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

Office of the Chief Counsel

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

APR 28 2009

Mr. David A. Schubkegel
Chief Inspector, Mesaba Airlines
1000 Blue Gentian Road, Suite 200
Eagan, MN 55121

Dear Mr. Schubkegel:

This letter is in response to your September 12, 2008, request for a legal interpretation of 14 C.F.R. § 121.309(b)(4), specifically whether a crash ax and portable lights (e.g. flashlights) must be marked with the date of last inspection.

Section 121.309 establishes the requirement for airplanes to be equipped with emergency equipment. Section 121.309(b)(4) states that the emergency equipment, "[w]hen carried in a compartment or container, must be carried in a compartment or container marked as to contents and the compartment or container, or the item itself, must be marked as to date of last inspection." Emergency equipment required by §§ 121.309, 121.310, 121.339, and 121.340 are subject to this requirement.

You note that information regarding crash axes and flashlights within the FAA's *Safety Attribute Inspection Data Collection Tool* (SAI) and *Element Performance Inspection Data Collection Tool* (EPI) appears to be inconsistent with the date of last inspection marking requirements of § 121.309(b)(4). In your letter you highlight four pieces of emergency equipment (crash ax, flashlight, rope, and megaphone) and note that both the SAI and EPI state that if ropes and megaphones are stored in a container, either the container or item itself must be marked with the date of last inspection.[1] You also note that the SAI and EPI do not state a similar requirement for crash axes or flashlights[2] and question whether these items are subject to the date of last inspection marking requirements.

Section 121.309(b) states that any emergency equipment required by §§ 121.309, 121.310, 121.339, and 121.340 must be treated in accordance with the requirements set forth in § 121.309(b)(1)-(4). As noted above, one of those requirements is that if a piece of emergency equipment is carried in a compartment or container, then that compartment or

---

[1] The EPI, issued September 28, 2007, references ropes in paragraphs 1.2.8, 2.6-2.8, and 3.4, and megaphones in paragraphs 1.1.13, 1.2.5-1.2.6, 2.2-2.3, and 3.1-3.2. The SAI, issued September 28, 2007, references ropes in paragraph 1.2.9-1.2.13 and megaphones in 1.1.18-1.1.24.

[2] The EPI references crash axes in paragraph 1.1.12 and flashlights in paragraphs 1.2.7. The SAI references crash axes in paragraph 1.1.17 and flashlights in paragraph 1.2.2.

container, or the item itself, must be marked with the date of last inspection. The items highlighted in your letter – crash axes, ropes, megaphones, and flashlights – are all required by the sections mentioned in § 121.309(b).[3] Therefore, if any of the four items you discuss are stowed in a compartment or container, the compartment or container, or the items themselves, would need to be marked with the date of last inspection.

You note that the SAI and EPI do not include information regarding marking crash axes or flashlights with a date of last inspection if stored in a container. The SAI and EPI data collection tools are guidance documents for FAA inspectors to use in determining compliance with FAA regulations. These documents, as you recognize in your letter, "are not all inclusive and regulatory in nature," nor are they intended to be. The absence of an explicit instruction in the SAI or EPI with respect to a regulatory requirement does not necessarily make the document inconsistent with that regulation, nor does it create an exception from that regulation. Accordingly, although not specifically mentioned in the SAI or EPI, if a certificate holder stores a crash ax or flashlight in a compartment or container it would be required to follow the provisions of § 121.309(b)(4).

This response was prepared by Dean Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the Certification and Surveillance Division, the Aircraft Maintenance Division, and the Air Transportation Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of further assistance.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200

[3] The requirements for these items are found in the following sections: Crash ax, § 121.309(e); rope (a means of emergency evacuation), § 121.310(a); megaphone, § 121.309(f); and flashlights (portable lights), § 121.310(n).