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

Office of the Chief Counsel

800 Independence Ave., SW.
Washington, DC 20591

AUG 13 2009

Dassault Falcon
Dassault Aircraft Services
Mr. Ed Gagnon
New Castle Airport
Box 10367
Wilmington, DE 19850

Re: Request for Interpretation of 14 C.F.R. § 43.11(b) Concerning Determining the Status of Applicable Airworthiness Directives

Dear Mr. Gagnon:

In a letter dated August 22, 2008, addressed to the Federal Aviation Administration's (FAA) Regional Counsel for the Eastern Region, you asked whether, under 14 C.F.R. § 43.11(b), a person performing a required inspection must conduct sufficient aircraft records review to determine the status of applicable Airworthiness Directives (AD). You stated that Dassault Aircraft Services (DAS) is the OEM Service Center Network for Dassault Falcon Jet. As a consequence, DAS provides maintenance services and performs inspections for many operators of Dassault Falcon Jet aircraft.

By your letter and in a later clarifying telephone conversation, you indicated that DAS has received conflicting advice from two FAA Flight Standards District Offices (FSDO)—the Little Rock, Arkansas FSDO and the Philadelphia, Pennsylvania FSDO. Specifically, you stated that DAS's Principal Maintenance Inspector (PMI) at the Little Rock FSDO advised DAS that the rule does mandate that the person performing the inspections must determine the status of applicable ADs, while the advice you received from officials at the Philadelphia FSDO opined to the contrary. Because of the apparent conflict in the advice you received from FSDOs in two FAA regions, we are responding to your inquiry.

It is our opinion that a person performing and completing an inspection required under 14 C.F.R. part 91 must determine the status of all applicable ADs in order to determine that the aircraft is in an airworthy condition. For this we look beyond the requirements in § 43.11(b), which addresses only situations in which the person performing the inspection finds the aircraft to be unairworthy.

You expressed your disagreement with the advice given by the Little Rock FSDO and provided reasons for your position. The essence of your disagreement is based on the requirements applicable to an inspection program selected under § 91.409(e). According to your letter, the inspection program selected by the Dassault Falcon Jet operators under § 91.409(e) is the one provided for in § 91.409(f)(3)—*a current inspection program recommended by the manufacturer*. To support your position that a person performing the inspection does not have to determine AD status, you referenced § 43.15(a)(2), which provides that, if the inspection is one required by § 91.409(e), that inspection must be performed in accordance with the instructions and procedures set forth in the inspection program for the aircraft being inspected. From this, you assert that if the inspection program selected does not provide a requirement to determine the status of applicable ADs, then the person performing the inspection has no obligation to determine their status. In fact, you urge that that duty falls upon the registered owner or operator under § 91.417(a)(2)(v).

While we agree that under § 43.15(a)(2) the selected manufacturer's inspection program must be followed, we note the additional requirement in § 43.15(a)(1), which provides that the person performing the inspection shall: "Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements; . . . ." Also note that § 43.11(a)(4) provides:

> Except for progressive inspections, if the aircraft is found to be airworthy and approved for return to service, the following or a similarly worded statement—"I certify that this aircraft has been inspected in accordance with (insert type) inspection and was determined to be in airworthy condition.

As to this type of certification, the National Transportation Safety Board (NTSB) has stated: "When a mechanic attests that he has performed an annual inspection and the aircraft is airworthy, he also attests that he has inspected the aircraft thoroughly and correctly," *Administrator v. Berglin*, NTSB Order No. EA-3846 at 2 (1993), WL 97397 (N.T.S.B.). And, on matters of airworthiness determinations, the NTSB has stated: "It is well-established that an aircraft is deemed 'airworthy' only when it conforms to its type certificate (if and as that certificate has been modified by supplemental type certificates and by Airworthiness Directives), and is in condition for safe operation." *Administrator v. Bailey and Avila*, NTSB Order No. EA-4294 at 4 (1994), WL 702156 (N.T.S.B.)

In order legally to make the certification required by § 43.11(a)(4), the person who performed and completed the inspection would have to have assured that all applicable ADs had been complied with.

In a telephone conversation on July 7 with Edmund Averman, an attorney on my staff, you clarified that your inquiry pertains to completed inspections in which the aircraft is

found to be airworthy. Accordingly, our answer does not address the listing of discrepancies requirements of § 43.11(b).

We have discussed the issue you raise with officials in the Aircraft Maintenance Division (AFS-300) in the Office of Flight Standards at FAA headquarters. That office agrees with the reasoning set forth in this interpretation. Accordingly, the FAA's Flight Standards Service is sending a memorandum clarifying the issue to the Managers in the FAA's Eastern Region Flight Standards Division and the Southwest Region Flight Standards Division.

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