Regulatory Compliance
Thursday, January 21st | 1:00 p.m. – 2:30 p.m.

PRESENTED BY:
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DOT Versus FAA

- Both Regulate Aviation
  - DOT Areas – Primarily Economic
  - FAA Areas – Primarily Safety
DOT Involvement in Business Aviation

- Part 298 Exemption for Part 135 Operations
  - Illegal Commercial Operations
- Advertising
  - Unfair and Deceptive Trade Practices
FAA Involvement in Business Aviation

- Pilot and Maintenance Technician Certification
- Registration and Airworthiness of Aircraft
- Part 91/135 Operating Structures
- Operation of the Aircraft in the NAS and Abroad
Question

Does the FAA regulate aviation economic issues?

a. Yes
b. No
Pilot and Maintenance Technician Certification

• Part 61 Governs Certification of Pilots
  • Must hold proper pilot certificate, rating, and medical certificate.
  • Must meet experience and currency requirements in Parts 61 and 91.
  • Insurance, audit and industry standards often exceed FAA minimums.
• Part 65 Governs Certification of Mechanics and Repairmen
  • Must hold proper certificate and rating.
  • Must meet the experience and currency requirements in Part 65, and Part 145 (if applicable).
  • Insurance, audit and industry standards may exceed FAA minimums.
Aircraft Registration Requirements – Part 47

• Must be: U.S. Citizen, Permanent Resident, or meet “Based and Primarily Used Test”

• Specific Requirements for Corporate Entities
  • Partnership – No Corporate Entity Partners
  • Corporations – Incorporated in US, President and 2/3 of Board are US Citizens, Actual Control Test, and 75% of Voting Interests Owned/Controlled by US Citizens

• Re-Registration Required Every 3 Years
Airworthiness – Part 43 and Part 91, Subpart E

• Must Have Valid Airworthiness Certificate
• Generally Manufacturer’s Recommended Maintenance Program is Used
• Other Options for Large Aircraft:
  • Continuous Airworthiness Maintenance Program (CAMP) – Section 135.411(a)(2)
  • Approved Aircraft Inspection Program (AAIP) – Section 135.419
  • Any other program approved by the Administrator
FAA Requirements for Operating Structures

• What Type of Operations are Being Considered?
• Part 91 v. Part 135
  • Major distinction: “for compensation or hire”, some exceptions in Part 91
  • Operational Control
Part 135 Operations

• Requires a Part 135 Certificate
  • Owner can obtain its own certificate
  • Owner can enter into a charter Management/Service arrangement
    • All flights operated by air carrier under Part 135, or
    • Owner can retain the ability to operate its own flights under Part 91
What Does A008 Require in Charter Management/Service?

• Owners Must Transfer “possession and custody” of the Aircraft to Air Carrier
• Air Carrier Must Have Knowledge of and Control:
  • All Attributes of All Part 135 Flights and Maintenance
  • All Individuals it Uses to Comply With the First Requirement
Part 91 Structure Fundamentals

• Who will operate the aircraft?
  • Registered Owner?
  • Dry Lessee?
  • Multiple Operators?

• Operator versus Passenger
  • Operator accepts operational control
  • Passenger does not
Operational Control

• Operational Control - with respect to a flight, means the exercise of authority over initiating, conducting or terminating a flight
  • Includes the acceptance of responsibility for safety and regulatory compliance
• If a user is unwilling to accept operational control responsibilities then the user cannot “operate” the aircraft under Part 91
Sole-Purpose Entities

• Sole Purpose Entities may own aircraft, but may not operate aircraft on passenger carrying flights for compensation or hire
  • Compensation = every form of compensation, including but not limited to money, non-monetary exchange, and good will
  • Contributions by an LLC member to the LLC can be viewed as compensation
Illegal Sole Purpose Entity Structure

Ownership
Contributions

Widget Co.

