

A CANDID DISCUSSION WITH THE FAA'S SAFE AIR CHARTER TEAM

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A Candid Discussion with the FAA's Safe Air Charter Team

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For more than two decades after the Wright Brothers' first flight, the U.S. government had little to no rules or standards regarding the transportation of passengers or property for compensation or hire; however, with the enactment of the 1926 Air Commerce Act,² and associated promulgation of the original Air Commerce Regulations, “legal” charter and its converse, “illegal charter,” became the law of the land.³

An air charter — also known as commuter or on-demand operations under 14 C.F.R. part 135 — requires a higher level of pilot training and certification, maintenance procedures, and safety rules, than pilots who simply take family or friends for an airplane ride.

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. FAA inspectors perform more frequent checks on pilots, crewmembers, and aircraft than they do on private pilot operations. Pilots undergo regular proficiency checks to maintain their FAA certifications.

Illegal charter⁴ is a complicated subject and there is a lot to unpack. It is very profitable—up to the point where the FAA, Department of Transportation (DOT), Department of Justice (DOJ), or worse—plaintiff's attorney, sends the bill.

How an individual or entity ends up in an illegal charter operation is usually the result of one

¹ The author thanks Coats Law Firm, FAA, and others, for their support.

² Air Commerce Act, May 20, 1926, ch. 344, 41 Stat. 568 (codified as 49 U.S.C. § 171, *et. seq.*).

³ *See*, Chapter 1, § 1, *Licensing law*; Air Commerce Regulations, effective December 31, 1926, citing § 1, Air Commerce Act of 1926.

⁴ This article is limited to those operations that should be conducted in accordance with 14 C.F.R. part 135, and certificated under 14 C.F.R. part 119.

of three things: *ignorance, indifference, or intentionally*. Regardless, the liabilities involved can be, as the credit card ad says, “priceless.”

As a retired 36-year FAA Attorney and Aviation Safety Inspector, I have seen plenty of illegal charter cases. I investigated a lot of them, as well as litigating many others. I also wrote the FAA’s Illegal Charter Course which is taught to Aviation Safety Inspectors.

Statutory and Regulatory Background

Pilots and owner/operators must understand the statutory and regulatory background. This begins before an aircraft is purchased; how the aircraft is ultimately owned; how it is operated; who is operating it (operational control); leases; as well as the pilots’ involvement in all of this.

Congress defines an “air carrier” as a person⁵ who “undertakes by any means, directly or indirectly, to provide” the “transportation of passengers or property by aircraft as a common carrier for compensation.”⁶ Additionally, pursuant to 49 United States Code (U.S.C.) §§ 41101⁷ and

⁵ See 49 U.S.C. §§ 40102, 41101, 41102 and 41110 requirements for an air carrier or commercial operator to be a U.S. citizen, and the definition of “U.S. citizen” and “person.”

⁶ See *id.*, §§ 40102(a)(2), (5), and (25).

⁷ 49 U.S.C. § 41101, Requirement for a certificate: (a) General.--Except as provided in this chapter or another law--(1) an air carrier may provide air transportation only if the air carrier holds a certificate issued under this chapter authorizing the air transportation; (2) a charter air carrier may provide charter air transportation only if the charter air carrier holds a certificate issued under this chapter authorizing the charter air transportation; and (3) an air carrier may provide all-cargo air transportation only if the air carrier holds a certificate issued under this chapter authorizing the all-cargo air transportation.

41102,⁸ citizens of the United States⁹ may not engage in air transportation¹⁰ unless they hold a certificate of public convenience and necessity authorizing them to provide air transportation as an air carrier.

“Air transportation” includes the transportation of passengers or property by aircraft as a common carrier for compensation between two places in the United States or between a place in the United States and a place outside of the United States.¹¹ The definition is contained within the term, “Interstate air commerce.”

What’s a commercial operator you ask? The regulations define a commercial operator as 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 carrier¹² The definition further states that "[w]here 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

⁸ 49 U.S.C. § 41102 General, temporary, and charter air transportation certificates of air carriers: a) Issuance.-- The Secretary of Transportation may issue a certificate of public convenience and necessity to a citizen of the United States authorizing the citizen to provide any part of the following air transportation the citizen has applied for under § 41108 of this title: (1) air transportation as an air carrier.

