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

Office of the Chief Counsel

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

JAN 7 2011

Mr. Leonard P. Miller
[redacted]

Dear Mr. Miller:

This letter is provided in response to your letter dated August 20, 2010, to David Grizzle, Chief Counsel, requesting a legal interpretation. In your request, you asked whether Civil Aeronautics Manual (CAM) 8 allows for the operation of an aircraft in contradiction to the Airplane Flight Manual (AFM), whether 14 C.F.R. § 137.51(5)(ii) allows for the overweight operation of an aircraft if it meets the requirements of this section regardless of the AFM, and whether an entity operating under a Part 137 certificate is considered by the Federal Aviation Administration to be an air carrier.

You did not provide us with any facts about the particular aircraft or operation that is the subject of your inquiry so we can only provide generally applicable responses to your questions that could vary depending on your specific factual scenario. Your questions and responses to those questions follow below.

Question 1: Does Civil Aeronautics Manual 8 (CAM 8), Appendix A, Restricted Category Aircraft Modifications, Weight and Balance, 7.1 allow for the operation of an aircraft in an overweight condition in contradiction to the AFM?[1]

Response 1: No. CAM 8 policies provided detailed technical information on acceptable methods of complying with the regulations for airplanes certificated by the Civil Aeronautics Board in the 1940's, 1950's and 1960's in accordance with Civil Air Regulation, Part 8, Aircraft Airworthiness Restricted Category (CAR 8). *See* CAM 8; CAR 8 (stating that CAR 8 establishes standards for the issuance of type and airworthiness certificates for restricted category aircraft intended to be used in agricultural operations and establishes operating limitations applicable to such aircraft); FAA Order 8900.1, Vol. 2, Air Operator and Air Agency Certification and Application Process, Ch. 8 Certification of a Part 137 Operator, Sec. 4 Restricted Category Agricultural Airplanes.

The CAR 8 procedures for type certification for restricted category aircraft have been recodified in 14 C.F.R. § 21.25. *See* FAA Order 8900.1, Vol. 2, Air Operator

[1] For purposes of this response, we will assume that your question refers to Civil Aeronautics Manual 8, Appendix A, Restricted Category Aircraft Modifications, Weight and Balance, 7.1. We will also assume that your reference to "approved flight manual" throughout the request refers to approved Airplane Flight Manual.

and Air Agency Certification and Application Process, Ch. 8 Certification of a Part 137 Operator, Sec. 4 Restricted Category Agricultural Airplanes. Today, the guidance in CAM 8 can only be used if CAR 8 served as the basis for an aircraft's type certification and then only in very limited circumstances. *See* id. (stating that, "For airplanes certificated under parts 21 and 23, CAM 8 may be considered to contain acceptable methods of complying with the regulations as the basis for a field approval, if the information is not contrary to the airplane's certification basis or the manufacturer's requirements."); Advisory Circular 20-33B.

In general, the Type Certificate Data Sheet (TCDS) and the AFM, which may be required by the TCDS, provides information necessary for the safe operation of the airplane based on the airplane's certification. *See* 14 C.F.R. § 21.5. AFM and TCDS information is specific to a particular aircraft type and the components therein. Thus, an inquiry into whether CAM 8 guidance may be used must include an examination of the particular aircraft's certification bases on the applicable TCDS.

You did not provide any information to indicate whether the aircraft that is the subject of your inquiry was certificated under CAR 8 or 14 C.F.R. Title 21 or Title 23. You also did not provide enough information for us to determine whether an AFM is required for the aircraft that is the subject of your inquiry. However, when an AFM is required or TCDS restrictions are provided, CAM 8 guidance is not a substitute for the safe operating limitations and procedures set forth in the aircraft's AFM or TCDS.

Question 2: Does 14 C.F.R. § 137.51(b)(5)(ii) allow for the overweight operation of an aircraft if it meets the requirements of this section regardless of the limitations in the AFM for an aircraft operated under Part 137?

Response 2: No. 14 C.F.R. Part 137 includes operating rules for agricultural operations as well as some exceptions to the generally applicable operating rules found in 14 C.F.R. Part 91. *See* 14 C.F.R. § 137.29(c) (allowing the holder of an agricultural aircraft operator certificate to deviate from the provisions of Part 91 without a certificate of waiver, as authorized in Subpart C of Part 137). 14 C.F.R. § 137.51 is an example of one such exception to Part 91. It allows for agricultural operations over congested areas below the altitudes prescribed in Part 91 during the actual dispensing activity. *See* 14 C.F.R. § 137.51; 14 C.F.R. § 91.119 (prohibiting operations over congested areas below 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft). In order to take advantage of this exception, 14 C.F.R. § 137.51(b)(5)(ii) requires an operators wishing to conduct agricultural operations in a multiengine airplane over a congested area to show that the airplane can meet certain climb requirements in the event of an inoperative engine. *See* FAA Order 8900.1, Vol. 3 General Technical Administration, Ch. 52 Part 137 Agricultural Aircraft Operations, Sec. 2 Evaluate a Part 137 Congested Area Operations Plan.

14 C.F.R. § 91.9 requires all persons operating civil aircraft to comply with the operating limitations found in the approved AFM for the aircraft being operated. Part 137 does not include an exception from this requirement. Therefore, an operator must comply with both the AFM and 14 C.F.R. § 137.51(b)(5)(ii) to conduct an agricultural operation over a congested area in a multiengine aircraft.

Question 3: Is an entity operating under Part 137 considered an air carrier?

Response 3: No. An entity conducting operations under a Part 137 operating certificate is authorized to conduct only agricultural aircraft operations, except in the case of an emergency. *See* 14 C.F.R. § 137.1. An "agricultural aircraft operation" involves,

> [T]he operation of an aircraft for the purpose of (1) dispensing any economic poison, (2) dispensing any other substance intended for plant nourishment, soil treatment, propagation of plant life, or pest control, or (3) engaging in dispensing activities directly affecting agriculture, horticulture, or forest preservation, but not including the dispensing of live insects.

See 14 C.F.R. § 137.3.

An air carrier is "a citizen of the United States undertaking by any means, directly or indirectly, to provide *air transportation.*" *See* 49 U.S.C. § 40102(a)(2) (emphasis added). Air transportation "means foreign air transportation, *interstate air transportation,* or the transportation of mail by aircraft." *See* 49 U.S.C. 40102(a)(5) (emphasis added). Air transportation is defined in pertinent part as, "[T]he *transportation of passengers or property by aircraft* as a common carrier for compensation...between a place in a State, territory or possession of the United States..." *See* 49 U.S.C. § 40102(a)(25) (emphasis added).

In a prior legal interpretation, the FAA determined that "An operator that *carries* agricultural chemicals in an aircraft to be dispensed during flight is not considered to be engaged in the *transportation* by air of property, but rather is considered to be engaged in an aerial works operation." *See* Legal Interpretation 1997-19. This interpretation is consistent with the regulatory definition of "agricultural aircraft operation" in which the purpose of the operation is the aerial dispersion of certain substances. *See* 14 C.F.R. § 137.3. *See also* 14 C.F.R. § 119.1(d) (stating that Part 119 (Certification: Air Carriers and Commercial Operators) is not applicable to operations conducted under Part 137). Consequently, a Part 137 operation does not meet the definition of "air carrier".

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 Sara Mikolop, Attorney, Operations Law Branch of the Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation and Commercial Division of the Flight Standards Service, the Aircraft Maintenance Division of the Flight Standards Service and the Engineering Division of the Aircraft Certification Service.

Sincerely,

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