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ALCOHOL OFFENSES AND THE REPORTING REQUIREMENTS OF 14 C.F.R. § 61.15

BRETT D. VENHUIZEN*

I. INTRODUCTION

John Pilot is a twenty-year-old aviation student at a well-known university aviation program. John is a conscientious young pilot and an excellent student. It has been his dream to be an airline pilot since he was five years old, when he got a glimpse inside the cockpit of an airliner while on a family vacation. He tries hard to comply with the Federal Aviation Regulations (FARs). John knows that a DWI/DUI conviction is reportable to the Federal Aviation Administration (FAA) and that his future employers could be privy to the information as well. In fact, John rarely drinks, and if he does, he never operates a motor vehicle after consuming even one alcoholic beverage.

John belongs to a fraternity and decides to attend a party one evening with his fellow fraternity members. He knows that he should not drink until he is twenty-one, but like many colleges students, he makes the unfortunate decision to consume alcohol anyway. John is sitting on the couch and has consumed approximately one-half of a can of beer when the police arrive. John is cited as a minor in consumption of alcohol.

If convicted, does John have to report the conviction to the FAA? Is John's entire future as a pilot at risk because of this one error in judgment? Interestingly enough, the answer to both of these questions may be "yes." Much depends on how the state where John is convicted punishes minors for consuming alcohol. If John's driver's license is suspended as a result of his infraction, he has reason for concern.

The Code of Federal Regulations, 14 C.F.R. § 61.15, provides the reporting requirements for drug and alcohol offenses by pilots seeking certification.¹ Part II of this article will briefly examine the history of 14 C.F.R. § 61.15 and the intent of its drafters. Part III will analyze the reporting requirements of 14 C.F.R. § 61.15 as they relate to alcohol offenses. Part IV will discuss what the author believes are some unintended

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1. Certification: Pilots, Flight Instructors, and Ground Instructors, 14 C.F.R. § 61.15 (2002).

consequences of 14 C.F.R. § 61.15 and will analyze the situation of our hypothetical John Pilot.

II. THE HISTORY OF 14 C.F.R. § 61.15

The goal of the FAA in establishing the reporting requirements of 14 C.F.R. § 61.15 was to increase aviation safety.² The FAA decided to accomplish this by identifying persons who may commit unsafe acts in an aircraft because of a disregard for certain safety regulations and removing them from the airspace.³ On May 18, 1989, the FAA issued a notice of proposed rulemaking (NPRM) concerning pilots convicted of alcohol- or drug-related motor vehicle offenses, or subject to state motor vehicle administrative procedures.⁴

For some time, the FAA has required pilots to report alcohol- or drug-related motor vehicle convictions on the FAA medical application form. The May 18, 1989, NPRM was issued after the results of an audit of the FAA's medical certification program were released by the Office of the Inspector General (OIG) of the United States Department of Transportation (DOT).⁵ In conducting the audit, the OIG compared an extract of a state driver's licensing file on alcohol- and drug-related motor vehicle offenses with the FAA's medical file.⁶ The comparison showed that 1584 of the state's active pilots (3.4%) had at least one DWI/DUI conviction and that 1124 of these pilots (71%) had failed to report their convictions to the FAA.⁷ The OIG found similar results when comparing the National Driver Register (NDR) records with the FAA's medical files.⁸ This comparison showed that the driver's licenses of approximately 10,300 (1.45%) of the nation's 711,648 airman had been suspended or revoked during the past

2. Pilots Convicted of Alcohol- or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures, 55 Fed. Reg. 31300 (Aug. 1, 1990) (to be codified at 14 C.F.R. pts. 61, 67).

3. *Id.*

The rule is intended to enhance safety in air travel and air commerce, and is necessary to remove from navigable airspace pilots who demonstrate an unwillingness or inability to comply with certain safety regulations and to assist in the identification of personnel who do not meet the medical standards of the regulations.

Id.

4. Pilots Convicted of Alcohol- or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administration, 54 Fed. Reg. 21580 (May 18, 1989) (to be codified at 14 C.F.R. pts. 61, 67).

5. 55 Fed. Reg. 31300 (Aug. 1, 1990) (to be codified at 14 C.F.R. pts. 61, 67).

