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

Office of the Chief Counsel

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

DEC 8 2011

Gil Elmy
Forest Service, USDA
Intermountain Region
3515 Airport Rd.
Ogden, UT 84405

Dear Mr. Elmy,

This is in response to your letter requesting an interpretation of 14 C.F.R. § 91.9(b)(1). In your letter, you asked whether the Rotorcraft Flight Manual (RFM) which was provided at the time that an aircraft was purchased would be considered the "current" RFM for the purposes of § 91.9(b)(1) or whether the operator would need to have the latest revision of this RFM in order to legally operate the aircraft. You also asked whether this interpretation would remain the same for a part 135 operator.

Section 91.9(b)(1) prohibits operation of an aircraft for which an RFM is required if that aircraft does not contain a copy of the "current" approved RFM. The FAA first addressed the meaning of "current" in an interpretation that was issued in 1998.[1] The 1998 interpretation stated that the word "current", as used in an operational regulation, imposed an ongoing obligation to keep the latest copy of the RFM in the aircraft. However, the 1998 interpretation did not address the issue of whether this position complied with the Administrative Procedure Act (APA).[2]

The FAA resolved this issue in a 2008 interpretation, which addressed the word "current" in the context of manufacturers' inspection programs.[3] In that interpretation, the FAA found that construing the word "current" to encompass "subsequently issued changes to maintenance manuals or inspection programs" would violate the APA. This is because certain regulations require the regulated parties to comply with the current maintenance manuals and inspection programs.[4] If the word "current" in those regulations is construed to encompass subsequent changes that a third party makes to a maintenance manual or inspection program, then by making those changes the third party would be able to impose significant additional regulatory burdens without first going through the

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[1] *See* Oct. 8, 1998, Memorandum concerning Legal Interpretation of Certain Provisions of Parts 21, 25, 91, and 121 from Assistant Chief Counsel for Regulations, AGC-200.
[2] *Id.* at 4 n.1.
[3] *See* Dec. 5, 2008, Memorandum concerning Legal Interpretation of 14 C.F.R. § 91.409(f)(3) issued to Manager, Aircraft Maintenance Division, AFS-300, from Assistant Chief Counsel for Regulations, AGC-200.
[4] *See, e.g.*, 14 C.F.R. § 91.409(f)(3).

notice and comment process required by the APA.[5] Thus, in order to comply with the APA, the 2008 interpretation construed the word "current" more narrowly so that this word did not impose an ongoing obligation, but rather, in the context of the regulation at issue, applied only to a manufacturer's inspection program that was in place at the time that it was adopted by the owner or operator.

However, an RFM that was provided with the aircraft at the time the aircraft was purchased may subsequently be amended by an Airworthiness Directive (AD). The RFM, as modified by the AD, would be considered a "current, approved" RFM for purposes of § 91.9(b)(1). This is because an AD is issued pursuant to the procedures specified in the APA – usually through notice and comment rulemaking.[6] As such, construing the word "current" in the regulations to encompass obligations imposed by an AD would not violate the APA.

Applying the above discussion to this case, the word "current", as it is used in § 91.9(b)(1), refers to the version of the RFM that was in place at the time that the aircraft in question was purchased and includes any subsequent AD-mandated changes that were made to the RFM. The word "current" does not encompass any subsequent changes that were made to the RFM that were not mandated by an AD or other rulemaking because those changes did not go through the notice and comment rulemaking process.

With regard to your question about whether this interpretation would also apply to a part 135 operator, because your letter does not indicate the specific provisions of part 135 that are at issue, the FAA cannot answer your question at this time.

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 Alex Zektser, Attorney, Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation and Commercial Division of Flight Standards Service.

Sincerely,

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

[5] *See* 5 U.S.C. § 553 (requiring notice and comment for rulemaking).
[6] *See* 14 C.F.R. § 11.21(b).