

FAA WARNS OF ILLEGAL CHARTER SCHEMES

STORY BY LINDSEY MCFARREN

In December 2019, the Federal Aviation Administration cautioned BlackBird Air, a web-based application, which claimed it “facilitates” the lease of aircraft and, separately, the securing of pilot services, that the pilots participating in the company’s business model are illegally “holding out” commercial air transportation without proper authority. The agency also published a notice warning passengers and pilots of the risks of illegal charter operations.

This is just the latest in FAA action regarding illegal charter operations. There are many flavors of illegal air charter models, and the proliferation of web-based applications and the “gig” economy have led to even more creative schemes, with the FAA and legitimate players in the charter industry trying to keep up.

What is a “legal” charter operator? What schemes make up illegal charter operations? How can you identify and avoid illegal charter operations? Why does it even matter?

The intent of this article is not to be a comprehensive history or deep analysis of illegal charter, as a complete view of the issue could fill a book. Rather, the intent is to provide

a high-level overview of illegal charter and encourage passengers, pilots, and others involved in the charter industry to be diligent about their relationships and agreements and to demonstrate how far the tentacles of enforcement can reach.

Legal air charter operations

A legal air charter operator typically has authority from the FAA under 14 CFR 119 and – for the purposes of this article – 14 CFR 135, which grant the operator authority to conduct commercial operations, that is – accept compensation for air transportation.

A few key points help determine a legal charter arrangement. These include:

1. Compensation – Does the aircraft operator have authority to collect money for air transportation?
2. “Holding out” – Does the aircraft operator have authority to “hold out” or advertise to the public?
3. Operational control – Does the certificated air carrier maintain operational control of flight – meaning authority to initiate, conduct and terminate a commercial flight?

Traditionally, air charter operations are conducted under 14 CFR 135. A typical charter arrangement involves a passenger securing use of the entire aircraft, with pilots, from a Part 135 operator for a fee and on demand – that is, at the passenger’s requested date, time and location. It is possible to obtain legal charter flights through an air charter broker who usually shops a number of Part 135 operators to find the best arrangement for the passenger – again for the entire aircraft, with pilots, at the passenger’s requested date, time and location.

Those are the two scenarios most common to chartering under Part 135 – directly from the Part 135 operator or through an air charter broker.

There are also legal charter models that do not involve the entire aircraft. A Part 135 operator may have FAA authorization to conduct commuter operations, thereby selling transportation by the seat and on a fixed schedule. Some reputable operators also offer various models of per-seat on-demand operations.

Illegal air charter schemes

In the old days, illegal charter involved an aircraft owner selling seats on his or her plane to friends. Today, the proliferation of technology and the growing acceptance of the “gig” economy have led to new schemes and increasingly creative schemes.

The FAA letter to BlackBird is the latest in web-based applications that purport to be aircraft and pilot a la carte menus in which a passenger separately chooses an aircraft and pilot services, or which offer some method of “flight sharing.” Offering an aircraft and separately offering pilot services is not a new scheme, by the way, and in some specific scenarios can be a legal arrangement. BlackBird is unique in its customer interface, which feels familiar to customers who are now accustomed to obtaining a myriad of services through web-based applications.

In the scenarios above, the aircraft owners and pilots do not hold authority to conduct commercial operations. The web-based applications and similar schemes are, according to the FAA, attempting to circumvent regulations

by “facilitating” the lease of an aircraft and separately securing pilot services from qualified individuals. Unfortunately, as the FAA highlighted in its letter to BlackBird, those pilots do not have authority to “hold out” or advertise for commercial air transportation.

Why does it matter? Capitalism, baby!

Why should a passenger, pilot, operator, or anyone for that matter care if an air charter operation is legal or not? After all, if someone is able to turn a dating app for passengers, pilots and aircraft into cold hard cash, isn’t that just capitalism?

The answer is illegal charter operations can be detrimental to everyone involved in the aviation industry and can certainly be harmful to passengers.

Legal charter operators face stricter training requirements for pilots; are required to participate in drug and alcohol testing programs; must hold different insurance policies; often must participate in specific maintenance programs; and are subject to greater FAA oversight, in general.

Illegal air charter operations circumvent these requirements, not only placing their passengers at risk but also the aircraft owner, who after an accident might find his/her

insurance does not cover commercial operations; pilots, who can face severe enforcement action if they were complicit in the scheme; and the aviation industry as a whole, which often must defend itself after an accident or high-profile enforcement case.

Pilots should be particularly uncomfortable with the prospect of involvement in illegal charter operations. In the BlackBird letter, the FAA goes so far as to ask the company what, if any, action it intends to take regarding the “jeopardy to pilots who participate in BlackBird’s services.” Pilots involved in illegal charter operations are subject to civil penalties and/or airman certificate suspensions or even revocations. In extreme cases in which fraud or other crimes are alleged, pilots may face criminal prosecution.

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Passengers – often unknowingly – place themselves at risk by not receiving the minimum safety standard for commercial operations as established by the FAA. They can also find themselves sideways with the IRS, as legitimate charter operators are required to collect federal excise taxes.

Legal charter operators are victims, too, since every flight lost to an illegal charter operator means less revenue for a legal one. Legal charter operators accept the additional costs associated with upholding Part 135 requirements only to see unfair competition by illegal schemes.

What to look for

Watch for red flags of illegal charter schemes. Passengers should ask for multiple quotes from charter providers. If a quote is too good to be true, it probably is. Be suspect of any arrangement that results in a contract with or billing from multiple sources; for example, one contract or invoice for the aircraft and another contract or invoice for the pilot.

Always verify a charter operator's status at www.faa.gov/about/initiatives/safe_charter_operations and be especially concerned by an entity that hesitates to provide their air carrier certificate number or basic insurance information.

If you're a pilot, do some due diligence before flying for a new entity or even allowing your name and qualifications to be used on an app or website. Be suspicious of any scheme in which you bill the passengers directly for pilot services or of flights on which the passengers seem to be strangers. Remember – traditional air charter involves the use of an entire aircraft, so passengers are typically familiar with each other in some manner. Your livelihood depends on you being alert to suspicious activity and asking questions when the legality of an operation is in doubt.

If you suspect an entity is conducting illegal charter operations, you can report the activity anonymously or with your name to the Air Charter Safety Foundation at 888-SKY-FLT1 (888-759-3581). This hotline is managed by the ACSF on behalf of the FAA. All reports are submitted to the FAA for further investigation. □

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