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

Office of the Chief Counsel

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

OCT - 1 2014

Stephen R. Greenwood
Fly By Knight, Inc.
800 Judge Leon Ford Dr.
Hammond, LA 70401

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

Dear Mr. Greenwood:

This is in response to your letter dated March 22, 2014, in which you asked for a legal interpretation of 14 CFR § 91.409(b). You explained that Fly By Knight, Inc. is a 14 CFR part 61 and 141 flight school that offers both flight instruction and aircraft rental to its customers. You indicated that there seem to be several opinions regarding the interpretation of § 91.409(b) as it applies to aircraft used for these purposes.

Section 91.409(b) of subpart E, part 91, states 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." For purposes of this rule, aircraft used for flight training under part 141 are not treated any differently than aircraft used for flight instruction under part 61. In fact, § 141.39(a)(3) provides that each aircraft used by a part 141 flight school for flight training and solo flights "must be maintained and inspected in accordance with the requirements for aircraft operated for hire under part 91, subpart E."

The 100-hour maintenance inspection requirement of § 91.409(b) depends on how the aircraft is operated. *See* Legal Interpretation, Letter to Craig Brown from Donald Byrne, Assistant Chief Counsel for Regulations (February 24, 2000). Therefore, when Fly By Knight, Inc. uses an aircraft for both flight instruction and rental, the 100-hour maintenance inspection requirement depends on how the aircraft is operated during the flight in question. For instance, if Fly By Knight, Inc. is going to operate the aircraft to provide flight instruction for hire, then the aircraft must have had an annual or 100-hour maintenance inspection within the preceding 100 hours of time in service. If Fly By Knight, Inc. is going to rent the aircraft to a customer, however, and does not provide the pilot, that aircraft need not have an annual or 100-hour maintenance inspection within the preceding 100 hours of time in service. *See* Legal Interpretation, Letter to Berry Rackers from Joseph Brennan, Associate Regional Counsel (May 3, 1984).

You listed six scenarios that could occur during your operations, and you requested counsel's opinion as to whether these scenarios represent a violation of § 91.409(b).

Scenario 1: Fly By Knight, Inc. uses an aircraft for both flight instruction and rental. The aircraft has accumulated 95 hours of time in service since the last annual inspection. A rental customer reserves the aircraft for a weekend trip and anticipates flying an additional 10 hours. We assume Fly By Knight, Inc. does not provide a pilot. Fly By Knight, Inc. performs a 100-hr/annual inspection upon the aircraft's return.

The fact pattern in scenario 1 does not violate § 91.409(b). As explained above, the 100-hour maintenance inspection requirement depends on how the aircraft is operated. If the rental customer rents the aircraft and Fly By Knight, Inc. does not provide the pilot, then the aircraft is not being operated to carry a person (other than a crewmember) for hire, or to provide flight instruction for hire. Thus, the 100-hour maintenance inspection requirement does not apply, and the rental customer may pilot the aircraft the additional 10 hours. Fly By Knight, Inc. must perform an annual or 100-hour maintenance inspection, however, prior to operating the aircraft to provide flight instruction for hire.

Scenario 2: Fly By Knight, Inc. uses an aircraft for both flight instruction and rental. The aircraft has accumulated 99.8 hours of time in service since the last inspection. The aircraft is dispatched on a local training flight with a Fly By Knight, Inc. instructor and a student pilot, and the flight lasts 1.5 hours. Fly By Knight, Inc. performs a 100-hr/annual inspection upon the aircraft's return.

The fact pattern in scenario 2 represents a violation of § 91.409(b) because the flight instructor and the student pilot intend to overfly the 100-hour limitation during a local training flight. The aircraft is being operated to provide flight instruction for hire. As a result, the aircraft must have received an annual or 100-hour maintenance inspection within the preceding 100 hours of time in service. The next annual or 100-hour maintenance inspection is due in 0.2 hours, and the local training flight is expected to take 1.5 hours. Section 91.409(b) states that "[t]he 100-hour limitation may be exceeded by not more than 10 hours while en route to reach a place where the inspection can be done." This 10-hour grace period applies only to situations where the aircraft must be flown en route to reach a place where the inspection can be performed.

