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

Office of the Chief Counsel

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

AUG 1 2 2016

Anthony S. Lowenstein
Lowenstein Law Office
4040 Civic Center Drive
Suite # 200
San Rafael, CA 94903

Re: Request for Legal Interpretation of 14 CFR § 91.409(b)

Dear Mr. Lowenstein:

This is in response to your letter dated March 28, 2016, in which you asked for a legal interpretation of 14 CFR § 91.409(b) with respect to whether the regulation's 100-hour aircraft inspection requirement applies when an aircraft provided by a fixed base operator (FBO) to a renter who then hires a certified flight instructor (CFI) to provide flight instruction in that aircraft. The nuance to your question is that the flight instructor's name appears on a list of CFIs that are pre-approved by the FBO to operate its aircraft, and the list is maintained by the FBO and is available to the aircraft renter.

Your fact scenario may be summarized as follows: An FBO rents airplanes to renters. Some renters periodically rent an airplane from the FBO and hire a CFI to provide flight instruction to them in the rented airplane. The FBO neither employs nor contracts in any way with any CFI. All CFIs are treated by the FBO like any other [prospective] renter (in that to be eligible to rent and/or fly as pilot-in-command of one of the FBO's airplanes, the CFI must pass a "check-out ride" with one of the FBO's authorized Chief Pilots (for quality assurance purposes to ensure that all renters are current, proficient, and made aware of and use lawful, safe, and company approved procedures, and confirmed to be familiar with local landmarks and nuances). The FBO maintains, and upon request, offers renters a list of CFIs who have been checked out by the FBO to fly its airplanes. The FBO takes no role in providing or arranging for these CFIs. You emphasized the following three points:

1. The FBO has no contractual relationship with any CFI. Renters compensate the CFI directly, with no involvement by the FBO.

2. The FBO does not recommend or give preference to any CFI. The FBO does not require that any CFI chosen by a renter be already pre-approved by the FBO and on its aforementioned list of CFIs.

3. Any renter is able to choose any CFI of his or her choosing, whether or not the CFI is on the pre-approved list, as described in number 2, above.

Based on the above, you asked two specific questions:

1. Does § 91.409(b) apply to the CFIs in the above scenario? (Are those CFIs ***providing*** the aircraft for the purpose of § 91.409(b))?

No. Section 91.409(b), in pertinent part, provides 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 that aircraft has received an annual or 100-hour inspection . . . ." Here, assuming the accuracy of the FBO's assertion that it in no way provides the CFI (such that CFI through the FBO could be deemed as providing the aircraft), it is the renter who provides the CFI and, through the rental of the aircraft, the person receiving the instruction is providing the aircraft (the same as if he or she owned, rented/leased, or borrowed it from elsewhere) the arrangement does not come within the purview of § 91.409(b).

2. Is the scenario here (as relates to § 91.409(b)) any different than the "Aircraft owner scenario" (where an Aircraft owner, provides the aircraft and hires his own Instructor – which is <u>not</u> subject to a 100-hour inspection under § 91.409(b)? (Is it different in this Scenario where instead of an Aircraft Owner, there is an Aircraft <u>Renter</u> who provides the aircraft and hires his own Instructor?)

No. As indicated in our answer to your first question, above, it makes no difference whether the person providing the aircraft is an owner, renter, lessee, or borrower, so long as the person providing flight instruction is not in any way providing the aircraft.

You asked a final, un-numbered question: "Given the above Scenario, ([the FBO] has no contractual relationship with CFIs, and is merely renting its aircraft to Renters and requiring them to hire independent CFIs, with specifics above), for CFIs to provide instructions on [the FBO's] aircraft, does [the FBO] need to conduct 100-hour inspections on its aircraft? No, under the narrow facts provided, the FBO would not be held to the regulation's 100-hour inspection requirement. We caution, however, that this arrangement should not be used as a "work-around" the regulation, whereby a company rents the aircraft to a student and then later also provides, or is instrumental in providing, the flight instructor separately. On May 4, 2016, the FAA's Office of the Chief Counsel issued a legal interpretation that addressed similar issues.[1] (Copy enclosed.) In it we stated: "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."

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[1] Letter dated May 4, 2016, to Nicholas Pipitone from Lorelei Peter, Assistant Chief Counsel for Regulations, AGC-200. Your request referenced a related interpretation we issued in 2014, which, although addressing six different scenarios did not answer your precise issue. We issued the Pipitone letter after you mailed your request to us, and we believe it will help clarify these matters for you.

I hope this information is helpful. This response was prepared by Edmund Averman, an attorney on my staff, and coordinated with the FAA's Aircraft Maintenance Division (AFS-300). If you have further questions concerning this response, please contact us on (202) 267-3073.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

Enclosure

LOWENSTEIN LAW OFFICE 4040 Civic Center Dr. #200, San Rafael, CA 94903
415-272-1292 • 415-366-2110 Fax
Anthony S. Lowenstein, Esq. A@LowensteinLaw.com • LowensteinLaw.com

March 28, 2016

Office of the Chief Counsel
800 Independence Avenue SW
Washington, DC 20591
(202) 267-3222 / 202-267-3073
(202) 267-3227 Fax
AGC-200
Interpretation Department
Kim L. Young

RE: Request for Legal Interpretation of 14 CFR §91.409(b)

Dear FAA:

This letter requests FAA interpretation on a very specific point in 14 CFR § 91.409(b) regarding the applicability of the 100-hour inspections requirement under that regulation to rental aircraft.

