



THE SECRETARY OF TRANSPORTATION
WASHINGTON, DC 20590

April 12, 2021

The Honorable Maria Cantwell
Chair
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

Dear Chair Cantwell:

Enclosed is the Federal Aviation Administration's (FAA) report to Congress on illegal charter flights, as required by Section 540 of the FAA Reauthorization Act 2018 (Public Law 115-254).

Section 540 directs the Secretary of Transportation to submit an analysis of reports filed during 2008 to 2018 through the illegal charter hotline of FAA and other sources.

In response to Section 540, this report includes

- actions taken when a report of illegal charter operations is received;
- resource allocation for addressing illegal charter operations;
- challenges in identifying illegal operators; and
- recommendations for combating illegal charter carrier operations.

A similar letter has been sent to the Ranking Member of the Senate Committee on Commerce, Science, and Transportation and to the Chair and Ranking Member of the House Committee on Transportation and Infrastructure.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pete Buttigieg", is positioned below the word "Sincerely,".

Pete Buttigieg

Enclosure



THE SECRETARY OF TRANSPORTATION
WASHINGTON, DC 20590

April 12, 2021

The Honorable Roger Wicker
Ranking Member
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

Dear Ranking Member Wicker:

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April 12, 2021

The Honorable Peter A. DeFazio
Chair
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chair DeFazio:

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THE SECRETARY OF TRANSPORTATION
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April 12, 2021

The Honorable Sam Graves
Ranking Member
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Ranking Member Graves:

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FAA
Aviation Safety

REPORT TO CONGRESS:

Illegal Charter Flights

**FAA Reauthorization Act of 2018 (Pub. L. No. 115-254) Section
540**

Executive Summary

This Federal Aviation Administration (FAA) report is submitted in accordance with Section 540 of the FAA Reauthorization Act of 2018 (P.L. 115-254). Section 540 requires the Secretary of Transportation to provide an analysis of reports on illegal air charter operations received through FAA's illegal air charter hotline and other sources during the 10-year period preceding enactment of the statute.

This report includes an overview of FAA investigative actions arising from reports of illegal air charter operations, along with an explanation of how FAA resources are allocated to investigate such reports (based on an analysis of data received from 2008 to 2018). In addition to FAA investigative resources available at local Flight Standards District Offices (FSDOs), FAA established the Special Emphasis Investigations Team (SEIT), which is a team of FAA Aviation Safety Inspectors (FAA inspectors) that receives many of the reports of illegal air charters for initial review.

In addition, this report details challenges FAA faces in identifying and investigating illegal air charter operators. The report notes the need for increased awareness by industry and the flying public concerning illegal air charter operations.

Further, this report offers a variety of FAA recommendations to address illegal air charter operations. First, a key recommendation is for FAA to collect data from different FAA databases to identify and specifically track illegal air charter reports received by FAA through the resolution of each report. The collection of data should include a means to track the number of resources and amount of time expended to reach significant stages of each investigation through the resolution of the report. This data collection should allow for development of meaningful performance metrics and trend analyses.

Second, the report recommends the continuation of educational efforts both within FAA (for investigative personnel and counsel) and outside FAA (to industry, regulated entities, and the flying public). For example, FAA has developed material to raise the awareness of its inspector workforce and FAA legal counsel regarding illegal air charters. In addition, FAA has created a web page that provides an information center on air charter operations, including illegal air charters. FAA also has developed and delivered a significant amount of educational material through media outlets.

Finally, this report recommends that FAA explore ways to improve both access to aircraft registry data by FAA inspectors investigating illegal air charter operations and data sharing between internal databases that would flag suspicious activity suggestive of illegal air charter activity.

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Introduction

This report is provided in response to the requirements established in the FAA Reauthorization Act of 2018, Section 540, Report on Illegal Charter Flights. While FAA does not specifically define the term “illegal air charters,” FAA broadly recognizes and uses that term to refer to unauthorized air charter operations. Air charter operations typically include operators that conduct commuter and on-demand operations, as defined at 14 Code of Federal Regulations (CFR) § 110.2. To be lawful, such operators must hold a certificate to conduct these operations as air carriers and follow the operating rules in 14 CFR Part 135; however, illegal air charter operators conduct commuter and on-demand operations without meeting these requirements.