⁹ United States Air Carrier defined, 14 C.F.R. § 1.1 (2024).

¹⁰ Air transportation means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft. 49 U.S.C. § 40102(a)(5); 14 C.F.R. § 1.1 (2024).

¹¹ 49 U.S.C. §§ 40102(a)(5), (a)(23), and (a)(25). “Air transportation” means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft. The definition is contained within the term, “Interstate air commerce.” The transportation must be interstate in order to constitute air transportation, which requires an air carrier certificate as opposed to an air operator certificate. *See* 49 U.S.C. § 40102(a)(5).

¹² 14 C.F.R. § 1.1 (2024).

profit.”¹³

Both the regulatory definition of a commercial operator and the common law definition of common carriage include a *compensation* element.¹⁴ I will address common carriage first, and then define compensation.

So what is the definition of common carriage you ask? There is none! Common carriage, in the context of air service, consists of the *holding out* or provision of air transportation to the public for compensation or hire.¹⁵ Although the FAA Act¹⁶ does not define the term “common carriage,” the FAA has interpreted this term in accordance with its common-law meaning.¹⁷ The four

¹³ *See id.*

¹⁴ *See e.g.*, Adm’r v. Wagner, NTSB Order No. EA-4081, 1994 WL 49600 (1994), *pet. denied*, Wagner v. N.T.S.B., 86 F.3d 928 (9th Cir. 1996); FAA Legal Interpretation Letter from Mark W. Bury, Assistant Chief Counsel for Int’l L., Legis., and Reg., to Rebecca B. MacPherson, 2014 WL 4185826 (Aug. 13, 2014).

¹⁵ *See, e.g.*, Adm’r v. Decruz, NTSB Order No. EA-5827, 2017 WL 4404282 (2017), *aff’d*, Decruz v. Elwell, 2018 WL 5919197 (D.C. Cir. 2018); Adm’r v. Woolsey, 7 N.T.S.B. 1152 (1991), *aff’d*, 993 F.2d 516, (5th Cir. 1993), *reh’g denied*, 3 F.3d 441 (5th Cir. 1993), *cert denied*, 511 U.S. 1081 (1994); Voyager 1000 v. C.A.B., 489 F.2d 792 (7th Cir. 1973), *cert. denied*, 416 U.S. 982 (1974); Las Vegas Hacienda v. CAB, 298 F.2d 430 (9th Cir. 1962), *cert. denied*, 369 U.S. 885 (1962); Consolidated Flower Shipments, Inc. v. C.A.B., 16 C.A.B. 804 (1953), *aff’d*, 213 F.2d 814 (9th Cir. 1954); Intercontinental, U.S., Inc., Enforcement Proceeding, 41 CAB 583 (1965); Sky King, Inc., violations of 49 U.S.C. §§ 41101 and 41712, Order 2002-10-18, 2002 WL 32341097 (2002); Airmark Aviation, Inc., violations of 49 U.S.C. § 1372, Order 92-2-14, (1992); and Viscount Air Services, Inc., violations of §§ 401 and 411 of the Federal Aviation Act and 14 C.F.R. § 201.6, Order 92-8-26, 1992 WL 206253 (1992).

¹⁶ *See* Public Law 85-726; 72 Stat. 737 (1958), 49 U.S.C. App. 1301, et. seq.

¹⁷ *See generally*, Las Vegas Hacienda v. C.A.B., 298 F.2d 430 (9th Cir. 1962), *cert. denied*, 369 U.S. 885 (1962). *See* AC No. 120-12A, *Private Carriage Versus Common Carriage of Persons or Property*, (Apr. 24, 1986); Flytenow, Inc. v. F.A.A., 808 F.3d 882 (D.C. Cir. 2015), *cert. denied*, 580 U.S. 1047 (2017); CSI Aviation Servs.,

elements of common carriage¹⁸ are set forth in Advisory Circular (AC) 120-12A, *Private Carriage Versus Common Carriage of Persons or Property*.¹⁹ They are:

- (1) a holding out of a willingness to;
- (2) transport persons or property;
- (3) from place to place; and
- (4) for compensation.

