of anything bringing competency into question. The 609 check is normally scheduled with plenty of lead time, and most airmen are well advised to take an hour or so of instruction from a CFI in preparation. Having such an entry in the log book before the check is an indication of the seriousness with which the pilot takes his flying. It also lets the inspector know that a CFI has found the pilot qualified to take the check.

Another way many pilots get sucked into the violation vortex is through the "call-this-number-after-you-land" gambit. For example, during an IFR flight, ATC clears the aircraft to climb and maintain 9,000 feet. The pilot misses the altitude and levels off at 9,500 momentarily. He then eases it back down to the assigned 9,000. The aircraft's mode C is on and has previously been verified. The controller asks the pilot about his altitude, and he verifies that he's level at 9,000 feet. The controller then asks the pilot to call a certain telephone number after he's on the ground.

The pilot's course of action after landing is simple—don't make the call! The call will most certainly be recorded. The pilot will probably admit to the deviation, in which case he'll probably lose his ticket.

Instead, he should file a NASA safety report within 10 days, so that if a violation is ultimately found against him, no sanction can be imposed. In fact, he should file the NASA report even if he has admitted the deviation. He'll still be insulated from any sanction FAA might later try to impose.

The NASA program does not preclude the FAA from finding a violation. It merely protects the pilot from any sanctions (such as a fine or certificate action). However, there are some caveats to the ASRS program. It does not provide blanket protection from everything. If the occurrence in question was inadvertent, did not result in an accident, was not part of any criminal activity, and the pilot has not previously exercised the protection of the NASA immunity within the past five years, he's safe from sanction. Otherwise, it's business as usual, and the pilot is still on the hook.

In another typical scenario, pilot John Q. Citizen receives a telephone call from a person identifying himself as an FAA inspector. The inspector says that he is investigating a complaint of a low flying aircraft on a certain date over a local beach. He wants to know if pilot Citizen was flying a white Cessna 150 that day in that location.

Pilot Citizen, being a cagey fellow, tells the inspector to send him a letter. Pilot Citizen then seeks legal advice. He should

admit nothing to the inspector, either over the phone or face to face.

In this instance the inspector is still digging to identify the correct aircraft, and then he must identify the correct pilot. Any admission by pilot Citizen covers both of these two items, and the inspector simply needs to either have the pilot admit to an altitude violation or line up his eyewitnesses who were sitting on the beach with their binoculars trained on the aircraft.

Some years ago an airline captain who was flying solo, buzzed a crowded beach. He realized he would likely be turned in for busting the minimum altitude regs. In an effort to thwart conviction, he went back to his nearby home base. There, he picked up an unsuspecting passenger, and returned to the same beach. This time, he was flying at 1,000 feet.

Never having told his lawyer or his passenger of the earlier buzz job, the matter went to a hearing before an administrative law judge. The pilot's defense was that he never descended below 1,000 feet while over the beach, since he had his passenger-witness to prove it. But FAA produced a single eyewitness. The witness proved to be what made

FAA's case. He was a minister-pilot who was on the beach drinking ginger ale with his family, and who wrote down the N-number and exact time of the first pass. Since the administrative law judge determines the credibility of any witnesses, the airline captain took a 30-day unpaid vacation. He was lucky—in today's enforcement climate, such a violation might well have netted him a certificate revocation instead.

FAA also starts the violation ball rolling through the mails. Many times, the pilot's first indication of something amiss is a "letter of investigation" from FAA.

If a pilot receives a letter of investigation, he has several options. He can ignore the letter, or he can respond to it in writing, telephone the inspector or meet

with the inspector. Regardless of the option the pilot selects, he can be assured that whatever he says or writes will be used against him.

The reason for this is that the rules of evidence in a formal NTSB hearing are quite liberal. Unlike criminal proceedings, virtually everything is admissible including hearsay statements and hearsay writings. Even an equivocal statement such as "I didn't think I was that low" could be used to show that the pilot was not certain of his altitude and thus be construed as an admission that he could have been below the minimum altitude requirements.