Sole Purpose, LLC

Operator
Dry Leases

- Dry Lease = Lease of aircraft without crew
  - If the Part 91 operator is someone other than the registered owner generally that operator must dry lease the aircraft from the registered owner
  - Dry Leases for aircraft with an MTOW of more than 12,500 lbs must comply with Truth in Leasing requirements in § 91.23
Truth in Leasing – Section 91.23

- Applicable to “Large aircraft”
- Lease must be in Writing
- Copy of Lease must be mailed to FAA Technical Section within 24 hours of Execution
- Notify nearest FSDO at least 48 hours in Advance of First Flight
- Carry Copy of the Lease on the Aircraft
Part 91 Dry Lease Structure

Widget Co.  
*Operator*

Sole Purpose, LLC

Ownership  
Dry Lease
Other Part 91 Options

• 91.501(b)(5)
• Time Sharing
• Joint Ownership
• Interchange
FAR Section 91.501(b)(5)

“Carriage of officials, employees, guests, and property of a company on an airplane operated by that company, or the parent or a subsidiary of the company or a subsidiary of the parent, when the carriage is within the scope of, and incidental to, the business of the company”
Time Sharing – Section 91.501(b)(6)

• “an arrangement whereby a person leases his airplane with flight crew to another person, and no charge is made for the flights conducted under that arrangement other than those specified in paragraph (d) of this section”
  • The items specified under (d) are essentially two times actual cost of fuel, plus a few other specific expenses
• Truth in Leasing is Applicable
“an arrangement whereby one of the registered joint owners of an airplane employs and furnishes the flight crew for that airplane and each of the registered joint owners pays a share of the charge specified in the agreement”
Interchange – Section 91.501(b)(6)

• “an arrangement whereby a person leases his airplane to another person in exchange for equal time, when needed, on the other person’s airplane, and no charge, assessment, or fee is made, except that a charge may be made not to exceed the difference between the cost of owning, operating, and maintaining the two airplanes”

• Truth in Leasing is Applicable
Scenario

User 1 – Individual, U.S. Citizen

User 2 – Company, U.S. Citizen, has a major enterprise
User 1 – Individual, U.S. Citizen

User 2 – Company, U.S. Citizen, has a major enterprise

Operator

91.501(b)(5) (No Charge)
Another Option – Time Sharing

User 1 – Individual, U.S. Citizen

Timeshare (Limited Reimbursement)

User 2 – Company, U.S. Citizen, has a major enterprise

Operator
Another Option – Dry Lease

User 1 – Individual, U.S. Citizen
W-2 Employer of Pilots Operator

Dry Lease

Pilot Service Agreement

User 2 – Company, U.S. Citizen, has a major enterprise Owns Aircraft Operator
Other Unique Scenarios/Pitfalls

• NBAA Small Aircraft Exemption
  • 91.501 Only Applicable to “Large Aircraft”
  • Exemption Extends 91.501 to smaller aircraft provided conditions are met.
• Carriage of Elected Officials – Section 91.321
• Letters of Authorization – RVSM, MEL…etc.
Question

Is it legal to operate a Part 91 aircraft in a sole purpose company?

a. Yes
b. No
FAA Jurisdiction Does Not Stop at the Border

- Part 91, Subpart H – Foreign Aircraft Operations and Operations of U.S. Registered Civil Aircraft Outside the United States
  - US Law applies “so far as it is not inconsistent with applicable regulations of the foreign country”
Who Can Name the Accident?

Platinum Jet Management

Paul Brassington
Michael Brassington
Andre Budhan

CHARTERS

Joseph Singh
Brian McKenzie

MAINTENANCE

Contract Pilots

Francis Vieira  Steven Smyth  John Collier  "Hawk" Hunley  Larry Stansell  David Contreras  Carlos Salaveria  John Kimberling
You’ve Made a Mistake. Now what?