This "*holding out*," which makes a person a common carrier, can be done in many ways and it does not matter how it is done. The internet, social media, signs, advertising, business cards and flyers, are the most direct means of "*holding out*," but are not the only ones. Reputation is enough!²⁰

A "*holding out*" may be accomplished through the actions of agents, agencies, or salesmen

Inc. v. Dep't of Transp., 637 F.3d 408 (D.C. Cir. 2011); Adm'r v. Woolsey, 7 N.T.S.B. 1152 (1991), *aff'd*, 993 F.2d 516, (5th Cir. 1993), *reh'g denied*, 3 F.3d 441 (5th Cir. 1993), *cert denied*, 511 U.S. 1081 (1994) (noting FAA's definition is "in relevant respect the same as that found at common law").

¹⁸ See *Flytenow, Inc. v. F.A.A.*, 808 F.3d 882 (D.C. Cir. 2015), *cert. denied*, 580 U.S. 1047 (2017). The FAA's AC defines "common carriage" as service meeting four elements: (1) a holding out of a willingness to (2) transport persons or property (3) from place to place (4) for compensation. See e.g., *Adm'r v. Woolsey*, 7 N.T.S.B. 1152 (1991), *aff'd*, 993 F.2d 516, (5th Cir. 1993), *reh'g denied*, 3 F.3d 441 (1993 5th Cir.), *cert denied*, 511 U.S. 1081 (1994); *Adm'r v. Decruz*, NTSB Order No. EA-5827, 2017 WL 4404282 (2017), *aff'd*, *Decruz v. Elwell*, 2018 WL 5919197 (D.C. Cir. 2018).

¹⁹ AC 120-12A, *Private Carriage Versus Common Carriage of Persons or Property* (Apr. 24, 1986).

²⁰ See *Adm'r v. Decruz*, NTSB Order. No. EA-5827, 2017 WL 4404282 (2017), *aff'd*, *Decruz v. Elwell*, 2018 WL 5919197 (D.C. Cir. 2018), see also, *Adm'r v. Woolsey*, 7 N.T.S.B. 1152 (1991), *aff'd*, 993 F.2d 516, (5th Cir. 1993), *reh'g denied*, 3 F.3d 441 (1993 5th Cir.), *cert denied*, 511 U.S. 1081 (1994).

who may, themselves, procure passenger traffic from the general public and collect them into groups to be carried by the operator.²¹ Now that we know what common carriage is, let's turn to the term, compensation.

The FAA has continually maintained a longstanding policy that defines compensation in very broad terms.²² It does not require profit, a profit motive, or the actual payment of funds. Instead, compensation under the FAA's view is the receipt of *anything of value*, including valuable good will.²³ Reimbursement of expenses (fuel, oil, transportation, lodging, meals, etc.), accumulation of flight time, and goodwill in the form of expect future economic benefit, may be considered compensation.²⁴

Compensation is broadly defined as well by the National Transportation Safety Board (NTSB);

²¹ See Decruz.

²² See e.g., FAA Legal Interpretation Letter from Mark W. Bury, Assistant Chief Counsel for Int'l L., Legis., and Reg., to Robert P. Silverberg, 2013 WL 3490729 (July 2, 2013); FAA Legal Interpretation Letter from Rebecca B. MacPherson, Assistant Chief Counsel for Regs., to Alan M. Dias, 2011 WL 6739585 (Dec. 19, 2011); FAA Legal Interpretation Letter from Rebecca B. MacPherson, Assistant Chief Counsel for Regs., to Joseph A. Kirwan, 2005 WL 4994728 (May 27, 2005).

²³ See e.g., FAA Legal Interpretation Letter from Rebecca B. MacPherson, Assistant Chief Counsel for Regs., to Joseph A. Kirwan, 2005 WL 4994728 (May 27, 2005); FAA Legal Interpretation Letter from Rebecca B. MacPherson, Assistant Chief Counsel for Regs., to Michael Goldman, 2006 WL 3792079 (June 14, 2006).

