

Attention All 134.5 Operators, Your FAA Inspector Is Coming

Amundsen Davis Aerospace Alert

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We don't have a crystal ball but it doesn't take magic to recognize the warning signs to operators conducting illegal charter flights. For those who aren't familiar, Part 91 of the Federal Aviation Regulations ("FARs") governs flights operated for the benefit of the owner or lessee of an aircraft, where the occupants (which may or may not include the pilot) have operational control over the flight. Part 135 governs what are commonly known as charter flights, where the operator makes flights available for members of the public, and the company providing the airplane (not the occupants) has operational control over the flight.

For obvious reasons, Part 135 operations are required to comply with more rigorous maintenance, training, supervision, and accountability standards. Part 135 flights are more expensive due to the costs that have to be absorbed into the hourly rental costs, but Part 135 flights are also subject to Federal excise taxes, whereas most Part 91 flights don't trigger these taxes. For the operator competing for business in the tight charter market, the motivations to skirt the regulations are plain to see. Frequently, sophisticated passengers have unreasonable pricing expectations and may pressure operators to risk FAA enforcement to provide cheaper flights. Mix in the pressures placed on the charter market from the web, with all sorts of apps and brokers offering discount charter flights, and the temptation to provide a Part 135 flight at Part 91 prices (sometimes known as a Part 134.5 flight) can become overwhelming.

The National Air Transportation Association (NATA) doesn't offer any sympathy for operators who don't play by the rules. In conjunction with the recent FAA General Aviation Safety Summit, on October 24, 2017, this association of 2300 aviation businesses called upon the FAA to step up investigations and enforcement against illegal charter operations. NATA requested the agency review the resources it dedicates to identifying and stopping these operations, and NATA's President added, "we hope the agency will work with NATA and legitimate operators to combat this growing problem before an accident or incident involving illegal charter mars the entire general aviation community's safety record." *NATA*.

NATA's call to action should be particularly worrisome at this juncture because the FAA enforcement machine has been sitting idle for a few years now. Between the two-year old compliance philosophy program which de-emphasizes certificate action, and the implementation of the pilots' bill of rights, FAA

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enforcement action has dropped off dramatically over the past several years. We have corroborated this decline in FAA enforcement action through our network of aviation attorneys across the country, FAA counsel, NTSB law judges, and data provided by the FAA.

For those concerned about vulnerabilities within their records, heed this warning to get your records in order. Your principal operations inspector and/or the safety inspector who makes a spontaneous inspection has the right to review the essential records for your flights. Some of you may need to consider self-disclosure. If you aren't certain if a flight can be legally operated under Part 91, it probably can't. Ideally, you want a flawless set of records that is beyond reproach. If nothing else, we encourage all operators to be particularly vigilant going forward. When it comes to flying charter, begging forgiveness is no substitute for compliance.

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