

CHAPTER 2
AIRCRAFT FLIGHT REGULATIONS
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CHAPTER 2

AIRCRAFT FLIGHT REGULATIONS

1. GENERAL.

a. The Federal Aviation Administration (FAA) and the California Department of Transportation (Caltrans), Division of Aeronautics, are strictly administrative law agencies without powers of arrest. In situations requiring physical arrest, these agencies must summon a peace officer to affect the arrest.

b. Section 21252 of the Public Utilities Code (PUC) gives every peace officer the authority to enforce the rules and orders issued under PUC, Division 9, Aviation, Part 1, State Aeronautics Act, and all other laws of this state relating to aeronautics.

c. Violations of Federal Aviation Regulations are enforced by the FAA through the administrative complaint process.

2. POLICY. Officers of this Department shall assist the FAA and Caltrans Division of Aeronautics by taking appropriate action for all observed violations of the Aeronautics Act.

3. PROCEDURES.

a. Arrest. When a violation of flight regulations is observed, appropriate enforcement action or notification should be initiated. Normally, departmental involvement will be restricted to a forced landing on a highway, an aircraft crash, or, in limited circumstances, when summoned by the FAA. Definitions of applicable aircraft flight regulations are contained in Annex A.

(1) For all violations of Section 21407.1 PUC, officers shall arrest, book, and obtain a chemical test in accordance with local procedures and applicable laws. Submission to a blood alcohol test is required by Section 21407.2 PUC upon the request of a peace officer. Refusal to complete the test may result in prohibition from operating an aircraft for up to one year. Although no formal implied consent admonishment is prescribed, the provisions of Section 21407.2 PUC are similar to those described in Section 23612 of the California Vehicle Code (e.g., choice of chemical tests or requirement for blood if drugs are suspected).

(2) Section 21407.6(a) PUC specifies a noninjury violation of Section 21407.1 PUC, is punishable as a misdemeanor.

(3) Section 21407.6(b) PUC specifies a violation of Section 21407.1 PUC, where the aircraft operator, "...has done any act forbidden by law or neglects any duty imposed by law in the operation of the aircraft, which act or neglect proximately causes bodily injury to any person other than the operator..." is punishable as a felony.

NOTE: Section 21407.1 PUC is not included in the list of specified crimes for which an officer can seek a search warrant (refer to Section 1524 of the California Penal Code). As such, if an aircraft operator is arrested for a violation of Section 21407.1 PUC, and refuses chemical testing, officers should thoroughly document the person's refusal to provide a chemical test in their report but shall not seek a search warrant to compel a blood sample.

(4) Low flying, "buzzing," and acrobatics over congested areas are instances of careless and reckless flying which are unlawful (Section 21407 PUC).

(a) No reliable rule of thumb can be offered to guide observers in determining the precise altitude of an aircraft in flight.

(b) Officers of this Department should exercise discretion when estimating altitude and be primarily concerned with occurrences where there is no doubt that flight was conducted below the minimum of 500 feet.

(5) The landing, takeoff, or taxiing of an aircraft on a freeway, highway, road, or street, is unlawful except in an emergency or with prior approval from the public agency having primary jurisdiction over traffic upon the freeway, highway, road, or street (Section 21403 PUC).

(6) For failure to produce an FAA pilot certificate or FAA medical certificate upon demand, cite into the local court for a violation of Section 21410 PUC.

(7) Officers are to assume custody of a private person's arrest (including from an FAA Agent) in accordance with policy contained in Chapter 1, Arrest Policies, of this manual.

b. Complaint. All violations not requiring an arrest are to be reported in accordance with paragraph 3.c.

c. Documentation. Each investigation of a violation of flight regulations shall be documented on a CHP 216, Arrest – Investigation Report. The investigation report should include:

- (1) Date, time, and place of the violation.
- (2) Description of the aircraft.
- (3) Aircraft identification number (painted on wing or side of fuselage).
- (4) Description of the violation.
- (5) Names and addresses of witnesses.
- (6) Enforcement actions recommended.

4. REPORTING. For each documented violation, the Area commander shall notify the FAA and Caltrans Division of Aeronautics as follows:

- a. Notify the nearest Flight Standards District Office or FAA Flight Service Station by telephone for relay to the appropriate FAA investigator. District office locations and phone numbers are listed on the FAA Web site at https://www.faa.gov/about/office_org/field_offices/fsdo/?state=CA.
- b. Notify their respective communications center by telephone to relay the information to the Caltrans Division of Aeronautics.
- c. The notification should briefly describe the violation, the aircraft, the identity of the pilot, if known, and the enforcement action taken or contemplated.
- d. The reporting Area commander may be contacted by the FAA and/or Caltrans Division of Aeronautics if more information is required.