²⁴ See e.g., Adm'x v. Clair Aero & Brathwaite, NTSB Order No. EA-5181, 2005 WL 2289590 (2005); Adm'x v. Briggs, NTSB Order No. EA-4502, 1996 WL 716742 (1996); Adm'r v. Mims, 7 N.T.S.B. 849 (1991); FAA Legal Interpretation Letter from Donald Byrne, Assistant Chief Counsel to John W. Harrington, 1997 WL 34613525 (Oct. 23, 1997).

e.g., money, goodwill, expectation of future business, intangible benefits,²⁵ and nominal charges such as “free transportation by air” included in the passenger’s hotel fee.²⁶ The issue is not whether the pilot earned a profit from the flight(s), but whether he or she charged the passengers for providing transportation they had requested for their own purposes.²⁷

Title 14 C.F.R. part 119, *Certification: Air Carriers and Commercial Operators*, establishes the general certification requirements for air carriers and commercial operators.²⁸ In order to

²⁵ See *Adm’r v. Grimmett*, NTSB Order No. EA-5541, 2010 WL 1135915 (2010). The Board held that intangible rewards such as goodwill or the expectation of future economic benefits—can also constitute “compensation.” See also, *e.g.*, *Adm’x v. Maxson*, NTSB Order No. EA-5183, 2005 WL 2824186 (2005); *Adm’x v. Murray III*, NTSB Order No. EA-5061, 2003 WL 22472202 (2003); *Adm’r v. Mims*, 7 N.T.S.B. 849 (1991); *Adm’r v. Blackburn*, 4 N.T.S.B. 409 (1982), *aff’d sub nom.*, 709 F.2d 1514 (9th Cir. 1983); *Adm’r v. Rountree*, 2 N.T.S.B. 1712 (1975), *pet. denied*, 556 F.2d 588 (9th Cir. 1977).

²⁶ See *Las Vegas Hacienda, Inc. v. C.A.B.*, 298 F.2d 430, *cert. denied*, 369 U.S. 885 (1962); *M. & R. Investment Co. v. C.A.B.*, 308 F. 2d 49 (9th Cir. 1962).

²⁷ See *Adm’r v. Mealey*, NTSB Order No. EA-3634, 1992 WL 409313 (1992). The NTSB has held that there can be compensation where the payment covers only costs and no actual profit is shown, see *e.g.*, *Adm’r v. Rountree*, 2 N.T.S.B. 1712 (1975), *pet. denied*, 556 F.2d 588 (9th Cir. 1977); *Consolidated Flower Shipments, Inc. v. C.A.B.*, 16 C.A.B. 804 (1953), *aff’d*, 213 F.2d 814 (9th Cir. 1954). or even if the money was later returned. See *Adm’r v. Henderson*, 3 N.T.S.B. 4029 (1981). Even the mere expectation of payment is enough to constitute compensation. See *e.g.*, *Adm’r v. Southeast Air, Inc., Cunningham, and Rolf*, 4 N.T.S.B. 517 (1982); *Adm’r v. Wagner*, NTSB Order No. EA-4081, 1994 WL 49600 (1994), *pet. denied*, *Wagner v. N.T.S.B.*, 86 F. 3d 928 (1996); *Adm’r v. Wallace*, NTSB Order No. EA-5461, 2009 WL 2178657 (2009). Even if the pilot decided not to bill for the flight, it is still compensation. See *e.g.*, *Adm’r v. Plowman*, 5 N.T.S.B. 960 (1987); *Adm’r v. Southeast Air, Inc., Cunningham, and Rolf*, 4 N.T.S.B. 517 (1982).

²⁸ See 14 C.F.R. part 119 (2024).

conduct common carriage, with few exceptions, a person must be issued an air carrier or air operating certificate under 14 C.F.R. part 119, *Certification of Air Carriers and Commercial Operators*. Depending upon the operating regulations applicable, the person receiving certification and associated operations specifications, will be approved and authorized to conduct operations under either 14 C.F.R. part 121, 125, or 135.²⁹ Title 14 C.F.R. § 119.5(g) states that, “no person may operate as a direct air carrier or as a commercial operator without, or in violation of, an appropriate certificate and appropriate operations specifications.”³⁰ If a person wishes to conduct common carriage, as a commercial operator, he or she must obtain the proper FAA certificate and operations specifications.

