

The last paragraph of the letter up for review includes the irritating catch-all FAR 91.13(a). In spite of NTSB Appeals court warnings about the FAA's use of this reg as a universal "catch-all" (in case none of the other charges stick), we continue to see the General Counsel office reference it.

The letter, backed up by past enforcement actions against pilots, adequately points out that if a prudent pilot, using all available information and in-flight decision-making skills, still runs into icing, then he/she can be cited by an inspector because the airplane was found with ice clinging to it (in this case). The FAA, in it's one-sided adjudication process, will doubtless use it's "justice" system to impose a penalty on the "errant" pilot, basing it's case solely on the statements of under-qualified inspectors who's only exposure to the circumstances surrounding the incident was on a ramp.

It's interesting the FAA will use NTSB recommendations as a basis FOR enforcement actions, but ignores NTSB recommendations when they don't serve an intended purpose. NTSB Order No. EA-4679 (FAA v Tsosie, 1998) had comments regarding this issue by EVERY MEMBER of those preciding regarding this. Each said, in essence, the use of 91.13(a) when no carelessness on the part of the pilot could be found (in this case because of lack of adherence to the Part 135 regulations) is without purpose and dilutes the significance of the regulation.

A pilot who, using all available information, finds him-/herself in a situation requiring the penetration of an area of icing, can be exposed to this charge and I find it disconcerting the General Counsel, who is charged with the awesome responsibility of fairness, would wave this threat at anyone who shows up on a ramp with ice clinging to the airframe.

The FAA might say, "The pilot has the option of appealing the decision," but is well aware of the extreme expense involved trying to fight a sanction/fine.

Using the language of the letter, then, it would be simpler to just say, "If the FAA finds your airplane with ice on it, you will have enforcement action taken against you."