

DO YOU WANT A RIDE?

How to Protect Your Certificate and Prevent an Illegal Air Charter

by FAA's Safe Air Charter Team

SOMETHING NOT QUITE RIGHT? BE ON THE LOOKOUT! NO MATTER HOW THEY'RE DISGUISED, ILLEGAL AIR CHARTERS ARE A THREAT TO SAFETY.

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

faa.gov/charter



ILLEGAL AIR CHARTERS PUT US ALL AT RISK



KNOW YOUR FAA PILOT & OPERATOR / AIR CARRIER CERTIFICATIONS



PART 119
REQUIRES PART 135 OR PART 121 AIR CARRIER CERTIFICATE WHEN THE AIRCRAFT IS AVAILABLE FOR HIRE FOR AIR TRANSPORTATION



PART 91
PILOTS CANNOT PROVIDE AIR TRANSPORTATION FOR HIRE

Flying in our nation's airspace is more complex, congested, and costly than ever before. The lure to cut down on some of those costs may motivate operators to offer their flight services without meeting proper FAA requirements. It's important to note that just having a current commercial pilot certificate doesn't always mean you can take a passenger for a ride. Something as simple as accepting a six-pack to fly a friend, to a complicated leasing scheme, could be considered an "illegal air charter" by the FAA — often characterizing the rogue operator as either *clueless*, *careless*, or *criminal*. An illegal air charter is a safety risk, so read on so you don't find yourself in the *clueless* category.

An Unlawful Upsurge

Over the past four years, the FAA and industry organizations such as the National Air Transportation Association (NATA) have seen a 300% increase in illegal air charter complaints. In response, the FAA tasked a specialized investigative unit, the Special Emphasis Investigations Team (SEIT), to focus on the issue. This safe air charter team raises awareness about the issues and warning signs of

illegal air charters to the FAA workforce, the public, and to civil aviation agencies around the globe.

Rogue operators have been levied more than \$18 million in civil penalties. Two situations that commonly lead to illegal air charter operations are the sharing of flight expenses and the improper use of a dry lease.

Splitting the Bill

The FAA broadly defines what compensation is, which includes receiving anything of value, a promise of anything of value, or even the accrual of flight time. Operating an aircraft is expensive, and sharing aircraft operating expenses is compensation. However, an exception exists to offset some of that cost by allowing certain operating expenses to be split with your passengers.

No matter the pilot certificate held — sport, recreational, private, commercial, or airline transport — a pilot can equally (on a pro-rata basis) share the cost of fuel, oil, airport expenditures, and aircraft rental fees as long as your passengers have a common purpose and you are not holding out to connect with them.

The pilot must pay for any expenses not specified with their pilot privileges and limitations in 14 CFR part 61. Some examples of prohibited costs that can't be shared are aircraft maintenance, insurance, depreciation, supplemental oxygen, and navigation charts. No one else may pay the pilot's share.

A commercial or airline transport pilot (ATP) exercises their private pilot privileges under 14 CFR section 61.113 when sharing costs with passengers. A common misconception for commercial and airline transport pilots is that their certificates allow unlimited operation for compensation or hire. The only exceptions, like student instruction, crop-dusting, etc., are listed in 14 CFR section 119.1(e).

