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

Office of the Chief Counsel

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

February 1, 2010

Mr. Eric Atkins
[redacted]

Dear Mr. Atkins:

This responds to your e-mail dated September 28, 2009. In that e-mail you state that you recently applied for and received airworthiness certification of a turbine-powered helicopter as an experimental amateur–built aircraft. You state that the aircraft was manufactured from an aircraft kit and that the kit is identified on the FAA's listing of aircraft kits that have been evaluated and found eligible to meet the "major portion" requirement of Title 14, Code of Federal Regulations (14 CFR) § 21.191(g). You state that although a number of these aircraft have been certificated in the United States, disparate maintenance requirements have been imposed on the aircraft.

You specifically reference § 91.409 and ask whether the builder of this aircraft can elect to use an annual condition inspection in lieu of an approved program for this aircraft. You specifically state that paragraph (e) of § 91.409 permits that "the owner or operator of a turbine-powered rotorcraft may elect to use the inspection provisions of § 91.409(a), (b), (c), or (d) in lieu of an inspection option of section 91.409(f)."

In the context of § 91.409(f)(3) you also ask who is considered the manufacturer of the aircraft when it is amateur-built.

Additionally, you ask whether the Flight Standards District Office (FSDO) must approve your aircraft's maintenance program when the operations limitations issued with your aircraft's airworthiness certificate contain the following statement:

> Inspections must be recorded in the aircraft maintenance records showing the following, or a similarly worded, statement: "I certify that this aircraft has been inspected on [insert date] in accordance with the scope and detail of the [identify program, title] FSDO-approved program dated _____, and found to be in a condition for safe operation.

For an aircraft to be certificated as amateur-built under § 21.191(g), the "major portion" of the aircraft must have been "fabricated and assembled by persons who undertook the construction project for their own education or recreation." As an experimental aircraft, the maintenance, preventive maintenance, rebuilding, and alteration provisions of part 43 do not apply to your aircraft (unless the aircraft has previously been issued a different kind of airworthiness certificate). *See* § 43.1(b).

Section 91.319 prescribes specific operating limitations that are applicable to all aircraft issued experimental certificates. The Administrator may also issue other limitations considered necessary, such as those addressing maintenance, in accordance with § 91.319(i). The operator of the aircraft must comply with each operating limitation.

FAA Order 8130.2F, Airworthiness Certification of Aircraft and Related Products, establishes procedures for accomplishing original and recurrent airworthiness certification of aircraft and related products. Paragraph 154 of chapter 4, section 9 of that order sets forth those operating limitations that an aviation safety inspector or designee will issue for the operation of an amateur-built aircraft. Paragraphs 22 through 25 of that section set forth those operating limitations applicable to the maintenance of amateur-built aircraft; however the order specifically notes that "limitations 24 and 25 will be issued in lieu of limitations 22 and 23 for turbine-powered amateur-built aircraft." Limitations 24 and 25 are as follows:

> **(24)** This aircraft must not be operated unless it is inspected and maintained in accordance with an inspection program selected, established, identified, and used as set forth in § 91.409(e) through (h). This inspection must be recorded in the aircraft logbook and maintenance records.
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> **(25)** Inspections must be recorded in the aircraft logbook and maintenance records showing the following, or a similarly worded, statement: "I certify that this aircraft has been inspected on [insert date] in accordance with the scope and detail of the [identify program, title] FSDO-approved program dated _____, and found to be in a condition for safe operation." The entry will include the aircraft's total time-in-service (cycles if appropriate), and the name, signature, certificate number, and type of certificate held by the person performing the inspection.

Limitation 24 permits the aircraft to be operated "in accordance with an inspection program selected, established, identified, and used as set forth in § 91.409(e) through (h)." Although paragraph (e) of § 91.409, permits "the operator of a turbine–powered rotorcraft to elect to use the inspection provisions of § 91.409(a), (b), (c), or (d) in lieu of an inspection option of section 91.409(f)," paragraph (c) specifically states that paragraph (a) and (b) of that section do not apply to "an aircraft that carries . . . a current experimental certificate" or to "turbine-powered rotorcraft when the operator elects to inspect that rotorcraft in accordance with paragraph (e) of this section." Paragraph (a) contains provisions for use of an annual

inspection. As this turbine powered rotorcraft has been issued an experimental certificate, an annual condition inspection can not be used in lieu of an approved maintenance program. This action was properly disallowed by your inspector.

With respect to your question as to who is considered the "manufacturer" of an amateur-built aircraft certificated under § 21.191(g), the FAA considers the person (or persons) who fabricated and assembled the major portion of the aircraft to be the aircraft's "manufacturer" or "builder." This person is listed as the aircraft builder on FAA Form 8130-6, Application for U.S. Airworthiness Certificate, and as the aircraft manufacturer on the AC Form 8050-1, Aircraft Registration Application. When § 91.409(f) is being applied by an owner or operator to select an inspection program for an amateur-built turbine powered rotorcraft, the FAA interprets the term "manufacturer" consistently with this determination. Section 91.409(f)(3) specifically permits the use of "a current inspection program recommended by the manufacturer." An owner or operator who has fabricated and assembled an amateur-built turbine-powered rotorcraft from an eligible kit therefore may select an inspection program which that person, acting as the manufacturer, has recommended. Such a program, due to its comprehensive nature, however, is frequently based upon an inspection program recommended by the aircraft kit manufacturer. Any inspection program used would also have to be FSDO-approved in accordance with the operating limitations issued for the aircraft.

The FAA considers FSDO approval of the inspection program to be a critical element of the process of ensuring that the aircraft is in a condition for safe operation. Accordingly, the FAA would consider any statement certifying that the aircraft has been inspected in accordance with a program that has not been FSDO approved to be significantly different from the original statement specified by the operating limitations issued for the aircraft. Such a statement would not constitute a statement "similarly worded" to the original.

This interpretation was prepared by Paul Greer, an attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the Aircraft Maintenance Division (AFS-300) of the Flight Standards Service and the Production and Airworthiness Division (AIR-200) of the Aircraft Certification Service. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,



Rebecca B. MacPherson
Assistant Chief Counsel, Regulations Division (AGC-200)
Office of the Chief Counsel