The significant safety risk presented by illegal air charters is not always readily apparent. Illegal charter operators are able to provide their services at rates much lower than air charter operators who comply with the law, and customers who use illegal charters pay a “cheaper” price, likely not fully realizing the safety implications of doing so. These customers are often reluctant to provide information on illegal charter activity to FAA, given their financial interests. With a higher profit margin and loyal customer base, there are economic incentives for illegal charter operators to continue or even expand their operations.

The economic incentives for illegal charter operators generally include the following.

- No formal oversight by FAA inspectors, resulting in less cost to the illegal operator and less safe operations due to the following factors:
 - Lower maintenance standards: Charter operators must have FAA approval of maintenance programs, and may be required to replace parts more often, do additional inspections, and adhere to specialized requirements such as fire-blocking interiors.
 - Fewer flight crew training and testing requirements: Charter operators’ pilots must be trained, tested, and checked every six months. (Single pilot operators are excepted from some of these requirements.) Operators of larger and more complex aircraft send their pilots to industry training centers, with costs that may easily exceed \$20,000 per year per pilot.
 - No flight crew and duty rest requirements: Charter operators’ pilots are limited in how many hours they may operate per day, and how many hours they may be on duty in a 24-hour period. These limitations may require additional flight crews.
 - Lower airport standards: Charter operators may not be able to take off and land at certain smaller airports due to a lack of weather reporting equipment, and requirements for additional runway length in wet or snow/ice conditions.
 - No drug and alcohol testing programs: Charter operators are required to have FAA-approved drug and alcohol programs.

- Lower insurance costs: Aircraft insurance rates, hull and liability, for charter operators are higher for commercial operations.
- Federal Excise Tax (FET): Charter operators must pay an FET of 7.5 percent per person per segment.
- Modified Accelerated Cost Recovery System (MACRS) depreciation for aircraft: Under MACRS, fixed assets are assigned to a specific asset class, which has a designated depreciation period associated with it. Aircraft operated by charter operators are depreciated on a seven-year MACRS schedule, whereas non-commercial aircraft are depreciated on the faster five-year MACRS schedule.

By avoiding the costs incurred by charter operators who comply with the law, illegal charter operators are able to undercut the prices charged by legal charters for transportation. In doing so, illegal charter operators put their passengers at risk and leave legal certificated operators at an economic disadvantage.

This report explains the investigative process FAA uses when it receives a report of an illegal charter and how FAA allocates resources. FAA reviewed data from 2008 to 2018 to complete its analysis. In addition, the report identifies challenges in addressing illegal charter operations and provides recommendations for improving current processes. FAA believes that efforts to bring illegal charter operations into compliance are critically important to maintaining the safety of our National Airspace System.

Legislative Mandate

This report responds to the requirements of the FAA Reauthorization Act of 2018 (P.L. 115-254), Section 540, which reads as follows:

SEC. 540. Report on illegal charter flights.

Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation shall submit to the appropriate committees of Congress an analysis of reports filed during the 10-year period preceding such date of enactment through the illegal charter hotline of the FAA and other sources that includes—

- (1) what follow-up action the Department of Transportation or the Administration takes when a report of illegal charter operations is received;*
- (2) how the Department of Transportation or the Administration decides to allocate resources;*
- (3) challenges the Department of Transportation or the Administration face in identifying illegal operators; and*
- (4) recommendations for improving the efforts of the Department of Transportation or the Administration to combat illegal charter carrier operations.*

Response to Section 540 Requirements

Actions Taken When a Report of Illegal Charter Operations is Received

FAA receives reports of illegal charter operations via multiple channels. The National Air Transportation Association's Air Charter Safety Foundation (NATA ACSF) established and maintains an illegal charter hotline where industry partners provide FAA with reports of possible illegal charter operations. FAA also receives illegal charter operation reports from the FAA Hotline Information System, the FAA Administrator's Hotline, and public complaints to local FAA offices.

Upon receiving an illegal charter allegation, FAA's current practice generally is to refer the report to the Flight Standards District Office (FSDO) having geographic responsibility for the operation. Special Emphasis Investigations Team (SEIT) also receives all reports from the NATA ACSF illegal charter hotline for initial review and potential referral. SEIT may retain reports that include allegations of political involvement, extensive media coverage, sensitive matters, significant law enforcement involvement, or complex or elaborate schemes.