6. *Id.*

7. *Id.*

8. *Id.*

seven years for DWI/DUI offenses, and 7850 (76%) of these pilots had failed to report their convictions to the FAA on their medical applications.⁹

“Based on the information discovered during the audit, the OIG recommended that the FAA develop an objective, regulatory standard that would provide for FAA certificate action against pilots convicted of alcohol- or drug-related motor vehicle offenses.”¹⁰ Such a provision would serve to put some regulatory “teeth” into the reporting requirements. The FAA adopted an amnesty policy that ran from October 22, 1987, through January 1, 1988.¹¹ The policy gave airmen the opportunity to voluntarily correct their medical files and avoid an FAA enforcement action.¹² Approximately 11,300 pilots participated in this program.¹³

The FAA received eighty-four comments from the public and various organizations representing pilots regarding the May 18, 1989, NPRM.¹⁴ “In general, the majority of the commenters support[ed] the safety goal of the proposed rule. Those objecting sa[id] that the methods proposed by the FAA in the NPRM [did] not contribute to a safer aviation community, but rather place[d] serious regulatory burdens on those airmen who are law-abiding.”¹⁵ Several commenters suggested that the FAA was overstepping its statutory authority.¹⁶ Other commenters believed that there was no correlation between pilots’ ability to drive a car and their ability to pilot an airplane.¹⁷ Some also argued that the costs of administering the program were

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

On October 22, 1987, the FAA issued a notice (52 FR 41557; October 29, 1987) of a special enforcement policy regarding applicants for a medical certificate who have provided incorrect information about traffic convictions on a medical application form. In order to encourage compliance with the reporting requirement on the medical certificate application form, and to ensure that the FAA’s records are accurate and complete, the FAA afforded airmen an opportunity to avoid FAA enforcement action based on falsification of their medical certificate applications if they volunteered the corrected information to the FAA before January 1, 1988.

Id.

13. *Id.*

14. *Id.*

15. *Id.*

16. *See id.* (stating “[t]hree commenters argue that the proposed regulations overstep FAA’s statutory authority, which involves the safety of flying. They believe that FAA regulations should address only the act of flying while under the influence of alcohol or drugs”).

17. *Id.*

Numerous objections to the proposals in the NPRM assert that there is little or no relationship between the task of piloting an aircraft and driving an automobile. The commenters contend that training and the environment surrounding the operations of motor vehicles and aircraft are drastically different and should not be subject to similar regulations. The Commenters state that pilots are carefully selected and subject to

just too high.¹⁸ The FAA disagreed, arguing that even if a very small number of lives were saved, the program would be successful.¹⁹ The final rule was issued in 1990 as amendments to 14 C.F.R. parts 61 and 67. Applicable portions of 14 C.F.R. § 61 (as amended) are reproduced in Part III.

III. THE REPORTING REQUIREMENTS

In analyzing what 14 C.F.R. § 61.15 requires pilots to report, we must first look at the regulation itself. Sections (a) and (b) have been deleted as they deal with offenses involving drugs and are beyond the scope of this article.

§ 61.15 Offenses involving alcohol or drugs.

....

(c) For the purposes of paragraphs (d), (e), and (f) of this section, a motor vehicle action means:

(1) A conviction after November 29, 1990, for the violation of any Federal or State statute relating to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug;

(2) The cancellation, suspension, or revocation of a license to operate a motor vehicle after November 29, 1990, for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug; or

(3) The denial after November 29, 1990, of an application for a license to operate a motor vehicle for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug.

(d) Except for a motor vehicle action that results from the same incident or arises out of the same factual circumstances, a motor

different medical requirements and training than those licensed solely to operate motor vehicles, and, therefore, cannot be so directly equated.

Id.

18. *See id.* (stating “[f]our commenters, including one organization, raise economic issues. Three say that the administrative paperwork would not be ‘nominal,’ and that the FAA should attempt to quantify these costs”).

19. *Id.*

vehicle action occurring within 3 years of a previous motor vehicle action is grounds for:

- (1) Denial of an application for any certificate, rating, or authorization issued under this part for a period of up to 1 year after the date of the last motor vehicle action; or
- (2) Suspension or revocation of any certificate, rating, or authorization issued under this part.

(e) Each person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division (AMC-700), P.O. Box 25810, Oklahoma City, OK 73125, not later than 60 days after the motor vehicle action. The report must include:

- (1) The person's name, address, date of birth, and airman certificate number;
- (2) The type of violation that resulted in the conviction or the administrative action;
- (3) The date of the conviction or administrative action;
- (4) The State that holds the record of conviction or administrative action; and
- (5) A statement of whether the motor vehicle action resulted from the same incident or arose out of the same factual circumstances related to a previously reported motor vehicle action.

