

Commercial Pilot Privileges and Limitations

A brief summary of how to remain legally safe
as a commercial pilot.

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Two Privileges

A commercial pilot certificate allows a pilot two important privileges. Per 14 CFR §61.133, commercial pilots can act as pilot in command (PIC) for compensation or hire, or while carrying persons or property for compensation or hire. These privileges come with a caveat: the PIC must be qualified under the applicable regulations that govern that type of operation.

Therein lies much confusion about commercial pilot privileges. “Carrying persons or property for compensation or hire” and “acting as PIC for compensation or hire” are two very separate things.

The former is a situation in which both the pilot and airplane are for hire to do things like transport people, mail, and property. Think airlines, charter companies, and air cargo. Organizations that do this kind of work are called air carriers and are additionally governed under Subchapter G, covering Parts 110-139.

The latter is flying someone else’s airplane for hire, assuming that you are not also flying persons or property for hire in the process. This type of operation is not governed under Subchapter G.

The fundamental challenge in understanding commercial pilot privileges and limitations is determining whether or not an operation involves the carriage of persons or property for hire. This is an area that causes many a commercial pilot applicant to bust a practical test oral exam, and that tricks others into performing actions that they’re legally not authorized to conduct. So, it’s critical to understand this area in detail.

Operational Control

Operational Control is the degree to which customers have control over the operation—whether or not flights dispatch due to weather, fuel loading, destinations, and so on. Generally, the more operational control that customers have, the less regulation is required.

Carrying mail and passengers for hire is heavily regulated because those customers have no operational control. If a passenger does not wish to go they can choose to not board, but that decision will have zero impact on whether or not the flight leaves. If the operation’s employees, namely pilots and dispatchers, deem it safe, the flight will go.

FAA Advisory Circular (AC) 91-37B provides us with the following sample questions to help determine who maintains operational control:

1. Who decides to assign crewmembers and aircraft; accept flight requests; and initiate, conduct, and terminate flights?
2. For whom do the pilots work as direct employees or agents?
3. Who is maintaining the aircraft and where is it maintained?
4. Before departure, who ensures the flight, aircraft, and crew comply with regulations?
5. Who decides when/where maintenance is accomplished, and who directly pays for the maintenance?
6. Who determines weather/fuel requirements, and who directly pays for the fuel?
7. Who directly pays for the airport fees, parking/hangar costs, food, service, and/or rental cars?

Determining whether or not the operation requires an air carrier certificate can be difficult because the world of commercial aviation is full of ambiguity, shady operations, and low-time pilots eager to build time.

We recommend erring on the side of caution should there be any question about whether or not an operation requires an air carrier certificate.

Air Carriers

The focus of this discussion is preventing new commercial pilots who are not conducting operations as an air carrier from acting as such, nevertheless, more context about air carriers may be helpful. Air carriers are governed under 14 CFR Subchapter G, mainly Parts 121 and 135.

Regularly scheduled air carrier operations are governed under Part 121. For simplicity, this includes most airlines from large majors like United Airlines and Delta Air Lines to smaller regional operators like SkyWest Airlines and Mesa Airlines.

Part 135 operations are on-demand charter operations. Kenmore Air, Mokulele, Surf Air, JSX, and Boutique are examples of larger Part 135 operations. Sometimes Part 121 operators will also maintain a Part 135 certificate for certain operations. SkyWest Airlines made recent news for applying this strategy to hire pilots with less experience than required under Part 121.

Consider the customers' operation control in each type of air carrier. It's lower for those flying on Part 121 operators, and so airlines are generally subject to more regulation than on-demand air carriers. Intuitively, United Airlines is required to comply with more regulations than Kenmore Air.

This includes the requirements to serve as a pilot for either operation. As career-aspiring pilots well know, serving as a pilot in a Part 121 operation requires, among other experience, an Airline Transport Pilot certificate, for which pilots are only eligible once they've achieved a minimum of 1,500 hours of flight time.

Private vs. Common Carriage

The next boondoggle we must confront is the distinction between Private and Common Carriage operations. These are common law terms, but they're not well-defined in 14 CFR. Fortunately, Advisory Circular 120-12A further defines them.

Common Carriage is carriage that involves four criteria: (1) a holding out (more about this term later, but basically advertising services) or a willingness to (2) transport persons or property (3) from place to place (4) for compensation. An air carrier certificate is required to conduct common carriage operations.

Private Carriage is carriage that does not involve holding out and is generally long-term.

Distinguishing between private carriage and common carriage involves much ambiguity. The FAA has determined that pilots with 18-24 contracts have been holding out and acting as an air carrier, and meanwhile have upheld an operator as conducting private carriage with 3 contracts. That's a large spread, folks.

AC 120-12A states "persons intending to conduct only private operations in support of other business should look cautiously at any proposal for revenue generating flights which most likely would require certification as an air carrier." In other words, be very careful.

