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

Office of the Chief Counsel

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

SEP 30 2008

Gary M. Roberts
Director of Quality Assurance
Automotive Air Charter, Inc.
7310 Highland Road
Waterford, MI 48327

Dear Mr. Roberts,

This is in response to your July 12, 2007 request for an interpretation originally sent to Martha Winnard in the Detroit Flight Standards District Office. We apologize for the delay in responding to your request.

Your request states that you believe that when an aircraft is operated under part §91.509(b) or §135.167, the liferaft requirement of §25.1415(b)(1) does not apply. You base your conclusion on the language in §25.1415(a) that states:

Ditching equipment used in airplanes to be certificated for ditching under §25.801, and required by the operating rules of this chapter, must meet the requirements of this section.

You then cite to the operating rules in §91.509 and §135.167, noting that the liferaft equipage requirements there are not identical to §25.1415, and that the operating rules themselves do not call out compliance with §25.1415.

We are unable to agree with your conclusion for several reasons.

First, the operating rules of parts 91 and 135 generally do not presume to distinguish the type certification basis of aircraft being operated under those parts. Aircraft certificated under parts other than part 25 also operate under parts 91 and 135, and the operating rule language applies to them all, regardless of the standard to which they were built. For example, airplanes certificated under part 23 operate under both parts 91 and 135. Unlike §25.1415(b)(1), however, §23.1415 does not contain the part 25 requirement for liferaft capacity. As such, §§91.509 and 135.167 impose its own liferaft requirement on part 23 airplanes operating under those parts. We cannot accept the rationale that failure to call out a specific certification regulation in an operating rule means the certification rule does not apply – such as when an aircraft certificated under part 25 is operated under part 91.

In fact, to be airworthy, an airplane must conform to its type design. Since the type design for a part 25 airplane certificated for ditching includes liferafts that meet the requirements of §25.1415, operation without those liferafts, when the applicable operating rules require ditching equipment, would also violate §91.7(a), which prohibits the operation of an aircraft unless it is in airworthy condition.

Second, the certification rules of part 25 do not presuppose operation under any particular part. A part 25 airplane may be operated under part 91, 121, 125, 128, or 135. Thus, the reference in §25.1415(a) sets out the equipment requirement when the aircraft is to be certificated for ditching and ditching equipment (in this case liferafts) is required by the operating rule under which the airplane is operated. The operating rule reference is to a further requirement that *may be* applicable to an individual operation, not a recitation of particular operating rules.

Your argument appears to view the phrasing "ditching equipment used .... and required by the operating rules of this chapter" as meaning the equipment is required only when the specific equipment of the certification rule is called out in an operating rule. The reference to an unspecified operating rule in §25.1415 was never intended to be read with that restriction. Instead, the requirements of this section apply when two conditions are met: (1) the applicant requests certification with ditching provisions under §25.801; and (2) the applicable operating rules require ditching equipment. If both conditions are met, the requirements of §25.1415 must be met.

Your conclusion states that "If it was intended that 25.415(b)(1) be applied as an operating rule to all aircraft certificated for ditching there would be no need to have regulations 91.509(b)(2) or 135.67(a)(2)." This conclusion fails to take into account the difference between certification and operating rules. As stated previously, certification rules are based on aircraft type and size and do not presuppose operation. Operating rules apply to all aircraft that can legally be operated under that part, regardless of certification part. Each are written and amended at different times for different reasons and have different purposes. They must be read together for each aircraft type/operating part. When one requires a more stringent standard, the lesser may not be used to argue that only the lesser applies or it would be written differently. The fact that every possible aircraft certification and operation combination is not called out in identical text is not dispositive of application of the regulations to an individual operation.

In this case, §25.1415 calls out a further certification requirement for any part 25 airplane if the operating rule under which is will be operated requires ditching equipment. It does not mean that the further requirement only applies when an operating rule calls out section §25.1415. Both §91.509(b) and §135.167 are examples of the when the further requirement of §25.1415 becomes applicable. Any airplane meeting the requirements of §25.1415 will also meet the requirements of §§91.509(b) and 135.167(a)(2).

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, and was reviewed by staff in the Transport Airplane Directorate.

Sincerely,

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