

# Who's Making the Rules?

by Christine Kalakuka

---

In a recent decision by the National Transportation Safety Board, a pilot was heavily sanctioned for violating Federal Aviation Regulation 91.119(a)(b)-Minimum Safe Altitudes, and 91.13(a)-Careless or Reckless Operation. The pilot made two landings in small parking lots within city limits to exchange paying passengers. According to the Federal Aviation Administration Inspector who investigated a complaint made by the municipality where the landings took place, both parking lots were very small (approximately 70 and 40 feet wide) and had powerlines within 50 feet of the actual landing sites. There were no injuries or damage of any kind.

In his original discussions with the FAA, and in his appeal to the NTSB, the pilot contented that FAR 91.119 should not apply to balloons because a loss of power at a higher altitude is actually more dangerous to the balloon occupants than a loss of power at a lower altitude. (This is not always true. For example, loss of power at a low altitude over powerlines may well be more dangerous than loss of power at higher altitude where some horizontal movement may occur.)

An argument is made by many balloonists that balloons should not be subject to certain FARs because balloons are different from other aircraft.

These arguments, while having some merit, disregard two important components of federal regulation and airspace usage which are (1) that all aircraft use the same airspace and should, consequently, be subject to the same rules, and (2) that the primary purpose of FARs is to protect people and property on the ground.

That being said, we must recognize the fact that with ever-increasing regulation and excessively subtle interpretations of regulations, use of the airspace by general aviation is being restricted.

The NTSB, the same federal agency which stands in final judgment of infractions made by trucking lines and oil pipeline operators, is considered the final court of appeal for a balloon pilot accused by the FAA of violating FARs. Each decision made by the NTSB becomes part of a body of case histories which inevitably define, and in some cases, produce, regulation.

In several cases adjudicated by the NTSB against balloonist, the NTSB has expanded the meaning of §91.119 by stating that a landing site was inappropriate, therefore the provision for restricting altitude "except when necessary for takeoff or landing" does not apply. The actual words in the decision are: "If the landing site is inappropriate under the circumstances, then the low flight cannot be excused under the

regulation as necessary for landing." There are several problems with that statement. The NTSB's determination of appropriateness of a landing site is not made by people who are qualified to make such a judgement. We're not talking about airplanes and airports here, we're talking about balloons, which can safely land in small and unusual places. If a pilot has selected a landing site which he can achieve, he should be entitled to the provisions in the regulation which allow him the absolutely necessary maneuver of flying low in order to reach the ground. In a footnote to one case, the NTSB says: "That the Administrator did not offer definitive evidence of the wind speed at the time of the landings or takeoffs is inconsequential, given the apparent unsuitability of the sites for takeoff and landing." This is another statement made in ignorance of the characteristics of balloon flight. A landing site that is unsuitable on a windy day may well be suitable on a calm day. Anybody who flies a balloon, or who has observed balloon flight, knows that. (By the way, we don't know why the FAA did not offer information on wind speed. It may be because they didn't have it; it may be that it would have weakened their case.)

The Administrative Law Judge, in a previous decision of the same case, found in favor of the pilot stating that "if the respondent believed he had an adequate reason for landing where and when he did, then those landings were "necessary" and, therefore, could not violate the regulation. This finding is in accordance with FAR §91.3(a) which states: "The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft." The NTSB board, who may never have seen the city where these events took place, and may never have ridden in, or seen, a hot air balloon, chose to reverse the ALJ's decision, which was based on regulations and common sense. The NTSB's decision was made after they had reviewed previous NTSB decisions, two of which refer to airplanes, not balloons.

Bruce Landsberg, in an article in the January 1996 *AOPA PILOT* magazine entitled *Keep It Simple* argues that Federal Aviation Regulations have become far too complex, due to lawyers and administrators, and proposes a set of 12 simple regulations to govern flight. A good idea. We now have thousands of regulations, written, if not by lawyers, than with lawyers and lawsuits in mind. Landsberg also advocates that determination of guilt of pilots accused with careless or reckless operation should be made by a panel of pilots. Another good idea.

As it is now, you can have your certificate revoked based on a report by a policeman who didn't see the landing, and on a report written by an FAA inspector who wasn't on the scene, because of judgments made by a Board comprised of people who aren't required to hold the certificate they are taking from you.

The pilot in question had stated he doesn't believe balloons should be subject to FAR §91.119, and may have felt that an NTSB investigation and adjudication was an appropriate forum to affect a change in the rules. It clearly was not, and, in practice, this anti-balloon-landing interpretation of the law has been strengthened as another citable case is added to the library.

*For more information on the original case see Minimum Safe Altitudes Rewritten? in the June 1995 issue. Editor*

---

Copyright © 1996 Balloon Life. All rights reserved.



[Table of Contents](#)