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

Office of the Chief Counsel

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

JUL 6 2009

John E. Gillick
Zuckert Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, NW
Washington, DC 20006-3309

Dear Mr. Gillick:

Thank you for your letter of February 10, 2009 on behalf of the Army Aviation Heritage Foundation (AAHF) seeking clarification of the applicability of Airworthiness Directives (ADs) to AAHF aircraft. The AAHF fleet includes the Bell Helicopter UH-1 and AH-1G/P/F aircraft that were acquired from the United States Army (Army).

Your letter indicated that your client received conflicting interpretations of AD applicability from FAA Counsel in 2007 from the Western-Pacific Region and in 2008 from the Southern Region. In 2007, the AAHF was told that because the aircraft in question were never given civilian type certificates, it was "unlikely that the FAA would ever issue an AD that would apply."

In 2008, the AAHF received an interpretation that concentrated on its maintenance program. The opinion indicated that the program does not exempt the AAHF aircraft from compliance with ADs, and that the intent of the program was to comply with ADs. We presume that the statement on intent means that the FAA considered compliance with ADs to be one of the reasons it approved the AAHF's maintenance program. The later interpretation also cites FAA Advisory Circular (AC) 39-7C for its statement that having an experimental airworthiness certificate for an aircraft does not qualify for exemption from AD compliance.

Your request for clarification of the FAA's position regarding the applicability of part 39 to your aircraft states that there is no type design in use by the FAA to which the AAHF aircraft conform, and that the AAHF aircraft were not produced according to a type design for which a type certificate was ever issued. While you note that "in some cases, type certificates have been issued for civilian versions of these particular aircraft," you conclude that since the military versions were manufactured either before or contemporaneously with the civilian versions, the type design basis was different, and therefore, the aircraft could not have a type design to which ADs would attach. Under your analysis, there could never be a type design for a surplus military aircraft since there is no civilian record of the 'drawings and specifications' for the exact airplanes produced for the military, and regardless of the identicality of parts or production or the FAA's knowledge of an unsafe condition, no AD could ever be applicable to an aircraft originally produced for the military. This analysis assumes too much.

The relevant issue is not the basis under which the FAA issued an airworthiness certificate, but whether there is a type design applicable to the product. Neither of the previous interpretations addressed the question that is at the heart of your request, and that is the meaning of the term "type design" as used in 14 CFR Part 39. The regulation at the base of this discussion is §39.5:

> FAA issues an airworthiness directive addressing a product when we find that:
> (a) An unsafe condition exists in the product; and
> (b) The condition is likely to exist or develop in other products of the same type design.

As you are aware, there is no definition in 14 CFR Part 1 for "type design," nor is there one in Part 39. Part 21, §21.31 describes "type design" and what it consists of for certification purposes under Part 21. In short, it indicates that the type design consists of the "drawings and specifications ... necessary to define the configuration and the design features of the product" shown to comply with the applicable regulatory part as is appropriate for the aircraft in question.

The FAA finds that your analysis of when part 39 applies is based on an overly restrictive reading of the term type design. Nothing in Part 39 suggests that its use of type design is a limited, tightly constrained concept. In fact, most ADs include in the applicability provision the phrase "certificated in any category" to ensure that the AD covers the aircraft affected by the unsafe condition, regardless of the kind of type certificate issued.

The mission of the FAA, beginning with its statutory authority, is aviation safety. Part 39 is the means used by the agency to correct known safety defects. It would be contrary to the intent of that authority to exclude aircraft based on a restricted reading of the term type design, when we have evidence that the aircraft or a part installed on it may have a safety problem.

Your letter included tangential discussions of numerous other issues, including your understanding of the terms "airworthy," "product," "make" and "model" and their relationship to ADs, and instances of the term type design used in guidance material unrelated to Part 39. We did not find these other discussions applicable to the limited issue of the term type design as it is used in §39.5.

However, your letter also included reference to language in the AAHF's own maintenance program approved by the FAA. As you note, that program discusses methods of compliance with ADs; this would appear to presume their applicability to AAHF's aircraft. Thus, AAHF is required to comply with all ADs referenced by the maintenance program, even if not otherwise subject to an AD under part 39. The fact that AAHF does not conduct its maintenance under part 43 (but under its FAA-approved program) does not alter the applicability of an AD issued under Part 39.

We trust that this explanation responds to your inquiry. If you have any questions, please contact my staff at 202-267-3073. This response was prepared by Karen Petronis, Senior Attorney for Regulations in the Office of the Chief Counsel with input from other agency attorneys. It was coordinated with the Aircraft Engineering Division of the Aircraft Certification Service and the Aircraft Maintenance Division of the Flight Standards Service.

Sincerely,

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