
Interpretation 2004-7**FAD Digest of Interpretations:****FAR 91.409(b)**

FAA defines a person as an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity, and thus a non-profit corporation would be considered a person under the FAA's rules.

*West's Key Number Digest**Aviation* ☞ 33**FAR 91.409(b)**

Where flying club members contract with independent flight instructor for flying lessons, and flying club merely rents aircraft to its members, the flying club is not required to perform 100-hour inspection under § 91.409(b); however, if arrangement changed such that flying club provided both the aircraft and the instructor, then a 100-hour inspection would be required.

*West's Key Number Digest**Aviation* ☞ 33**FAR 91.409(b)**

"Providing the flight instructor" for purposes of 100-hour inspection under § 91.409(b) will be interpreted broadly, such that, for example, if a flying club contracted with independent flight instructors to provide lessons for its members, and the members paid an hourly rate to the club for the use of an aircraft, and a separate fee directly to the instructor for the lessons, the FAA would likely find that the aircraft and instructor are provided through the same entity.

*West's Key Number Digest**Aviation* ☞ 33**FAR 91.409(b)**

With regard to members of a flying club providing instruction to other members, 100-hour inspection under § 91.409(b) is not implicated as long as 1) there is no contractual relationship between the member-instructor and the flying club for the provision of flight instruction, 2) the member-instructor is not recommended or given a preference by the flying club, and 3) the members are free to choose instructors who are not members of the flying club.

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Source of Interpretation: Letter to Forrest Reid, Esq., from Joseph Conte, Manager, Operations and Air Traffic Law Branch, dated August 20, 2004.

Your letter of May 3, 2004, requests an interpretation of 14 C.F.R. § 91.409(b) which requires a 100-hour inspection to be performed on aircraft that is engaged in the carriage of persons for hire, or that is used by the owner to provide flight instruction. Specifically, you asked if a 100-hour inspection is required for an aircraft that is owned by a flying club and rented to club members. As you explained in your letter, the flying club is a non-profit corporation that owns the aircraft. Members of the club are required to pay a nominal monthly fee and allowed to rent the aircraft on an hourly basis for personal travel and flight instruction. In light of the arrangement described above, you asked the following questions:

1. Does the FAA consider the non-profit corporate entity to be a "person" for the purpose of applying the Federal Aviation Regulations (FARs)?
2. Would the aircraft be exempt from the 100-hour inspection requirement if a member received flying lessons in the aircraft from a flight instructor who was also a member of the club?

In answering these questions, it is helpful to restate the FAA's position regarding the 100-hour inspection requirement. The FAA has previously stated that the 100-hour inspection is required only when the aircraft is carrying a person for hire, or when a person is providing flight instruction for hire in his or her own aircraft. (*See* Interpretation 1984-10). A later FAA interpretation clarified that the 100-hour inspection requirement is not dependent on who owns or possesses the aircraft, but rather on how the aircraft is operated. (*See* Interpretation 2000-2). In that interpretation, the FAA stated that the 100-hour inspection is required if you operate an aircraft to carry a person (other than a crew-member) for hire, or when you provide flight instruction for hire and you are providing the aircraft. *Id.*

The FAA defines a person as an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity. *See* 14 C.F.R. 1.1 (2004). Thus, the non-profit corporation would be considered a person under the FAA's rules.

According to your letter, the flying club members contract with an independent flight instructor for flying lessons. In some cases, the flight instructor is also a member of the flying club, but instructors who are not members are permitted to provide instruction in the aircraft as well. Under these circumstances, it appears that the flying club merely rents the aircraft to its members, and therefore, would not be required to perform the 100-hour inspection. Based on your description, the flight instructors are not provided by the corporation as part of the aircraft rental, the flight instructors are not paid by the corporation to provide flight instruction and there is nothing prohibiting members from hiring a flight instructor who is not a member of the club. Therefore, § 91.409(b) would be inapplicable.

If, however, the arrangement changed such that the flying club provided both the aircraft and the instructor, then a 100-hour inspection would be required; and it is important to note that the FAA will interpret "providing the flight instructor" very broadly. For example, if the flying club contracted with inde-

pendent flight instructors to provide lessons for its members, and the members paid an hourly rate to the club for the use of the aircraft, and a separate fee directly to the instructor for the flying lessons, the FAA would likely find that the aircraft and the instructor are provided by the same entity, even though the instructor is an independent contractor who is paid separately. In the FAA's view, the contractual relationship between the instructor and the flying club for flight instruction services would be a sufficient nexus to find that the club is "providing" the aircraft and the instructor. On the other hand, if the independent contractor is truly independent and bears no flight training connection to the flying club, then § 91.409(b) would not apply.

Finally, with respect to instructors who are members of the flying club, the FAA position is that a member-instructor providing lessons to other members would not implicate § 91.409(b) as long as: 1) there is no contractual relationship between the member-instructor and the flying club for the provision of flight instruction services, 2) the member-instructor is not recommended or given a preference by the flying club, and 3) the members are free to choose instructors who are not members of the flying club. The FAA considers these conditions to be sufficient to ensure that the flying club does not circumvent the regulations by using its members as instructors.

We trust that this satisfactorily responds to your request. Please contact us if we can be of further assistance.