
Flight Sharing Background

The FAA has long held that any receipt of a benefit by a pilot from a passenger, for example the sharing of flight expenses, constitutes compensation and is therefore a commercial activity. In order to ensure the safety of the flying public, the FAA requires pilots offering these services be subject to additional licensing and oversight requirements. However, the FAA also sensibly created a limited exception to that requirement (14 CFR 61.113) as a way for persons with a common connection to share the expenses related to a trip with a mutual purpose. For example, a pilot who flies friends, family or co-workers to a common destination like a resort or conference.

The exception, however, must be viewed in proper context. It was never constructed in such a way as to say the flight in question is NOT commercial. Rather, it was created as an exception to the requirement that such flights be conducted by a commercial pilot and, depending on circumstances, a licensed air carrier.

Recently, entrepreneurs have attempted to use that limited exception to bypass the safety, training and aircraft maintenance requirements for pilots who wish to carry passengers. Pilots in the contested operations would be able to provide advertised transportation service as private pilots in private aircraft. This means the passengers, with whom the pilots admittedly have no connection, are receiving air transportation without the numerous regulatory safety nets required for commercial air carriers.

Private pilots:

- Can have as few as 35 hours of flight time
- Are not required to hold ratings permitting flight in poor weather
- Are not covered by DOT drug and alcohol testing programs
- Are generally not required to file flight plans
- Are not required to have on-going training and checking other than a flight review with an instructor (the review could be as short as 1 hour flying and 1 hour of ground review) once every two years
- Have no requirement for minimum liability insurance

The FAA has determined that flights facilitated by online flight-sharing websites like Flytenow, AirPooler and others do not generally fall under the limited exception and are commercial flights that require additional pilot experience, training and aircraft maintenance. Though the proposed communication platform is new, the idea is not. Previously, the FAA took a similar position related to a business model utilizing a 1-800 telephone number.

The FAA's position, as presented in legal interpretations requested by Flytenow and AirPooler, stated that pilots using online flight-sharing websites are likely in violation of the agency's common carriage requirements. Flytenow challenged the interpretation which was ultimately upheld by the U.S. Court of Appeals. The Court declined Flytenow's request for an en banc rehearing. Flytenow then petitioned the U.S. Supreme Court to hear their case. On January 9, 2017, the Supreme Court denied Flytenow's petition.

The legislative fixes now sought by flight sharing services would provide carte blanche authority for private pilots to establish public transportation services. It would undermine the distinction that rightly exists between private aircraft flights where expenses are shared by individuals with a common purpose and commercial flights where members of the public are transported by aircraft for remuneration.