Fractional Ownership

Fractional ownership organizations appear from the outside to be similar to Part 135 operations, except that customers are partial owners of the aircraft and thus the operation does not engage in common carriage. This type of operation is governed by 14 CFR Part 91 Subpart K, which specifically prohibits fractional owners from carrying persons or property for compensation or hire.

Subpart K organizations use shared ownership, an exchange of dry leases, and a management company to allow customers to functionally purchase part of a fleet, which provides them flexibility.

The largest fractional companies include NetJets and FlexJet. Many large fractional organizations also maintain air carrier certificates for when operations need to be conducted on non-program aircraft.

Holding Out

Holding out is a vague term for a pilot implying a willingness to serve a segment of the general public. Examples of holding out include signs, advertising, operating on behalf of an organization if membership/participation is available to a significant segment of the public, or even just having a reputation to serve all.

What New Commercial Pilots Can Do

By now, you may be wondering what exactly a new commercial pilot *can* do other than flying for a business with an air carrier certificate. The good news is that there are several opportunities for low-time commercial pilots, which are well-defined in 14 CFR §119.1(e). Below is a simplified summary of the operations listed, but be aware that many include additional stipulations, such as distance from the departure airport and the size of aircraft involved. Those listed in bold are the most common low-time time-building jobs for new commercial pilots. For specifics refer to 14 CFR §119.1(e). We'll also note that you can advertise your willingness to perform these services because they do not involve the transportation (as in, from place to place) of persons or property for hire.

1. **Student instruction**
2. **Non-stop air tours**
3. **Ferry or training flights**
4. **Aerial work like crop dusting, banner towing, and pipeline patrol**
5. Sightseeing flights in hot air balloons
6. **Flying skydivers**
7. Certain local helicopter flights
8. Helicopter operations under Part 33 (External Load Operations)
9. Emergency mail service
10. Operations under §91.321 (Carriage of Candidates in Elections)
11. Small UAS operations under Part 107

What This Means for a New Commercial Pilot

Operationally, all of this means a few things for a new commercial pilot.

1. While you can be hired as a pilot under Part 61, you cannot function as an air carrier, and you cannot conduct common carriage operations without an air carrier certificate.

2. You can go work for air carriers when you are legally eligible and they hire you.
3. There is a lot of gray area surrounding whether or not a specific operation is engaging in common carriage and thus requires an air carrier certificate. When presented with ambiguity, play it safe and either obtain legal clarification or do not conduct the operation.
4. There are specific commercial operations that are explicitly permitted and are typical time-building jobs like flight instructing or aerial survey.

14 CFR Part 119 Summary

§119.1(a) — Defines what kinds of operations fall under Part 119, stating that it applies to all persons operating or intending to operate:

1. As an air carrier or commercial operator (common carriage)
2. Private carriage with seat configuration of 20 or more passengers or max payload capacity of 6,000lbs or more

§119.1(d) — Exempts fractional ownership operations under Part 91 Subpart K, so long as common carriage is not involved.

§119.1(e) — Defines operations exempt from Part 119, excepting §119.1(a)(2):

1. Student instruction
2. Nonstop air tours meeting certain requirements.
 - i. Configuration of 30 seats or fewer
 - ii. Maximum payload capacity of 7,500lbs or less
 - iii. Start and end at the same airport
 - iv. Conducted within a 25-statute mile radius of the departure airport
 - v. Comply with the Letter of Authorization (LOA) of §91.147
3. Ferry or training flights
4. Aerial work operations, including:
 1. Crop dusting, seeding, spraying and bird chasing
 2. Banner towing
 3. Aerial photography or survey
 4. Fire fighting
 5. Helicopter operations in construction or repair work
 6. Powerline or pipeline patrol
5. Sightseeing flights in hot air balloons
6. Nonstop flights within 25-statute mile radius of the airport for intentional parachute operations
7. Helicopter flights in a 25-statute mile radius if:
 1. No more than 2 passengers carried

2. Day VFR
3. 100 inspection requirement is met
4. Operator notifies Flight Standards office at least 72 hours in advance
5. No more than 6 flights per year
6. Approved by the administrator (FAA)
7. No cargo
8. Operations under Part 133 (Rotorcraft External Load Operations)
9. Emergency mail service
10. Operations under §91.321 (Carriage of Candidates in Elections)
11. Small UAS operations under Part 107

§119.5 - Overview of Air Carrier requirements

§119.7 - Requirement for air carriers to publish Operations Specifications which establish:

1. Authorizations, limitations, and procedures used for each kind of operation
2. Procedures under which each class and size of aircraft is to be used

§119.8 - Air Carriers must use a Safety Management System (SMS)

The rest of the stuff in Part 119 is all about more specific requirements for Air Carriers. And, obviously if you are working for a Part 121 or 135 operator, there will be further regulations under 14 CFR Parts 121 (Airlines) or 135 (Charter) operations.