

Part 91 Ramp Check? Just say "No." - (I did.)

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The August 2013 issue of the Allied Pilots' Association (American Airlines Pilot's Union) Newsletter offered some advice about how pilots should deal with ramp checks. (See the Executive Director's Report, pages 3 and 4).

Unfortunately, the Executive Director did not make any distinction in the article between Part 135 operators ("commercial" pilots), Part 121 operators ("airline" pilots) or the general catch-all, Part 91 operators ("private" pilots). But these are important distinctions because, per the Fourth Amendment of the U.S.

Constitution, **there is no such thing as a "ramp check" for Private Pilots!**

See, according to the Constitution, which calls itself the "Supreme Law of the Land" (supreme over the FAA and Homeland Security), you have a right to be free from warrant-less searches. As it pertains to Private pilots and so-called "ramp check", the Fourth Amendment means that an FAA Inspector does not have the right to board or enter your private property (your aircraft) unless he has a search warrant. Even the chief legal counsel of the AOPA sees this. (See the last paragraph of the January 2011 article Ramp Check by John Yodice). As such, a lot of what you've been told about ramp checks (even by the AOPA in a later article and on its website) is wrong.

Since you'll probably have to educate the authorities about this (as I once had to), let's start by discussing where the concept of a "ramp check" came from in the first place. It's quite logical when you know the facts. Unfortunately, the logic has become fuzzy over time.

First, so that you know the facts, you need to know that we pilots are bound by law to obey the FARs only. That is, we are NOT bound to obey the FAA's internal rules for its employees, known as FAA Order 8900.1, as some would have you believe.

Unfortunately, that word "Order" in the title of the FAA's Handbook is an intimidating misnomer. It has even confused at least one federal judge who improperly dismissed an aviation matter because the judge took the title too literally. But the FAA's internal regulations are not "orders" that apply to YOU. They only apply to FAA employees.

Nevertheless, the belief that the FAA's Handbook is controlling law for pilots is

fairly entrenched within the FAA. See, for example, [this article on ramp check, written by a FAAS Team Program Manager](#). Notice that he says HE is required to obey the Handbook. Again, that does not mean YOU are. (Kudos to him for getting some things right, as we'll see below. But he gets some things wrong too.)

Now that we know we are only bound by the FAR's, let's examine them. It might surprise you to know that there IS such a thing in the FARs as a "ramp check" (although it's not called that by name). But ramp checks are only for FAR Part 135 Commercial Operators and FAR Part 121 Air Carriers. See FAR 135.73 and FAR 119.59 respectively. There is a logical basis for this.

See, these operators fly the public around for hire. And the FAA's mandate is to protect the public. Therefore, Congress gave the FAA the right to board these aircraft for inspection whenever it wants. In essence, these operators waived their Fourth Amendment right to warrant-less searches when they signed up to carry passengers for hire. But if you're a Part 91 Private Pilot, none of the FAR's about impromptu invasive inspections (i.e. ramp checks) apply to you.

Unfortunately, fuzzy logic has crept in over time. While it's the FAR's that give inspectors the legal authority to inspect commercial operators, when it comes to inspecting private operators, Inspectors cite their internal Handbook for authority instead. But, as we've said, the Handbook is not controlling law for pilots.

Kudos to the FAAS guy (above) for acknowledging that, per the FAR's, private pilots don't have to provide access to their aircraft. Too bad he contradicts himself later when he says you may have to remove your Airworthiness Certificate so he can inspect it. (He cites FAR 91.203 for authority, but FAR 91.203 does not say that).

Even if the FAA's internal rules did apply to you, that doesn't automatically make them lawful orders. Let's say, for the sake of argument, that the Constitution notwithstanding, an internal FAA order said an FAA Inspector could board your Part 91 private plane during a ramp check. That would be like the IRS writing an internal rule in its Special Agent's Handbook saying an agent could kick down your door any time he wanted. That is unconstitutional and therefore, not lawful. You do not have to comply.

Next problem: The FAA confuses the differences in the FAR's between commercial and private pilots, telling us you have to produce the same papers that a commercial operator would. But you don't.

For example, commercial operators have to calculate and record a Weight &

Balance manifest before every flight for hire. But as a Part 91 operator, there is no such requirement for you. You only need know that you are within your W&B for safe flight. Kudos to the FFAST guy again for acknowledging that Part 91'ers don't have to show a W&B calculation.

Similarly, as a Part 91'er, you do not have to show aeronautical charts either. Again, that's a Part 135 regulation (specifically, it's FAR 135.83). See how this goes?

Now, as with a cop, an FAA inspector can ask you anything he wants. (The FFAST guy says he'll ask when you last had a BFR). But, as with a cop, you do not have to answer or consent to a search. And, as with a cop, anything you say can be used against you.

Fact is, by law, there's very little you have to do. The FAR's only say that you have to show (not "give" or "surrender") your pilot's license and medical (and now, photo ID) to an FAA inspector or law enforcement officer upon request.

I actually went through his once and survived. Years ago, my airplane partner and I had flown in for an air fair in New Mexico to talk up General Aviation. I was immediately suspicious when some guy in a white shirt was waiting for us as we taxied in (and I knew he wasn't a line man). After saying "Nice airplane!" (it's a Glasair and was a novelty at the time), he asked, "Where's your Airworthiness Certificate?"

I knew the only guy in the world who would ask about an Airworthiness Certificate would be an FAA guy. I didn't have to show it to him (especially since he hadn't identified himself), but I humored him. I knew it had to be legible to the passengers or crew and it was. Pointing through the canopy, I said, "It's there." Then I locked up the plane saying, "We're late for pancakes."