If the pilot chooses to ignore the letter of investigation, more likely than not, a letter of proposed certificate action will come from the regional FAA counsel. This letter will probably invite the pilot to admit to the charges and turn in his certificate. It will also tell him he can have an order issued suspending his certificate, which will be stayed so that he can have a formal hearing before an NTSB Law Judge. The letter will also offer to have the pilot meet with an FAA attorney and present his case as to why no action should be taken.

Again, if the pilot elects to meet with an FAA attorney, he will be expected to in essence put his proof on the table as to why the FAA will be unable to support the charges against him. Meeting with the FAA attorney can be extremely hazardous to the health of a pilot certificate, since the pilot is usually operating in the dark. Unless he has previously requested the FAA enforcement file on his case, the strength or weakness of the FAA's case will ordinarily not be disclosed at this meeting. Indeed, FAA may be acting on a case it couldn't ordinarily proceed with, but is hoping that statements from the pilot will add enough evidence to make the charges stick. As with any other statements to FAA, anything the pilot says at such a meeting, if helpful to FAA, will be used against him.

While ignorance is no excuse for violating the rules, a pilot's ignorance of his rights is FAA's excuse for walking all over them. Wise pilots will know their rights and demand them. So, here's a list of a pilot's rights and responsibilities when dealing with FAA.

The Airman's Bill of Rights

A pilot must:

1. Present his pilot certificate, medical certificate, and/or required flight records to FAA inspectors, NTSB investigators, or local police on request (per FAR 61.3(h), 51(d)).
2. As the aircraft owner or operator (but not as the pilot), he must make available to an FAA inspector or an NTSB investigator all required maintenance records (per FAR 91.173(c)).
3. He must notify the nearest NTSB field office of any accident, reportable incident, or missing aircraft by the most expeditious means. He must also

Assuming that the pilot is unsuccessful in getting FAA to drop the charges, a hearing date will be set usually at a location convenient to the pilot. Keeping in mind that FAA has the burden of proof, the pilot may want to simply stay away from the hearing since he can be called by FAA as a witness in the FAA's case against him. If the pilot has not provided any admissions against himself by way of writings or conversations, and he feels that the only way FAA can prove its case is through his own testimony, the pilot should allow the hearing to proceed in absentia. If present, he can be compelled to testify under oath, which means that if he perjures himself, he's exposed to the criminal sanctions for perjury.

Say, for example, in a buzz-the-beach case, all FAA has is the aircraft type and N-number, with no witnesses who can identify the pilot. Without the pilot's testimony, FAA will probably not be able to make its case. But if the pilot shows up, he can be forced to testify, even against himself, since the Fifth Amendment doesn't apply in such proceedings.

If, on the other hand, the circumstances surrounding the alleged FAR violation also suggest exposure to criminal penalties, the pilot is free to decline to testify based on his constitutionally protected right against self incrimination.

So, although the pilot may not be aware of them, he does have certain rights when dealing with FAA. He is only required to cooperate in a fairly limited way, and he can sometimes stave off a violation by simply cooperating at the minimum level.

But perhaps the most important thing to do when confronted by FAA is to get an aviation lawyer. That old saw about "He who represents himself has a fool for a lawyer," is never more true than when dealing with FAA.

file written report within 10 days of any accident (per NTSB regulations, Part 830).

4. He must present himself for a Part 609 check when requested. (These are scheduled in advance.)

A pilot is not required:

1. To respond to any verbal or written inquiries from the FAA.
2. To present his aircraft for inspection.

A pilot involved in a violation has the right to:

1. Record, using audio and/or videotape, any proceeding, investigation or inquiry that he permits the FAA to undertake, provided that such recording does not inhibit the activity involved.
2. Permit the FAA to copy records required to be presented. (He does not have to surrender any of these records to FAA).