(f) Failure to comply with paragraph (e) of this section is grounds for:

- (1) Denial of an application for any certificate, rating, or authorization issued under this part for a period of up to 1 year after the date of the motor vehicle action; or
- (2) Suspension or revocation of any certificate, rating, or authorization issued under this part.²⁰

From reading the text of the regulation, one can see that pilots must report motor vehicle actions to the FAA.²¹ That alone isn't very helpful though. As a preliminary matter we need to define the term "motor

20. Certification: Pilots, Flight Instructors, and Ground Instructors, 14 C.F.R. § 61.15 (2002).

21. *Id.*

vehicle.” The definition of a motor vehicle can vary from state to state. Some states classify snowmobiles, boats, and other means of transportation as motor vehicles while other states do not.²² Once it has been determined that the vehicle the pilot was operating is considered a “motor vehicle,” then we are able to move to the next step and define “motor vehicle action.”

A. WHAT IS A MOTOR VEHICLE ACTION?

The first step in determining what a pilot is required to report to the FAA is to determine whether the pilot’s offense constituted a motor vehicle action. Section 61.15(c) lists several situations that are defined as motor vehicle actions.²³ The first occurrence that the FAA describes as a motor vehicle action is any conviction of a federal or state statute “relating to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug.”²⁴

Clearly a pilot convicted of a DWI/DUI has had a motor vehicle action, but what if a pilot is convicted of reckless driving? Could this be reportable as well? The answer may be yes if the reckless driving conviction makes reference to the pilot’s intoxication or impairment by alcohol. What if the pilot is a minor and is convicted as a minor in consumption of alcohol while driving a car? Again, this is likely reportable. The issue is whether the statute that the individual is convicted of violating relates to the operation of a motor vehicle while intoxicated, impaired, or under the influence of alcohol.²⁵ It is important to look at how the state where the conviction occurred defines the charge. If there is any indication in the judgment of conviction that the pilot operated a vehicle while intoxicated, impaired, or under the influence of alcohol, the pilot would be well-advised to report the matter to the FAA.²⁶

The next occurrence that the FAA describes as a motor vehicle action is “[t]he cancellation, suspension, or revocation of a license to operate a

22. Compare N.D. CENT. CODE § 39-01-01(38) (Supp. 2001) (defining a motor vehicle as including “every vehicle that is self-propelled, every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and, for purposes of motor vehicle registration, title registration, and operator’s licenses, motorized bicycles. The term does not include a snowmobile as defined in section 39-24-01”), with S.D. CODIFIED LAWS § 32-3-1 (11) (Michie 2002) (defining a motor vehicle as all “automobiles, motor trucks, motorcycles, house trailers, trailers, and all vehicles propelled by power other than muscular power, except traction engines, road rollers, farm wagons, freight trailers, vehicles that run only on rails or tracks, and off road vehicles as defined in § 32-20-1”).

23. 14 C.F.R. § 61.15(c)(1).

24. *Id.*

25. *Id.*

26. *Id.* § 61.15(e).

motor vehicle . . . for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug.”²⁷ Administrative suspensions for refusing to submit to a breath test for alcohol are considered motor vehicle actions.²⁸ In *Kralely v. National Transportation Safety Board*,²⁹ Robert Kralely had his driver’s license suspended under Ohio’s implied consent statute, which provided for a suspension of one year upon failing to submit to a chemical test to determine blood alcohol concentration.³⁰ The court found, “Such a suspension constitutes ‘a cause related to the operation of a motor vehicle . . . while under the influence of alcohol’ under the intent and wording of 14 C.F.R. § 61.15(c).”³¹

The report also must be made in a situation where a DWI/DUI charge has been reduced to a lesser offense, such as reckless driving, if there has been a driver’s license suspension.³² According to aviation attorney Jerry Eichenberger, “Regardless of what your traffic court lawyer may tell you, you have a motor vehicle action in the eyes of the FAA if you had driver’s license repercussions.”³³ The NTSB has liberally construed the term “motor vehicle action” as seen in the case of *Hinson v. Wilson*.³⁴ Cynthia Wilson, a FAA certificated pilot, took

the position that this regulation did not apply to the suspension she incurred because it was based only on the fact that she was found, following her arrest while operating a motor vehicle, to have a prohibited blood alcohol level (.08 per cent [sic] or above), not on the ground that she had operated a motor vehicle while intoxicated, impaired, or under the influence of alcohol.³⁵

The NTSB, in affirming the Administrative Law Judge’s suspension of Wilson’s pilot certificate, concluded that section 61.15 applied to the suspension of her driver’s license for driving with an excessive blood alcohol level under California law.³⁶ The Board further explained,

27. *Id.* § 61.15(c)(2).

28. *Kralely v. Nat’l Transp. Safety Bd.*, No. 97-4227, 1998 WL 708705, at *1 (6th Cir. Oct. 1, 1998).

