U.S. Department of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

OCT 24 2012

Mr. Larry Williams
Williams and Associates
3579 Sanford Drive
Murfreesboro, TN 37130

Dear Mr. Williams:

This letter is in response to your request of June 13, 2012 for a legal interpretation regarding the question of operational control in several situations involving the leasing of aircraft between various parties. In your scenario, Company A owns an aircraft that it dry leases to Company B, which employs its own pilots and mechanics and operates the aircraft under part 91 and maintains operational control during those operations. Company B also dry leases the same aircraft on occasion (on an hourly basis without crews) to Company C, a part 135 certificate holder that in turn places the aircraft on its Operations Specifications. Although not required, Company C chooses to contract pilots from Company B to fly the aircraft on flights under the operational control of Company C. The pilots are trained and qualified under Company C's part 135 certificate. Your question is whether this example would meet the operational control test when Company C is operating the aircraft.

The question of operational control turns on whether the lease of the aircraft by Company B to Company C is a dry lease (without crew) or a wet lease (with crew). 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 Eric L. Johnson from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division (Aug. 11, 2011). In previous interpretations the FAA has stated that operational control is determined on a case-by-case basis. *See* Legal Interpretation to George C. Douglas, Jr., from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations (July 31, 2009). The FAA has also found that 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 Eric L. Johnson (stating that a lessee employing the same management company as the aircraft owner could indicate that that the purported dry lease is merely a wet lease in disguise that has been entered into to avoid part 119 certification).

In the scenario presented, Company C may contract with a pilot employed by Company B so long as that arrangement is truly independent from the lease of the aircraft by Company B. Otherwise, it could be considered a wet lease and Company B would need

to obtain certification under part 119. The pilot-agent agreement provided with your interpretation request appears to clarify that operational control resides with Company C. The FAA reiterates, however, that determining whether a crew is truly independent is determined on a case-by-case basis. Any factual changes in this scenario or the pilot-agent agreement may alter the determination whether or not the lease is truly independent.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This letter has been prepared by Robert H. Frenzel, Manager, Operations Law Branch, Office of the Chief Counsel and coordinated with the Air Transportation and General Aviation and Commercial Divisions of Flight Standards.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for International
Law, Legislation and Regulations, AGC-200