ON DECLARING EMERGENCIES

BY

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There is a whole section in the AIM having to do with "pilot/controller responsibility." This section tells us who is supposed to do what to whom, under normal and some abnormal circumstances. One of the most abnormal of these circumstances is the emergency.

An aircraft in distress has right-of-way over all other aircraft. That's where you start learning the right-of-way rules, because it's the simplest case. There are no "ifs," "ands," or "buts." If you are out there in your hot-air balloon and an airplane in distress comes toward you, you must get out of his way. If you are a controller working a string of Boeing airliners backed up from Baton Rouge to Los Angeles and a Cessna 150 declares an emergency, you've got to move all that heavy iron to make way for the Cessna.

So, how do you achieve this exalted status? Well, you have to have an emergency that requires immediate action. Then you have to declare an emergency, and bingo – you have right-of-way over *all other aircraft*.

But it gets better. If you are in the middle of an emergency that requires immediate action, you can, in fact, you *must* violate any and all aviation regulations to the extent necessary to deal with the emergency.

I assume that this does not include whipping out that snap roll you've always wanted to try in your 172; but would you like to land on a taxiway or bust through a cloud without a

clearance? Be my guest, as long as that action is necessary to cope with the emergency.

Military pilots are encouraged to declare emergencies at the drop of a hat. If the coffee is not hot, or if the supply of creamer is getting low, those guys declare an emergency. Well, maybe it's not quite that extreme, but I have heard pilots of multiengine military aircraft declare emergencies just because they have had to shut down one of their powerplants. That's not often done in the civilian realm, where an engine failure is usually considered more of an inconvenience than an "emergency requiring immediate action." Assuming that nothing else is going wrong on your flight, and that you are able to maintain altitude, or at least maintain a shallow enough glide to make it to a runway, you would usually do just that, provided that you don't need priority handling from a controller.

An example comes to mind from maybe forty years ago. A pilot came in toward New Orleans Lakefront Airport with a reasonable amount of fuel. He was hoping to land at Lakefront, but the weather took an unexpected turn for the worse, and he found that the field was reporting less than a thousand foot ceiling and three miles visibility, the minimum necessary for normal VFR operations.

This gentleman elected to hold at the south end of the Ponchartrain causeway, about six miles west, where he was in VFR conditions. These days, we'd say that Lakefront was in "D" airspace, because it has a control tower. In those days, they called it a "control zone." In either case, it was an area about five miles in radius that required a thousand and three for VFR operations.

The pilot held for half an hour. IFR traffic was active in the control zone, and the rule was that airplanes operating under Instrument Flight Rules had priority over those flying under special Visual Flight Rules.

My friend called the tower and told them that he was running a tad short on go-juice, and that he needed to come in pretty soon. They asked him if he wanted an IFR clearance, and he said negative. He was not, at that time, IFR equipped or qualified. They told him to continue holding.

Another fifteen minutes went by, and he called them back with more urgency in his voice. He was getting critically short of fuel, and needed to come in for a landing. He was told that they were "unable," due to IFR operations in the zone.

So he finally told them he was coming in anyway. They asked him if he were declaring an emergency. He said no, I'm just running short of gas and I'm coming in to land. And that's exactly what he did.

The controllers didn't know what to do. If he had declared an emergency, they would have been justified in bringing him in ahead of IFR traffic, and everything would have fit into standard procedure. What he ended up doing was to violate the rule that said he was supposed to obey the tower guy's instructions. He violated this rule for what seemed to him a good and sufficient reason, namely that he was going to be flying a glider if he delayed the last five miles of his trip much longer.

These were the days before lawyers got automatically involved in everything. As I recall, he called the tower, at their request, and they had a confab about the affair, explaining to him that they needed the declaration of emergency before they could

let him do what he had to do. He said he was sorry, and the whole affair was dropped.

Another incident, which took place in the Twenty-First Century, involved another friend of mine on an IFR flight, somewhere in the vicinity of Lake Charles, Louisiana. He started developing roughness in his only engine, and told ATC that he needed a lower altitude. They cleared him down, and in the excitement, he busted through the assigned altitude, looking for a runway to land on.

The ATC facility fussed at him over the radio, but didn't request that he call them on the phone. When he got home, he called me to help him figure out how much trouble he was in.

The first question that occurred to me was, "Did you, by any chance, declare an emergency?" It seemed to me that such a declaration would have simplified the situation, making it legal for this pilot to ignore any FAR he needed to violate, for the purpose of dealing with the emergency. He could at least have argued that the airplane was incapable of maintaining altitude, and thus that he was forced by the emergency to bust the assigned altitude.

Nothing came of that one, either. I don't think the folks at ATC are anxious to plunge into a questionable action, especially when the outcome is successful. In my judgment, however, this pilot made an operational error in not telling the controllers that he was going to continue his descent. If he had been classified as an aircraft in distress, there would have been no question that they were required to clear the airspace, as necessary, to allow him to do what he had to do. And he might have had a talking

point with the lawyers, if it had come to that, if he had been operating as an aircraft in distress.

Let's think a little bit more about an aircraft with engine trouble. It may be that the powerplant has just become uninterested in further toil, but does this necessarily make it an occasion for declaration of an emergency?

Suppose your only engine craps out in the traffic pattern right at the high key position, on downwind leg, just opposite your proposed touchdown point. Suppose furthermore that there are no other airplanes in the area. Is this an emergency requiring immediate action? Sure it is. Is this an appropriate occasion for declaring an emergency?

