U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Chief Counsel

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

MAY - 4 2016

Nicholas Pipitone
[redacted]

Re: Interpretation of 14 C.F.R. § 91.409(b)

Dear Mr. Pipitone:

This is in response to your August 6, 2015 and January 26, 2016 letters asking several questions centering around whether an aircraft would be considered "club owned" and whether such aircraft would be subject to the 100-hour inspection requirement in 14 C.F.R. § 91.409(b). You are concerned that clubs, and therefore the club's membership, are under the assumption that they are the owners of aircraft regardless of the aircraft's registered ownership. If they are considered the owners, you state they are the providers of the aircraft for flight training, and as such, the aircraft is exempted from the 100-hour inspection requirement. In particular, you ask the following:

1. In the case of a club leased aircraft registered in the name of an individual and not the club, is the aircraft considered to be "club owned"?

Response: No. Under 49 C.F.R. § 47.5(b), an aircraft may be registered only by and in the legal name of its owner.[1] In your question, the aircraft is registered in the name of the individual. Generally speaking, it follows that the individual, and not the club, is the owner of the aircraft.[2]

2. If the owner of the leased aircraft is also a club member, is this viewed as "club owned" by virtue of the lessor being a member?

Response: No. If the registered owner is also a club member, this fact alone does not change the legal ownership of the aircraft.

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[1] Under 14 C.F.R. § 47.5(d), an owner "includes a buyer in possession, a bailee, or a lessee of an aircraft under a contract of conditional sale, and the assignee of that person."

[2] Please note that under 49 U.S.C. § 44103(c), registration is not evidence of ownership in any proceeding in which ownership by a particular person is in issue.

You state that if a club leases an aircraft from other owners (and the aircraft is not registered to the club), the aircraft, when offered for instruction for compensation, is subject to the § 91.409 100-hour inspection requirement. As discussed below, this is not necessarily the case.

Rather than focusing on who owns the aircraft, the answer to your question may be more easily resolved by looking at how the aircraft is being operated.[3] Regardless of who legally owns the aircraft, the 100-hour maintenance inspection is required if you operate the aircraft for certain purposes.[4] With regard to flight instruction, the 100-hour inspection requirement applies when *the flight instructor* provides *both* flight instruction for hire and the aircraft to be used for that instruction.[5]

The 100-hour inspection requirement you reference in your letters is found in § 91.409(b). With respect to flight instruction, this section generally states that no person may give flight instruction for hire in an aircraft "which that person provides," unless within the preceding 100 hours of time in service the aircraft has received an annual or 100-hour inspection.[6]

The 100-hour inspection requirement does not apply if the person receiving flight instruction provides the aircraft.[7] The person receiving flight instruction can provide an aircraft that he or she owns or leases.[8] If the person receiving flight instruction does not own the aircraft, the FAA may review the manner by which that person provided the aircraft to ensure the instructor, or an entity represented by the instructor, did not effectively provide the aircraft.[9]

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[3] *See e.g.* Legal Interpretation, Letter to Stephen R. Greenwood from Lorelei Peter, Acting Assistant Chief Counsel for Regulations, AGC-200 (October 9, 2015).

[4] Legal Interpretation, Letter to Craig Brown from Donald Byrne, Assistant Chief Counsel (Feb. 24, 2000).

[5] *See e.g.* Legal Interpretation, Letter to T.L. Colvin, Jr. from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, AGC-200 (Nov. 10, 2011).

[6] 14 C.F.R. § 91.409(b). There are exceptions to § 91.409(b) found in § 91.409(c).

[7] Legal Interpretation, Letter to T.L. Colvin, Jr. from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, AGC-200 (Nov. 10, 2011). *See also* Legal Interpretation, Letter to Robert W. Slater from R.R. Hagadone, Office of the Regional Counsel (Feb. 14, 1975)(interpreting FAR 91.169(b), the predecessor to 14 C.F.R. § 91.409(b), that where a student furnishes (not owns) an airplane which is not operated for hire to be used for his own flight instruction and pays a flight instructor for instruction, that the aircraft does not need to have the 100-hour inspection).