• Depends on when and how the mistake is discovered.
  • Some, but limited, self reporting options under Part 91.
• FAA Enforcement Action versus DOT Enforcement Action versus DOJ
Question:

How Often Can A Pilot File A “NASA” Form?

A: Once in Five Years
B: Once Per Year
C: Every Day
Self Disclosure - ASRS

- AC 00-46E - NASA Aviation Safety Reporting System (ASRS) and Section 91.25
  - Applicable to all Individual Certificate Holders (i.e. Pilots, Mechanics, Flight Attendants…etc.)
  - Requirements:
    - Inadvertent
    - Did not involve a criminal offense, accident, or action which discloses a lack of qualification or competency
    - No prior FAA enforcement action within 5 years
    - ASRS report filed within 10 days of when person became aware, or should have become aware of the violation
  - May still have a finding of violation, but no civil penalty or suspension will be imposed.
Self Disclosure - VDRP

• AC 00-58B – Voluntary Disclosure Reporting Program (VDRP)
  • Applicable to Part 135 carriers and Fractional Companies
  • Requirements:
    • Immediate Notification of FAA after Detection, before FAA learns of it by other means
    • Inadvertent
    • Does not indicate a lack, or reasonable question, of qualification
    • Immediate action taken
    • Comprehensive Fix
  • Letter of Correction in lieu of other Enforcement Action
Know Your Rights

- FAA Investigative Process
  - Ramp Inspection
  - Facility Inspection
  - Letter of Investigation/Notice of Investigation
Know Your Rights

• Appeal Rights
  • Informal Conference
  • Administrative Law Judge
  • Appeal to the Full Board
  • Appeal to Federal District Court-NEW
  • Circuit Court of Appeals
Informal Conference

- Notice of Proposed Certificate Action
- Enforcement Investigative Report
  - You Will Know What They Know
ALJ Hearing

• Order Has Been Issued
  • Appeal “Stays” the Order
• Full Review of Facts & Law (NEW!)
  • Previously, NTSB Was Bound by FAA Interpretations
• Judge Comes To You
• Preponderance Of Evidence
  • Federal Rules of Evidence
  • NOW APPLY
Appeal to Full Board

- No Hearing or Oral Argument
- Board Typically Respects Credibility Findings of ALJ
- Board Decisions are Precedents for the ALJs and Board in Future Decisions unless Overruled by Federal Courts
Appeal to Federal District Court

- NEW
- Federal District Court Has Authority to Review Facts & Law
- Federal District Court Judge Not Bound by Decision of ALJ or Board
Appeal to Circuit Court of Appeals

• Appeal May Stay Effectiveness of Order
• Lowest Priority on the Docket
• Real Judges, But It May Not Get Past the Clerks
• Review of Law Only
  • Arbitrary & Capricious Standard
• Funnel Concept
Question:

If a FAA Inspector Asks to See Your Certificate, Should You Hand It Over?

A: Yes
B: No
C: Maybe
FAA Investigations

• No Constitutional Rights
  • But, FAA Now Required to Inform of Investigation
• Inspectors Are Instructed To Put You At Ease
• No Inspector Will Run Off With Your Certificates
FAA Investigations

• NEVER LIE!!
• Falsification=
  • Revocation
  • Criminal Fines
  • Jail!
FAA Investigations

- They Cannot (and will not) Legally Detain You
- 6 Months For Notice of Proposed Civil Penalties/Certificate Action to Individuals
- 2 Years For Notice of Proposed Civil Penalties or Certificate Actions against Companies
Respond in 10 Days or the File Will Be Processed Without the Benefit of Your Comments!