As stated supra, there are a very few exceptions to the part 119 certification requirements. They are enumerated in 14 C.F.R. § 119.1(e)(1)-(11). In other words, but for their inclusion in § 119.1(e), these operations would have to be conducted under part 135. The list includes, but is not limited to:

- Student Instruction;
- Nonstop Commercial Air Tours;
- Ferry or training flights;
- Aerial work operations;
- Sightseeing flights conducted in a hot air balloon;
- Nonstop flights conducted within a 25–statute–mile radius of the airport of takeoff carrying persons or objects for the purpose of conducting intentional parachute operations;
- Helicopter flights conducted not more than 25 statute miles from the point of takeoff;

²⁹ Part 135, Operating requirements: Commuter and on demand operations is what most are familiar.

³⁰ *Id.* § (g) (2024).

- Operations conducted under part 133 of this chapter or 375 of this title;
- Emergency mail service conducted under 49 U.S.C. 41906;
- Operations conducted under the provisions of § 91.321 of this chapter;
- Small UAS operations conducted under part 107 of this chapter; *etc.*

Some mistakenly believe, and advise, that Subpart F of 14 C.F.R. part 91 also excepts persons from part 119 rules conducting common carriage. This is false. Section 91.501(a) specifically prohibits operations “involving common carriage.”

Actual Costs Of Illegal Charter Cases

A jury in the United States District Court, S.D. Texas, Houston Division, to be an illegal charter operator, and ordered to pay nearly \$240,000 for operating 14 flights contrary to the Federal Aviation Regulations (14 C.F.R.s).³¹ In another case, the Federal Aviation Administration (FAA) revoked the operating certificate of a part 125 operator for alleged illegal charter flights.³² In August 2021, the FAA proposed a \$2,191,938 civil penalty against an aircraft management company and other associated parties for allegedly conducting illegal charter flights.³³ The following month, the FAA proposed a \$1.38M civil penalty against another company and other

³¹ *U.S. v. King and Ascent Aviation, LLC*, 4:19-cv-01418 (S.D. Tex. 2021), *judgment aff'd*, 2023 WL 3848362 (2023).

³² <https://www.faa.gov/about/initiatives/safecharteroperations/rogue-operators-news-enforcement-actions>, viewed March 19, 2024.

³³ <https://www.faa.gov/about/initiatives/safecharteroperations/rogue-operators-news-enforcement-actions>, viewed September 30, 2021. Subsequent settlement announced by U.S. Attorney's Office, Southern District of Indiana, in the amount of \$187,500.

associated parties for allegedly conducting illegal charter flights.³⁴ The largest proposed civil penalty against an illegal charter operator to date by the FAA is \$4 Million.³⁵ That case involved at least 798 passenger-carrying revenue flights in a two-year period without holding an air carrier certificate or required operations specifications. The FAA also found that 262 of the flights were operated by a pilot who did not hold an Air Transport Pilot (ATP) certificate with the appropriate type rating.

FAA Regulations Governing charter Operations

- 14 C.F.R. part 91
- 14 C.F.R. part 119
- 14 C.F.R. part 135

Operational Requirements

Private pilots may neither act as pilot-in-command (PIC) of an aircraft for compensation or hire nor act as a PIC of an aircraft carrying persons or property for compensation or hire, pursuant to 14 CFR (Code of Federal Aviation Regulations FARs). To meet the operational requirements, the pilots must be employed (as a direct employee or agent) by the certificate holder with operational control of the flight, e.g., a part 135 certificate holder, or must herself or himself hold a certificate issued under 14 CFR part 119.

³⁴ <https://www.faa.gov/about/initiatives/safecharteroperations/rogue-operators-news-enforcement-actions>, viewed March 19, 2024. (Settled March 2024, Defendants agreed to pay a \$700,000 civil penalty).

³⁵ David Michaels, *FAA proposes \$4 million fine against rogue charter operator*: <https://www.dallasnews.com/business/airlines/2009/12/04/faa-proposes-4-million-fine-against-rogue-charter-operator/>.

A dry-lease agreement is an aircraft leased with no crew. Whenever you pilot an aircraft subject to a dry-lease agreement, you should consider the following:

Is it truly a dry-lease agreement whereby the lessee, in practice and agreement, has operational control in accordance with AC 91-37B and the Federal Aviation Regulations? If not, then flights operated under this agreement may be illegal charters and you, the pilot, may be in violation of the FARs for those flight operations.

Dry Lease Agreements

Are you as the pilot also providing the aircraft involved in the dry-lease? If so, you may be in violation of the FARs for those flight operations if you do not have the appropriate operational authority (part 135 certificate) to conduct the flights.

