Commercial Pilot Privileges

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Overview

Reaching 250 and becoming a Commercial Pilot is one of the most rewarding goals a pilot could achieve. However, many pilots at every level become confused by the big mess of regulations regarding commercial privileges. This guide discusses the Commercial Pilot Privileges to help every pilot better understand the rules set forth by the FAA. This guide does not cover ever regulation regarding for hire operations. This is focused around Commercial Pilots for Airplanes, so be sure to check the rules for your particular operation.

Disclaimer

This guide is written by a Flight Instructor, not a lawyer. This guide is not regulatory. If you are unsure if something is legal with the regulations, err on the side of caution.

> If in doubt, consult a lawyer for a legal interpretation or say no. Don't accidentally break a rule because you are unsure. The FAA can suspend or revoke your certificates as well as issue hefty fines.

This guide does not cover the following areas in any detail:

- Glider Towing Operations
- Foreign Commercial Operations
- External Rotorcraft Loads

Basic Privileges and Limitations

Refer to 14 CFR § 61.133. This section describes the privileges and limitations of a commercial pilot. However, it does not contain them in their entirety.

§ 61.133(a)(1):

(1)General. A person who holds a commercial pilot certificate may act as pilot in command of an aircraft -

(i) Carrying persons or property for compensation or hire, provided the person is qualified in accordance with this part and with the applicable parts of this chapter that apply to the operation; and

(ii) For compensation or hire, provided the person is qualified in accordance with this part and with the applicable parts of this chapter that apply to the operation.

This part tells us that a commercial pilot can fly for hire, but they must follow the rules which apply to them. The regulations are split into several parts. Part 61 is about certification. Part 91 is for flight rules. Part 135 is on-demand for hire rules. Part 121 is scheduled for hire rules. Part 119 tells which part to follow regarding for hire operations.

A private pilot must follow Part 91 rules. A commercial pilot must see what their for hire operation falls under and follow those given rules. Most commercial pilots operate until Part 91 unless they are employed by a company which operates under another part such as Part 135.

This section (§ 61.133) also imposes a few limitations as well, but the one of most concern to airplane pilots is § 61.133(b)(1):

(1) A person who applies for a commercial pilot certificate with an airplane category or powered-lift category ratingand does not hold an instrument rating in the same category and class will be issued a commercial pilot certificate that contains the limitation, "The carriage of passengers for hire in (airplanes) (powered-lifts) on cross-country flights in excess of 50 nautical miles or at night is prohibited." The limitation may be removed when the person satisfactorily accomplishes the requirements listed in § 61.65 of this part for an instrument rating in the same category and class of aircraft listed on the person's commercial pilot certificate.

This just limits a Commercial Pilot who does not hold an Instrument Rating. If a Commercial Pilot does not have an Instrument Rating, they cannot fly at night and they must not exceed 50 nautical miles during a cross country flight.

Holding Out and Common Carriage

Many potions of the regulations use the terms “Holding Out”, “Common Carriage”, and “Private Carriage”. To understand the regulations, a Commercial Pilot must fully understand these terms.

Holding Out - Advertising oneself to the public
Common Carriage - Holding out, offering services regularly, or providing services to many clients
Private Carriage - Not holding out and only providing services to a select few customers on an occasional or one-time basis

Examples of Holding Out:

1) Asking a friend if they would like to fly somewhere if they pay you.
2) Making a Facebook post advertising your services.

Examples of NOT Holding Out:

1) Someone notices you are a pilot and approaches you with a request.
2) Belonging to a pilot Facebook post, so someone finds you and asks for your services.

Examples of Common Carriage:

1) A shipping business which ships packages for clients using airplanes.
2) A pilot offering sightseeing flights to a friend.
3) A pilot delivering packages for a client on a regular basis.

Examples of Private Carriage:

1) Flying a client in their own plane to where they would like to go. (Given the pilot did not hold out their services)
2) Flying a package to a friend per their request (no holding out).

This guide describes the terms in an easy to understand way, but the sources of their meanings are derived using several sources.

First, the legal definition of the following must be used:

Common Carrier - an individual, a company or a public utility (like municipal buses) which is in the regular business of transporting people and/or freight. This is distinguished from a private carrier, which only transports occasionally or as a one-time-only event.