Destination Unknown

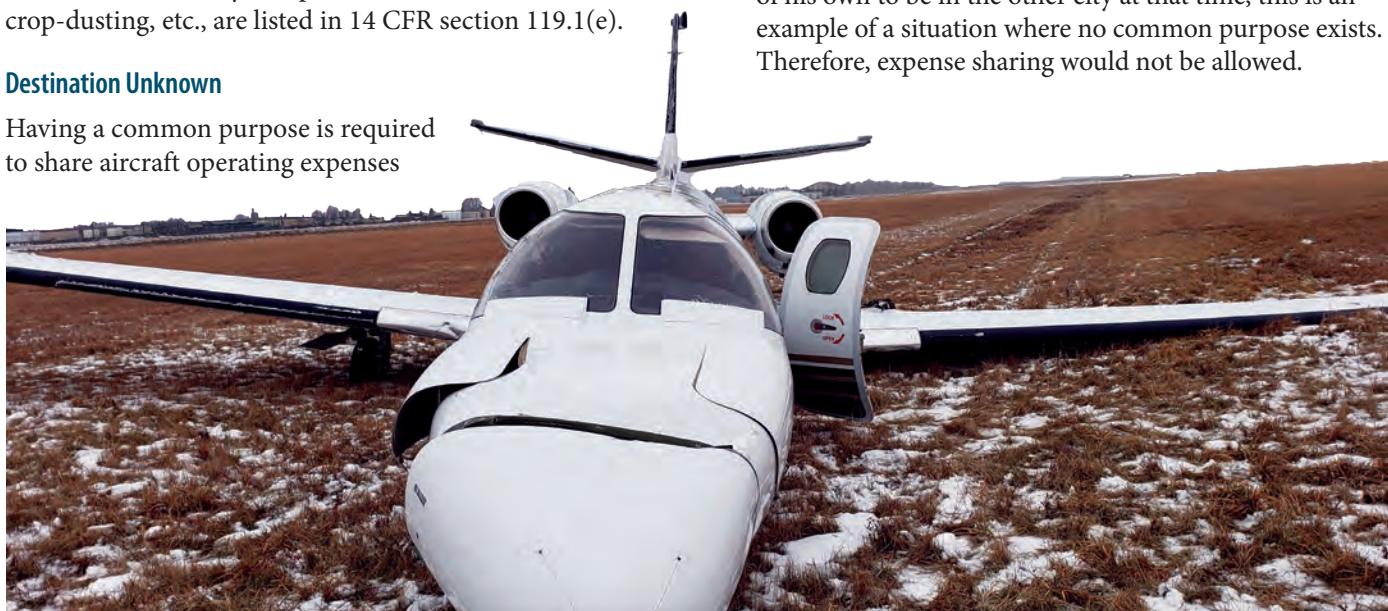
Having a common purpose is required to share aircraft operating expenses

with your passengers legally. There may need to be more than just flying to a common destination to show a common purpose. The FAA considers whether you, as the pilot, have your own reason for traveling to the destination.

When the pilot, not the passenger, chooses the destination, it suggests that the pilot is not simply transporting passengers for compensation. The common destination satisfies the common purpose test even if the pilot and the passengers have different business to conduct at the destination. No common purpose exists when the pilot has no particular business to conduct at the destination, or the flight is only to transport passengers.

If the passenger identifies the destination first, and then the pilot elects to travel to that destination, it could present the appearance of air transportation, which may require additional FAA certification. The common purpose test can be stated as “but for the receipt of compensation, the pilot would not have taken that flight.” Here are two examples.

- John, a private pilot, plans to fly from Charlotte, N.C., to Boston to accumulate flight time. Pete, his friend, asks if he can hitch a ride to Boston and share the flight expenses with him so that he can visit his great-grandmother for the weekend. A common purpose exists for this flight because John was already flying to Boston and would be making the trip regardless of whether Pete shared the flight.
- A friend asks a pilot to fly him to another city to pick up a new car he ordered and offers to share the flight expenses. The private pilot agrees, as he is not doing anything else and would enjoy the flight. As the passenger chose the destination and the private pilot does not have a purpose of his own to be in the other city at that time, this is an example of a situation where no common purpose exists. Therefore, expense sharing would not be allowed.



This 8-passenger Cessna 550 Citation crashed in Fargo, N.D., in 2018 with 10 people aboard. The pilot was flying the airplane under a single-pilot exemption, which he was not fully qualified to do. The FAA deemed the private business flight as an illegal air charter.

Don't Hold Out on Me

It is helpful to understand the definition of common carriage and how it relates to sharing aircraft operating expenses. Common carriage is “(1) a holding out of a willingness (2) to transport persons or property (3) from place to place (4) for compensation or hire.” When an operator meets all four elements of common carriage, they cannot operate under the expense-sharing exception and, unless an exception applies, needs to hold a part 119 certificate and operate these flights under 14 CFR part 121 or 135.

With expense sharing, the element of whether the pilot is “holding out a willingness” to fly is critical. Holding out is accomplished by any means that communicates to the public that a transportation service is indiscriminately available to the members of that segment of the public that it is designed to attract. There is no specific rule or criteria as to how holding out is achieved. Instead, holding out is determined by assessing the available facts of a particular situation. Advertising in any form raises the question of holding out.

The FAA distinguishes between offering expense-sharing services to a broad audience and a limited group because holding out to the public may suggest to unsuspecting passengers that the pilot has met the higher regulatory requirements to carry passengers. Absent this limitation on holding out, an unsuspecting passenger may unknowingly assume the safety risks of flying in aircraft flown by pilots who lack the training, experience, and operational oversight that the FAA requires of common carriage operators.

