

Come Fly with Me...

BY PAUL GREER

*(But, Let Me Check the Rules
before You Pay Me)*



You made it! You finally earned your private pilot certificate and now you're ready to really start flying. As Susan Parson discusses in Practice Makes Proficient (page 7), you recognize the need to practice to keep your skills sharp, but you also know that this flying stuff can get pretty expensive. Like most new pilots, you begin to wonder if there's any way to get some help whittling down the cost of staying sharp—and grabbing that \$100 hamburger. Perhaps there is, but you need to be careful.

From your training, you remember that a private, sport, or recreational pilot generally can't act as pilot in command of an aircraft carrying passengers or property for compensation or hire. Nor can he or she generally receive compensation

for just piloting an aircraft. However, you also seem to remember your flight instructor saying that there are some exceptions to that general rule, but that you should be very cautious if you ever accept anything from anyone for piloting an aircraft.

Wondering what those exceptions are, you take out your well-worn copy of the regulations and quickly notice in part 61 that a sport, recreational, or private pilot may receive some compensation from passengers for a flight. But the pilot must cover at least his or her *pro rata* share of the operating expenses of a flight with passengers—and those operating expenses can only involve fuel, oil, airport expenditures, or rental fees.

Even if you get a tailwind on both legs of a flight and give your friends the “experience of lifetime,” you still have to pay for your share of the flight



Photo by Tom Hoffmann

regardless of how much your passengers insist that you don't open your wallet. Also, be wary if your passengers try to buy you a fancy dinner or hand you the key to the beach house for the weekend, if the value exceeds their *pro rata* share of the costs for the flight. You also can't receive reimbursement for the shared expenses from someone other than your passengers, such as an employer.

Common Purpose Is Key

Underlying the concept of sharing expenses is the notion that you and your passengers are taking the flight for a "common purpose." You and your passengers must be taking the flight for a common purpose; otherwise, you can't even share the expenses of the flight with them. Whether a *bona fide* common purpose exists, however, depends on the specific facts of the situation. This doesn't mean that you can't ask people to fly with you and share some of the costs, but the sole purpose of your flight can't be just to transport your passengers from one point to another.

Asking your flying buddies if they want to split the costs of flying to Oshkosh with you and flying with friends to that resort on the coast you're all going to share and sharing the flying costs—those would be okay. However, sharing expenses with a passenger on a flight to a place you would not otherwise be flying to would be a problem.

What about business trips?

Looking at section 61.113, you notice that the private pilot certificate allows you to receive compensation for some other activities. You can receive compensation for acting as pilot in command in connection with a business or employment. But, this, too, is a very limited exception. Wading through the details of the regulation, you determine that the flight must be incidental to that business or employment; that is, you can't be in the business of flying and you can't carry passengers or property for compensation or hire. So, you can get paid by your employer when you fly yourself on *Old Bessie* for that occasional business trip, but you can't be paid for taking your co-workers.

Be careful about offering your piloting skills to the public.

It's for charity!

As you delve deeper into section 61.113 and the complexities of flying for compensation or hire as a private pilot, you find out that you can also receive compensation for flying in certain charitable, nonprofit, or community events, and you can be reimbursed. However, both you and the event sponsor must comply with the detailed requirements of section 91.146, which could easily be the subject of another article.

You can also be reimbursed for some expenses when flying in certain sanctioned search-and-location operations. There are provisions for aircraft salesmen and persons who tow gliders or ultralight



vehicles, too. But, let's get back to where we started: saving a few dollars grabbing that hamburger.

Commercial certificate is the cure, right?

By now, you may be starting to wish you had a commercial pilot certificate like that dashing young aviator lurking behind the sunglasses with an eye

firmly focused on a seat at a major air carrier. Surely that god/goddess of the sky can really be paid to fly for anything they do.

Not so fast, ace! One of

the facts that many new commercial pilots don't quite understand is that even though they may have commercial pilot privileges and can be paid to carry passengers or property for compensation or hire, they can't act as an air carrier or commercial operator without also obtaining an operating certificate. A commercial pilot *certificate* does not authorize a person to become a commercial operator.