Maybe not. It seems that there is nothing anybody can do to help you, given the situation I've described. You don't need to get in front of anyone else. You don't need priority handling by ATC. You don't need to violate any of the FARs to deal with the emergency. So what's the point? And to whom are you going to declare this emergency? I would argue that you have more important business on your agenda than fooling around tuning your commo radio to 121.5 and fumbling with the transponder, trying to get it on 7700. Why not go ahead and land, just as you had planned to do in the first place?

Then there's the story of a guy who departed early in the morning in a Piper Aztec, from a strip way out in the middle of nowhere. The cloud bases were low, and the visibility on departure iffy. He obtained his clearance via radio prior to departure, and headed for his destination, which I remember being San Antonio, Texas.

A little while later, one of his engines quit. He went through the emergency routine, was unable to get it going again, shut it down and successfully feathered the propeller. At this time he had reached cruising altitude, and he noticed that the airplane was maintaining that altitude just fine. In his mind, he was flying a slightly asymmetrical Cessna 210.

Was this an emergency? My friend had about an hour and a half to go, at his reduced speed, to reach his destination. The airplane was under control and he had plenty of fuel aboard. San Antonio had good instrument approaches available, along with emergency equipment, in case something were to go wrong. This did not seem to him like an emergency. What's more, immediate action was not required. So he called ATC, told them he was now conducting a single-engine operation, and kept on trucking. They asked him if he wanted to declare an emergency, and he declined. He did not need priority handling, and there was nothing anyone on the ground could have done to help him.

He made it in and taxied with his single engine to a location where a mechanic could tend to the problem. In his mind, he had used his authority as pilot-in-command to make some decisions which, in retrospect, produced a successful outcome.

The rule that addresses this issue of "pilot-in-command" is FAR 91.3. The rule has three parts:

(a) The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft.

(b) In an in-flight emergency requiring immediate action, the pilot in command may deviate from any rule of this part to the extent required to meet that emergency.

(c) **Each pilot in command who deviates from a rule under paragraph (b) of this section shall, upon the request of the Administrator, send a written report of that deviation to the Administrator.**

Imagine this pilot's surprise when the FAA guys wrote him a letter requesting the report required by part (c)! He responded that he had not declared an emergency, had not even requested priority handling, and that he was merely exercising his authority under part (a) of that rule.

The FAA claimed that he had violated another of the Federal Aviation Regulations, namely 91.7:

(a) No person may operate an aircraft unless it is in airworthy condition.

(b) The pilot in command of a civil aircraft is responsible for determining whether that aircraft is in condition for safe flight. The pilot in command shall discontinue the flight

when unairworthy mechanical, electrical, or structural conditions occur.

This hapless soul was busted for not discontinuing the flight the moment he lost that engine. The FAA contended that he should have returned to his place of departure and landed. They were not impressed by his contention that the departure airport was socked in, that there was no emergency equipment at that airport, and that it was totally deserted at that time of the morning.

In retrospect, it probably would have been better for him if he had kept his problem to himself. Would declaring an emergency have helped in this case? We'll never know, since to this day, he claims he did not have an emergency. We can speculate, however, that he might have ridden a different legal pony if he had declared an emergency. He might have argued that "immediate action," i.e. flying another hour and a half on one engine, was required by the situation, and that he was exercising his authority as pilot in command of an aircraft in distress. What's more, he might have contended that his emergency status immunized him from having to comply with 91.7 (b).

Of course, this would have required ATC to move goodness knows how much traffic out of his way, causing delays and traffic snarls we can only speculate about.

Another philosophical take about emergencies was the subject of an article in *IFR* Magazine a few years ago. The author posited that loss of communication during an IFR operation, in IFR weather, constituted an emergency.

He invented a scenario, as I recall, of a Cessna 172 flying on an IFR flight plan in the clouds, with a destination of DFW, the hugely busy airport serving the Dallas/Fort Worth area. This author suggested that the pilot should not comply with Part 91.185, which spells out in great detail what a pilot ought to do in this situation.

In this age of GPS navigation, suggested this author, the pilot should punch in the "go-to-nearest" function of his navigator, proceed to the nearest airport, and land. He contended that this action would cause less hazard to safety and much less interference with the orderly flow of traffic at the huge Dallas terminal. According to this theory, the emergency authority of the Pilot-in-Command would supersede the procedures laid out in 91.185.

I am dubious, considering what happened to the Aztec pilot, as to how the FAA would respond to such a theory. Clearly, the only way that ATC would expect this 172 pilot to land short would be if he encountered VFR conditions, in which case the entire IFR operation would cease to have any relevance, and the admonition to "maintain VFR and land as soon as practicable" would apply. Seems to me that a corollary of this author's thesis might be that the 172 pilot lie about it and claim that he had landed in VFR conditions, assuming that he had been able to find the airport and descend below the cloud bases

without hitting any microwave towers or causing a midair collision.

So, the subject of when to declare an emergency and when not to do so, is somewhat obfuscated by some stories of pilots who chose not to pull the trigger. The primary use of the declaration of an emergency is to give a pilot right-of-way over other aircraft, to require ATC to give priority handling when it is needed in an urgent situation, and to give the pilot some leeway with the FARs when he is under the gun. It should be used judiciously and, I would argue, sparingly; but it *should* be used when appropriate.

What that means is left to the judgment of the pilot. That's why I think the subject deserves some consideration ahead of time, to prepare the pilot for proper judgment-making should the possible need for a declaration of an emergency arise.