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

Office of the Chief Counsel

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

MAR 2 3 2016

Wallace Frelander
[redacted]

Re: Request for Legal Interpretations of 14 CFR § 91.413, Appendix F to Part 43, and 14 CFR §§ 43.9 and 43.11

Dear Mr. Frelander:

This is in response to your letter dated November 18, 2013, in which you asked for legal interpretations of 14 CFR § 91.413, appendix F to part 43, and 14 CFR §§ 43.9 and 43.11. You specifically asked which regulation you must comply with, § 43.9 or § 43.11, to approve for return to service an aircraft after performing an ATC transponder test and inspection required by § 91.413.

Section 91.413(a) states that "[n]o persons may use an ATC transponder that is specified in 91.215(a), 121.345(c), or § 135.143(c) of this chapter unless, within the preceding 24 calendar months, the ATC transponder has been tested and inspected and found to comply with appendix F of part 43 of this chapter...." Appendix F of part 43 directs you to comply with the provisions of § 43.9, which contains record requirements for maintenance, preventive maintenance, rebuilding, and alteration records. You indicated, however, that the Minneapolis Flight Standards District Office (MSP FSDO) has instructed you to comply with § 43.11, which contains record requirements for inspections conducted under part 91. You further indicated that the MSP FSDO has stated that you are in violation of the regulations by complying with § 43.9 rather than § 43.11.

You must comply with § 43.9 when performing ATC transponder tests and inspections required by § 91.413. As stated above, § 91.413 requires compliance with appendix F to part 43, which contains the requirements for performing ATC transponder tests and inspections required by § 91.413. Among these requirements is a record keeping requirement that mandates compliance with the provisions of § 43.9.[1]

[1] This record keeping requirement has been in effect since January 26, 1973. Airborne ATC Transponder Equipment Final Rule, 37 Fed. Reg. 28499 (Dec. 27, 1972). Furthermore, in 1987, the FAA amended appendix F to part 43 and explicitly stated that "[t]he existing requirement for recordkeeping will be retained." Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System Final Rule, 52 Fed. Reg. 3380, 3389 (Feb. 3, 1987).

Although the maintenance record requirements of § 43.11 apply to inspections performed in accordance with part 91, and § 91.413(a) requires an ATC transponder to be tested and "inspected," the FAA did not intend § 43.11 to encompass every maintenance procedure or test that included the word inspection.[2] The maintenance record requirements of § 43.9 apply to maintenance performed on aircraft, airframes, aircraft engines, propellers, appliances, or component parts. Maintenance is defined as an "inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance." 14 CFR § 1.1. Therefore, an inspection is a subset of maintenance. *See* Legal Interpretation, Letter to Vanessa Meskimen from Rebecca MacPherson, Assistant Chief Counsel for Regulations (Mar. 22, 2012). Accordingly, even though § 91.413 requires an ATC transponder test and "inspection," that inspection is considered a maintenance procedure that must comply with appendix F of part 43 and be recorded under § 43.9. Advisory Circular 43-6C provides an example of a maintenance record entry for the performance of an ATC transponder test and inspection, which illustrates compliance with the provisions of § 43.9.

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, Regulations Division of the Office of the Chief Counsel, and coordinated with the Aircraft Maintenance Division of the Flight Standards Service.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

[2] Initially, § 43.11 applied only to annual, 100-hour, and progressive inspections. 14 CFR § 43.11 (1979). The FAA subsequently added the inspection recording requirements of § 91.217, part 123, part 125, and § 135.411(a)(1) to § 43.11. Operations Review Program: Amendment No. 12: Aircraft Maintenance Final Rule, 47 Fed. Reg. 41085 (Sept. 16, 1982).

November 18, 2013

Office of the Chief Counsel
Attn: Mark L Warren
800 Independence Avenue SW
Washington, DC 20591

Dear Sir:

I have a question concerning the interpretation of the regulations.

On recurring occasions two FAA Inspectors from the MSP FSDO have been performing ramp checks/inspections and stated that our aircraft are not in compliance with the regulations and therefore unairworthy.

The regulations in question is 14CFR91.413, 14CFR43 Appendix F and 14CFR43.9.

To comply with 91.413 "ATC Transponder Tests and Inspections", 91.413 states that you must "comply with Appendix F of part 43 of this chapter". Appendix F states "(k) Records: Comply with the provisions of 43.9 of this chapter as to content, form, and disposition of the records."

The problem is that the MSP FSDO is stating that compliance with 14CFR43.9 is not correct and that by complying with 43.9 and not 43.11 we are in violation of the regulations.

The last thing we want is to be in violation of the regulations, but this is creating a lot of confusion. It is also utilizing a lot of my work hours in getting multiple FAA Certified Repair Stations (RC Avionics, Modern Aero and Duncan Aviation) to change the way they create their logbook entries because they insist on complying with 43.9.

I appreciate any help in clarifying this interpretation for me.

If you have any questions, please call me at [redacted] (24-hour cellular) or my e-mail [redacted]

Sincerely,

Wallace Frelander,

[redacted]

Transponder cert

Wallace Frelander to Ed Averman 04/10/2014 04:21 PM

Example requested by FAA in regards to my letter sent last year.

My aircraft was sent in for a transponder certification IAW 43 Appendix E. During a ramp check, two FAA Inspectors informed me that the aircraft was not airworthy because the transponder certification was signed off IAW 43.9 and that it is required to be signed off IAW with 43.11.

The question is do we follow the regulations and ensure the logbook is signed off IAW 43.9 or do we follow the inspectors orders to have the logbooks signed off IAW 43.11?

Sincerely,
Wallace Frelander
[redacted]

Sent from my iPad