Private Carrier - one who provides transportation or delivery of goods for money, just for the particular instance, and not as a regular business. It is distinguished from a "common carrier" which is in the business, such as buses, railroads, trucking companies, airlines and taxis. However, a private carrier may be liable for injuries to anyone who pays or shares the cost of transport.

These two definitions are not very aviation friendly, so refer to Advisory Circular 120-12A. Advisory Circulars are not regulatory in nature, but this Advisory Circular advises pilots on how the FAA interprets and what the FAA intends with the terms “Holding Out”, “Common Carriage”, and “Private Carriage”. Taking this into consideration with the legal definition, a much better understanding is formed.

Part 119 - Applicability

As mentioned before, Part 119 describes which part must be followed for each type of commercial operation. If a type of commercial operation applies to Part 119, then that operation must follow part 121, 125, or 135. If a commercial operation does not apply to Part 119, then it falls under the regular flight rules of Part 91.

The first section to consider is § 119.1(a):

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(a) This part applies to each person operating or intending to operate civil
aircraft -

(1) As an air carrier or commercial operator, or both, in air commerce; or

(2) When common carriage is not involved, in operations of U.S.-registered
civil airplanes with a seat configuration of 20 or more passengers, or a
maximum payload capacity of 6,000 pounds or more.
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Number 2 would not apply to many pilots due to aircraft size. However, consider number 1.

Consider the following definitions from Part 1.1:

- Air carrier means a person who undertakes directly by lease, or other arrangement, to engage in air transportation.
- Commercial operator means a person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property, other than as an air carrier or foreign air carrier or under the authority of Part 375 of this title. Where it is doubtful that an operation is for "compensation or hire", the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit.
- Air commerce means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

When deciding if something is legal, consider who is the "person" when checking if it is a "commercial operator". The "person" in this case is the one who operates the flight. Next, consider what "air commerce" is in regard to the "commercial operator". More importantly, consider what commerce means. Commerce is the exchange of goods or services for money or in kind. Now, take these into consideration with the following scenario.

Scenario:

Tom: Owner of a Cessna 172
Joe: Commercial Pilot

Situation:
Tom wants to fly from Fort Worth to Houston, so he hires Joe. Is Tom a commercial operator? Tom just wants to visit family in Houston.

Answer:
Tom is not a commercial operator because he is not engaging in carriage in air commerce. This is not considered air commerce because Tom is not exchanging goods or services in this flight. Tom is just hiring a pilot for his own aircraft. Also, Joe is not a commercial operator because he is not the operator conducting the flight.

HOWEVER, Tom would be acting as a commercial operator if the purpose of the flight was different. If Tom was using this flight to transport goods to Houston, then it would be considered air commerce making him a commercial operator. Now, if the delivery of these goods were incidental to Tom's business (such as Tom bringing samples to clients to assist with a sale), then it may not be considered air commerce.

Refer to "Green - (1993) Legal Interpretation". It does not cover the same scenario as above, but it will help one better understand when someone is engaging in air commerce or needs a commercial operator certificate (not the same as a commercial pilot certificate).

> In the end, if in doubt, consult an attorney for advice. Also, for clarification on a rule, it is possible to call the local FSDO for clarification. However, if someone at FSDO tells you something which "allows" you to do something in a "gray" area, then be sure to get it in writing.

Returning to part 119, anything which applies to those described above [§ 119.1(a)] are now considered.

Notice § 119.1(c):

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(d) This part does not govern operations conducted under part 91, subpart K
(when common carriage is not involved) nor does it govern operations conducted
under part 129, 133, 137, or 139 of this chapter.
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Operations applicable to part 91, subpart K do not apply to part 119. This will be covered in detail later.

Next, notice § 119.1(e):

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(e) Except for operations when common carriage is not involved conducted with
airplanes having a passenger-seat configuration of 20 seats or more, excluding
any required crewmember seat, or a payload capacity of 6,000 pounds or more,
this part does not apply to -
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This part is VERY important to every commercial pilot! It is a mouthful, but it is just written this way because another part is applicable to the aircraft and operation described above (this is covered later). All this means to commercial pilots, is if your plane has less than 20 seats and cannot hold 6,000 pounds, then the following does not apply to part 119 (thus, they apply to part 91 operations unless applicable elsewhere):
(Refer to § 119.1(e) for the complete list)

- Student Instruction

- Sightseeing Flights - With limitations per § 91.147 and § 119.1(e)(2)
  Be sure to be in compliance with § 91.147 and hold a Letter of Authorization before conducting sightseeing flights. This is covered in more detail later.

