



# FAA Safe Air Charter Symposium

A Joint FAA and Industry Dialogue Regarding  
Current Issues Surrounding Illegal Aircraft  
Charter Operations

*July 21, 2020 | 2pm ET*



Federal Aviation  
Administration

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# Opening Remarks

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Rick Domingo, Executive Director  
FAA Flight Standards

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# **Moderator**

Mark Kramer, Division Manager  
FAA Office of General Aviation  
Safety Assurance



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# Panelists

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- **Don Riley** – FAA Operations Inspector, Flight Standards Special Emphasis Investigations Team
- **Greg Lander** – Senior Attorney, FAA General Counsel
- **Ryan Waguespack** – Senior Vice President National Air Transportation Association (NATA)
- **Brian Koester** – Director, Flight Operations and Regulations, National Business Aviation Association (NBAA)
- **David T. Norton** – Partner, Shackelford, Bowen, McKinley & Norton, LLP
- **David M. Hernandez** – Shareholder, Vedder Price P.C.



# Agenda

- **Overview**
- **Key Concepts** – Illegal Operations and Operational Control
- **How Did We Get Here?**
- **Nuts and Bolts** – Basic Regulatory Concepts and Requirements
- **Which Operational Rules Apply?**
- **Illegal Charter** – Appropriate vs. Inappropriate Reimbursements and Holding Out
- **What is Being Done to Address Illegal Charter?**
- **Resources**

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# Key Concept for Discussion

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1) Operations conducted under part 91 that should be flown under part 135 by an air carrier or part 91K by an authorized fractional program manager. Examples include:

- **Improper flight sharing (e.g. Flytenow)**
- **Wet leases disguised as dry leases**
- **Individual leases. For example:**
  - Owners “wet” leasing to “offset” cost of ownership or “help a friend”
  - Blackbird, and similar systems to hold out to the public
  - Improper “Dry Lease Pools” (essentially fractional programs without the additional protections required by Part 91K)

2) 135 operators conducting unauthorized flights, e.g. aircraft not on certificate, flights outside authorized Air Operations Area

***What do we mean by “illegal” operations?***

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# Key Concept for Discussion

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## *Operational Control*

### Keep in mind the following:

- A key element the FAA has observed in suspect operations is a failure to understand the concept of operational control or for it to be ignored.
- Lessees tend to sign documents stating they have operational control, but it is likely that control remains with the lessor.

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# How Did We Get Here?

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## Industry and FAA Perspective





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# Nuts and Bolts

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## *Basic Regulatory Concepts and Requirements*

### **“Operate” & “Operational Control”**

- **“Operate** — with respect to aircraft, means use, cause to use or authorize to use aircraft, for the purpose . . . . of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise).”
- **“Operational control** — with respect to a flight, means the exercise of authority over initiating, conducting or terminating a flight.”

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# Nuts and Bolts

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## *Basic Regulatory Concepts and Requirements*

### “Indicia” of Operational Control

- “Wet” Lease vs. “Dry” Lease – *More on This Below!*
- Who is providing:
  - **Maintenance**
  - **Fuel**
  - **Insurance**

**\* Who is ultimately responsible for the safe conduct of the flight?\***

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# Nuts and Bolts

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## *Key Regulatory Definitions*

### “Wet ” Leases vs. “Dry ” Leases

- “Wet lease – any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember...”
- Dry lease means??? Not actually defined, but essentially a “mere equipment lease”...
- **Key Distinction:**
  - Under a **wet** lease, the **lessor** retains *operational control*
  - Under a **dry** lease, *operational control* is transferred to the **lessee**

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# Nuts and Bolts

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## Key Regulatory Definitions

“**Commercial operator** means a person who, **for compensation or hire**, engages in the carriage by aircraft in air commerce of persons or property, other than as an air carrier or foreign air carrier or under the authority of part 375 of this title.

Where it is doubtful that an operation is for "**compensation or hire**", the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit.”

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# Nuts and Bolts

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## *So, Which Rules Should You Operate Under?*

- **Part 91** – baseline for all operations
- **Part 135** – “on-demand operations of each person who holds or is required to hold an Air Carrier Certificate (AAC) or Operating Certificate (OC) under part 119 of this chapter”
- So, when are you required to hold an ACC or OC? Generally speaking, when you are an **operator** carrying **persons** or property for **compensation or hire**:
  - “**Operator**” – the person exercising “operational control” (either as an owner or lessee – more on that below) – Note: there is no such thing as a “disregarded entity”
  - “**Persons or Property**” – someone other than a crewmember – Note: there no such thing as a “disregarded entity”
  - “**Compensation or Hire**” – i.e., not only “holding out” as a common carrier, but also when any reimbursement is made in any amount and any kind related to the conduct of the flight

