



# Let's Keep You Out of Illegal Charter Traps

## Air Charter Safety for Everyday Operations



*File Modified for EMI GRR Summer 2023 FAAS Team Presentation v2*



**Federal Aviation  
Administration**

# Michael Roth

# ATP/CFI-CFII-MEI-AGI FAASTeam Rep (EMI)

- Fly exclusively for my own business and with my family today.
- Previously worked as a corporate pilot and flight instructor.
- Passionate about aviation for business and aviation safety.
- Knowledgeable regarding tax implications and liability issues.
- More information on my personal website **MikeRoth.com**



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# Jason Blair

# ATP/DPE/CFI-CFII-MEI FAASTeam Rep (GRR)

Jason Blair is an active single and multi-engine instructor and FAA Designated Pilot Examiner with 5,000+ hours total time and 3,000+ hours instruction given.

In his role as a DPE he has issued over 2400 pilot certificates

He writes for multiple aviation publications and actively works within the general aviation industry.

More about Jason and much of his writing can be found at:  
[www.JasonBlair.net](http://www.JasonBlair.net)



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# POP Quiz

## Scenario 1, part 1.

You are a commercial pilot who owns a 6-seat Piper Saratoga.

You would like to fly to Madison, Wisconsin to go to a football game with five (5) buddies.

**Can you share operating expenses?**



# POP Quiz

## Scenario 1, part 2.

But after you drop off five your (5) buddies in Madison, you get a call to return to your Point of Origin to pick up 5 more buddies. Now all 11 of you are going to the game.

**Can you do this?**



# Agenda

- **Introduction** – Stay Out of Trouble
- **It's a Hot Topic On your Commercial Checkride!**
- **Key Concepts** – Illegal Operations, Operational Control
- **Illegal Charter** – Forms They Take, Holding Out
- **Pilot Privileges and Limitations** – Private/Commercial
- **Expense Sharing** – Do's and Don'ts
- **Resources**



Task: Target Investigation

16:18:10

03/02/2019

Easting: 520812.80

Heading: 198.61

Northing: 5518513.32

Depth: -67.70

Altitude 0.42



# Key Concepts

Operations conducted under part 91 that should be flown under part 119 air carrier or operating certificate.

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

## Examples include:

- Wet leases disguised as dry leases (“sham” dry lease)
- Improper flight sharing or expense sharing
- Individual leases. For example:
  - Blackbird, and similar flight/ride sharing apps to hold out to the public
  - Improper “Dry Lease Pools”



# Key Concepts

## “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.”

# Key Concepts

## Indicators of Operational Control\*

Who is providing:

- Aircraft
- Pilots
- Maintenance
- Insurance
- Flight Management

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

# **Key Concepts**

## ***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 (ACC) or Operating Certificate (OC) under part 119 of this chapter
- **So, when are you required to hold an ACC?** Generally speaking, when you are carrying persons or property for compensation or hire:
  - “**Persons or Property**” – someone other than a crewmember
  - “**Compensation or Hire**” – e.g., not only obtained through “holding out” as a common carrier, but also when any reimbursement is made in any amount and any kind in exchange for the flight.

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# Illegal Charter

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## *The Why*

- Clueless, Careless and Criminal
- Offset expensive costs of aircraft ownership
- Avoids fees & taxes, e.g., FET
- Avoids costly expense of FAA certification and continuing oversight
- Competitive advantage over a legitimate operator

**\*Hence to Make Money**

# Illegal Charter

## *What Does an Illegal Charter Look Like?...*

- “Sham” Dry Leasing (*common form of illegal charter*)
  - AC 91-37B helps determine operational control and legitimacy of dry lease
  - Explain the “sham”
- Certificate Holders
- “Demo” Flights
- “Fake” Flight Instruction
- Misuse of Expense Sharing (*see AC 61-142*)

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# Illegal Charter

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## *Holding Out-Why It's Important*

- **AC 120-12A Private vs Common Carriage**
- **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

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# Elements of Holding Out

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- May be accomplished through agents
- Holding out by reputation or word of mouth
- Advertising and signs
- Internet/Social Media



craigslist

# Elements for Compensation

- **Compensation is broadly defined by the FAA**
  - 1) Money or the promise of money
  - 2) Good will
  - 3) Expectation of future business
  - 4) Nominal charges such as “free transportation by air”
  - 5) Accruing flight time



# Pilot Red Flags



- If the company provides the aircraft and at least one crewmember, yet attempts to transfer operational control to a consumer
- A lack of a safety briefing or passenger briefing cards
- Evasiveness to questions or concerns. Legitimate operators are transparent and helpful.
- If the passengers are coached by anyone on what to say or do if an FAA aviation inspector meets the aircraft at its destination.



