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

Office of the Chief Counsel

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

MAY - 7 2018

Charles Walters
Chief Executive Officer
Blue Line Aviation, LLC
P.O. Box 91205
Raleigh, NC 27675

Re: Clarification of 14 CFR § 91.409(b)

Dear Mr. Walters:

This letter is in response to your inquiry dated August 11, 2017, in which you requested a legal interpretation of 14 C.F.R. § 91.409(b)(2). Specifically, you ask whether a 100-hour inspection is required if the flight instruction is not for hire, and you provide three specific scenarios to illustrate your question. While we appreciate the specifics of each scenario you provide, we believe that we can provide clarification without addressing each scenario separately.

Section 91.409(b) provides, in pertinent part, 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 and been approved for return to service in accordance with part 43 of this chapter or has received an inspection for the issuance of an airworthiness certificate in accordance with part 21 of this chapter. Section 1.1 defines ***person*** as an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them.

You state that Blue Line Aviation, LLC ("Blue Line") has aircraft at the flight school for rent to the public and that these aircraft are not used for regular flight training. You also state that Blue Line must complete pilot checkouts for renters for insurance and safety purposes. The FAA does not have a regulatory requirement for a flight instructor to conduct a checkout for insurance purposes.

Whether § 91.409(b) is triggered by a checkout depends upon whether the checkout is considered flight instruction. A checkout is considered flight instruction if flight training is given during the checkout. If no flight training is provided during the checkout, then the flight would not be considered instruction.

The 100-hour inspection requirement applies to a checkout when a flight school (1) provides the aircraft and the instructor; (2) the school is receiving compensation; and (3) flight training is provided. A flight school cannot avoid the 100-hour inspection requirement by not charging separately or explicitly for the instructor (e.g. adding the cost of the instructor to the overall rental fee for the aircraft or to membership fees). If the instructor is paid by the school, the student/renter likely pays for the service, which is a flight instruction for hire operation. Alternatively, even if the instructor is not a regular employee of the school, such as the owner, the 100-hour inspection requirement of § 91.409(b) is triggered if the school is providing the aircraft and the instructor, receiving compensation, and flight training is being provided. Note, however, that if no flight training is provided during the checkout, then the flight would not be considered instruction and the checkout would not trigger § 91.409(b).[1]

This response was prepared by Melissa Crain, an attorney in the Regulations Division of the Office of the Chief Counsel and coordinated with the General Aviation and Commercial Division of the Flight Standards Service. If you have any additional questions regarding this matter, please contact my office at (202) 267-3073.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations

[1] For additional discussion of when § 91.409(b) is implicated please see Legal Interpretation to Greenwood dated October 9, 2015; Legal Interpretation to Lowenstein, dated August 12, 2016; and Legal Interpretation to Pipitone, dated May 4, 2016.

BLUE LINE
AVIATION, LLC

August 11th, 2017

Office of the Chief Counsel
800 Independence Avenue SW
Washington, DC 20591

To whom it may concern:

This letter is to formally request interpretation/clarification of 91.409 (b). The regulation states, among other things, that a 100hr inspection is required in the following cases:

1) The aircraft is used For Hire, such as by an air carrier or used for part 91 air tours
2) if a person gives instruction "for hire" in an aircraft provided by that person.

My question revolves around number 2 above, and the definition of giving instruction for hire. Presumably, one could give instruction at no charge in an aircraft provided by that person (regardless of whether or not the person charges for the aircraft). The question is whether or not a 100 hr hour inspection is required if the flight instruction is not for hire. I will provide three specific scenarios:

First, a flight school has aircraft available for rent to the public that are not used for regular flight training. A 100hr inspection is not required to be performed on rental aircraft. The school needs to complete initial and/or recurrent pilot check outs for renters to obtain and keep their check out for insurance and safety purposes. Is it legal to provide that check out without charging for the instructor? It clearly can't be charged for since the company would be providing instruction for hire in an aircraft which it provides, and the regulation clearly states doing the instruction "for hire" triggers the 100hr requirement.

Second, the same facts from scenario 1 apply, but this time there is a membership fee to have access to the aircraft. The school operates its rental operation as a membership based flying club where members pay an enrollment fee to join and monthly fees for continued access to aircraft facilities, and other benefits that do not include any number of flight instructor hours.

Third, a flight school has a fleet of training aircraft that undergo 100hr inspections since they are normally used for flight instruction for hire. The aircraft's 100hr inspection is nearing its due time and it is not possible to get it done before the needs of the student are met. The school decides it would rather sacrifice the instructor fee than delay the student's program, checkride, and/or retraining. Is the school authorized to continue flying the airplane, renting it to the student for the training, without charging for the flight

instructor? Again, the instructor is not "for hire," which triggers the 100hr requirement. In this scenario, the school would rather lose money on the instructor fee than sacrifice its ability to deliver for the student.

In both scenarios, all other maintenance requirements, such recurring Ads are complied with. In both scenarios, the company does not charge extra for ground instruction, the aircraft, and in no other way makes an effort to "make up" for the free instructor time. Additionally, is there an impact if the instructor is being paid by the school at the school's expense? What about if the instructor is the school's owner who isn't a regular legal "employee" of the school?

Thank you in advance for your careful consideration of this request. I look forward to hearing from you soon. Please contact me if you have any additional questions or require additional information.

Warmest regards,

Charles Walters

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