

respondent had been shown to have operated his aircraft carelessly on three occasions by passing too low over a residence following taking off from an adjacent airstrip in Rimrock, Arizona, in violation of section 91.13(a) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 91).² On appeal, the Administrator argues that the law judge erred by not also finding that respondent's flights violated the prohibition against low flight in FAR section 91.119(c)³ and by his resulting modification of sanction from a 120 to a 45-day suspension.⁴ We agree with the first objection.⁵

²FAR section 91.13(a) provides as follows:

§91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

³FAR section 91.119(c) provides as follows:

§ 91.119 Minimum safe altitudes: General.

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

* * * *

(c) *Over other than congested areas.* An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

⁴The Administrator has not appealed the law judge's dismissal of two of the five alleged low flights.

⁵The respondent, *pro se*, has filed a one-page reply reflecting his agreement with the law judge's rejection of FAR section 91.119(c).

The residence the respondent allegedly flew too low over is located about 100 feet laterally from the end of Runway 5, which is roughly 2,500 feet long. For a variety of reasons we need not detail here, the custom at the airstrip is for aircraft to follow a right-hand traffic pattern, to take off on Runway 23, and to land in the opposite direction, that is, on Runway 5. The law judge in effect found that the respondent on three occasions had carelessly endangered the residence and its occupant, a Mr. James Davis, by making right turns on climbout that had taken him over the Davis residence at altitudes of less than 200 feet. He nevertheless apparently concluded that because the use of a right turn to exit the pattern was appropriate, given, among other factors, the potential for meeting landing traffic head-on, the altitude regulation did not apply. We agree with the Administrator that the law judge's reasoning is flawed.

The altitude regulation exempts from its several minimum altitude restrictions only those operations that are "necessary" for takeoff or landing. Consequently, the appropriateness of making right turns after takeoff from Runway 23 does not mean that a pilot is not answerable under the regulation for a turn in either direction that is accomplished at a point during climbout that *unnecessarily* takes the aircraft over a person, vessel, vehicle, or structure within a distance that would be prohibited when not taking off or landing.⁶ Since the record suggests no

⁶Indeed, the law judge's conclusion that respondent had violated FAR section 91.13(a) reflects his recognition that air safety is perforce breached by flights below the altitude

reason why the respondent, consistent with the practice of other users of the airstrip, could not have delayed his right turns on takeoff until after passing the Davis residence, his low flights over it cannot be said to have been necessary for his takeoffs, so as to immunize them from the reach of FAR section 91.119(c).⁷

As to sanction, the Administrator argues that a conclusion that both FAR sections 91.119(c) and 91.13(a) were violated justifies a reinstatement of a 120-day suspension. We do not concur. In our view, the charges are essentially duplicative, since the rationale for prohibiting low flying in the former regulation is largely to avert the creation of the endangerments addressed in the latter. Thus, the seriousness of respondent's conduct is no different whether one or both provisions were breached, for the FAR section 91.13(a) charge is clearly derivative of or residual to the charge under the low flight regulation. Given this circumstance, and the unappealed dismissal of two of the alleged low takeoffs, we are not

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regulation's minima: "it was not appropriate for [the respondent] to fly over someone's house that low" (I.D. at 165).

⁷In his reply, the respondent contends essentially that no violation of FAR section 91.119(c) should be found because "[y]ou cannot depart or land at Rimrock without passing less than 500 feet from" the Davis residence. Although the Administrator has not addressed this argument, which was first raised briefly at the hearing, we do not find it persuasive. The regulation, in seeking to except from its coverage the low level flying that inevitably and unavoidably accompanies takeoffs and landings, is not, in our judgment, rendered inapplicable simply because an aircraft must pass within 500 feet from a person, vessel, vehicle, or structure in order to conduct a safe and proper takeoff or landing at some suitable location. The issue in such a case is, we think, whether the aircraft was flown closer than was necessary to execute the ascent or descent.

persuaded that the Administrator, who has cited no closely similar factual precedent, has demonstrated that the law judge's reasons for reducing sanction, including his conclusion that respondent was justified in making right turns on takeoff at Rimrock, were not sufficient.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted in part;
2. The initial decision is reversed to the extent it dismissed the charges under FAR section 91.119(c); and
3. The 45-day suspension of respondent's private pilot certificate ordered by the law judge is affirmed.⁸

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT and GOGLIA, Members of the Board, concurred in the above opinion and order.

⁸Respondent has previously surrendered his certificate for the 120-day suspension period sought in the Administrator's complaint.