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# Privileges & Limitations

## *Private*

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- The privileges and limitations conferred upon pilots are separate and distinct from the operational authority required to conduct the flights.
- § 61.113 Private pilot privileges and limitations: PIC
- In general, you cannot act as PIC for compensation or hire.
- In general, you cannot act as PIC of an aircraft that is carrying passengers or property for compensation or hire
- Exceptions...expense sharing...AC 61-142

# Privileges & Limitations

## *Commercial*

- 14 CFR § 61.133 - Commercial pilot privileges and limitations
- Can act as PIC for compensation or hire
- Can act as PIC of an aircraft carrying persons or property for compensation or hire
- Be careful! You cannot hold out to provide transport...Flytenow & Blackbird cases
  - *The privileges and limitations conferred upon pilots are separate and distinct from the operational authority required to conduct the flights.*

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# Expense Sharing

## *Do's & Don'ts*

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- AC 61-142 Sharing Aircraft Operating Expenses in Accordance with 14 CFR § 61.113(c)
- A pilot (also applies to Commercial and ATP) exercising private pilot privileges may share expenses with passengers within the constraints of § 61.113(c).
- The only operating expenses that may be shared are specifically listed in § 61.113(c). Those expenses are fuel, oil, airport expenditures, or aircraft rental fees.

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# Expense Sharing

## *Do's & Don'ts*

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- The FAA has consistently interpreted § 61.113(c) to mean that a private pilots have a **common purpose** with his or her passengers and to have his or her own reason for traveling to the destination.
- Private pilots who want to share expenses under § 61.113(c) must not “hold out” to the public or a segment of the public as being willing to furnish transportation to any person who wants it.

### **Always Remember...**

The privileges and limitations conferred upon pilots are separate and distinct from the operational authority required to conduct the flights.

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# POP Quiz

## Scenario 2, part 1.

A commercial pilot owns his own airplane and is asked by someone to fly them to Las Vegas.

The pilot is offered reimbursement for the cost of fuel and hours on the airplane owned by the pilot.



**Can you do this legally?**

# POP Quiz

## Scenario 2, part 2.

A commercial pilot owns his own airplane and is asked by someone to fly them to Las Vegas.

The pilot is offered reimbursement for the cost of fuel and hours on the airplane owned by the pilot.

**Can you share expenses?**



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# When is it “Commercial Activity Vs. Private Carriage?”

- Is the aircraft generating revenue/profit/benefit?
- Is the pilot being compensated? (\$\$ or other methods)
- Is the service available to the public? (What constitutes “the public”?)

*If the answer to any two or more of these activities, your activity is likely to require an operators certificate. It is unlikely to meet the test of being truly “private carriage.”*



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# When is it “Commercial Activity Vs. Private Carriage?”

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Example Scenario:

*A pilot (Suzy) is hired to fly for a pilot (George) who owns their own aircraft but lost their medical. George will employ Suzy to fly his aircraft for personal and business flights. Suzy will get a day rate of \$800.00 to fly George's Piper Malibu.*

*Private or Commercial Carriage?*

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# When is it “Commercial Activity Vs. Private Carriage?”

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## Example Scenario:

*A pilot (Suzy) is hired to fly for a pilot (George) who owns their own aircraft but lost their medical. George will employ Suzy to fly his aircraft for personal and business flights. Suzy will get a day rate of \$800.00 to fly George's Piper Malibu. BUT, George's friend also needs to get places. So, George will charge his friend Alex \$1,500 / hour of use of the aircraft and the \$800.00 he pays Suzy to fly for the day.*

*Private or Commercial Carriage?*

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# When is it “Commercial Activity Vs. Private Carriage?”

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## Example Scenario:

*A pilot (Suzy) is hired to fly for a business owner who owns an AirBNB on an island. It's hard to get to the island, so the owner will include the transportation to their guests from a nearby mainland airport to the island as a part of their rental fee for the cottage. You get hired by the business to fly the Cessna 310 from the island to the mainland and pick up customers who will be staying for the weekend. The customers are not billed separately for the flight; it is included as a part of their stay cost.*

*Private or Commercial Carriage?*

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# When is it “Commercial Activity Vs. Private Carriage?”