29. No. 97-4227, 1998 WL 708705, at *1 (6th Cir. Oct. 1, 1998).

30. *Kralely*, 1998 WL 708705, at *4.

31. *Id.* (citing 14 C.F.R. § 61.15(c)(2)).

32. Jerry Eichenberger, *When a Pilot Gets Busted for Drinking and Driving*, PRIVATE PILOT, June 2001, at 62.

33. *Id.*

34. No. SE-13582, 1995 NTSB LEXIS 7, at *10 (NTSB Jan. 19, 1995).

35. *Hinson*, 1995 NTSB LEXIS 7, at *2.

36. *Id.*

Respondent's argument that no report was required for the motor vehicle action in which she was involved is predicated on a reading of section 61.15(c)(2) that fails to take into account its plain intent to reach alcohol or drug related motor vehicle license actions that do not result in a conviction for operating a motor vehicle while intoxicated, impaired, or under the influence. That intent is manifest in the regulation's requirement that reports be made of license actions taken not just for those operational offenses, but also for causes "related to" those operational offenses. It is therefore irrelevant that the offense for which respondent's motor vehicle license was suspended under California law was not predicated on any finding that she was actually intoxicated, impaired or under the influence of alcohol. The issue before us is not whether the evidentiary basis for the offense of driving with an excessive BAL is the same, under California law, as that for the offense of driving while intoxicated, impaired or under the influence of alcohol, but, rather, whether the two offenses involve associated conduct.³⁷

Jerry Eichenberger uses an easy rule of thumb to determine whether a motor vehicle action has occurred, stating any suspension, denial, or revocation of a driver's license is a motor vehicle action if it was a result of an alcohol-related problem with the courts, "regardless of the actual offense to which you plead guilty or get convicted."³⁸ Once a pilot determines that his or her offense constituted a motor vehicle action, the next step is to make the proper reports.

B. THE "WHEN AND WHERE" OF REPORTING

The reporting requirements are contained in 14 C.F.R. § 61.15(e).³⁹ The pilot must make the report no later than sixty days after the motor vehicle action.⁴⁰ In order to be in compliance, the pilot must make the required report even if there has not yet been a conviction because a driver's license suspension itself constitutes a motor vehicle action and starts the sixty-day clock running.⁴¹

37. *Id.* at *2-*3.

38. Eichenberger, *supra* note 32, at 62.

39. 14 C.F.R. § 61.15(e) (2002).

40. *Id.*

41. *Id.* § 61.15(c)(2).

The report required by this part must be made to the FAA Civil Aviation Security Division and not to the Medical Certification Division.⁴² This is an important distinction, as it is vital for pilots to realize that the reporting requirements of 14 C.F.R. § 61.15 are in addition to what must be reported on their next medical certificate application form.⁴³ Pilots must make the required report to the FAA Civil Aviation Security Division within sixty days of the motor vehicle action.⁴⁴ Then, they have a continuing obligation to report as required on their next medical certificate application.⁴⁵ Reporting the matter to an aviation medical examiner, however, does not relieve pilots of their responsibility to also make the report to the FAA Civil Aviation Security Division.⁴⁶

C. FAILURE TO REPORT

Failing to report motor vehicle actions is where pilots typically get themselves into trouble. Every time pilots apply for a medical certificate they consent to having their National Driver's Register records searched.⁴⁷ All motor vehicle actions will show up during this search. If a pilot has failed to disclose the motor vehicle action on the application for the medical certificate, or has failed to report the action, the FAA will find out about it and take action.⁴⁸

Section 61.15(f) provides the penalty for failing to make the required report.⁴⁹ The penalties for not reporting can be substantial. Failing to report is grounds for the denial of an application for any certificate, rating, or authorization for up to one year from the date of the motor vehicle action, or suspension or revocation of any certificate, rating, or authorization.⁵⁰ The actual penalties imposed vary with the circumstances of each case, but it is common for suspensions of thirty to ninety days to be issued. For example, one pilot had his ATP certificate suspended for forty-five days after failing to make the report required by 14 C.F.R. § 61.15(e).⁵¹

42. *Id.* § 61.15(e).

43. *See id.* § 67.403(a)(1) (stating pilots who make the report required by Title 14 CFR 61.15 and then subsequently fail to also report the matter on their next medical certificate application, could be subject to an FAA enforcement action in addition to potentially facing charges for falsifying government documents).

44. *Id.* § 61.15(e).

45. Garvey v. Ikeler, No. SE-15003, 1998 NTSB LEXIS 81, at *5 (NTSB Aug. 20, 1998).

46. *Id.*

47. 14 C.F.R. § 67.7.