In most circumstances, FAA's follow-up action for an illegal charter allegation includes:

1. Receiving the complaint and conducting an initial analysis to determine whether the complaint reveals potential illegal air charter activity.
2. Conducting an initial investigation to identify preliminary matters such as pilot(s), aircraft, and passengers.
3. Developing and executing an investigative plan including ramp inspections, interviews, site visits, and a review of records.
4. Issuing a letter of investigation to the alleged violator(s) regarding the apparent statutory or regulatory violations.
5. Considering action pursuant to Compliance Program guidance, if the investigation supports the conclusion that the operation was an illegal air charter.¹
6. Preparing an Enforcement Investigative Report (EIR) for internal review containing identifying information on the alleged violator, the evidence relevant to the apparent violation, an analysis of whether sufficient proof exists to support violation allegations, and recommended findings of regulatory violations. This action is taken if referral for legal enforcement action is deemed appropriate.

The timeframe and investigative actions, as well as compliance approaches, for FAA's follow-up action on reports of illegal charter activity depend on various facts and circumstances. During an investigation into the matter, the FAA inspector assesses the likely root cause of the illegal

¹ The FAA Compliance Program guides agency personnel in the exercise of FAA prosecutorial discretion when using compliance, administrative, and legal enforcement actions to ensure that all regulated persons conform their conduct to statutory and regulatory requirements. See FAA Order 2150.3C, chap. 5. The Compliance Program also provides guidance for FAA personnel to issue non-regulatory compliance action determinations in situations not involving statutory or regulatory noncompliance, when such actions nevertheless would address other safety concerns.

operation and determines the best response under the Compliance Program to achieve future compliance and prevent recurrence. In those instances where the pilot or operator unwittingly operated a flight for compensation or hire, the FAA inspector may decide that compliance action (e.g., education or counseling) or administrative action (e.g., warning notice) is appropriate. Many illegal air charters stop voluntarily when FAA inspectors contact the operator and pilot and give information on how their operation is contrary to regulations.

Investigations may uncover pilots and operators that are aware their operations are illegal, yet engage in such conduct because their operations are typically more profitable than those of legitimate operators. As mentioned earlier in this report, legitimate operators incur higher costs related to enhanced safety requirements for operations, including drug and alcohol testing, maintenance, and crew proficiency.

There are situations in which an FAA inspector will refer matters for legal enforcement action consistent with FAA policy.² For example, FAA inspectors are required to refer matters for legal enforcement action when violation conduct is intentional or reckless. FAA inspectors also have discretion to refer matters for legal enforcement action in other circumstances, including when the evidence demonstrates repeated violation conduct.

In addition, FAA inspectors determine whether to open an investigation against companies and aircraft owners involved in illegal charter operations. In more complex cases, FAA might investigate multiple pilots, companies, and aircraft owners from a single report of an illegal air charter operation. Frequently, deliberate illegal air charter operations can be extremely complex, employing sophisticated lease and management agreements, intertwined company relationships, and pools of aircraft and pilots. Such investigations require significant resources, both investigative and legal, to review documents, obtain records, interview witnesses, and follow evidentiary leads. This is complicated further when operators coach passengers, who may also benefit from illegal charter arrangements, to avoid cooperating with FAA investigators.

Investigations into deliberate or repeated illegal air charter operations typically require greater care to ensure completeness in gathering evidence and proper analysis of evidence. Moreover, if the alleged violator is a pilot, FAA must give that pilot a letter of investigation that complies with the Pilot's Bill of Rights.³ An EIR is compiled containing identifying information about the alleged violator, a tracking number for the case, and a statement of the basis for the legal enforcement action that includes recommended findings of regulatory violations and evidence supporting the violations. That report goes through a series of reviews and is then referred to the FAA's Office of the Chief Counsel, Enforcement Division for consideration for legal action.

² FAA Order 2150.3C, chap. 5, para. 5.