In this scenario, the flight instructor and the student pilot intend to overfly the 100-hour limitation during a local training flight. The 10-hour grace period does not apply to local training flights. As a result, the operator violates § 91.409(b) when the 0.2 hours expire.

Scenario 3: Fly By Knight, Inc. uses an aircraft for both flight instruction and rental. The aircraft has accumulated 99.8 hours of time in service since the last inspection. The aircraft is dispatched on a solo cross country training flight with a student pilot. The flight takes 2.5 hours and includes a full stop landing at the destination airport. Fly By Knight, Inc. performs a 100-hr/annual inspection upon the aircraft's return.

The fact pattern in scenario 3 represents a violation of § 91.409(b) because the flight student intends to overfly the 100-hour limitation during his solo cross country flight, and he is not flying the aircraft en route to reach a place where the inspection can be done. Section 91.409(b) applies to aircraft operated to provide flight instruction for hire. Thus, § 91.409(b) applies to aircraft used for flight instruction under part 61, which includes solo training flights. Furthermore, § 141.39 states that each aircraft used by a part 141 flight school for flight training and solo flights "must be maintained and inspected in accordance with the requirements for aircraft operated for hire under part 91, subpart E." Therefore, if a flight student conducts a solo cross country training flight, the aircraft must have received an annual or 100-hour maintenance inspection within the preceding 100 hours of time in service.

In this scenario, the next annual or 100-hour maintenance inspection is due in 0.2 hours, and the solo cross country training flight is expected to take 2.5 hours. The 10-hour grace period in § 91.409(b) applies only to situations where the aircraft must be flown en route to reach a place where the inspection can be performed. The student pilot intends to overfly the 100-hour limitation during his solo cross country flight, and he is not flying the aircraft en route to reach a place where the inspection can be done. As a result, the operator violates § 91.409(b).

Scenario 4: Fly By Knight, Inc. uses an aircraft for both flight instruction and rental. The aircraft has accumulated 99.8 hours of time in service since the last inspection. The aircraft is dispatched on a cross country training flight with a Fly By Knight, Inc. instructor and a student pilot. The 1st leg to the destination airport takes 1.5 hours. The return flight also takes 1.5 hours. Fly By Knight, Inc. performs a 100-hr/annual inspection upon the aircraft's return.

The fact pattern in scenario 4 represents a violation of § 91.409(b) because the flight instructor and the student pilot intend to overfly the 100-hour limitation during their cross country flight, and they are not flying the aircraft en route to reach a place where the inspection can be done. The aircraft is being operated to provide flight instruction for hire. Therefore, the aircraft must have received an annual or 100-hour maintenance inspection within the preceding 100 hours of time in service. The next annual or 100-hour maintenance inspection is due in 0.2 hours, and the dual cross country flight is expected to take 3 hours. As stated above, the 10-hour grace period in § 91.409(b) applies only to situations where the aircraft must be flown en route to reach a place where the inspection can be performed. In this scenario, the flight instructor and the student pilot intend to overfly the 100-hour limitation during their cross country training flight, and the aircraft is not being flown en route to reach a place where the inspection can be done. As in the previous scenario, the operator violates § 91.409(b).

Scenario 5: Fly By Knight, Inc. uses an aircraft for both flight instruction and rental. The aircraft has accumulated 97 hours of time in service since the last inspection. The aircraft is dispatched on a cross country training flight with a Fly By Knight, Inc. instructor and a student pilot. The 1st leg to the destination airport is expected to take 1.5 hours. The return flight is also expected to take 1.5 hours. Due to ATC vectoring/unexpected winds, the flight instead takes 3.1 hours. Fly By Knight, Inc. performs a 100-hr/annual inspection upon the aircraft's return.

The fact pattern in scenario 5 does not violate § 91.409(b). The aircraft is being operated to provide flight instruction for hire. As a result, the aircraft must have received an annual or 100-hour maintenance inspection within the preceding 100 hours of time in service. The aircraft had its last inspection within the preceding 97 hours of time in service and the planned flight is expected to take 3 hours. The aircraft remains in compliance with § 91.409(b) even though the flight takes 3.1 hours due to unexpected circumstances. The flight instructor and the student pilot did not intentionally overfly the 100-hour limitation, and § 91.409(b) provides that the 100-hour limitation may be exceeded by not more than 10 hours while en route to reach a place where the inspection can be done.