Here are two scenarios that illustrate what the FAA would consider in determining whether an operator is holding out. These examples are fact-specific and not all-inclusive.

- A small neighborhood book club has set up a private Facebook group. Only members of the club who are approved by the board are allowed to join and see posts. A member of the club posts that they are piloting a plane

to the beach for the day and asks if any other members would like to join and share expenses. Here the group is limited and defined with a prior personal relationship, and the FAA would likely not consider this pilot to be holding out.

- On a public Facebook page viewed mainly by the local community college student body, a pilot posts availability to share expenses for a flight for spring break. This would not be considered a defined and limited group because it would not be limited to people with whom the pilot has an ongoing, pre-existing relationship. Further, even if a Facebook group were limited to only to the student body, the size of the student body likely would cause that group to be considered a broad segment of the general public that the pilot would be willing to provide transportation services to; and, therefore, the pilot would be considered to be holding out.

Sharing is Caring

Pilots may share operating expenses with passengers on a pro rata basis when those expenses involve only fuel, oil, airport expenditures, or rental fees. These exceptions are themselves further limited. In assessing whether an expense-sharing flight is appropriately conducted under the exception in 14 CFR section 61.113(c), the FAA considers whether the pilot and passengers have a common purpose and whether the pilot has held 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 a deeper dive and more scenarios about cost sharing, review Advisory Circular 61-142, *Sharing Aircraft Operating Expenses in Accordance with 14 CFR § 61.113(c)*. You can also talk to your local FAA Flight Standards District Office.



REPORT SUSPECTED ROGUE OPERATORS

Contact the FAA Hotline

1-866-835-5322

Hotline.faa.gov

Contact the National Air Transportation Association (NATA)

1-888-759-3581

AvoidIllegalCharter.com

Who's on First

For pilots with commercial or ATP certificates, the issue of who has operational control of a leased aircraft is essential to understand. Operational control is not dependent on aircraft size or the number of aircraft operated; it is a matter of legal responsibility.

An aircraft lease is either called a wet lease or a dry lease. A wet lease is any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember. Leasing an aircraft without the crew is considered a dry lease. Typically, in the case of a dry lease, the lessee (renter) exercises operational control of the aircraft. Conversely, the lessor (owner) exercises operational control in a wet lease.

Aircraft owners can evade compliance with the applicable certification and operating rules of 14 CFR parts 121 and 135 governing air carriers and commercial operators through devious leases and conditional sales contracts. This evasion of compliance makes it appear that the lessees and conditional buyers are responsible for operational control when they do not have that responsibility. This knowing or unknowing assumption of responsibility creates a serious problem in air safety and may involve legal liabilities. As a pilot hired to fly a leased aircraft, here are some red flags.

- ✚ Am I the flight's lessor (owner) and pilot?
- ✚ Did the lessor (owner) schedule me for this flight?
- ✚ Is the lessor (owner) paying me directly for this flight?
- ✚ Am I required to coach the passengers on what to say in the event of an FAA ramp check?
- ✚ Have I been discouraged by the lessor (owner) or others to answer questions about the operation from passengers or the FAA?
- ✚ If there are maintenance issues, must I call the lessor (owner)?
- ✚ Does the lessor (owner) provide the aircraft and at least one crewmember yet attempt to transfer operational control to the passenger?

If the answer is yes, then you may be at risk of flying an illegal air charter.

Review AC 91-37B, *Truth in Leasing*, for a more comprehensive discussion about aircraft leasing and operational control. If you are considering operating an aircraft under a lease agreement, visit faa.gov/charter and seek the advice of a qualified and experienced aviation attorney to help navigate the many requirements.

We hope this gave you more insight and a clue to keep you safe and prevent an illegal air charter. ➤

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QUESTIONS FOR THE SAFE AIR CHARTER TEAM

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Advisory Circular 61-142, *Sharing Aircraft Operating Expenses in Accordance with 14 CFR § 61.113(c)*
bit.ly/AC61142

Advisory Circular 91-37B, *Truth in Leasing*
bit.ly/AC9137B

Advisory Circular 120-12A, *Private Carriage Versus Common Carriage of Persons or Property*
bit.ly/AC12012A

FAA Safe Air Charter Webpage
faa.gov/charter