³ Public Law 112-153, § 2(b)(2) (Aug. 3, 2012), as amended by Pub. L. No. 115-254, § 392(a) (Oct. 5, 2018), requires investigative personnel to provide airmen who are the subject of an investigation with timely written notification of the nature of the investigation and other required notifications.

Resource Allocation for Addressing Illegal Charter Operations

The following discussion of how FAA allocates resources to address illegal charter operations is based on the following considerations: (1) an examination of reporting from 2008-2018; (2) an increase in aviation activity; and (3) the agency's mission of providing the safest, most efficient aerospace system in the world.

FAA Order 8000.368A, Flight Standards Service Oversight, describes the statutory safety oversight responsibilities of the Flight Standards Service (Flight Standards).⁴ Flight Standards has oversight responsibility for a wide range of aviation activity, from private pilots to large air carriers with sophisticated equipment and flight management systems. To comply with statutory oversight requirements, Flight Standards uses a risk-based decision-making process to help allocate resources based on the facts and circumstances.

Within the Flight Standards' General Aviation Safety Assurance organization, there are 78 FSDOs. A FSDO is a field office that serves an assigned geographical area. FSDOs are staffed with personnel who serve the aviation industry and the public on matters relating to the certification and operation of air carrier and general aviation aircraft. Activities that FSDOs carry out include safety surveillance of operators, repair stations, flight schools, and maintenance schools; accident prevention; and enforcement. FSDOs are also responsible for investigating reports of low-flying aircraft, accidents and incidents, and aircraft maintenance and operational issues. FSDOs particularly concentrate on investigating apparent violations of aviation regulations.

A challenge in FAA reporting on allocation of resources relative to investigations of illegal air charter operations is the lack of any specific database to track such reports and their outcomes. As mentioned previously in this report, there are multiple hotlines for reporting suspected illegal air charter operations, and the reports can also be made directly to any of the 78 FSDOs. In addition, many of the reports received through hotlines are initially referred to SEIT, and SEIT retains some and refers others to FSDOs for investigation. Currently, the feedback process in place to centrally track the outcome of any given investigation is deficient. The issues of resource allocation, database tracking and reporting are all being addressed in the Flight Standards Safety Assurance System.⁵

Moreover, most methods for reporting illegal charter operations are used to report many different kinds of alleged safety violations, and illegal charter operations are not specifically identified and tracked as such. There is no provision to identify resources and time spent specifically investigating or resolving reports of illegal air charters. Finally, a given report of illegal air charter

⁴ 8000.368A- Flight Standards Service Oversight:

https://www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document.information/documentID/1020609

⁵ FAA aviation safety inspectors capture certification and surveillance data in the Safety Assurance System. The Flight Standards Safety Assurance System policy and procedures are found in FAA Order 8900.1, Volume 10:

https://fsims.faa.gov/wdocs/8900.1/v10%20safe%20assur%20sys/chapter%2001/s_10_001_001.htm

activity may result in multiple investigations being opened against different participants, such as pilots and a company or multiple companies behind the operation, resulting in the use of multiple available FSDO resources. The recommendations in this report to improve illegal charter data collection will facilitate trend analysis, risk identification, and resource allocation.

A report of an illegal charter operation received by a FSDO is only one of the numerous kinds of complaints these offices receive each year. Each of these offices has a full portfolio of work. Each office manager will assign office resources according to the manager's evaluation of the priority of the reported violation against the safety risk presented by other required work, existing reports of violations, and the knowledge, skills, and experience of the available FAA inspectors to conduct the investigation. Thus, some reports are investigated more quickly in some offices than others. As FAA continues to improve its approach to investigating illegal air charters, including enhancement of data collection and reporting, risk-based decisions on the allocation of resources will improve.

Challenges in Identifying Illegal Operators

The FAA has encountered many challenges when it comes to identifying illegal operators. As discussed below, these challenges include reporting, regulatory complexity, investigation, public awareness, and deterrence. To meet these challenges, the FAA continues to improve in how it addresses illegal operators.

Reporting Challenges

- FAA receives anonymous and vague complaints on illegal charters.
- FAA does not have a consolidated database to track reports and outcomes specific to illegal air charter operations, as well as the related resource and time expenditures due to the complexities of these operations.

