

# POLICY SPOTLIGHT

Flight Sharing and the Future of Aviation

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Sharing economy platforms have made rapid strides in the taxi and hospitality industries, expanding choice for customers and igniting competition among providers. However, when flight-sharing platforms emerged—matching cost-conscious travelers with private pilots who had empty seats on their planes—they quickly encountered a regulatory system that, in the name of public safety, prioritized the status quo over innovation. While these services were merely digital versions of long-standing practices among private pilots, the Federal Aviation Administration (FAA) extended its definition of “common carrier” to require pilots engaging in flight-sharing via these online platforms to be treated as commercial pilots. The startups had to shut down.

## OLD PRACTICE, NEW PLATFORM

Aviation is an expensive hobby. A pilot who flies 100 hours a year could spend about \$225.30 per hour when all the costs of flying are accounted for.<sup>1</sup> Private pilots are required to maintain a minimum number of flight hours, landings, and takeoffs per year to keep their licenses current. To defray the costs, pilots advertise upcoming flights on airport bulletin boards so that passengers can join them in exchange for covering their portion of the costs. This practice has been recognized by the FAA since the 1960s.<sup>2</sup>

Startups Flytenow and AirPooler saw an opportunity to build platforms to match private pilots with passengers more efficiently. They were careful to adhere to the FAA's existing guidelines and specifically designed their platforms to meet current regulations for flight-sharing practices.

## A BAN IN ALL BUT NAME

Instead of directly banning the practice, the FAA made it too onerous to use these platforms by expanding its definition of common carriers. Private pilots using online booking services were reclassified as commercial pilots and thus required to comply with additional licensing and certification. This policy reduced the supply of private pilots using this service to zero, and the startups had to end operations.

The FAA could have addressed public safety concerns in a number of other ways without hindering entrepreneurship. Here are two alternative approaches:

- Develop a pilot program to roll out flight-sharing platforms by allowing online booking services to be introduced at a small, experimental scale, away from high-traffic airports. The FAA would then evaluate the experience and establish a

timescale for expanding the services to more populous areas.

- Adopt the approach taken by European regulators to actively work with flight-sharing platforms to promote safety rather than ban the entire practice. The European Aviation Safety Agency (EASA), in collaboration with flight-sharing platform Wingly, has produced a charter setting out general principles and responsibilities as well as a checklist to set expectations among pilots and passengers.<sup>3</sup>

## IF THE FAA DOES NOT ACT, CONGRESS SHOULD

In 2016, the Supreme Court declined to review a challenge to the FAA's expansive definition of common carrier, upholding a lower court ruling that had deferred to the regulator and leaving flight-sharing platforms grounded.<sup>4</sup> The FAA, however, could revisit its policy and allow a gradual roll out of these platforms while setting standards to preserve public safety. In effect, that is the current policy of European regulators. Until the FAA adopts a more accommodating disposition, Europe is likely to continue outpacing the United States in this space.

Ultimately, if the FAA refuses to act, Congress could enact reform. The FAA has been able to adopt an expansive definition of common carrier because Congress never defined the term in the Federal Aviation Act. By codifying a definition in law, Congress could provide certainty to entrepreneurs and force the FAA to make room for innovation in flight-sharing.

## NOTES

1. Aircraft Owners and Pilots Association, "Hypothetical Operating Cost Calculation," accessed October 25, 2017, <https://www.aopa.org/go-fly/aircraft-and-ownership/buying-an-aircraft/tips-on-buying-used-aircraft/hypothetical-operating-cost-calculation>.
2. 29 Fed. Reg. 4717, 4718 (April 2, 1964).
3. Wingly, *Safety of Non-Commercial General Aviation Flights with Light Aircraft*, 2017; European Aviation Safety Agency and Wingly, *Pilot Check List for Wingly Passenger Handling*, n.d.
4. FAA Legal Interpretation from Mark Bury, Acting Assistant Chief Counsel for International Law, Legislation, and Regulations Division, to Rebecca B. MacPherson, August 13, 2014; FAA Legal Interpretation from Mark Bury, Acting Assistant Chief Counsel for International Law, Legislation, and Regulations Division, to Gregory Winston, August 14, 2014.

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