Thanks to Chapter 135 of Des Moines, Iowa for bringing the following item to our attention:

In the Matter of)
Request for Rule Making)
for Transponders with) Docket No. 9559
Automatic Altitude Reporting)
Capability Requirements with)
Migratory Waterfowl)

To: The Pilots

NOTICE
OF
PROPOSED RULE MAKING

On Friday, April 1, the FAA issued a "Notice of proposed rule making" (NPRM), Transponder with Automatic Altitude Reporting Capability Requirements Associated with Migratory Waterfowl (Docket no 95599, notice no. 99-9). It contains the following two provisions; if adopted, will affect all who fly in the airspace of the United States.

1. Miniature Mode C Transponders in the form of neck or leg bands would be required by all migratory waterfowl flying within 40 nautical miles of any TCA's or ARSA's. This will apply to all waterfowl flying within the 250 cylinders of airspace from the ground to 12,500 MSL. Such banding will be required before 1993, as provided by the Airport and Airways Safety and Capacity Expansion Act of 1987 (Public Law 100-223)

2. Such banding will be instituted under the direction of the Federal Wildlife conservation commission, in conjunction with State and Local Conservation Commissions. Since the Bald Eagles and the Whooping Cranes are endangered species, they will also be required to be banded with the Mode S transponders. Funding will be provided with a check off on your Federal Income Tax Form (1040), as well as candy sales by the Campfire Girls.

Fairweather Flyers: dues \$5/yr, call Linda Pearson at 491-0129. They are a loosely knit group who plan informal flyouts to various places.

From Safety Board Files

The Moment of Truth

There are some decisions that can really test the judgment of a pilot. Deciding to continue or abort a takeoff can be one of the most difficult, and tricky, decisions a pilot can face. When conditions, like wind direction, change during the takeoff roll, the judgment of even the best pilot can be sorely tried.

Exactly that situation occurred on May 12, 1987 in Chestertown, Maryland. The 19,919-hour, instrument-instructor-rated pilot elected to continue a takeoff from an unfamiliar grass strip after the wind had unexpectedly shifted. He never made it out of ground effect. Fortunately, neither he nor his passenger were injured in the accident. He was flying a Beech C24R Sierra, and had logged 190 hours in the airplane at the time of the accident.

The 62-year-old pilot departed Martin State Airport in Baltimore, Maryland that afternoon to pick up his passenger at Flying Acres Airfield, a private grass airport in Chestertown. He had never flown to that particular airfield before. The flight time was only about ten minutes, and he

was going to ferry the airplane and passenger directly back to Martin State.

Upon arrival at the 2,500-foot strip, he circled it. He wrote in his statement to investigators that there was no wind sock on the field, and the grass had recently been mowed. Also, the field was unattended, so no Unicom service was available. However, the winds were apparently light and variable, so he landed to the south. During landing, he got the impression of a right tailwind due to the extent the aircraft floated and the crab angle needed to stay over the runway.

The pilot taxied to a stop, and the passenger got in. The pilot observed from the trees and grass around the airfield that the wind was blowing lightly from the north. The passenger, a student pilot, confirmed this.

The pilot lined up to take off to the north. Aware that the Sierra is a marginal short-field airplane, and that the turf would add drag during the takeoff roll, he had the intention of making a trial run to check acceleration down the runway. At about mid-field the airplane felt ready to fly, so he elected to continue with the

takeoff. However, the Beech did not lift off until it had traveled about 80 percent of the way down the runway. It lifted off just at stall speed.

The airplane neither accelerated nor climbed. It stayed in ground effect, traveling down the remainder of the runway. The Sierra ran into a small tree at the north end of the field under full power, knocking it over. The Beech flopped back to the ground past the tree, breaking off the nosegear.

After getting out of the airplane, the pilot noticed that the wind had shifted and was blowing out of the south at about five knots. He wrote that this was undoubtedly a factor in the accident, and also cited urgency and stress due to reports of thunderstorm activity near Baltimore.

The pilot's recommendations on how to avoid this type of accident contain some good thoughts: "Avoid situations wherein marginal runway length is a factor. Add a large 'fudge factor' to the performance data, as soil firmness, drag of turf, wind shifts, and runway slope are impossible to predict and difficult to judge."