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# Nuts and Bolts

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## *So, Which Rules Should You Operate Under?*

- **Fundamental operational differences:** Both are safe, but one involves significantly more certification requirements, regulatory oversight and operational requirements:
  - Part 91 – arguably boils down to: airworthy airplane, qualified crew, comply with the rules of the road
  - Part 135 – first, get an air carrier certificate, then comply with additional maintenance, crew training and operational requirements – all while routinely interfacing with a team of specifically-assigned FAA aviation safety inspectors
- **Fundamental philosophical difference:** Generally speaking:
  - If you are flying it yourself, paying for it yourself, and responsible for it yourself, Part 91 is generally enough.
  - If you are instead “holding out” as willing to fly for others, or even simply flying for others and collecting some economic benefit in return for providing such operations (and/or possibly seeking liability shielding from those operations), then go comply with Part 135.
  - If you are a “mere passenger” who is paying for a flight, you should be able to expect the additional oversight afforded by Part 135.

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# Illegal Charter

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## *Appropriate vs. Inappropriate Reimbursements – Holding Out –*

### **Appropriate Reimbursements**

- “True” Dry Leasing
- Sections 91.321 and 91.501 Exceptions, e.g., carriage of candidates, time sharing, joint registered ownership, etc.
- Certain Other Exceptions, e.g., aerial survey, charity flights, etc. – See Section 119.1(e)

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# Illegal Charter

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## *Appropriate vs. Inappropriate Reimbursements; – Holding Out –*

### **Inappropriate Reimbursements**

- “Sham” Dry Leasing
- “Flight Department Companies”
- Cost Sharing Outside of the Permitted Exceptions, e.g., *“We can just pay two times the fuel, right?”*
- “Part 91 Management Companies” Who Retains Operational Control
- Certificate Holders or Other Permitted Operators who are Operating Outside the Scope of their Authorizations as listed in their OpSpecs or LOAs



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# Illegal Charter

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## *Appropriate vs. Inappropriate Reimbursements; Holding Out*

- **Holding Out** – *The Concept of “Common Carriage”* – Generally 4 Elements:
  - 1) *a holding out of willingness to*
  - 2) *transport persons or property*
  - 3) *from place to place*
  - 4) *for compensation or hire*
- **Examples Include:**
  - “Dry Leasing Programs”
  - Web-Based Advertising

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# What is Being Done

*to address Illegal Charter?*

**Recognize the 3 types of *illegal charter operators***

**The Clueless**

**The Careless**

**The Criminal**

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# What is Being Done

*to address Illegal Charter?*

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## ***Clueless and Carless Illegal Charter Operators:***

- Educate, Educate, Educate!
  - FAA / NATA / NBAA Seminars
  - Aviation Safety Inspectors create multiple layers of informal contact with operators
  - Possible administrative or legal enforcement actions

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# What is Being Done

*to address Illegal Charter?*

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## ***“Criminal” Illegal Charter Operators:***

- Administrative Actions
- Legal Enforcement
- Referred for Criminal Enforcement

# Resources

- **Advisory Circulars**

- AC 120-12A – Private Carriage vs. Common Carriage
- AC 91-37B – Truth-In-Leasing
- AC 61-142 – Sharing Expenses

- **FAA Order 8900.1 – FSIMS**

- Vol. 3, Ch. 13 – Lease and Interchange Agreements
- Vol. 3, Ch. 25 – Operational Control for Air Carriers

# Resources

## *Report Suspected Illegal Air Charters*



- [www.avoidillegalcharter.com](http://www.avoidillegalcharter.com)
- 888-SKY-FLT1 or 888-759-3581
- [www.faa.gov/go/safeaircharter](http://www.faa.gov/go/safeaircharter)
- [www.nbaa.org](http://www.nbaa.org)
- [www.faa.gov/go/part135](http://www.faa.gov/go/part135)
- [www.nts.gov](http://www.nts.gov)



**SOMETHING  
NOT QUITE RIGHT?  
BE ON THE LOOKOUT!  
ILLEGAL AIR CHARTERS  
PUT US ALL AT RISK**

**THE FAA NEEDS  
YOUR HELP TO  
IDENTIFY, REPORT  
& SHUT DOWN  
ILLEGAL AIR  
CHARTER  
OPERATORS**



**FLIGHT SHARING**

**AIR SHARING**

**TIME SHARING**

**LEASING POOL  
OR PROGRAM**

**NO MATTER HOW THEY'RE DISGUISED,  
ILLEGAL AIR CHARTERS ARE A THREAT TO SAFETY.**

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# Questions

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Our FAA team is monitoring the  
livestream

Send your questions now