[8] Legal Interpretation, Letter to T.L. Colvin, Jr. from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, AGC-200 (Nov. 10, 2011) (citing Legal Interpretation, Letter to Berry Rackers from Joseph T. Brennan, Associate Regional Counsel (May 3, 1984)).

[9] Legal Interpretation, Letter to T.L. Colvin, Jr. from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, AGC-200 (Nov. 10, 2011). *See also* Legal Interpretation, Letter to Forrest Reid from Joseph Conte, Manager, Operations and Air Traffic Law Branch (Aug. 20, 2004) (discussing that the FAA interprets providing the flight instructor very broadly).

I hope this information has been helpful. This response was coordinated with the Aircraft Maintenance Division (AFS-300). If you have further questions concerning this response, please contact Sarah Sorg on my staff at 202-267-3073.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

August 6, 2015 Modified 12/30/2015

Mr. Mark Bury
Assistant Chief Counsel
AGC-200
Office of the Chief Counsel
Federal Aviation Administration National Headquarters (FOB 10A)
800 Independence Avenue, SW
Washington, DC 20591

Dear Mr. Bury:

This letter is submitted for clarification of flying club maintenance exemption ruling.
There is a growing concern over flying clubs being exempted from the 100 hr. inspection requirements of 14 CFR 91.409.

In a letter written to AOPA, "QUESTION of The Month," dated January 11, 2013, concerning 100 hour inspection requirements, the AOPA response treats the subject of ***club ownership***. The assumed ownership suggests club members are owners of club aircraft by virtue of their membership and therefore, are the providers of the aircraft for flight training, thereby exempting the aircraft from the 100 hour inspection requirements of 14 CFR 91.409. If this is the result of a past Legal Interpretation, where can it be found; does the existence of this Legal Interpretation pre-empt 14 CFR 91.409?

In a PHONCON with AOPA, they explained the article and exemption ruling pre-supposes the Club owns and the aircraft is registered to the club. Conversely, if the club **leases** aircraft from other owners where the aircraft is registered to an individual(s) other than the club, the aircraft when offered for instruction for compensation, the aircraft is subject to the 91.409 100 hr. inspection requirement.

Unfortunately, there are clubs nationwide that are under the assumption that the club and therefore the membership, are owners of the aircraft regardless of the registered ownership and are not subject to the 100 hour inspection requirement. The result being the lack of maintenance oversight, compromise in airworthiness and overall safety of operation.

I believe this misunderstanding if valid, should be reviewed and addressed for clarification of what constitutes club ownership. If club **leased** aircraft registered to individuals other than the club itself is not considered club owned, it appears the 100 hour inspection requirement of 14 CFR 91.409 is required when the aircraft is provided to club members by the club and owner for flight instruction.

Sincerely,

Nicholas F. Pipitone
[redacted]

ENCLOSURE

January 26, 2016

Counselor Mark Bury
Assistant Chief Counsel, AGC-200
Office of the Chief Counsel
Federal Aviation Administration National Headquarters (FOB 10A)
800 Independence Avenue, SW
Washington, DC 20591

Dear Counselor Bury:

In a letter to your office dated August 6, 2015, I requested a legal interpretation on flying clubs being exempted from performing the 100 hr. inspection required by 14 CFR 91.409. It has been established that flying club members are viewed as owners of club aircraft and therefore the aircraft is exempted from the 100 hour inspection when used by a member "owner" when receiving flight instruction since the owner is providing the aircraft and not the instructor.

In the case of a club leased aircraft registered in the name of an individual and not the club, is the aircraft considered to be "**club owned**" ?

If the owner of the leased aircraft is also a club member, is this viewed as a "**club owned**" by virtue of the lessor being a member?

Following the receipt of my letter by your office, I received a reply stating that I should expect a reply by December 2015. This letter was forwarded to me via the San Diego FSDO.

To date, I have not received a reply. I fully understand that your office receives many requests for legal interpretation which can be overwhelming in terms of response time.

I've enclosed a copy of my original letter dated August 6, 2015.

Thank you in advance for your attention to this matter.

Sincerely,

Nicholas F. Pipitone

[redacted]

Enclosure: Original letter dated August 6, 2015.

P.S. Hi and best wishes to Mike McKinkey.