

Pilot Counsel: Complex private privileges

By John S. Yodice

The title of FAR 61.113 is “Private Pilot Privileges and Limitations: Pilot in Command.” The title of the rule belies its scope and complexity. Many, many pilots safely conduct operations under this rule, operations that but for the rule would otherwise be considered commercial, with all the complexities that entails. And, very important, the rule applies not only to private pilots, as the title of the rule seems to suggest, but also to commercial and ATP pilots. That is because commercial and ATP pilots may exercise the privileges of a private pilot within the scope of their higher-grade certificates.

The general part of the rule seems to be fairly well understood. It is the six exceptions to the rule that mostly cause the complexity. In the terms of the general part of the rule, a private pilot may not act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may that pilot, for compensation or hire, act as pilot in command of an aircraft. Stated more simply, a private pilot may not be paid or “compensated,” as that term is expansively interpreted, to act as pilot in command of an aircraft. And, a private pilot may not act as pilot in command of an aircraft carrying passengers or property regardless of who is receiving the compensation for the carriage—again, as “compensation” is expansively interpreted. The six exceptions to the rule are: 1) a flight incidental to a business or employment; 2) a shared expense flight; 3) a charitable flight; 4) search and location operations; 5) sales demonstration; and 6) glider and ultralight towing.

A 2009 FAA chief counsel’s interpretation addresses the nuances of two of these exceptions. A pilot who owns a single-engine Bellanca Super Viking is an executive for a company. The business of the company is not related to air transportation. On occasion the pilot uses his aircraft to transport

himself to business meetings. His question to the FAA is whether, and to what extent, he may be reimbursed for the cost of the transportation. Citing to the “incidental” exception to the rule, the FAA told him, using the terms of the rule, that a private pilot may, for compensation or hire, act as pilot in command of an aircraft in connection with any business or employment, so long as the flight is only incidental to the business or employment, and if the aircraft does not carry passengers or property for compensation or hire. “Thus, in this scenario, where you are only transporting yourself to the business meeting, you may be compensated for the expense of the flight.” Many, many pilots safely conduct operations under this exception.

However, the FAA’s answer was different regarding transporting his colleagues to the business meeting. “In regard to whether you may seek reimbursement from your employer for transporting your colleagues, since you are transporting people to the meeting, the allowance for the flight to be conducted for compensation or hire (i.e., reimbursement) under 61.113(b) does not apply. The exception in paragraph (b) allows you to use your private pilot certificate only for compensation or hire if the operation is incidental to your employment and you are not transporting other passengers or property. Thus, because you are transporting people to the meeting, you may not seek reimbursement from your employer for this flight under 14 C.F.R. Section 61.113(b).”

I could agree with this interpretation if the sole reason the pilot was going on the trip was to transport his colleagues, and not for his own business or employment purpose in attending the meeting. Otherwise, I respectfully disagree. The pilot is only being reimbursed for the cost of his carriage. Carrying his colleagues does not add to the cost of the trip. I believe a more reasonable interpretation is that the colleagues are not being carried “for compensation or hire” on this common-business-purpose flight, and the “incidental” exception should apply.

The pilot also asked whether the “shared expense” exception could apply. The FAA said no. Under this exception, the rule “allows a private pilot to seek

reimbursement only from his or her fellow passengers, not a third party, such as your employer.” The FAA further explained: “You may only seek reimbursement for the operating expenses of the flight from your passengers, provided you pay your own pro rata share of the operating expenses, and you all share a common purpose, such as attending the business meeting.”

As the FAA further explained, a private pilot may not pay less than the pro rata share of operating expenses for the flight because “if pilots pay less, they would not just be sharing expenses but would actually be flying for compensation or hire.” An additional requirement is that there must be a common purpose for the flight. “There is no common purpose if the pilot is flying and transporting passengers to a destination where he or she has no particular business to conduct.”

So, what if the employer reimburses the pilot for his share of the cost of the flight, and reimburses each colleague for his and her share of the cost of the flight, and the colleagues in turn pay those costs to the pilot? Pandora’s box is opening! Wouldn’t it be more rational to allow the “incidental” exception to apply?

As I said, the title of the rule belies its the scope and complexity, and lends itself to difficult official interpretations that we as pilots must understand and apply.