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

Office of the Chief Counsel

800 Independence Ave., SW.
Washington, DC 20591

August 15, 2008

Mr. Michael D. Busch
[redacted]

Re: Request for Interpretation of 14 C.F.R. § 43.11 and § 91.417

Dear Mr. Busch:

On March 10, 2008, you requested, via E-mail, an interpretation of the above-referenced regulations in the context of the recording of maintenance entries following an annual inspection with resulting discrepancies and the related documents that must be carried aboard the aircraft on a subsequent ferry flight to a location for correction of the discrepancies. Specifically, you posited a fact-based scenario and then asked three questions based on the facts presented.

Your facts:

> An aircraft owner takes an aircraft to an IA [certificated mechanic with an Inspection Authorization] for an annual inspection, the IA finds one or more airworthiness discrepancies, and the owner directs the IA to "sign off the annual with discrepancies" per 14 CFR 43.11(a)(5) (disapproving the aircraft for return to service) and to provide the owner with a list of discrepancies per 14 CFR 43.11(b). The owner then secures a ferry permit to fly the unairworthy aircraft to a different location where the discrepancies will be corrected and the aircraft approved for return to service.

Your specific questions in order:

> 1. The owner asks the IA to make the requisite 43.11(a)(5) maintenance record entry on a self-adhesive sticker so that the owner can bring the entry to the shop at which the repairs are to be performed without having to carry the aircraft maintenance logbook in the aircraft. The IA insists that the maintenance record must be in the aircraft logbook in order to be legal. Who's right?

ANSWER: The aircraft owner is right. The applicable regulations set forth the types of maintenance records that must be made and kept, including the length of time they must be kept. The regulations do not, however, define the format or form of the record.

Section 43.11(a) provides, in pertinent part: "The person approving or disapproving for return to service, an aircraft . . . .after any inspection performed in accordance with part 91, . . . shall make an entry in the maintenance record of that equipment containing the following information: . . . (5) Except for progressive inspections, if the aircraft is not approved for return to service because of needed maintenance, noncompliance with applicable specifications, airworthiness directives, or other approved data, the following or a similarly worded statement—'I certify that this aircraft has been inspected in accordance with (insert type) inspection and a list of discrepancies and unairworthy items dated (date) has been provided for the aircraft owner or operator.'"

In addition, section 91.417(a) provides, in pertinent part: "Except for work performed in accordance with §§ 91.411 and 91.413, each registered owner or operator shall keep the following records for the periods specified in paragraph (b) of this section: (1) Records of the maintenance, . . . records of the . . . annual, . . .and other required or approved inspections, as appropriate, for each aircraft . . . ." Paragraph (b) of the section provides, in pertinent part, "The owner or operator shall retain the following records for the periods prescribed: (1) The records specified in paragraph (a)(1) of this section shall be retained until the work is repeated or superseded by other work or for 1 year after the work is performed."

Section 43.11(a), which applies to the maintenance provider, requires that the entry be made in the "maintenance record of that equipment," without specifying what that record should be, *e.g.*, the aircraft maintenance logbook (as premised in your question), or something else, *e.g.*, a self-adhesive sticker [even a post-it note] (again, as premised in your question). Of course, it is incumbent on the owner under section 91.417 to keep these records for the requisite time period, in this case, until the next annual inspection, or for one year. While keeping such records in the actual maintenance logbook of the aircraft might facilitate their being kept and readily available during the specified time periods, the regulations do not required it. The aircraft owner may determine what is used as a maintenance record for his or her aircraft.

2. The owner asks the IA to prepare the requisite 43.11(b) list of discrepancies and airworthiness items as a separate document, signed and dated by the IA, with a copy retained by the IA and countersigned by the aircraft owner acknowledging receipt thereof. The IA insists that he must document the discrepancies and air-worthiness items in the aircraft logbook as part of the 43.11(a)(50 entry. The owner does not want the IA to do this because 91.417(b)(3) provides that the 43.11(b) discrepancy list need be retained by the owner only until the discrepancies have been rectified and the aircraft approved for return to service, whereas the 43.11(a)(5) maintenance record entry must be retained for at least one year or until the next

annual inspection, whichever comes first (per 91.417(b)(1)) and is typically retained indefinitely. The IA is unwilling to record the discrepancies in a separate document and insists that it must be part of the logbook entry. Who's right?

ANSWER: The aircraft owner is right. The list of discrepancies required to be provided to the aircraft owner or operator (or lessee) by sections 43.11(a)(5) and (b) is not a maintenance record that must be entered in the maintenance record of the aircraft. Assuming the IA made the appropriately worded certification after the inspection, his or her remaining duty under those paragraphs is to placard inoperative instruments and the cockpit controls of inoperative equipment and to provide the owner or lessee a signed and dated list of the discrepancies. The list may be on a separate piece of paper or other medium separate from the aircraft maintenance logbook. Under section 91.417(b)(3), the owner or operator must keep this list only until the defects are repaired and the aircraft is approved for return to service.

3. The owner submits an FAA Form 8130-6 to the FSDO requesting a ferry permit, and receives an FAA Form 8130-7 special flight permit signed by the FSDO inspector. When the owner makes the ferry flight, which of the following documents must by regulation be carried in the aircraft on that flight: (1) The Form 8130-7 special flight permit; (2) The 43.11(a)(5) maintenance record entry; (3) the 43.11(b) discrepancy list (assuming that the answer to question #2 is that this is a separate document)?

ANSWER: Of the documents mentioned, only the FAA Form 8130-7 special flight permit issued by the FSDO must be carried on the aircraft on the flight at issue. This would include associated operating limitations deemed necessary for safe operation. The current Airworthiness Certificate for the aircraft also must be aboard during the ferry flight. Section 91.203(a)(1) requires that an appropriate and current airworthiness certificate must be on board the aircraft when it is operated, and section 21.175 defines the special flight permit as a special airworthiness certificate. In addition, the following should be on board during the ferry flight:

- Approved Airplane Flight Manual or Rotorcraft Flight Manual
- If the listed discrepancies include inoperative instruments or equipment, a placard must be installed on the affected instruments or equipment

This response was prepared by Edmund Averman, an Attorney in the Regulations Division of the Office of the Chief Counsel and coordinated with the aircraft Maintenance Division of 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