For your reference, I have attached a 2014 FAA Interpretation of §91.409(b), which addresses other issues in six different scenarios, however I request interpretation on an issue not addressed in those scenarios.

To confirm my understanding of 14 CFR §91.409(b) – and please advise if this is, in any way, not correct:

> **§91.409 Inspections.**
>
> (b) Except as provided in paragraph (c) of this section, **no person may operate an aircraft carrying any person (other than a crewmember) for hire**, and **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 …
>
> SUMMARY - The 100-hour inspection is required for aircraft: that carry any person (other than a crewmember) for hire; and/or that are provided by any person giving flight instruction for hire. The phrase "for hire" refers to the person, not the aircraft. If a flight instructor provides an aircraft, or any organization that supplies both flight instruction and an aircraft, that aircraft is subject to the 100-hour inspection. Conversely, an aircraft provided (owned or rented) by the (student) Pilot, who is receiving instruction, is not subject to the 100-hour inspection.

Is the above Summary accurate and correct? If not, please advise and explain how and why it is in any way inaccurate or incorrect.

REQUEST FOR LEGAL INTERPRETATION – "Scenario":

Attitude Aviation ("Attitude") is an FBO[1] that rents airplanes to Renters ("Renters"). Some of its Renters are certificated Pilots who just want to rent aircraft for private flight. Some Renters periodically want to rent the aircraft and have a Certificated Flight Instructor ("CFI") join to provide instruction for additional ratings and/or recurrency training and instruction (such as a Biennial Flight Review or Instrument Proficiency Check, etc.). Some of its Renters are Student Pilots, who wish (or need) to have a CFI join for training.

[1] Attitude is just an FBO and not a "Flight Club". It does not have "memberships". Query whether the "Scenario" would be any different for a Flight Club?

Attitude neither employs nor contracts, in any way, with any CFIs. CFIs are treated like any other [prospective] Renter of Attitude: which is that to be eligible to rent and/or fly as P.I.C. of any or specific Attitude aircraft, one needs to pass a "check-out ride" with one of Attitude's authorized Chief Pilots, primarily for insurance purposes (as well as quality assurance and training to ensure that all renters are current, proficient, and made aware of and use lawful, safe and company approved procedures, and confirmed to be familiar with local landmarks and nuances).[2]

Attitude maintains, and upon request, offers to its Renters a "list" of CFIs who have been check-out to fly Attitude Aircraft. However, to be clear, other than maintaining and offering to Renters the above list, Attitude takes no role in providing or arranging CFIs. Specifically, to be clear:

(1) Attitude has no contractual relationship with its CFIs. Indeed, the terms of a CFI and Renter are solely between that CFI and Renter and the Renter compensates the CFI directly (with no guidance or oversight by Attitude).
(2) Attitude does not recommend or give preference to any CFIs; Attitude does not require CFIs to be existing approved Pilots / CFI's of Attitude.
(3) As a result of #2, above, any Renter who wants a CFI is able to choose any CFI s/he wishes (regardless of whether that CFI is an existing approved Pilot / CFI of Attitude) – and indeed a Renter may acquire and bring and use his/her own new CFI, who is not on the "list" – right after that CFI passes the "check-out ride", above)

The issue for Legal Interpretation relates to Attitude and the CFIs who provide instruction in Attitude's aircraft (to Attitude's Renters) – whether 14 CFR 91.409(b) applies, and thus whether the aircraft require the 100-hour inspection under 14 CFR 91.409(b).

(1) Does §91.409(b) apply to the CFIs in the above scenario? (Are those CFIs ***providing*** the aircraft for the purposes of §91.409(b)?
(2) Is the Scenario here (as relates to § 91.409(b)) any different than the "Aircraft owner scenario" (where an Aircraft Owner, provides the aircraft and hires his own Instructor - which is not subject to a 100-hour inspection under §91.409(b)? (Is it different in this Scenario where instead of an Aircraft Owner, there is an Aircraft Renter who provides the aircraft and hires his own Instructor?)

Given the above Scenario, (Attitude has no contractual relationship with CFIs, and is merely renting its aircraft to Renters and requiring them to hire independent CFIs, with specifics above), for CFIs to provide instructions on Attitude's aircraft, does Attitude need to conduct 100-hour inspections on its aircraft?

Sincerely,

A Lowenstein

Anthony S. Lowenstein, Esq.

[2] The charge for the checkout flight is solely for the cost of the airplane. The Renter is P.I.C. and the chief pilot or designee who attends is just there to conduct the flight check – not to provide instruction. If instruction is needed, the Pilot will ask them to get further instruction, supra, before attempting another check ride.