Scenario 6: Fly By Knight, Inc. uses an aircraft for both flight instruction and rental. The aircraft has accumulated 100 hours of time in service since the last inspection. Fly By Knight, Inc. cannot perform an inspection within the next 3 days. The aircraft is marked for rental use only; no flight instruction is performed. Rental customers accumulate 12 hours of flight time over the 3 day period. After this, the aircraft receives an annual inspection.

The fact pattern in scenario 6 does not violate § 91.409(b). Fly By Knight, Inc. cannot operate the aircraft to provide flight instruction for hire because the aircraft has not received an annual or 100-hour maintenance inspection within the preceding 100 hours of time in service. Fly By Knight, Inc. may rent the aircraft to customers, however, as long as Fly By Knight, Inc. is not providing the pilot and as long as the rental customer is not operating the aircraft for hire. Rental customers may continue to accumulate flight time in this scenario because the 100-hour maintenance inspection requirement does not apply to aircraft being operated for rental purposes. However, Fly By Knight, Inc. must perform an annual or 100-hour maintenance inspection on the aircraft prior to operating it to provide flight instruction for hire.

You also asked if an annual inspection "reset the clock" for a 100-hour inspection. You provided the following example: "[A]n aircraft received an annual inspection and then flew 105 hours, if a 100hr inspection was performed then the next inspection due would be in a further 95 hours however, if instead an annual inspection was performed, then the next required inspection would be in a further 100 hours, *i.e.*, gaining 5 hours over performing a 100hr inspection." Your scenario is only partially correct.

Section 91.409(b) states that "[t]he 100-hour limitation may be exceeded by not more than 10 hours while en route to reach a place where the inspection can be done." However, "[t]he excess time used to reach a place where the inspection can be done must be included in computing the next 100 hours of time in service."

You may perform an annual inspection rather than a 100-hour maintenance inspection when the aircraft reaches the 100-hour limitation under § 91.409(b). However, if you perform an annual inspection on an aircraft that has exceeded the 100-hour limitation, you are still required to subtract the excess time from the next 100 hours of time in service. In your example, the aircraft received an annual inspection and then flew 105 hours. This aircraft would be overdue for an annual or 100-hour maintenance inspection by 5 hours, assuming it is being operated for hire or operated to provide flight instruction for hire. For purposes of this hypothetical, we will

assume you exceeded the 100-hour limitation by 5 hours while en route to reach a place where the inspection could be done. You must subtract the 5 excess hours from the next 100 hours of time in service. Therefore, the next annual or 100-hour maintenance inspection would be due in 95 hours, regardless of whether an annual or 100-hour maintenance inspection was last performed—the fact that you deemed the inspection in the second part of your hypothetical an annual rather than a 100-hour inspection makes no difference.

Finally, you asked how to bring the aircraft described in scenario 6 back into compliance when considering the 10-hour limitation detailed in § 91.409(b). As explained above, the fact pattern described in scenario 6 does not violate the regulation. The rental customer may overfly the 100-hour limitation because the 100-hour maintenance inspection requirement does not apply to rental aircraft, provided that Fly By Knight, Inc. does not provide the pilot to the rental customer and provided that the rental customer does not operate the aircraft for hire. Furthermore, the rental customer may accumulate flight time in excess of 110 hours because the 10-hour grace period applies only when the aircraft is being operated for hire or operated to provide flight instruction for hire. Therefore, the operation in scenario 6 does not violate § 91.409(b) when a rental customer accumulates flight time in excess of 110 hours. However, Fly By Knight, Inc. must perform an annual or 100-hour maintenance inspection prior to using the aircraft to provide flight instruction for hire, and the next inspection must be performed before the next 88 hours of time in service for Fly By Knight to continue to provide flight instruction or carry a person for hire.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Katie Patrick, Attorney, International Law, Legislation and Regulations Division of the Office of the Chief Counsel, and coordinated with the Aircraft Maintenance Division of the Flight Standards Service.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for International Law,
Legislation and Regulations