48. *Id.* § 61.15(e)-(f).

49. *See id.* § 61.15(f) (providing for penalties associated with failure to provide a written report of each motor vehicle action to the FAA).

50. *Id.*

51. Garvey v. Ikeler, No. SE-15003, 1998 NTSB LEXIS 81, at *2 (NTSB Aug. 20, 1998).

Pilots who report a single motor vehicle action to the FAA will not face any repercussions to their pilot certificates.⁵² Problems will arise, however, if a pilot has another motor vehicle action within three years.⁵³ Section 61.15(d) provides for penalties for a pilot who has a second motor vehicle action (unrelated to the first) within three years of a previous motor vehicle action.⁵⁴ The penalties for receiving a second motor vehicle action within three years are the same as the penalties for failing to report a motor vehicle action, that is: denial of an application for any certificate, rating, or authorization for up to one year from the date of the motor vehicle action, or suspension or revocation of any certificate, rating, or authorization.⁵⁵

In *Kraley*, Kraley was convicted of driving under the influence in 1992, and had his driver's license administratively suspended in 1994 for refusing to submit to a chemical test.⁵⁶ Kraley's pilot certificate was suspended for 120 days because he violated 14 C.F.R. § 61.15(d).⁵⁷ In another case, Frederic Bennett received a thirty-day suspension of his certificate for failing to report a motor vehicle action.⁵⁸ He subsequently received two more administrative suspensions that he also failed to report.⁵⁹ Bennett had his flight instructor and ATP certificates revoked because he had a noncompliant attitude and because he had received three motor vehicle actions within a three-year period in violation of 14 C.F.R. § 61.15(d).⁶⁰ In many of these situations the application of the regulation is relatively straight forward, but not all situations lend themselves to a clear answer.

IV. THE GRAY AREAS (UNINTENDED CONSEQUENCES?)

So what of the hypothetical university aviation student John Pilot? Has John had a motor vehicle action? Well, the answer to this question is a very definite maybe. Assume John had his driver's license suspended; the suspension would be for an alcohol-related cause. However, John was sitting on the couch and not anywhere near a motor vehicle when he was cited. The only reason John's license was suspended is because that is how his state punishes minors for drinking while underage. John's situation

52. 14 C.F.R. § 61.15(d).

53. *Id.*

54. *Id.*

55. *Id.*; see also 14 C.F.R. § 61.15(f).

56. *Kraley v. Nat'l Transp. Safety Bd.*, No. 97-4227, 1998 WL 708705, at *1 (6th Cir. Oct. 1, 1998).

57. *Id.*

58. *Garvey v. Bennett*, No SE-15137, 1999 NTSB LEXIS 26, at *2 (NTSB Apr. 6, 1999).

59. *Id.*

60. *Id.*

certainly doesn't seem to fit within the intentions of 14 C.F.R. § 61.15. The fact that he has consumed alcohol while underage does not seem to indicate an increased likelihood that he will operate an aircraft while intoxicated or a propensity to violate safety regulations. John was at least consuming alcohol in a relatively safe environment. He was just consuming it at too young of an age.

This hypothetical situation was discussed with two FAA attorneys and an FAA investigator. One of the attorneys and the investigator would advise John Pilot to make the report as required by 14 C.F.R. § 61.15(e). The other attorney was of the opinion that John's citation would not rise to the level of a motor vehicle action, despite the fact that his driver's license was suspended, because he was not actually in control of a motor vehicle at the time. Both FAA attorneys advised that any of the attorneys at the Aeronautical Center Counsel Office would be happy to speak anonymously with airmen and advise them on whether to report. The FAA investigator explained that if a report was made and subsequently found not to meet the criteria for § 61.15 reporting, it would be returned to the pilot and all records of the report would be purged. Since there is no penalty for having a single motor vehicle action within a three-year period, making the report may be the safest thing for John to do.

V. CONCLUSION

Section 61.15 seems to do a good job of keeping pilots with drinking problems out of the sky. The fact that more pilots are in violation for failing to make the proper reports than for having too many motor vehicle actions tends to show that pilots and attorneys need to be more aware of the requirements of the provision.

The FAA needs to clarify its position on minors who receive non-driving alcohol violations and have their driver's licenses suspended. Receiving a minor in consumption citation is a common occurrence amongst young people, and a misstep in reporting (or not reporting) the incident could potentially cause serious damage to their careers. Reporting everything to the FAA and letting them sort it out is certainly less than desirable. Because states are now suspending individuals' driver's licenses for numerous violations besides DWI/DUI, there will be new questions to answer. It may be time to modify the wording of the regulation to ensure that the drafters' intent is realized.
