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

Office of the Chief Counsel

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Washington, D.C. 20591

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Dear Mr. Johnson:

This letter is in response to your November 16, 2009 request for interpretation which substituted for your original October 19, 2009 request. You ask five specific questions regarding FAA regulation of aircraft leases and whether the facts outlined in two scenarios would comply with those regulations.

In your first scenario, an aircraft owner engages a management company as an independent contractor to provide flight crew, management, fueling, and maintenance services. The flight crewmembers are independent contractors. The aircraft owner would like to enter into several multi-year dry leases with friends and business acquaintances. Each lease agreement would provide that (1) the lessee has operational control of the aircraft and maintains possession, command, and control during flights conducted under the lease; (2) lessees are free to engage independent management and pilot services of lessee's choosing; (3) scheduling and use of the aircraft must be coordinated with the management company; and (4) the owner retains responsibility for maintenance and insuring the aircraft. Each lessee, at its own discretion, engages the management company used by the owner to provide flight crew, fueling, management, and other services. Lessees pay lease fees directly to the owner, and pays pilot fees to the management company who collects the pilot fees on behalf of the flight crew.

In the second scenario, all the facts are the same, except lessees pay the lease fees directly to the aircraft owner, and pay pilot fees directly to the flight crew. You state that in either case, the leases would comply with the truth-in-leasing clause requirements of § 91.23.

In general, the FAA recognizes two general types of leases—wet leases and dry leases. 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 George C. Douglas, Jr., from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (July 31, 2009). Under a dry lease, operational control resides with the lessee, and the lessee is permitted to operate the aircraft in furtherance of its business under part 91. *See id.* In contrast, under a wet lease, the lessor provides both the aircraft and the crew and retains operational control of the flight. *See id.* 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 id.*

A key consideration in differentiating a dry lease from a wet lease is whether the aircraft and flight crew are obtained separately, or provided together as a package. *See* Legal Interpretation to Joseph D. Fabian, from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division (Sept. 10, 2007). Whether the crew is truly independent and the lease arrangement is a dry lease would be determined on a case-by-case basis. *See* Legal Interpretation to Douglas; Legal Interpretation to Fabian (stating that a pattern of evidence may show a wet lease exists if parties are "acting in concert" to furnish an aircraft and crew). As such, the answers to your questions, discussed below, would inform whether the lease agreements in your scenario constitute a dry or wet lease.

First, you ask whether there is a limit to the number of lessees that may lease an aircraft from an owner. The FAA does not limit the number of lessees that may lease an aircraft from an owner.

Second, you ask whether there are a minimum number of flight hours a lessee must contractually obligate itself to use during a calendar year. The answer is no. The FAA does not establish hourly requirements for aircraft leases. The number of flight hours that comprise the lease are contractual terms negotiated by the owner and the lessee.

Third, you ask whether a lessee may hire a management company that is also engaged by the aircraft owner. The management company would provide flight crew (as independent contractors), management, fueling, and maintenance services. In your letter you note that the lease would not restrict the lessee from engaging a management company of its choosing. There is no prohibition against a lessee hiring the same management company that is used by the owner; however, as discussed above, the determination of whether an arrangement is a dry or wet lease is made on a case-by-case basis. *See* Legal Interpretation to Douglas; Legal Interpretation to Fabian. A lessee employing the same management company as the aircraft owner could indicate that the purported dry lease is merely a wet lease in disguise that has been entered into to avoid part 119 certification. *See* Legal Interpretation to Fabian; Legal Interpretation to James Datsko, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division (Sept. 23, 1991).

Fourth, you ask whether a lessee may contract with the same flight crew that is contracted for by the aircraft owner. The answer to this question is similar to the previous answer. Generally the FAA would consider an arrangement where a person leases an aircraft from its owner, and secures the flight crew from another source to be a dry lease. If the aircraft and flight crew are provided as a package, the lease would be a wet-lease. In your scenario, 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.

Fifth, you ask whether an aircraft lessee may pay pilot fees to the management company that collects the fees on behalf of the flight crew. In your first scenario, the management company collects payments for the flight crew. In your second scenario, the lessee pays the

flight crew directly. The FAA does not have specific requirements regarding collection of payment for the flight crew. However, the method of payment may serve as indicia of whether the parties have entered into a wet- or dry-lease agreement.

This response was prepared by Dean Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division 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