So what?
Letter of Investigation

“I Didn’t Mean To”
Generally, Not A Defense
Letter of Investigation

• Only Submit Proof of Defense
  • If You Are Positive You’re Right,
  • Or
  • If You’re Positive You’re Wrong & They Can Prove It
PBR

- Changes Under Pilot’s Bill of Rights:
  - Increased Access to EIR & Tapes
  - Notification of Investigation
  - NTSB & Courts Can Interpret Law
  - Evidence Rules
  - Appeal to Federal District Court
• What Pilot’s Bill of Rights Did NOT Do:
  • Despite the Name, PBR Did Not Make Aviation “Privileges” = Constitutional Rights
  • Still No Right to a Jury of Your Peers
  • Still Administrative Law
  • Still No Property Rights in Your Certificates
Normal Inspections

• What Would Your Mother Expect?
  • Clean Floor, Organized Files
  • Fresh Coffee at least
  • Cookies or Donuts?
  • Hospitality = Demonstrate Compliance Attitude
• Broad FAA Subpoena Power Recently Re-affirmed, So Don’t Hesitate to Make Copies of Any Files You Are Required to Keep On Site
• Don’t Have Anything Else On Site
ATC Wants a Call-

- If ATC Wants a Call
  - You Are Not Required to Call
  - Should You Call?
    - Do You Have All Your Facts?
      - You don’t have the tape, but they do
    - The Call Will be Recorded and May Be Used as Evidence
  - But: Sometimes- These Calls Work-
If You Need to Talk to the NTSB:

- REVIEW PART 830
- Know Definitions of “Accident” vs. “Incident”
  - Accident Requires "Substantial damage"
  - Know Your Reporting Requirements
"Aircraft accident" means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives *substantial damage*. 
Substantial Damage
means damage or failure which adversely affects the structural strength, performance, or flight characteristics of the aircraft, and which would normally require major repair or replacement of the affected component. Engine failure or damage limited to an engine if only one engine fails or is damaged, bent fairings or cowling, dented skin, small punctured holes in the skin or fabric, ground damage to rotor or propeller blades, and damage to landing gear, wheels, tires, flaps, engine accessories, brakes, or wingtips are not considered "substantial damage" for the purpose of this part.
• **Immediate Notification**
  • Aircraft Accident or Aircraft Missing
  • Flight control system malfunction or failure;
  • Inability of any required flight crewmember to perform normal flight duties as a result of injury or illness;
NTSB

• **Immediate Notification**
  • Failure of any internal turbine engine component that results in the escape of debris *other than out the exhaust path*;
  • In-flight fire;
  • Aircraft collision in flight;
• **Immediate Notification**
  
  • Damage to property, other than the aircraft, estimated to exceed $25,000 for repair (including materials and labor) or fair market value in the event of total loss, whichever is less.
  
  • Note: There is No Dollar Amount in Definition of Accident or Substantial Damage
• **Immediate Notification**
  
  • For large multiengine aircraft;
  • (i) In-flight failure of electrical systems;
  • (ii) In-flight failure of hydraulic systems;
  • (iii) Sustained loss of the power or thrust produced by **two or more engines**; and
  • (iv) An evacuation of an aircraft in which an emergency egress system is utilized.
- **Immediate Notification**
  - A complete loss of information, excluding flickering, from more than 50 percent of an aircraft's cockpit displays known as:
    - (i) EFIS;
    - (ii) EICAS;
    - (iii) ECAM; or
    - (iv) PFD, PND and other integrated displays
• **Immediate Notification**
  
  • Airborne Collision and Avoidance System (ACAS) resolution advisories issued either:
  
  • (i) When an aircraft is being operated IFR and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft; or
  
  • (ii) To an aircraft operating in class A airspace.
• Immediate Notification
  • Release of all or a portion of a prop, except when due to ground contact
  • Damage to helicopter tail or main rotor blades, including ground damage, that requires major repair or replacement of the blade(s)
  • Additional Rules For Air Carriers
Question

Does the NTSB require immediate notification of an engine failure?

a. If you lose at least two engines
b. If an engine explodes out the side, rather than out the back
c. a. or b.
d. None of the above
DOT Enforcement

- Typically Begins with a Letter
- Most in Business Aviation result in a Warning or Consent Order
- Appeal Rights?
Questions?

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