



FLIGHT-WATCH



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VFR FLIGHT FOLLOWING MAY INCREASE YOUR CHANCES OF AVOIDING TEMPORARY FLIGHT RESTRICTIONS

As temporary flight restrictions (“TFRs”) have become an issue in our post-9/11 environment, I have not seen any situations where TFRs were compromised by aircraft on an IFR flight plan. All the cases I have seen were pilots who were flying VFR. While I have seen situations where pilots requested flight following from an appropriate approach or departure control facility or an air route traffic control center facility after a TFR incursion, I have not seen any cases where the pilots were receiving flight following and then penetrated a TFR. In fact, in one case, the ATC noticed that an aircraft was going to penetrate a TFR. The approach control facility having jurisdiction over this area attempted to reach the aircraft on the approach control frequency to alert the aircraft to the fact that its heading and altitude would place it in a TFR. The controller directed the aircraft to turn to a head-

was not monitoring the approach control frequency in his sector, he penetrated the TFR. When the pilot received an escort by an F-16, he went to 121.5 and then established radio contact with the approach control facility.

It is true that a TFR may “pop up” while an aircraft is en route after receiving a complete briefing from a flight service station. There would appear to be two ways to combat this unfortunate problem. One means would be to periodically check in with flight service stations along one’s route of flight and see if there are any TFRs along your projected flight path. Another way is to get flight following, since one would hope that approach and departure control facilities and air traffic control center facilities would be aware of TFRs in their area.

Based upon the cases I have seen involving TFR incursions, it is my advice to my clients that they get flight following whenever flight following is available.



SOME POINTERS FOR TAKING A 709 CHECKRIDE

As most pilots know, the FAA may, on a reasonable basis, request to re-examine a pilot. This authority is found in 49 U.S.C. § 44709. In pilot's jargon, this is called a "709 check ride" or a "709 ride." Competent and current pilots may assume they will have no difficulty with a 709 check ride. While that may generally be true, the pilot needs to ponder the possibility that the Agency inspector administering the check ride may misinterpret or misapply the regulations. This means that the pilot must know the regulations better than the inspector. If the inspector misapprehends the regulations, the pilot must know the regulations well enough to tell the inspector that he is mistaken. This may seem like an undue burden on pilots. However, in my experience, this is a potential problem. A pilot confronted with a 709 check ride may wish to receive some ground instruction from a seasoned flight instructor in addition to flight instruction. If the pilot cannot get past the oral examination, he will never get in the airplane. The pilot may anticipate the FAA inspector placing a fine edge on the regulations and trying to find any deficiency in the pilot's knowledge. For this reason, passing a 709 check ride may be more than simply being able to fly the airplane well. It may consist of thorough and complete knowledge of small nuances of the Federal

Aviation Regulations.

PILOT ERROR: MISTAKING A MOUNTAIN FOR CLOUD COVER

While approaching an airport to land, the jet aircraft impacted a mountain. It was alleged that the pilot and copilot miscommunicated in relation to the frequency to activate the runway lights. It was further alleged that the pilot mistook a mountain for cloud cover.

Mr. Price, age 69, and his son, age 38, were passengers aboard the aircraft. Everyone perished in the crash. An action was brought against the contracting company for vicarious liability of the flight crewmembers on behalf of Mr. Price and his son. The case settled before trial for \$3.5 million, divided equally among the plaintiffs.

Sutter v. Marr, USDC for the District of Hawaii, Civil Action File Nos: CV-01-00701 KSC; CV-01-00707 KSC, March 25, 2004.

Happy Thanksgiving!



Alan Armstrong is engaged in the general practice of law with an emphasis in the following areas:

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