The myriad means for reporting illegal air charter operations make it difficult to identify, quantify, and report on outcomes of reports specific to illegal air charter operations. In addition, a single report often results in multiple investigations being open with different outcomes for different types of investigations. For instance, it may be that an operator is deliberately operating multiple illegal charter operations, warranting legal enforcement action, while a pilot used in one of those flights may have been unaware of the true nature of the flight and his/her obligation to reasonably inquire into the nature of the flight. For this scenario, one investigation arising out of the original report may be closed quickly with a compliance action involving education of the pilot. However, the case against the company may take years to make its way through litigation; and even if the FAA prevails and a civil penalty is assessed against the company, the FAA must collect the civil penalty (or exhaust all collection options) before it can close the case and then close out the FAA report with its outcome.

In addition, without FAA tracking where the investigations of the reports occur and the resources and time spent investigating and resolving the investigations, and analyzing the outcomes of the investigations, it is difficult to make risk-based decisions on where and how many resources to allocate toward these investigations or to analyze trends. The integration of tracking and reporting illegal charters in the Flight Standards Safety Assurance System is expected to address this current shortcoming.

Regulatory Challenges

- Complexity of understanding and applying the regulatory framework and the Compliance Program in investigating and resolving reports of alleged illegal air charter operations.

Illegal air charter operations may result in violations of multiple FAA regulations, as different regulations apply to different participants in the illegal operation. For example, the regulations a pilot violates when conducting an illegal air charter will depend on the nature of the flight, including such factors as:

- The level of pilot certification held by the pilot.
- The kind of aircraft being operated.
- The relationship, if any, between the pilot and the passengers.
- Whether the pilot advertised to solicit the passengers for the flight.

On the other hand, the regulations violated by the operator will depend on factors such as:

- How the passengers were solicited.
- The number of passengers on the flight.
- The amount passengers were charged and the services covered by the charges.
- The type of aircraft used.
- Where the flights departed and landed.

The regulatory complexity underlying sophisticated illegal air charter operations may require specialized knowledge in order to properly investigate and resolve reports. Part of the investigation into whether there was illegal charter activity requires a comprehensive understanding of the regulatory scheme and familiarity with the typical signs of an illegal charter. In order to properly plan an investigation, the FAA inspector must have a fairly comprehensive knowledge of the applicable laws and regulations and the evidence needed to show a violation. If preliminary investigation supports a root cause analysis that reflects unintentional and unknowing violations, it may be appropriate for the FAA inspector to resolve the matter with a compliance action, such as educating the violator about the regulations and explaining how the involved conduct was not in compliance. That can be very difficult for FAA inspectors who lack training and experience in applying the regulations to illegal conduct. To address this, over the last year the Agency has

engaged virtually all of their Flight Standards inspectors on the topic of illegal charters, has created computer-based training, and integrated the topic of illegal charters into the foundational training for Aviation Safety Inspectors. Going forward, Flight Standards is building advanced training to provide investigative best practices to Aviation Safety Inspectors. This will aid them in investigating complex illegal charter operations as well as how to apply the FAA Compliance Program to alleged violators involved in illegal air charter operations.

Accordingly, development of best practices to investigate a report of an illegal charter operation efficiently and effectively, and how to properly apply the regulations, would facilitate timely resolution of reports of illegal charters. There are investigative tools such as subpoenas for documents and depositions that are used more frequently in suspected air charter investigations. Increased education in this area would aid the FAA inspector in getting the evidence to make a root cause analysis, a critical piece to determining whether compliance action is appropriate or more robust enforcement tools are appropriate.

Investigation Challenges

- Dependency on community reporting of alleged violators operating in remote areas.
- Inability or significant delay in obtaining evidence when alleged violators and witnesses refuse to cooperate.
- Lack of ready access by investigative personnel to:
 - aircraft registry data; and
 - all leases applicable to a given aircraft.
- The need for enhanced interagency collaboration with Customs and Border Protection on information related to aircraft, flight crew, and passengers making border crossings.
- The need for enhanced international cooperation in pursuing illegal charters through our International Civil Aviation Organization partnerships.
- Codified best practices for FAA inspectors and legal counsel on:
 - investigating complex illegal charter operations; and
 - how to apply the FAA Compliance Program to alleged violators involved in illegal air charter operations.