5. AIRCRAFT REGISTRATION. The FAA, Aircraft Registration Branch, has a Web site search feature that provides aircraft registration information. The FAA registry is available via their Web site at: https://www.faa.gov/licenses_certificates/aircraft_certification/aircraft_registry/ or by telephone (toll free 866-762-9434) between 0730 and 1600 hours Central Time.

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AIRCRAFT FLIGHT REGULATIONS APPLICABLE LAWS

California Public Utilities Code

21403. (a) Flight in aircraft over the land and waters of this state is lawful, unless at altitudes below those prescribed by federal authority, or unless conducted so as to be imminently dangerous to persons or property lawfully on the land or water beneath. The landing of an aircraft on the land or waters of another, without his or her consent, is unlawful except in the case of a forced landing or pursuant to Section 21662.1. The owner, lessee, or operator of the aircraft is liable, as provided by law, for damages caused by a forced landing.

(b) The landing, takeoff, or taxiing of an aircraft on public freeway, highway, road, or street is unlawful except in the following cases:

(1) A forced landing.

(2) A landing during a natural disaster or other public emergency if the landing has received prior approval from the public agency having primary jurisdiction over traffic upon the freeway, highway, road, or street.

(3) When the landing, takeoff, or taxiing has received prior approval from the public agency having primary jurisdiction over traffic upon the freeway, highway, road or street. The prosecution bears the burden of proving that none of the exceptions apply to the act which is alleged to be unlawful.

(c) The right of flight in aircraft includes the right of safe access to public airports, which includes the right of flight within the zone of approach of any public airport without restriction or hazard. The zone of approach of an airport shall conform to the specifications of Part 77 of the Federal Aviation Regulations of the Federal Aviation Administration, Department of Transportation.

21407. It is unlawful for any person to operate an aircraft in the air, or on the ground or water, in a careless or reckless manner so as to endanger the life or property of another. In any proceeding charging operation of aircraft in violation of this section, the court in determining whether the operation was careless or reckless shall consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics.

1407.1. (a) It is unlawful for any person, who is under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug, to operate an aircraft in the air, or on the ground or water, or to engage in parachuting for sport.

(b) No person shall operate an aircraft in the air, or on the ground or water, who has 0.04 percent or more, by weight, of alcohol in his or her blood.

21407.2. (a)(1)(A) Any person who operates an aircraft in the air, or on the ground or water, is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if

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lawfully arrested for any offense allegedly committed in violation of Section 21407.1, or if the officer requests chemical testing as part of any investigation of a suspected violation of state or local law. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) Any person who operates an aircraft in the air, or on the ground or water, is deemed to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 21407.1, or if the officer requests chemical testing as part of an investigation of a suspected violation of state or local law.

(C) The testing shall be administered at the direction of a peace officer having reasonable cause to believe the person was operating an aircraft in violation of Section 21407.1 under either of the following conditions:

(i) The person is lawfully arrested.

(ii) The officer requests the person to submit to chemical testing as part of an investigation of a suspected violation of state or local law.

(D) The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing may result in prohibition from operating an aircraft for not more than one year; and, if the person is convicted of a violation of Section 21407.1, a fine, imprisonment, prohibition from operating an aircraft for not more than one year, or any combination thereof.

(2)(A) If the person is lawfully arrested for operating an aircraft under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood or breath, and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing the chosen test, the person shall submit to the remaining test. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) If the person is lawfully arrested for operating an aircraft under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person has the choice of whether the test shall be of his or her blood, breath, or urine, and the officer shall advise the person that he or she has that choice.

(C) A person who chooses to submit to a breath test may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was operating an aircraft under the influence of any drug or the combined influence of an alcoholic beverage and any drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which that belief and that clear indication are based. If the person who is arrested is either incapable or states that he or she is incapable of completing a blood test, that person shall submit to and complete a urine test. If the person arrested either is incapable, or states that he or she is incapable, of completing either chosen test, the person shall submit to and complete the other remaining test.

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(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 21407.1 and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person has the choice of those tests which are available at the facility to which that person has been transported. In that event, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

(4) The officer shall also advise the person that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn his or her consent and a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests may result in a fine, imprisonment, and prohibition from operating an aircraft for not more than one year. Any person who is dead is deemed not to have withdrawn his or her consent and a test or tests may be administered at the direction of a peace officer.