All of this sounds pretty limiting and, frankly, it is. Basically, when a member of the public provides compensation for your services in piloting an aircraft, the public has an expectation that both the pilot and the operator will meet a standard of competence and provide a level of safety higher than that provided by a private pilot operating solely under the general operating requirements of part 91. In most instances where compensation is provided, the FAA has determined that this level of safety can

only be achieved when the operation is conducted by at least a commercial pilot flying under the provisions of an operating certificate.

All pilots need to understand the difference between those operations that can be conducted under the general operating rules of part 91 and those that must be conducted under part 135. Generally, if you're being compensated for providing a service to another person and have "operational control" of the aircraft in which that service is provided, you're going to have to be issued a certificate to conduct that operation under part 135 (or part 121 or 125 if larger aircraft and even more complex operations are involved). So, be particularly careful if you're both the pilot and provider of an aircraft to someone for compensation—and remember the FAA will look at the actual nature of the relationship and not just at any written agreements you may have.

Exceptions Are Limited

There are some exceptions to the general rules requiring the issuance of operating certificates for commercial operations. But again, these exceptions are limited and apply to activities such as flight instruction, certain types of sightseeing flights, and aerial work operations. You can find these exceptions in section 119.1 of part 119, which contains the regulations governing operations for compensation or hire.

Those kinds of operations that require an operating certificate under part 135 typically involve some form of common carriage (holding out to carry persons or property for compensation or hire), however, an operating certificate can also be required for operations involving private carriage (a "limited" holding out to carry persons or property for compensation or hire) and non-common carriage (no holding out involved but persons or property are carried for compensation or hire).

Hold the Line on Holding Out

"Holding out" can be as complex as publishing a flight schedule for a major airline or as simple as posting a notice on an FBO bulletin board (or the Internet) telling everyone you're the one who will fly them to that prime vacation resort and make their dreams come true. Many FAA inspectors also like to fly for pleasure, and they read those bulletin boards, too. They might not be too happy with your advertisement for *Old Bessie's* "charter service" when they find out you don't have a part 135 certificate, but at least they won't take you to task for promising to make your prospective client's dreams come true.



Many pilots believe that they can easily avoid the compensation or hire restrictions of the regulations by making other arrangements. The FAA, however, interprets “compensation” very broadly. For example, the FAA has long held that logging flight time for the conduct of a flight is compensation. Most of us, and especially those of us seeking that coveted left seat at a major air carrier, know how valuable flight time can be. So, if someone requests that you use your superior piloting skills to take them to that resort of their choice and you decline any monetary payment, but still log that flight time while not paying the costs of operating the aircraft, you’ve received compensation.

Goodwill obtained from providing a flight has also been determined to be compensation. Everyone knows how valuable a favorable news article or celebrity endorsement can be. Bartering can be considered compensation, too. You may want to think twice before you take someone flying in exchange for spending a weekend at their beach house.

A pilot may also be considered to be conducting a flight for compensation even if someone else receives the compensation for the flight. How would you like to be cited with a violation of the compensation or hire provisions of the regulations and not even receive any payment? Pilots should also be aware that not only will the FAA be unhappy if you conduct a commercial operation without an operating certificate, but if you are involved in an accident or an incident, your insurance company

might be able to deny coverage for any claims made against your policy. That’s never a good result of trying to get paid to fly.

If delving this deeply into the regulations makes your eyes glaze over, you may want to check out FAA’s Web site or call your local FSDO inspector if you have any questions. Importantly, since there are so many variations on the issue of flying for compensation or hire, this article is not a formal legal opinion from the FAA (apologies to all you hangar lawyers). You can, however, search the FAA’s legal interpretations in this area at: http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/agc200/Interpretations/.

If you still have a question about how the regulations apply to your specific situation, you can make a formal request to the Regulations Division in the FAA’s Office of the Chief Counsel in Washington, DC, for a legal opinion. Again, the caution is “be careful” if you’re going to accept anything for your flying.

Flying and getting paid for it has been a dream that most pilots have had at one time or another. It’s been done by generations of pilots, but it’s also an area ripe with opportunities for new (and even older) pilots to run afoul of the regulations. In short, before you hang out that “Will Fly for Food” sign please make sure you know the rules. ✈️

Paul Greer is an attorney in the FAA Office of the Chief Counsel. He holds commercial pilot and flight instructor certificates. He rarely flies for compensation.