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

Office of the Chief Counsel

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

DEC - 8 2010

Mr. Terry Sweat
[redacted]

Re: Request for Clarification of 14 C.F.R. § 91.409
Concerning Who is Authorized to Approve an Aircraft
For Return to Service Following an Annual Inspection

Dear Mr. Sweat:

This responds to your February 22, 2010, letter to the Federal Aviation Administration (FAA) requesting a clarification of 14 C.F.R. § 91.409—specifically: "Who is allowed to return an aircraft back into service after an annual inspection under part 91." In the accompanying narrative you narrowed the scope of your inquiry to whether an A&P-rated mechanic without an FAA-issued Inspection Authorization (IA) is permitted to perform this function, or whether the mechanic must hold an IA to approve an aircraft for return to service after an annual inspection. For the reasons discussed below, we have determined that the regulations require a mechanic to hold an IA in order to legally approve an aircraft for return to service following an annual inspection under part 91.

Preliminarily, the FAA's maintenance regulations found in 14 C.F.R. part 43 set forth who may perform maintenance and who may approve an aircraft for return to service after maintenance. For example, § 43.3(b) authorizes a mechanic to perform maintenance "as provided in Part 65 . . . .", and § 43.7(b) authorizes a mechanic to approve an aircraft for return to service after it has undergone maintenance "as provided in Part 65 . . . ." The limits of a mechanic's authority in each instance are circumscribed by the phrase "*as provided in Part 65.*" Among other things, certain sections in 14 C.F.R. part 65 specify additional "privileges" that are over and above the general privileges conferred on certificated mechanics by § 65.81. Section 65.81 provides in pertinent part:

> (a) A certificated mechanic may perform or supervise the maintenance, preventive maintenance or alteration of an aircraft . . . . for which he is rated (but excluding major repairs . . . .), and *may perform additional duties in accordance with §§ 65.85, 65.87, and 65.95.* (Emphasis added.)

Accordingly, a mechanic's additional privileges are limited by the referenced sections. Sections 65.85 and 65.87, respectively, permit a mechanic with an airframe rating or a powerplant rating to approve for return to service an airframe or a powerplant or propeller after performing, supervising, or inspecting its maintenance, and, respectively, to perform the 100-hour inspection required by part 91. No privilege to perform an annual inspection is granted by either section.

The FAA requires that a mechanic meet additional qualifications to be the holder of an IA, as set forth in § 65.91. As discussed below, historically the FAA and its predecessor agencies have drawn distinctions between 100-hour and annual inspections and who may perform them. As far back as 1952, annual inspections were associated with the Administrator's direct control—they had to be accomplished "by a person designated by the Administrator," while the periodic (100-hour) inspection required only "an appropriately rated mechanic . . . ." (14 C.F.R. § 43.32(a) and (b) (1952).) Presently, § 65.95 confers the additional privilege of performing an annual inspection to the holder of an IA.

By way of additional historical perspective, in 1956, the regulations drew a clear distinction between 100-hour and *periodic* (later changed to *annual*) inspections. **14 C.F.R. § 18.12 *Persons authorized to perform and approve one-hundred-hour, periodic, and progressive inspections*** provided, in pertinent part:

> (a) *One-hundred-hour inspection.* No person shall perform and approve 100-hour inspections except one of the following:
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> (1) Certificated mechanics who together hold airframe and powerplant ratings, or a certificated mechanic holding both such ratings; . . . .
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> * * * * *
>
> (b) *Periodic inspection.* No person shall perform and approve periodic inspections except one of the following:
>
> (1) A certificated mechanic holding both airframe and powerplant ratings when authorized by the Administrator in accordance with Part 24 of this subchapter; . . . .

Similar to current part 65, in 1956 14 C.F.R. part 24 set forth privileges and limitations for the holder of a mechanic certificate. Sections 24.40 provided that a mechanic "may perform or supervise the maintenance, repair, inspection, and alteration of an aircraft, . . . for which he is rated, and may perform additional work in accordance with the privileges and limitations stated in §§ . . . 24.41, 24.42, and 24.43 . . . ." Sections 24.41 and 24.42 listed, respectively, the privileges of an airframe and a powerplant-rated mechanic, which included, in each case, "he may perform the 100-hour inspection required by Part 43 . . . ." Section 24.43 provided additional privileges for a mechanic who held an IA. Specifically, in pertinent part, this regulation provided:

> (a) A certificated mechanic holding both airframe and powerplant ratings and having such other qualifications as the Administrator may deem appropriate, when issued an inspection authorization by the Administrator . . . , may:
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> * * * * *
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> (2) Perform the periodic, . . . inspections required by Part 43 . . . .

Historical perspective on the distinction between 100-hour and annual inspections and who may perform them also may be garnered from a review of the agency's Notice of Proposed Rulemaking (Notice No. 65-26) to change the references to "periodic inspection" in the regulations to "annual inspection." (30 FR 13167; October 15, 1965.) We are enclosing a copy for your convenience. The preamble provided further explanation that addresses your question directly, including the argument in your attached narrative that, because the scope and detail of both inspections are the same, a mechanic should not be required to hold an IA to perform an annual inspection:

> Because the performance standards of §§ 43.13 and 43.15 are identical for the 100-hour and periodic inspections, it is possible to erroneously conclude that all inspections (including 100-hour inspections) performed under those sections will satisfy § 91.169(a)(1) [currently § 91.409(a)(1)] if the 12-calendar month operating limitation is met. This is not the case. Compliance with § 91.169(a)(1) is met only by an inspection that is performed as a periodic inspection. This requires that it be performed by the holder of an inspection authorization, ...

The Final Rule resulting from Notice No. 65-26 also added a clarifying flush paragraph following § 91.169(a)(2) [presently following § 91.409(a)(2)]:

> No inspection performed under paragraph (b) off this section [the 100-hour inspection] may be substituted for any inspection required by this paragraph [either an annual inspection or an inspection for the issuance of an airworthiness certificate] unless it is performed by *a person authorized to perform annual inspections*, and is entered as an "annual" inspection in the required maintenance records.

(31 FR 3337; March 3, 1966 (emphasis added).)

The National Transportation Safety Board addressed this issue in *Administrator v. Guerin*, when it stated: "However, since only an I.A. can perform an annual inspection (see FAR section 65.95(a)(2)), it follows, although the regulations could be clearer on the matter, that only an I.A. can approve an aircraft for return to service after such an inspection." *Administrator v. Guerin*, NTSB Order No. EA-3827 (1993), WL 87670 (N.T.S.B.). For the reasons stated above, the holder of an FAA-issued mechanic certificate with both airframe and powerplant ratings must also hold an FAA-issued inspection authorization to legally perform the annual inspection required by 14 C.F.R. § 91.409.

In a telephone conversation on or about October 12, 2010, with Edmund Averman, an attorney on my staff, you stated that a reason for your inquiry was that, because you do not hold an IA, you recently paid a mechanic with an IA to approve your aircraft for return to service following an annual inspection that you had performed. Your concern was that you paid him a considerable sum for his service and that all he did was review your completed checklist and make a logbook entry approving the aircraft for return to service following an annual inspection—and that he did so without inspecting anything on the airplane. The scenario you described is of great concern. The holder of an IA that did what you described would be in serious violation of the regulations—most likely § 43.12(a)(1) involving a false entry in a maintenance record.

This response was prepared by Edmund Averman, an Attorney in the Regulations Division in the Office of the Chief Counsel, and coordinated with the Aircraft Maintenance Division (AFS-300) in the Office of Flight Standards 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 for Regulations, AGC-200

Enclosure