Another common pitfall to be aware of is the “sham dry lease” or the “wet lease in disguise.” This situation occurs when one or more parties act in concert to provide an aircraft and at least one crewmember to a potential passenger. One could see this, for example, when the passenger enters into two independent contracts with the party that provides the aircraft and the pilot. One could also see this when two or more parties agree to provide a bundle, e.g., when the lessor of the aircraft conditions the lease – whether directly or indirectly – to entering into a professional services agreement with a specific pilot or group of pilots. This type of scenario is further discussed in Advisory Circular (AC) 91-37B, Truth in Leasing.

Flight-sharing

Flight-sharing, according to Section 61.113(c) of Title 14 of the CFR, allows for private pilots to share certain expenses. Pilots may share operating expenses with passengers on a pro rata basis when those expenses involve only fuel, oil, airport expenditures, or rental fees. To properly

conduct an expense sharing flight under 61.113(c), the pilot and passengers must have a common purpose and the pilot cannot hold 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 example, advertising in any form (word of mouth, website, reputation, etc.) raises the question of “holding-out.” Note that, while a pilot exercising private pilot privileges may share expenses with passengers within the constraints of § 61.113(c), the pilot cannot conduct any commercial operation under part 119 or the less stringent operating rules of part 91 (*e.g.*, aerial work operations, crop dusting, banner towing, ferry or training flights, or other commercial operations excluded from the certification requirements of part 119).

Importantly

1. Dry leases must not include the pilot, directly or indirectly.
2. If a certificated part 135 operator will use an aircraft in its operation that is not on their Operations Specifications; you do not want to do business with that operator.
3. Avoid flying the same companies on dozens of “demo” flights.
4. Do not put the aircraft in a single asset LLC and allow the LLC to operate it.
5. Do not have a management company supply your plane and the pilots.
6. Someone’s desire to fly to San Antonio and the pilot’s desire to fly an illegal charter trip to San Antonio does not connote a common purpose contemplated by the rules.
7. Don’t hold yourself out to transport persons or property for compensation or hire just because you hold a commercial or ATP certificate.

Conclusion

Illegal charter, no matter the cause, occurs daily. A private pilot flying passengers from A to B for hire, no common purpose, under the guise of “cost sharing.” A corporate operator flying its customers or suppliers, and charging them for the transportation. A commercial pilot flying pipeline patrol and transporting passengers from place to place as part of each trip for compensation. An aircraft owner supplies his or her aircraft and pilot to anyone who wants transported using sham dry leases. Perhaps its ignorance. Calling a 1-800 number and setting up a flight department using an unknown CPA firm in some other state in response to an internet search is just not advisable. Following the advice of in-house counsel, who are not familiar with FAA requirements, focusing on limiting liability exposure, or only tax benefits, and in the process, setting up the company in a corporate flight department trap. Incidentally, no amount of passenger coaching or briefing cards can overcome a sham dry lease.

In Texas, there are a number of attorneys that are Board Certified in Aviation Law. They are listed on the Texas Board of Legal Specialization’s (TBLS) website. They know these issues and can properly advise you or your client on how to comply with applicable FAA requirements, IRS requirements, State requirements, as well as limiting liability. This is the best way to ensure that you, whether an owner, operator, pilot, or attorney, *have a comfortable seat in a legally flown aircraft, and not one in a courtroom.*

Glossary Of Terms

Air carrier means a person who undertakes directly by lease, or other arrangement, to engage in air transportation.

Air commerce means interstate, overseas, or foreign air commerce or the transportation of mail

by aircraft or any operation or navigation of aircraft within the limits of any federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

Air transportation means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.

All-cargo operation means any operation for compensation or hire that is other than a passenger-carrying operation or, if passengers are carried, they are only those specified in § 121.583(a) or § 135.85 of this chapter.

Charter air carrier means an air carrier holding a certificate of public convenience and necessity that authorizes it to provide charter air transportation.

Charter air transportation means charter trips in air transportation authorized under this part.

