

Informational Letter to Pilots

The FAA recognizes that there is a trend in the industry towards using computer and cell phone applications to facilitate air transportation by connecting potential passengers to aircraft owners and pilots willing to provide professional services. Some of these applications enable the provision – directly or indirectly – of both an aircraft and one or more crewmembers to customers seeking air transportation.

This letter serves as a reminder to all pilots that, as a general rule, pursuant to 14 CFR (commonly known by industry as the Federal Aviation Regulations FARs) private pilots may neither act as pilot-in-command (PIC) of an aircraft for compensation or hire nor act as a PIC of an aircraft carrying persons or property for compensation or hire. Furthermore, to engage in air transportation a pilot must hold a commercial or airline transport pilot license **and** must operate the flights in accordance with the requirements that apply to the specific operation conducted (e.g., part 135). To meet the operational requirements, the pilots must be employed (as a direct employee or agent) by the certificate holder with operational control of the flight (e.g., a part 135 certificate holder) or must herself or himself hold a certificate issued under 14 C.F.R. part 119.

Another common pitfall to be aware of is the “sham dry lease” or the “wet lease in disguise.” This situation occurs when one or more parties act in concert to provide an aircraft and at least one crewmember to a potential passenger. One could see this, for example, when the passenger enters into two independent contracts with the party that provides the aircraft and the pilot. One could also see this when two or more parties agree to provide a bundle (e.g., when the lessor of the aircraft conditions the lease – whether directly or indirectly – to entering into a professional services agreement with a specific pilot or group of pilots. This type of scenario is further discussed in [Advisory Circular \(AC\) 91-37B, Truth in Leasing](#).

Whenever you pilot an aircraft subject to a dry-lease agreement (a *dry lease is an aircraft leased with no crew*), you should consider the following:

- Is it truly a dry-lease agreement whereby the lessee, in practice and agreement, has operational control in accordance with AC 91-37B and the Federal Aviation Regulations? If not, then flights operated under this agreement may be illegal charters and you, the pilot, may be in violation of the FARs for those flight operations.
- Are you as the pilot also providing the aircraft involved in the dry-lease? If so, you may be in violation of the FARs for those flight operations if you do not have the appropriate operational authority to conduct the flights (e.g., a part 135 certificate.)

An additional caution to consider is flight-sharing. [Section 61.113\(c\)](#) of Title 14 of the CFR allows for private pilots to share certain expenses. Pilots may share operating expenses with passengers on a pro rata basis when those expenses involve only fuel, oil, airport expenditures, or rental fees. To properly conduct an expense sharing flight under 61.113(c), the pilot and passengers must have a common purpose and the pilot cannot hold out as offering services to the public. The “common-purpose test” anticipates that the pilot and expense-sharing passengers share a “bona fide common purpose” for their travel and the pilot has chosen the destination.

Communications with passengers for a common-purpose flight are restricted to a defined and limited audience to avoid the “holding out” element of common carriage. For example, advertising in any form (word of mouth, website, reputation, etc.) raises the question of “holding-out.” Note that, while a pilot exercising private pilot privileges may share expenses with passengers within the constraints of § 61.113(c), the pilot cannot conduct any commercial operation under part 119 or the less stringent operating rules of part 91 (e.g., aerial work operations, crop dusting, banner towing, ferry or training flights, or other commercial operations excluded from the certification requirements of part 119). For more information on sharing flight expenses, common purpose and holding out see [AC 61-142, Sharing Aircraft Operating Expenses in Accordance with 14 CFR 61.113\(c\)](#); [AC 120-12A, Private Carriage vs. Common Carriage of Persons or Property](#); and [FlyteNow, Inc. vs. Federal Aviation Administration, 808 F.3d 882 \(D.C. Cir. 2015\)](#).

Unauthorized 135 operations continue to be a problem nationwide, putting the flying public in danger, diluting safety in the national airspace system, and undercutting the business of legitimate operators. If you have questions regarding dry-lease agreements or sharing expenses, please review the FARs and Advisory Circulars. Additionally, you may contact your local Flight Standards District Office for assistance or seek the advice of a qualified aviation attorney.