U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

JUL 31 2009

George C. Douglas, Jr. Esq.
700 Century Park South
Suite 223
Birmingham, AL 35226

Dear Mr. Douglas:

This letter is in response to your March 2, 2009 request for interpretation, and subsequent correspondence dated March 26, 2009, regarding dry leasing of aircraft under 14 C.F.R. part 91.

Specifically, you present the scenario in which a person (lessor) owns an aircraft and employs a full-time flight crew for part 91 operations and would like to lease the aircraft to another person (lessee). The lessee would like to be able to hire the owner/lessor's flight crew when a third-party crew is not available. You ask (1) whether this arrangement would be considered a wet lease; (2) whether the lessee could hire the owner's crew under a dry lease so long as the owner has no interest or involvement in that transaction and the lessee maintains operational control of the flights; and (3) whether the FAA's 1990 *Huber* legal interpretation regarding leasing of aircraft is still in effect. First, we note that the *Huber* interpretation issued July 27, 1990 is still in effect. The remainder of your questions will be answered in the discussion that follows.

A dry lease of an aircraft is one in which the owner provides the aircraft and the lessee supplies his or her own flight crew and retains operational control of the flight. *See* Legal Interpretation to Fred Meier, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Jun. 12, 2009); Legal Interpretation to James Datsko, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division (Sept. 23, 1991). In contrast, under a wet lease, the lessor provides both the aircraft and the crew and retains operational control of the flight. *See* Legal Interpretation to Meier; Legal Interpretation to Shelly W. Austin, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Jun. 12, 2009); *see also* 14 C.F.R. § 119.3; Legal Interpretation to Datsko.

You note in your scenario that the lessee in some circumstances will lease the aircraft from its owner and hire a third-party flight crew to conduct the flight. This arrangement, in which the owner leases his aircraft without crew, is a dry lease which would permit the lessee to operate the aircraft in furtherance of its business under part 91. *See* Legal Interpretation to Mike Green, from Kenneth E. Geier, Assistant Chief Counsel (Jul. 29, 1989); *see also* Legal Interpretation to Datsko.

You also note that in other circumstances, the lessee would like to lease the aircraft from its owner and hire the aircraft owner's flight crew to conduct the flights. This situation appears, on its face, to be a wet lease because of the employment relationship between the aircraft owner and the flight crew. Generally speaking, under a wet-lease arrangement, the lessor of the aircraft is considered to be the operator of the aircraft and may be required to hold an operating certificate because it is providing air transportation. *See* Legal Interpretation Meier; Legal Interpretation to Austin; Legal Interpretation to Datsko. As noted in the *Huber* interpretation, "leasing a plane and pilot constitutes a 135 operation on the part of the lessor and pilot." Legal Interpretation to Melvin J. Huber, from Timothy C. Titus, Assistant Chief Counsel (Jul. 27, 1990). The FAA reiterated this concept in a 2007 legal interpretation noting that if an aircraft and pilot are provided to others as a package, the operations would be considered transportation of people or property for compensation or hire, and a part 119 operating certificate would be required. *See* Legal Interpretation to Joseph D. Fabian, from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division (Sept. 10, 2007).

However, in your subsequent correspondence, you outlined several provisions that would be added to a lease agreement with the purpose of demonstrating that the flight crew was acting outside of their employment arrangement with the aircraft owner. Whether the crew is truly independent and the lease arrangement would be considered a dry lease would be determined on a case-by-case basis. *See* Legal Interpretation to Fabian; Legal Interpretation to Datsko; *see also* Legal Interpretation to Meier; Legal Interpretation to Austin.

This response was prepared by Dean Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the Air Transportation and General Aviation and Commercial Divisions of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of further assistance.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200