



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

Office of the Chief Counsel
800 Independence Avenue, S.W.
Washington, D.C. 20591

JUN 13 2018

Mr. Richard A. Peri
Vice President
Government & Industry Affairs
Aircraft Electronics Association
601 Pennsylvania Avenue, N.W.
Suite 900, South Building
Washington, D.C. 20004

Re: Request for Legal Interpretation to Clarify the Meaning
of The Term “inspected” in 14 C.F.R. § 91.405(c)

Dear Mr. Peri:

This responds to your January 31, 2018 letter asking for a clarification of the term “inspected” as used in 14 C.F.R. § 91.405(c). Section 91.405, in pertinent part, states:

§ 91.405 Maintenance required.

Each owner or operator of an aircraft—

(a) Shall have that aircraft inspected as prescribed in subpart E of this part and shall between required inspections, except as provided in paragraph (c) of this section, have discrepancies repaired as prescribed in part 43 of this chapter;

* * * *

(c) Shall have any inoperative instruments or item of equipment, permitted to be inoperative by § 91.213(d)(2) of this part, repaired, replaced, removed, or inspected at the next required inspection; and

* * * *

In adding context to your inquiry, you stated:

However, because of the ambiguity of paragraph 91.405(c), one could interpret the requirement such that if the inoperative instrument or equipment could not

be remedied by repair, replacement, or removal that the inoperative instrument or equipment could be inspected, deemed to still be inoperable and through the provision of paragraph 91.213(d)(2) be continued until the next required inspection.

Based on that context, you sought clarification by suggesting two alternative meanings of the regulation:

Is the intent that the discrepancy be resolved at the next required inspection through repair, replacement, removal, or inspection as necessary? Or,

Is the inspection intended to confirm that the aircraft continues to be compliant with § 91.213(d) and the inoperative instrument and/or equipment can continue to be inoperable indefinitely?

Your second suggested alternative meaning of the regulation is supported by the FAA's preamble discussion for the final rule in 1988,¹ so long as the term "continue to be inoperable indefinitely" is given appropriate regulatory meaning. The FAA discussed this issue in the 1988 preamble when addressing comments on the matter. A commenter to the proposal had requested clarification on the length of time an inoperative instrument or item of equipment could remain inoperative after deactivation or removal. The FAA explained:

Sections 91.29(b) and 91.30(d)(4) [currently §§ 91.7(b) and 91.213(d)(4)] require a person to determine whether an aircraft with inoperative instruments and equipment is in condition for safe operation. In addition, § 91.165(c) requires at every required inspection thereafter, the owner/operator of the aircraft to have any inoperative instrument and equipment reevaluated to ensure the discrepancy will not affect the operation of any other installed instrument or equipment. Therefore, the FAA believes compliance with §§ 91.29(b), 91.30(d)(4), and 91.165(c) [currently §§ 91.7(b), 91.213(d)(4), and 91.405(c)] will provide adequate safeguards without having to impose time limits on the repair or replacement of inoperative instruments and equipment. 53 FR 50193; December 13, 1988.

Based on the above preamble explanation, if the inoperative instrument or item of equipment is not repaired, replaced, or removed at the next required inspection, the inoperative item must be inspected again (reevaluated) at that inspection in order to ensure that the discrepancy will not have an adverse effect on the safe operation of the aircraft.

The term "continue to be inoperable indefinitely" is not a term contemplated by the regulation. Under the regulation at issue, the process of reevaluating the item at each required inspection

¹ 53 FR 50190; December 13, 1988 (**Inoperative instruments or Equipment** Final Rule document for 14 C.F.R. §§ 91.30 and 91.165 (re-codified as 14 C.F.R. §§ 91.213 and 91.405, respectively, on August 18, 1989.)

may be continued “indefinitely,” so long the reevaluation is accomplished and documented at each required inspection. Note also that §§ 43.11(b), 91.213(d)(3), and 91.405(d) require that a placard be placed on the inoperative item to indicate its inoperative status.