Commercial air tour means a flight conducted for compensation or hire in an airplane or helicopter where a purpose of the flight is sightseeing. The FAA may consider the following factors in determining whether a flight is a commercial air tour:

- (1) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;
- (2) Whether the person offering the flight provided a narrative that referred to areas or points of interest on the surface below the route of the flight;
- (3) The area of operation;
- (4) How often the person offering the flight conducts such flights;
- (5) The route of flight;

(6) The inclusion of sightseeing flights as part of any travel arrangement package;

(7) Whether the flight in question would have been canceled based on poor visibility of the surface below the route of the flight; and

(8) Any other factors that the FAA considers appropriate.

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. (The Major Enterprise Test).

Direct air carrier is a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation. A Direct air carrier must have an FAA-issued air carrier certificate and must hold the appropriate economic authority from the department of transportation.

Dry Lease is not defined by statute or regulation. Leasing of an aircraft without the crew is considered to be a dry lease. Normally, in the case of a dry lease, the lessee exercise operational control of the aircraft.

Indirect air carrier is a company that contracts aircraft and crew services from an air carrier or commercial operator but may not engage in control over the operational function of any flight. An indirect air carrier will act as an agent for either the customer or the air carrier, and their advertising must make it clear that a certificated air carrier or commercial operator provides the transportation.

Interstate air commerce means the carriage by aircraft of persons or property for compensation

or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between a place in any state of the united states, or the District of Columbia, and a place in any other state of the United States, or the District of Columbia; or between places in the same state of the United States through the airspace over any place outside thereof; or between places in the same territory or possession of the United States, or the District of Columbia.

Interstate air transportation means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft--

(A) between a place in--

(i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) the District of Columbia and another place in the District of Columbia; or

(iv) a territory or possession of the United States and another place in the same territory or possession; and

(B) when any part of the transportation is by aircraft.

Intrastate air transportation means the carriage of persons or property as a common carrier for compensation or hire, by turbojet-powered aircraft capable of carrying thirty or more persons, wholly within the same State of the United States.

Kind of operation means one of the various operations a certificate holder is authorized to conduct, as specified in its operations specifications, i.e., domestic, flag, supplemental, commuter,

or on-demand operations.

Non-common carriage means an aircraft operation for compensation or hire that does not involve a holding out to others.

On-demand operation means any operation for compensation or hire that is one of the following:

(1) Passenger-carrying operations conducted as a public charter under part 380 of this chapter or any operations in which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative that are any of the following types of operations:

(i) Common carriage operations conducted with airplanes, including turbojet-powered airplanes, having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, except that operations using a specific airplane that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) of this chapter for those operations are considered supplemental operations;

(ii) Non-common or private carriage operations conducted with airplanes having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds; or

(iii) Any rotorcraft operation.

(2) Scheduled passenger-carrying operations conducted with one of the following types of aircraft with a frequency of operations of less than five round trips per week on at least one route

between two or more points according to the published flight schedules:

(i) Airplanes, other than turbojet powered airplanes, having a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

(ii) Rotorcraft.

(3) All-cargo operations conducted with airplanes having a payload capacity of 7,500 pounds or less, or with rotorcraft.

Operate, with respect to aircraft, means use, cause to use or authorize to use aircraft, for the purpose (except as provided in § 91.13 of this chapter) 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.

The term, “operational control,” is not defined in the FA Act. Definitions are found in 14 C.F.R. part 1, § 1.1 (2024). It is further described in AC 91-37B. Operational control involves three basic areas: Aircrew, Aircraft, and Flight Management.

Passenger-carrying operation means any aircraft operation carrying any person, unless the only persons on the aircraft are those identified in §§ 121.583(a) or 135.85 of this chapter, as applicable. An aircraft used in a passenger-carrying operation may also carry cargo or mail in addition to passengers.

Person, in addition to its meaning under § 1 of title 1, includes a governmental authority and a trustee, receiver, assignee, and other similar representative. 49 U.S.C. § 40102(a)(37). Person

means an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them.

United States air carrier means a citizen of the United States who undertakes directly by lease, or other arrangement, to engage in air transportation.

Wet lease means any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember. A wet lease does not include a code-sharing arrangement.

When common carriage is not involved or operations not involving common carriage means any of the following:

- (1) Non-common carriage.
- (2) Operations in which persons or cargo are transported without compensation or hire.
- (3) Operations not involving the transportation of persons or cargo.