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Example Scenario:

*A CFI has been asked by their FBO employer to fly a customer from airport XYZ to airport ZYX in the flight school’s Cirrus SR22. The customer, Icarus, wants to have an “introductory” lesson and happen to get to a business meeting that morning. As a CFI, can or should you do this flight? What concerns might you have?*

*Private or Commercial Carriage?*

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# What is “Compensation” when considering if a flight is a commercial activity?

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- Certainly payment in money counts
- Trade for goods and/or services?
- Future benefits?

*Many have tried to get creative and get around something being considered a “commercial activity” by just not having money change hands for the services. Any direct tangible benefit that is given in trade for flight services might make a flight be considered a commercial activity.*

# Resources Available

- FAA website: [www.faa.gov/go/safeaircharter](http://www.faa.gov/go/safeaircharter)
- National Air Transportation Association (NATA) website: [avoidillegalcharter.com](http://avoidillegalcharter.com)
- [hotline.faa.gov](http://hotline.faa.gov)
- Local Flight Standards Office website: [www.faa.gov/go/fsdo](http://www.faa.gov/go/fsdo)
- FAA Safety Team website: [www.faasafety.gov](http://www.faasafety.gov)





Search

Safe Air Charter Operations

FAA Home > About FAA > Programs & Initiatives > Safe Air Charter Operations

# Safe Air Charter Operations



## Important Information for Pilots & Passengers

### Contact Safe Air Charter

- Common Scenarios with Guidance (PDF)
- General Aviation Dry Leasing Guide (PDF)
- Download Safe Air Charter Fact Sheet (PDF)
- FAA Informational Letter to Pilots (PDF)
- FAA legal interpretation on peer-to-peer flight sharing (PDF)
- FAA letter discussing applicable flight sharing regulations (PDF)
- Important charter guidance for pilots and passengers (PDF)
- U.S. Court of Appeals decision on FAA's flight-sharing interpretation (PDF)

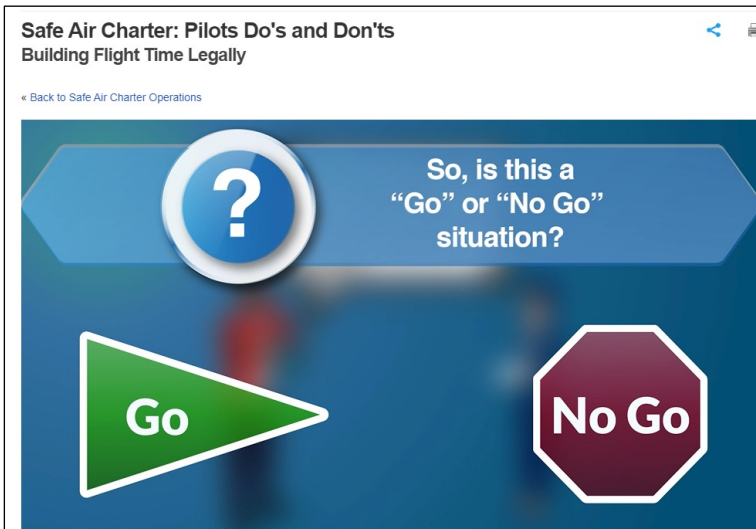
- About SAC
- Red Flags
- Illegal Operations
- Consumers
- Owners/Operators
- FAA Regulations
- Additional Resources
- Enforcement Actions
- Interactives

Illegal air charter operations pose a serious safety hazard to the traveling public. The FAA works aggressively to identify and shut down rogue operators and to help passengers ensure the company they hire is legitimate.



# SNEAK PEEK!

[www.faa.gov/go/safeaircharter](http://www.faa.gov/go/safeaircharter)



## Interactives



# Resources Available

Ensure you fully understand the requirements for legitimate leases and expense sharing as explained in the following FAA Advisory Circulars:

- [AC 61-142 – Provides guidance on how a pilot may share flight expenses with passengers](#)
- [AC 91-37B – Defines "Truth in Leasing" which defines operational](#)
- [AC 120-12A – Defines Common v. Private Carriage and the four p  
common carriage](#)





# Safety Management Systems (SMS) Coming to General Aviation



<https://www.faa.gov/about/initiatives/gasafetyoutreach>



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# Questions?

***FAASTeam***  
*Safer Skies Through Education*



**FAA**  
Aviation Safety



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