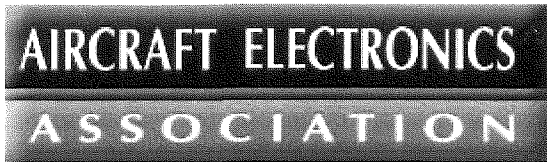
Also, be mindful that the instruments and equipment listed in § 91.213(d)(2) must be operative and are not subject to the exceptions set forth in § 91.405(c). Therefore, only those instruments and equipment not listed in § 91.213(d)(2) would be permitted to be inoperative and subject to the periodic reevaluations noted above.

I hope this response is helpful to you. It 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 in the FAA’s Flight Standards Service.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lorelei Peter".

Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200



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January 31, 2018

Request for interpretation of 14 CFR § 91.405 (c)

The Aircraft Electronics Association (AEA) requests a clarification of the term “inspected” as used in 14 CFR § 91.405(c).

The Association represents more than 1,300 aviation businesses worldwide, including repair stations that specialize in maintenance, repair and installation of avionics and electronic systems in general aviation aircraft. The AEA membership also includes instrument facilities, manufacturers of avionics equipment, instrument manufacturers, airframe manufacturers, test equipment manufacturers, major distributors, and educational institutions.

§ 91.405 (c) states that each owner or operator of an aircraft “Shall have any inoperative instrument or item of equipment, permitted to be inoperative by § 91.213(d)(2) of this part, repaired, replaced, removed, or *inspected* at the next required inspection;” [emphasis added].

Unfortunately the simple English definition of “inspected” can lead the interpretation into two distinct and opposite meanings:

Is the inspection intended to remedy the inoperable condition within the instrument or equipment? Or,

Is the inspection against the aircraft such that the inoperable equipment may remain inoperable indefinitely provided it is inspected (for its inoperability) at each required inspection?

It would appear that paragraph 91.405 (c) requires that any inoperative instrument or equipment permitted to be inoperative by § 91.213(d)(2) be remedied at the next required inspection by repair, replacement, removal, or inspection as appropriate.

AEA request for interpretation of 14 CFR 91.405 (c)

However, because of the ambiguity of paragraph 91.405 (c), one could interpret the requirement such that if the inoperative instrument or equipment could not be remedied by repair, replacement, or removal that the inoperative instrument or equipment could be inspected, deemed to still be inoperable and through the provision of paragraph 91.213(d)(2) be continued until the next required inspection.

Because of the conjunctive use of the word “or”, it would imply that the four terms: repaired, replaced, removed, or inspected are equal and intended to remedy the discrepancy. The paragraph is further clarified by removing the first three terms then reading as *each owner or operator of an aircraft shall have any inoperative instrument or item of equipment inspected at the next required inspection*; which would be a viable and appropriate correcting actions for resolution for instruments or equipment affected by a required inspections or Airworthiness Directives.

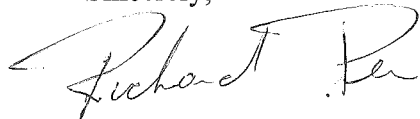
Nonetheless, because the English language allows for this paragraph to be read with two separate and distinct meanings, the Association requests for clarification of the term “inspected” as used in § 91.405 (c).

Is the intent that the discrepancy be resolved at the next required inspection through repair, replacement, removal, or inspection as necessary? Or,

Is the inspection intended to confirm that the aircraft continues to be compliant with § 91.213 (d) and the inoperable instrument and/or equipment can continue to be inoperable indefinitely?

The Aircraft Electronics Association appreciates the opportunity to request clarification on this critical maintenance task. Should you have any questions, please do not hesitate to contact me at (202) 589-1144 or e-mail ricp@aea.net.

Sincerely,



Richard A. Peri
Vice President,
Government & Industry Affairs