(b) Any person who is afflicted with hemophilia is exempt from the blood test required by this section.

(c) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon is exempt from the blood test required by this section.

(d)(1) A person lawfully arrested for any offense allegedly committed while the person was operating an aircraft in violation of Section 21407.1 may request the arresting officer to have a chemical test made of the arrested person's blood or breath for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

(2) If a blood or breath test is not available under subparagraph (A) of paragraph (1) of subdivision (a), or under subparagraph (A) of paragraph (2) of subdivision (a), or under paragraph (1) of this subdivision, the person shall submit to the remaining test in order to determine the percent, by weight, of alcohol in the person's blood. If both the blood and breath tests are unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test.

21407.6. (a) Any person convicted under Section 21407.1 shall be punished upon a first conviction by imprisonment in the county jail for not less than 30 days nor more than six months or by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000) or by both that fine and imprisonment. Any person convicted under Section 21407.1 shall be punished upon a second or any subsequent conviction by

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imprisonment in the county jail for not less than five days nor more than one year and by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000), without being granted probation by the court and without having the court suspend the execution of the sentence.

(b) Any person convicted under Section 21407.1 and who, when so operating an aircraft, has done any act forbidden by law or neglects any duty imposed by law in the operation of the aircraft, which act or neglect proximately causes bodily injury to any person other than the operator shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in the county jail for not less than 90 days nor more than one year and by fine of not less than two hundred fifty dollars (\$250) nor more than ten thousand dollars (\$10,000).

21408. For any violation of Section 21407 or 21407.1, in addition to the penalties provided by Section 21019 or 21407.6, the court may prohibit the violator from operating an aircraft within the state for a period not exceeding one year. Violation of the prohibition of the court may be treated as a separate offense under this section or as contempt of court. Upon a plea of guilty or conviction under Section 21407 or 21407.1, the department shall cause a record of the plea or conviction and of the sentence imposed to be maintained. This section does not authorize the court or any other agency or person to take away, impound, hold, or mark any federal certificate, permit rating, or license. The peace officer requesting that a person submit to a chemical test of the blood, breath, or urine pursuant to Section 21407.2 shall report anyone refusing to submit to the chemical test to the Federal Aviation Administration for appropriate administrative action.

21410. Every airman shall keep any certificate, permit, rating, or license required for him by the United States in his personal possession when he is operating within the state. He shall present it for inspection upon the demand of any peace officer, any other officer of the state or of a political subdivision, or member, official, or employee of the department, authorized by Section 21252 to enforce the aeronautics laws, or any official, manager, or person in charge of any airport upon which the airman lands, or upon the reasonable request of any other person.

Code of Federal Regulations

91.303–Aerobatic flight. No person may operate an aircraft in aerobatic flight:

- a) Over any congested area of a city, town, or settlement;
- b) Over an open-air assembly of persons;
- c) Within the lateral boundaries of the surface areas of Class B, Class C, Class D, or Class E airspace designated for an airport.
- d) Within 4 nautical miles of the center line of any Federal airway;
- e) Below an altitude of 1,500 feet above the surface; or
- f) When flight visibility is less than 3 statute miles.

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For the purposes of this section, aerobatic flight means an intentional maneuver involving an abrupt change in an aircraft's attitude, an abnormal attitude, or abnormal acceleration, not necessary for normal flight.

91.119—Minimum safe altitudes: General. Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

(a) Anywhere. An altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

(b) Over congested areas. Over any congested area of a city, town, or settlement, or over any open-air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.

(c) Over other than congested areas. An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

(d) Helicopters, powered parachutes, and weight-shift-control aircraft. If the operation is conducted without hazard to persons or property on the surface.

(1) A helicopter may be operated at less than the minimums prescribed in paragraph

(b) or (c) of this section, provided each person operating the helicopter complies with any routes or altitudes specifically prescribed for helicopters by the FAA; and

(2) A powered parachute or weight-shift-control aircraft may be operated at less than the minimums prescribed in paragraph (c) of this section.

91.313—Restricted category civil aircraft: Operating limitations.

(a) No person may operate a restricted category civil aircraft.

(1) For other than the special purpose for which it is certified; or

(2) In an operation other than the one necessary to accomplish the work of activity directly associated with that special purpose.

(b) For the purpose of paragraph (a) of this section, the following operations are considered necessary to accomplish the work activity directly associated with a special purpose operation:

(1) Flights conducted for flight crewmember training in a special purpose operation for which the aircraft is certificated.

