

FAA Safe Air Charter Symposium

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

July 21, 2020 | 2pm ET



Opening Remarks =

Rick Domingo, Executive Director FAA Flight Standards



Moderator _____

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



Panelists

- 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



Key Concept for Discussion

 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:

What do we mean by "illegal" operations?

- 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





Key Concept for Discussion:

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.





How Did We Get Here?

Industry and FAA Perspective









Nuts and Bolts =

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."





Nuts and Bolts =

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?*



Nuts and Bolts 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



Nuts and Bolts 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."



Nuts and Bolts

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



Nuts and Bolts

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.



Illegal Charter

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)



Illegal Charter

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



Illegal Charter

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



What is Being Done =

to address Illegal Charter?

Recognize the 3 types of illegal charter operators

The Clueless

The Careless

The Criminal



What is Being Done to address Illegal Charter?

Clueless and Carless Illegal Charter Operators:

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



What is Being Done

to address Illegal Charter?

"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

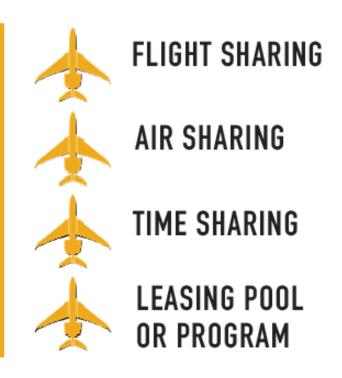


- www.avoidillegalcharter.com
- 888-SKY-FLT1 or 888-759-3581
- www.faa.gov/go/safeaircharter
- www.nbaa.org
- www.faa.gov/go/part135
- www.ntsb.gov



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

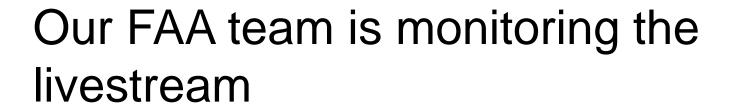
THE FAA NEEDS
YOUR HELP TO
IDENTIFY, REPORT
& SHUT DOWN
ILLEGAL AIR
CHARTER
OPERATORS



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



Questions =



Send your questions now







