

QUESTION OF THE MONTH: IS MY CLUB REQUIRED TO PERFORM 100-HOUR INSPECTIONS ON CLUB AIRCRAFT?

One of the most perplexing maintenance issues faced by flying clubs is whether they are required to perform 100-hour maintenance inspections on club aircraft. As with most aviation questions, the answer is a definite “maybe” and to get to the bottom of this we must dig deeper than the regulations themselves. We’ll first look at some relevant documents and then various FAA Legal Interpretations of the 100-hour regulation – it turns out that people have been asking about this for many years! We’ll then provide some typical flying club scenarios to help you determine if your club aircraft falls under the 100-hour inspection regulation.

In the case of flying clubs, the question of 100-hour inspections very much depends on whether club aircraft are used for flight instruction, so the first thing to consider is whether flying club members can use club aircraft for purposes of flight training, and if they can compensate their flight instructor.

The answer to this is “yes” and it is clearly defined in [FAA Order 5190.6B](#) (section 10.6) and its [amendment](#). We wrote about this recently in the *Club Connector* newsletter, so please review the [January 2018 Question of the Month](#) if you’d like more details.

So, having established that club members may indeed use club aircraft for flight training, albeit with conditions, we must next determine if this influences the need to perform 100-hour inspections, and for this we’ll look at some of the FAA Legal Interpretations of the 100-hour regulation.

Let’s first remind ourselves of the 100-hour regulation itself - FAR91.409(b). It states in part that “...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”.

Now, FAA Order 5190.6B states that a flying club is “a non-profit or not for profit entity” and that the club “may not offer or conduct charter, air taxi or aircraft rental operations”. As such, flying clubs may not be commercial operators. Consequently, flying club operations should not involve “...an aircraft carrying any person (other than a crewmember) for hire.” We must now look to see if flying clubs fall under the second part of the regulation, namely “...and no person may give flight instruction for hire in an aircraft which that person provides...”

According to an FAA Legal Interpretation (Reference 1), “The 100-hour maintenance inspection requirement of FAR91.409(b) depends on how the aircraft is operated” and not by how it is owned – this is important as it removes any distinction between equity and non-equity flying clubs. The Interpretation continues to list 6 scenarios that could apply to flight schools that provide aircraft for rent, as well as perhaps an instructor. In brief, in cases where the school provides both the aircraft and an instructor to give flight instruction for hire, then FAR91.409(b) applies. If a customer rents the aircraft from the school, but the school does not provide the instructor, the aircraft need not have an annual or 100-hour inspection within the preceding 100 hours of time in service.

So, we start to see that the need for 100-hour inspections depends on how aircraft are operated during particular flights. It would be easy at this stage to start wondering if “ownership” of the club aircraft would influence the need for a 100-hour inspection, for example, if the club owns the aircraft or leases an aircraft from an individual who may or may not be a club member. In fact, another FAA Legal Interpretation (Reference 2), in response to questions concerning “club owned aircraft”, states “Rather than focusing on who owns the aircraft, the [100-hour inspection] question may be more easily resolved by looking at how the aircraft is operated. Regardless of who legally owns the aircraft, the 100-hour maintenance inspection is required if you operate the aircraft for certain purposes. 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.”

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

We now have to review two other FAA Legal Interpretations to shed light on what “effectively provides” might mean for flying clubs. FAA Legal Interpretation (Reference 3) was directed at a flying club and contains some useful insight, including “...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 FAR91.409(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 any preference by the flying club, and 3) the members are free to choose instructors who are not members of the flying club.” Note that all three conditions are required to not implicate FAR91.409(b).

Yet another FAA Legal Interpretation, (Reference 4), was directed to an FBO rather than a club, but states the same general principles. It adds further guidance indicating it should be acceptable to require any instructor who will instruct in a club aircraft to pass a “check-out ride” or familiarization flight with a club pilot to be certain the “new” instructor meets the club’s insurance requirements, etc. The FAA cautions that “this arrangement should not be used as a ‘work around’ the regulation.”

So, there we have it. If club aircraft are used for compensated instruction, the need to comply with FAR91.409(b) depends not on the type of club and not on who owns the aircraft, but on how it is operated. If the club provides the aircraft and the instructor, the answer is “yes”. If a member decides to use the aircraft to receive individual flight training and is free to choose any instructor who may or may not be a club member, then “no”.

To help illustrate the above, here are a few typical flying club scenarios:

Scenario 1. Members do not use club aircraft for compensated flight training. FAR91.409(b) is not invoked.

Scenario 2. Members use club aircraft for flight training, but no compensation of any instructor occurs. A club member effectively just rents the aircraft from the club, and the member does not pay the instructor. FAR91.409(b) is not invoked.

Scenario 3. Members use club aircraft for flight training and compensate an instructor who has no affiliation with the club and has no contractual agreement with the club to provide instruction. FAR91.409(b) is not invoked.

Scenario 4. Members use club aircraft for flight training, and only instructors who are also members are authorized to instruct in the aircraft. As members do not have the choice to use a non-member instructor, the club is effectively providing the instructor. FAR91.409(b) is invoked.

Scenario 5. Members use club aircraft for flight training, and member-instructors are listed as authorized club instructors, as are non-member instructors. Members have the choice of using any instructor, including a non-member instructor, so the club is not providing the instructor. FAR91.409(b) is not invoked.

One final thought on this. If your club’s operations do not invoke FAR91.409(b), we suggest that you treat it as an opportunity for flexibility rather than “not needing to do the 100-hour inspection”. For example, if a club plane has flown 95 hours since the last annual and you anticipate another 20 hours being added before the annual is due, you might decide to wait for the annual. If, however, the aircraft has flown 95 hours in the first few months since the annual and you anticipate another 90 hours being flown before the annual, it would be prudent to consider performing a 100-hour (or early annual) inspection. Don’t let cost be the factor here. If the 100-hour inspections costs, say, \$1,000, then add \$10 onto the aircraft per-hour cost and the problem is solved.

Reference 1: Legal Interpretation, Letter to Stephen R. Greenwood from Lorelei Peter, Acting Assistant Chief Counsel for Regulations, AGC-200 (October 9, 2015).

Reference 2: Legal Interpretation, Letter to Nicholas Pipitone from Lorelei Peter, Assistant Chief Counsel for Regulations, AGC-200 (May 4, 2016).

Reference 3: Legal Interpretation, Letter to Forrest Reid from Joseph Conte, Manager, Operations and Air Traffic Law Branch (August 20, 2004).

Reference 4: Legal Interpretation, Letter to Anthony S. Lowenstein from Joseph Conte, from Assistant Chief Counsel for Regulations, AGC-200 (August 12, 2016).