(2) Flights conducted to satisfy proficiency check and recent flight experience requirements under part 61 of this chapter provided the flight crewmember holds the appropriate category, class, and type ratings and is employed by the operator to perform the appropriate special purpose operation.

(3) Flights conducted to relocate the aircraft for delivery, repositioning or maintenance.

(c) No person may operate a restricted category civil aircraft carrying persons or property for compensation or hire. For the purposes of this paragraph(c), a special purpose operation involving the carriage of persons or material necessary to accomplish that operation, such as crop dusting, seeding, spraying, and banner towing (including the

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carrying of required persons or material to the location of that operation), an operation for the purpose of providing flight crewmember training in a special purpose operation, and an operation conducted under the authority provided in paragraph (h) of this section are not considered to be carriage of persons or property for compensation or hire.

- (d) No person may be carried on a restricted category civil aircraft unless that person-
- (1) Is a flight crewmember;
 - (2) Is a flight crewmember trainee;
 - (3) Performs an essential function in connection with a special purpose operation for which the aircraft is certificated;
 - (4) Is necessary to accomplish the work activity directly associated with that special purpose; or
 - (5) Is necessary to accomplish an operation under paragraph (h) of this section.
- (e) Except when operating in accordance with the terms and conditions of a certificate of waiver or special operating limitations issued by the Administrator, no person may operate a restricted category civil aircraft within the United States-
- (1) Over a densely populated area;
 - (2) In a congested airway; or
 - (3) Near a busy airport where passenger transport operations are conducted.
- (f) This section does not apply to non-passenger-carrying civil rotorcraft external-load operations conducted under part 133 of this chapter.
- (g) No person may operate a small restricted-category civil airplane manufactured after July 18, 1978, unless an approved shoulder harness or restraint system is installed for each front seat. The shoulder harness or restraint system installation at each flight crew station must permit the flight crew member, when seated and with the safety belt and shoulder harness fastened or the restraint system engaged, to perform all functions necessary for flight operation. For the purposes of this paragraph-
- (1) The date of manufacture of an airplane is the date the inspection acceptance records reflect that the airplane is complete and meets FAA-approved type design data; and
 - (2) A front seat is a seat located at a flight crewmember station or any seat located alongside such a seat.
- (h)(1) An operator may apply for deviation authority from the provisions of paragraph (a) of this section to conduct operations for the following purposes:
- (i) Flight training and the practical test for issuance of a type rating provided-
 - (A) The pilot being trained and tested holds at least a commercial pilot certificate with the appropriate category and class rating for the aircraft type;
 - (B) The pilot receiving flight training is employed by the operator to perform a special purpose operation; and
 - (C) The flight training is conducted by the operator who employs the pilot to perform a special purpose operation.
 - (ii) Flights to designate an examiner or qualify an FAA inspector in the aircraft type and flights necessary to provide continuing oversight and evaluation of an examiner.

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- (2) The FAA will issue the deviation authority as a letter of deviation authority.
- (3) The FAA may cancel or amend a letter of deviation authority at any time.
- (4) An applicant must submit a request for deviation authority in a form and manner acceptable to the Administrator at least 60 days before the date of intended operations. A request for deviation authority must contain a complete description of the proposed operation and justification that establishes a level of safety equivalent to that provided under the regulations for the deviation requested.

California Penal Code

246. Any person who shall maliciously and willfully discharge a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited housecar, as defined in Section 362 of the vehicle code, or inhabited camper, as defined in Section 243 of the Vehicle Code, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for three, five, or seven years, or by imprisonment in the county jail for a term of not less than six months and not exceeding one year. As used in this section, "inhabited" means currently being used for dwelling purposes, whether occupied or not.

247. (a) Any person who willfully and maliciously discharges a firearm at an unoccupied aircraft is guilty of a felony.

247.5 Any person who willfully and maliciously discharges a laser at an aircraft, whether in motion or in flight, while occupied, is guilty of a violation of this section, which shall be punishable as either a misdemeanor by imprisonment in the county jail for not more than once year or by fine of one thousand dollars (\$1,000), or a felony by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, two years, or three years, or by a fine of two thousand dollars (\$2,000). This section does not apply to the conduct of laser development activity by or on behalf of the United States Armed Forces. As used in this section, "aircraft" means any contrivance intended for and capable of transporting person through the airspace. As used in this section, "laser" means a device that utilizes the natural oscillations of atoms or molecules between energy levels for generating coherent electromagnetic radiation in the ultraviolet, visible, visible, or infrared region of the spectrum, and when discharged exceeds one milliwatt continuous wave.

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