- Ferry or training flights

- Aerial work operations:
  - Crop dusting, seeding, spraying, bird chasing (may apply to part 137 and local or city ordinances)
  - Banner towing
  - Aerial photography or survey
  - Fire fighting

    - Helicopter operations in construction or repair work (not applicable to and from the work site)
    - Powerline or pipeline patrol

- Sightseeing flights in hot air balloons [limited by § 61.133(a)(2)(ii) and § 61.133(b)]

- Nonstop parachute jumping flights within 25-statute miles of the airport [limited by part 105]

- Helicopter flights within 25-statute miles from airport if allowed by limitations under § 119.1(e)(7)

- Operations under part 133 or 375 of 14 CFR (this is regarding helicopters with external-loads)

- Emergency mail service conducted under 49 U.S.C. 41906

- Operations under § 91.321 (Carriage of candidates in elections)

- Small unmanned aircraft system conducted under part 107 (Drones)

That is a large list which a commercial pilot may conduct outside of part 119 including common carriage and private carriage. However, notice that many of these rules have limitations elsewhere. These other limitations are also discussed in this guide.

Part 91.1001 - Fractional Programs

Part § 91.1001 describes what is applicable for subpart K. 91, subpart K is mentioned multiple times in part 119 as being excepted from part 119. This means, if an operation falls under subpart K, then the operation can follow the rules of part 91 (including subpart K).

Before continuing, look back at § 119.1(d):

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(d) This part does not govern operations conducted under part 91, subpart K
(when common carriage is not involved) nor does it govern operations conducted
under part 129, 133, 137, or 139 of this chapter.
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It is important to notice that 91, subpart K will NOT apply IF the operation includes common carriage.

Now for a breakdown of 91, subpart K. This part is all about Fractional Ownership Programs. It describes how they work, what they are, and any rules which apply to them. A Fractional Ownership Program is a program in which two or more aircraft are involved and at least one aircraft is partially owned by 2 or more owners. There are more requirements as to what is required for it to be considered a program described in § 91.1001(b)(5). § 91.1001 is important as it provides a definition for many terms used in subpart K.

This subpart has MANY rules which are different from operations one might be used to under part 91.

First, to have a Fractional Ownership Program, several people and aircraft must be involved. These people must have ownership of one of the aircrafts, and one aircraft must be fractionally owned. For airplanes, the minimum ownership is 1/16th, and for rotorcraft, the minimum ownership is 1/32 [§ 91.1001(b)(10)].

Second, there must be a program manager, and each owner involved must have a contract between the program manager which meets the requirements of § 91.1003.

Third, the program must comply with the limitations set forth by § 91.1005. The important takeaway from this section is § 91.1005(a):

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(a) Except as provided in § 91.321 or § 91.501, no owner may carry persons or
property for compensation or hire on a program flight.
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Fractional Ownership Program may ONLY carry people or property for hire if the operation meets § 91.321 (candidates in elections) or § 91.501 (many special exceptions - discussed later in this guide).

Fourth, a program may conduct flights under part 121 or part 135 as specified by § 91.1007.

Fifth, this subpart determines who has operational control for a flight. Referring to § 91.1009(a), an owner has operational control if granted operational control if the program grants them the rights, has directed the aircraft carry passengers or property, and the aircraft is carrying those passengers. Referring to § 91.1009(b), an owner is NOT in operational control of a flight if:

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(1) A program aircraft is used for a flight for administrative purposes such as
demonstration, positioning, ferrying, maintenance, or crew training, and no
passengers or property designated by such owner are being carried; or

(2) The aircraft being used for the flight is being operated under part 121 or
135 of this chapter.
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If an owner has operational control of a flight, the owner is responsible for safe operations and for complying with all rules of part 91. The owner is allowed to delegate tasks as well [§ 91.1011(a)]. On the program manager's side, the program manager must brief each fractional owner about their operator responsibilities upon entry into the program management services contract. There must also be an acknowledgement of this briefing within the services contract. Further details about this briefing is found in § 91.1013.

Finally, the remainder of 91, subpart K [§ 91.1014 - 91.1443] describe how management works, inspections, record keeping, paperwork requirements, large aircraft limitations, and MANY different flight rules.

For further information on 91, subpart K, refer to Advisory Circular 91-84 "Fractional Ownership Programs".