



The FAA Continues Down the Path of Enforcement Against “Illegal Charters”

By James W. Cooling

Since revising its strategies to come down on companies that may be performing operations that the FAA deems to be “illegal charters,” the FAA has shown that they mean business when investigating and enforcing the rules. We have received many calls from clients recently because the FAA has either called or sent them a letter and has asked for a “meeting” to discuss their operations. The FAA is looking at all of the facts and circumstances surrounding these operations, trying to determine if the entity should be required to hold a Part 135 certificate or whether they have appropriately structured their operations such that they are under Part 91, including proper dry leasing in certain cases.

To help raise awareness around illegal charters, the FAA, along with the National Air Transportation Association (NATA), has created the Safe Air Charter program. The program provides resources and information to increase awareness of the safety and legal issues associated with illegal charters. The FAA also formed a Special Emphasis Investigations Team to investigate complex cases, comprised of experts from the FAA Special Emphasis Investigations Team (SEIT), Flight Standards District Offices (FSDO), the Office of Airports, and the Office of Communications. The FAA also maintained the [Illegal Charter Hotline](#) to report suspected operations.

On May 22, 2020, the FAA followed up on this initiative by issuing an [Informational Letter to Pilots](#) to nearly 500,000 U.S. pilots asking them to be on the lookout for potential operations that do not meet FAA regulations. The letter starts by stating that “[t]he FAA recognizes that there is a trend in the industry towards using computer and cell phone applications to facilitate air transportation by connecting potential passengers to aircraft owners and pilots willing to provide professional services. Some of these applications enable the provision – directly or indirectly – of both an aircraft and one or more crewmembers to customers seeking air transportation.” The FAA’s message was clear – the pilots are ultimately in operational control and should be responsible for understanding that each flight is in compliance with FAA regulations: “to engage in air transportation a pilot must hold a commercial or airline transport pilot license and must operate the flights in accordance with the requirements that apply to the specific operation conducted.” The letter went on to explain the basics of operational control, dry leasing, and “holding out,” advising pilots that they can be subject to enforce and to report or seek counsel if they see that could be deemed non-compliance.

It is good to know what to expect in case you are ever dealing with scrutiny or questioning from the FAA. Initially, the FAA may request an informal meeting to understand the type and structure of your operations. In any informal meeting, the FAA may advise that an attorney is not necessary due to the information meeting, but we would suggest contacting an attorney prior to any meeting to review any potential questions that could arise. The initial FAA meeting will likely be with the inspectors from the

local Flight Standards District Office. After the meeting, those inspectors may then take the information back to the FAA counsel's office to determine if any further action is required or a Letter of Investigation is warranted.

The FAA may also ask to review quotes, invoices, leases, and other documentation related to your operations. For larger aircraft, any dry lease would have been filed with the FAA under the Truth-in-Leasing requirements, so there should be no surprises. For quotes and invoices, the FAA will be looking to be sure that the aircraft and pilots are not be provided as a package, and that the aircraft owner/lessor and the pilot services company are not acting in concert. Again, it is suggested that you consult an attorney before providing any of this information to an inspector.

One fact that we often seen leading to FAA scrutiny is when only one pilot flies for all of the lessees of a certain aircraft. The FAA wants to see that an available group of pilots exists and that the lessees of the aircraft have freedom to select any pilot of their choosing. In reality, the availability of only one pilot may very well be due to the fact that there are simply no pilots available in geographical proximity to the airport. It may also be because insurance carriers are creating higher standards for pilots in order to maintain a reasonable policy for the aircraft. It will ultimately be up to the FAA to determine the facts and circumstances in a scenario like this. You should also consider that having a specific pilot approved under the aircraft owner's aircraft insurance policy is important for insurance purposes, but is a negative fact with regard to operational control, putting operators in a lose-lose situation.

Assuming the operations are in compliance with FAA regulations, you should expect a letter or correspondence from the FAA confirming this. However, if the FAA does seek to an enforcement case, it could come as a suspension or revocation of the pilot certificate(s) for operating flights without meeting Part 135 requirements, or an action against the operator in the form of a civil penalty. It can take years for an investigation and resulting penalty to be finalized. In June 2018 the FAA issued a civil penalty of \$3.3 Million to The Hinman Co in Michigan. This was the largest-ever civil penalty issued against a private company, and was based on alleged illegal charter in the form of timesharing agreements operated to make a profit without a Part 135 certificate on more than 800 flights.

Since the Hinman case, the FAA has continued on its track of bringing enforcement actions against both pilots and operators:

- In December 2018, the FAA proposed a \$624,000 civil penalty against a California operator for conducting 16 flights for paying passengers without the requisite operating certificate. This followed only a few months after a proposed \$167,500 civil penalty against the same operator for using unqualified pilots.
- In March 2020, the FAA issued an emergency revocation of an operating certificate for operations on Boeing 757s and a 737, including flights with sports teams, that were not authorized charter flights.

- In April 2020, a \$1.5 Million proposed civil penalty was issued by the FAA against a Texas operator for conducting 114 unauthorized flights for hire in the U.S. and Mexico.
- Also in April, 2020, a \$220,000 civil penalty was issued by the FAA against a North Carolina operator for conducting 18 flights without qualified pilots.
- In May 2020, a \$5.89 Million civil penalty against an Atlanta, Georgia operator for conducting 270 allegedly illegal charter and cargo flights was issued by the FAA.
- In August 2020, a \$576,400 civil penalty against a Florida operator, alleging 26 illegal for-hire flights between airports in Florida and the Bahamas, was issued by the FAA.

This is an abbreviated list of enforcement actions and does not list all enforcement taken by the FAA since 2018. It does, however, demonstrate that the FAA is enforcing and will continue to enforce operations that it sees as illegal charter. Be sure that you, your pilots, and any other members of your operation understand exactly how and why your operation is legal. Doing so should help prevent any unwanted encounters with the FAA.