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

AUG 25 2014

Mr. Chris Pfaff, President
AIRCAP Flight Services, Inc.
218 Reinaker Road
Danville, PA 17821

Dear Mr. Pfaff:

This letter is in response to your letter dated January 3, 2014 requesting a legal interpretation of FAA's rules regarding whether flights are being properly conducted under Part 91 of Title 14, Code of Federal Regulations, and logging of flight time by flight crewmembers.

You ask whether the operations described in your letter would properly be conducted under part 91 or part 135. In particular you ask whether the arrangement you describe would be a wet lease. The FAA recognizes two general types of leases – wet leases and dry leases. A dry lease of an aircraft is one in which the lessor provides the aircraft and the lessee supplies his or her own flight crew and retains operational control of the flight. Under a wet lease, the lessor provides both the aircraft and the crew and normally retains operational control of the flight. Whether a lease is a wet or dry lease is determined on a case-by-case basis and the FAA will look at factors such as whether the companies are acting in concert to make a determination that a purported dry lease is in fact a wet lease. *See* Legal Interpretation to Eric L. Johnson, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Aug. 11, 2011). The practical effect of engaging in a wet lease is that the lessor retains operational control of the operation and may be required to hold a part 119 certificate and conduct operations under part 135 because it is providing air transportation. *Id.*

In your letter you state that "C" uses the aircraft to transport its own cargo. "C" leases the aircraft from "A" and obtains its pilots from "B." You state that when you started as a pilot with "B" you specifically asked about the separation between "A" and "B" and that you were satisfied with your employer's response that they were separate entities. You also state that you are now unsure about the amount of separation, but you do not state any factors in your letter demonstrating an interrelationship other than "the principal of 'B' has been friends with the principal(s) of 'A' for years." As discussed above, whether a lease is a wet lease or dry lease is a factual determination, and without additional information the FAA would be unlikely to find that the dry lease between the parties is actually a wet lease meaning the operation could be conducted under part 91.

With regard to your questions pertaining to the logging of flight time, you acknowledge that the airplane does not require more than one pilot flightcrew member by type certification or the regulation under which the flight is being conducted. As such, it is not proper for both pilots to log flight time during these operations.

Under § 61.51(e)(1), a pilot may log PIC time when the pilot (i) is the sole manipulator of the controls of an aircraft for which the pilot is rated (category, class, and type rating, if appropriate), (ii) is the sole occupant of an aircraft, (iii) acts as PIC[1] of an aircraft for which more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is conducted; or (iv) holds a commercial pilot certificate or ATP certificate that is appropriate to category and class of aircraft while performing "the duties of pilot in command while under the supervision of a qualified pilot in command" if, among other things, the pilot is undergoing an approved PIC training program.

Although you are acting as PIC for the flight, you may not log PIC flight time during those times that the other pilot is manipulating the controls of the airplane because you are not acting as PIC of an airplane that requires more than one pilot flightcrew member. Additionally, you may not log SIC flight time because, under § 61.51(f), a person may log SIC flight time only when more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is being conducted. Whether a pilot pays an operator for accruing flight time is not relevant to the issue of logging flight time.

This response was prepared by Anne Moore and Dean E. Griffith, attorneys in the International Law, Legislation and Regulations Division of the Office of the Chief Counsel. It was coordinated with the Air Transportation Division and General Aviation and Commercial Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of additional assistance.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for
International Law, Legislation and Regulations

[1] In order to act as pilot in command, a pilot must hold the appropriate category, class, and type rating, if appropriate, for the conduct of the flight. 14 C.F.R. § 1.1.