

# What is 'Current' Maintenance?



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The answer depends upon the FAR Part and the person posing the question.

**WHAT DOES "CURRENT" MEAN WHEN YOU ARE** dealing with aircraft maintenance? There's more than one definition, since the correct response depends on whether you are maintaining an aircraft under FAR Part 91, 121 or 135.

In a Dec. 5, 2008, FAA Legal Interpretation, the agency answered in-house questions about the meaning of the phrase "current inspection program" in Part 91. The question, from the Aircraft Maintenance Division, AFS-300, was straightforward: "Whether, if a manufacturer amends its maintenance/inspection instructions, an affected aircraft operator is obliged to comply with the new instructions in order to be in compliance with Part 91.409(f)(3)."

The FAA Aircraft Maintenance Division pointed out that historically the requirement had been interpreted to mean that, when a manufacturer updates its maintenance instructions, an operator is obliged to comply with them.

However, the lawyers' answer was refreshingly succinct: "It is our opinion that the operator is not so obliged."

The FAA's rationale for a new interpretation of the word "current" eloquently showed respect for the rulemaking process: "If 'current' in Part 91.409(f)(3) and similarly worded regulations could be read to mean an ongoing obligation, manufacturers unilaterally could impose regulatory burdens on individuals through changes to their inspection programs or maintenance manuals. In essence, they would be making rules that members of the public affected by the change would have to follow. Under the APA [Administrative Procedures Act], 'a rule is any agency statement designed to implement, interpret, or prescribe law or policy. . . . For purposes here, a rule is any statement that imposes legal requirements. In order for an agency to adopt a rule, it must comply with the APA, specifically, 5 U.S.C. § 553. That section requires notice and comment procedures for rules imposing requirements unless the agency makes a 'good cause' finding that such procedures are 'impractical, unnecessary, or contrary to the public interest' [for example, an emergency AD]."

The FAA went on to explain the impact of allowing manufacturers to essentially circumvent the agency and issue binding rules of their own: "If the word 'current' in Part 91.409(f)(3) and other similarly worded provisions did mean an ongoing obligation, when manufacturers make changes to their instructions and programs . . . the new requirements could impose financial and other burdens on owners and operators of older aircraft that they did not bargain for."

The Legal Interpretation created a stir in the industry. While many strongly supported the rationale and the conclusion reached, some in the maintenance industry objected to what they saw as new ambiguity. On Feb. 27, 2009, the Aeronautical Repair Station Association wrote to

the FAA Aircraft Maintenance Division, anxiously explaining that "the new interpretation is causing significant confusion among certified repair stations that provide inspection services and FAA Aviation Safety Inspectors ASIs, in terms of how to apply Part 91.403(f)(3). This confusion is putting maintenance providers in Catch-22 situations. . . ."

Meanwhile, on March 25, 2009, the FAA issued another Legal Interpretation, this time answering the question of whether ICA (Instructions for Continued Airworthiness) inspections are required for airplanes operated under Part 135. The answer this time was "Yes." Current means current for Part 135.

The question and answer were carefully presented in the March Interpretation. The person asking the question, a director of maintenance for a Part 135 charter outfit, carefully laid out his own analysis of why the answer should be affirmative.

He listed a number of regulations, that he believed required the performance of inspections set forth in manufacturers' ICA. He also suggested that such inspections would be required if they were referenced in an Approved Aircraft Inspection Program. His questions were about small airplanes that are being maintained and inspected under the manufacturer's recommended program, but not under an inspection program required by Part 91.409(e) and (f).

The FAA explained that "air carriers, through their operations specifications and numerous operating rules, must select and follow one of several alternate maintenance and inspection programs. For example, one of the regulations you referenced, 14 C.F.R. Part 135.421 (b), in conjunction with the predecessor paragraph (a), requires that, unless the certificate holder follows another program approved by the FAA, the manufacturer's recommended maintenance programs must be followed for the type of airplanes at issue. Paragraph (b) clarifies that the referenced maintenance program is one that is contained in the maintenance manual or maintenance instructions set forth by the manufacturer. This would include ICA. If a certificate holder selected the alternative of another program approved by the administrator, that program should contain either the manufacturer's ICA inspections or a program of inspections at least equivalent to those recommended by the manufacturer."

At the risk of oversimplifying a complex regulatory rationale, the FAA is essentially saying that air carriers elect to hold themselves to the higher standard of current manufacturer maintenance guidance instead of the Part 91 standard of formerly current guidance. The only problem is that the December 2008 guidance interpreted Part 91.409(f)(3) "and similarly-worded regulations." The same Interpretation stated that rulemaking is required to clarify these regulations. On that point, everyone agrees. ■