At times, illegal charter operations might occur in remote locations that make it extremely difficult for FAA inspectors to investigate the report properly. For example, illegal charter operations in some United States territories are difficult to investigate due to the cost of sending an FAA inspector to a distant location for several days to conduct a complex investigation.

In complex investigations involving numerous pilots and companies, it can often be difficult to obtain requisite evidence in order to timely present an EIR to legal counsel within the six-month period from the date of violation in order to take action to suspend the pilot certificate for flying an

illegal charter.⁶ Such difficulties are exacerbated when the airman and witnesses refuse to provide documents or testimony.

Public Awareness Challenges

- Lack of knowledge of the characteristics of an illegal charter operation.
- Need for improved knowledge of the enhanced safety protections provided by legal air charter operators.
- Need for improved education and relationships with customers/passengers who are willing to sacrifice safety for cost and/or convenience.
- Lack of understanding of the liability risk assumed by customers/passengers complicit in illegal air charter operations.

Deterrence Challenges

- Inadequate deterrence from the assessments of civil penalties against uncertificated companies due to low civil penalty assessment authority.
- Inadequate criminal penalties.

The financial incentives to conduct illegal charters detailed earlier in this report often far outweigh the amount of civil penalties that may be collected against uncertificated companies. This is particularly the case for illegal charters involving the operation of luxury jet aircraft. FAA's assessment authority is constrained by the relatively low civil penalty limits per violation provided in 49 U.S.C. § 46301, even after adjustment for inflation.⁷

Recommendations for Addressing Illegal Charter Carrier Operations

Based on the challenges it has encountered over the past 10 years, FAA has progressed in addressing illegal charter operations. Areas for improvements and recommendations to assist the Department of Transportation and FAA to combat illegal air charter operations are:

Improve Reporting

- Provide consolidated intake of reports of illegal air charter operations within FAA so they may be assigned and tracked through resolution of the case.
- Tracking significant activities and resources used in investigating and resolving reports.

⁶ See 49 C.F.R. § 821.33 (providing a basis for dismissing allegations in a complaint occurring more than six months prior to FAA issuance of notice of such allegations).

⁷ 49 U.S.C. § 46317 includes criminal penalties for individuals who operate an aircraft in air transportation without an airman certificate authorizing the individual to serve in that capacity. However, there are no criminal penalties for individuals who conduct air transportation operations without holding an air carrier certificate or exceeding the authorizations of an air carrier certificate, i.e., an illegal air charter carrier operation.

The Flight Standards Safety Assurance System is being used to improve access to investigative personnel on detailed aircraft registry data and all leases applicable to a given aircraft. Furthermore, improving tracking specific to illegal air charters will facilitate trend analysis, risk identification, and resource allocation. Such data will also be useful in setting performance metrics to improve transparency and accountability.

Improve Investigative Processes

- Develop and deliver best practices training to FAA investigators and legal counsel on:
 - investigating complex illegal air charters; and
 - applying the Compliance Program to investigations of illegal air charter operations.
- Investigate ways to improve data sharing between internal databases that would facilitate investigations.

Increase Public Awareness

- Increase education and collaboration with industry, airport sponsors, and Federal, State, and local authorities to recognize common signs of illegal air charter operations and improve reporting of illegal air charter operations.
- Improve communication and messaging to industry stakeholders and the public to recognize common signs of, and the safety risks presented by, illegal air charter operations.
- Update FAA's website and databases with current and relevant content, including legal and guidance documents; listings of legal charter companies and the aircraft they operate as well as pilot qualifications; and other information relevant to safe charter operations. The Safe Air Charter Operations site is available at:
https://www.faa.gov/about/initiatives/safe_charter_operations/

Conclusion

FAA remains committed to addressing illegal air charter concerns. Although there are many challenges in identifying and investigating illegal air charter operations, FAA continues to improve reporting and investigative processes in this area. FAA's focus through its website and other media outlets on providing educational information on the benefits of certificated air charter operations, as contrasted with the risks of illegal air charters, will help the public recognize the significant safety protections that legal air charter operations provide. FAA will continue to adopt the recommendations listed in this report to bring illegal air charter operations into compliance and further the promotion of the safety of the National Airspace System.