I thought that was the end of it, but he returned a few hours later, pulled out his wallet and flashed something at me that said "FAA" in big red letters. (Although I don't know what real FAA identification looks like, especially nowadays, when anyone can print a fake ID on their computer. And, this was on a Saturday. Was he really on duty?) He said, "May I have the pleasure of giving you a ramp check?"

I said, "No." I told him, "There is no such thing as a ramp check for Part 91 operators. That's only for Part 135 and Part 121 operators." That stunned him. Then he asked to see my pilot license, which I acknowledged I had to show him (although technically, I hadn't flown in, so wasn't acting as PIC, but I wanted to

spare my airplane partner from my actions).

Now, maybe flashing an ATP license helped, but that pretty much ended it. I did make the mistake of handing him my license. (Lesson from Bob Hoover. Don't do that! As with your driver's license, the law only requires you show it. I now carry copies of my pilot and drivers license to give to authorities when required). Thankfully, he didn't keep my license, but merely wrote down my certificate number in a little notebook of his. I never heard more about it.

Look, our counterparts on the oceans have lost this battle. Pilots of boats let the Coast Guard board their private vessels all the time under the guise of "safety", even though the Coast Guard is really looking for drugs most of the time. Like the FAA, the Coast Guard can legally board commercial ships without a warrant... but not a private vessel.

Nevertheless, boat pilots have abrogated their rights. Now, so-called Homeland Security is trying to do the same to us. Don't let them! You have a Constitutional right "to be secure in your person, house, papers, and effects, against unreasonable searches and seizures" no matter what some Agency writes in their little handbook.

Exercise your Fourth Amendment right. "Use it or lose it", as the saying goes. When it comes to a Part 91 ramp check, just say "No."

P.S. If you don't have a cell phone or tablet that records audio, I suggest carrying a digital audio recorder with you at all times. It will record all day on a charge. They cost only \$50, but will be invaluable if ever you have to fight for your rights.

Archie sent me the above as a .pdf file (that I've re-typed above) and I found it very interesting. The RV Builder's Forum (called the RV-list) has several FAA types who "lurk" and respond to posts sometimes, so I posted the file with the accompanying comment:

Original Post by Ken Brooks:

A knowledgeable pilot friend of mine sent me this regarding ramp checks that I found very interesting and thought I would pass it along. If there are any inaccuracies in it, those of you who are on the list that are affiliated with the FAA, possibly as a DAR, etc., are welcome to comment. I don't claim to have a corner on the knowledge market. FWIW.

And, in reply, I got this response:

1. 08:20 AM - Re: Part 91 FAA "Ramp Checks" (Mike Robertson)

Message 1

Time: 08:20:38 AM PST US

From: Mike Robertson <mrobert569@hotmail.com>

Subject: RE: RV-List: Part 91 FAA "Ramp Checks"

Ken,

The article that you attached is correct but there is something left out that needs to be addressed. The basis for the FARs is a federal law called Title 49. This is the federal law that dictates to the FAA to make and maintain a set of federal regulations. Within that law are several chapters stating all kinds of laws for air transportation. One of those chapters is Chapter 447-Safety Regulations. One of the sub-chapters/sections is section 44709. This section states that the FAA may re-inspect at any time a civil aircraft, aircraft engine, propeller, appliance, air navigation facility, air agency (repair station), or reexamine an airman holding a certificate. This is stated in paragraph (a). Paragraph (b) goes into what the FAA can do if anything is found wrong. In paragraph (c) and further it goes into notification to the owner/pilot of what action, if any, is proposed and about appeals. Generally speaking, in order to invoke this part of the law, an FAA inspector will issue the re-exam via a letter but there is nothing that states that he must. So in a certain way the FAA can ask to see the airworthiness certificate and registration along with the airmen's pilot certificate, medical, and ASK when you had you last BFR.

Here is where this gets interesting. Your aircraft is private property. The FAA may not enter your personal aircraft without permission. BUT, like any person interested he may look all he wants as long as he does not touch or enter. This includes sticking his head into the door or a window if it is open provided he does not touch anything. If he then sees something suspicious to give probable cause he may invoke the above 44709. This does not mean he can willy-nilly invoke section 44709 as he MUST have probable cause and be prepared to give the reason for the search in writing.

You may have heard of pilots who have an incident or accident stating that they have to go take a ride with the FAA. This is the most prominent example of the invoking of section 44709.

Another good example is if an FAA inspector suspects that an aircraft has not had the required annual inspection and is flying around, he may invoke section 44709 to inspect the aircraft and its associated maintenance log books.

In both cases I have stated, these re-exams will have a letter issued prior to the re-exam, but there is a provision within the law for emergencies (i.e., a pilot is suspected to be drunk). If the situation is deemed an emergency, then a letter is not required prior to the re-exam but must be written after the re-exam with all reasons and conclusions.

In a nutshell, the pilot/owner may refuse a ramp inspection of part 91 aircraft, but if the FAA inspector gives you a letter stating he/she wants to conduct a ramp inspection, you must submit or possibly suffer losing the airworthiness certificate of the aircraft.

Now...after stating all this don't get scared. Invoking section 44709 is taken as a serious thing and most inspectors won't go that far unless they already have a suspicion that they will find something wrong (personally, after 20 years with the FAA, I have only invoked section 44709 a handful of times and in all case, I pretty much knew what I would find.

I hope this clears things a little bit but if you have any questions please don't hesitate to ask.

Mike Robertson
Das Fed