U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

DEC 04 2012

Mr. Michael Vaupell
Chief Pilot
North American Jet Charter Group, LLC
26 East Palatine Road
Wheeling, IL 60090

Dear Mr. Vaupell,

This letter responds to your request for interpretation regarding landing performance limitations found in 14 C.F.R. § 135.399 as they relate to the Eclipse 500 Very Light Jet (VLJ), which has been type certificated and defined by the type certificate data sheet as a Small, Normal Category Aircraft under 14 C.F.R. part 23. Your question is whether § 135.399 and the corresponding landing limitations of §§ 135.385 and 135.387 are applicable to a small turbine engine powered airplane certificated in the normal category like the Eclipse VLJ. For the reasons explained below, by omission, § 135.399 is not applicable to small turbine powered normal category airplanes.

The Regulation

Part 135, subpart I establishes airplane performance operating limitations. Section 135.361(a) states "this subpart prescribes airplane performance operating limitations applicable to the operation of the categories of airplanes listed in § 135.363 when operated under this part." A small normal category airplane is covered under § 135.363(e), which provides that "each certificate holder operating a small nontransport category airplane shall comply with § 135.399."

Section 135.399(b) provides that:

> No person may operate an airplane that is certificated under § 135.169(b)(6)[1] unless that person complies with the landing limitations prescribed in §§ 135.385 and 135.387 of this part. For purposes of this paragraph, §§ 135.385 and 135.387 are applicable to reciprocating and turbopropeller-

[1] § 135.169 (b) No person may operate a reciprocating-engine or turbopropeller-powered small airplane that has a passenger seating configuration, excluding pilot seats, of 10 seats or more unless it is type certificated—
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(6) in the normal category and complies with section 1.(b) of Special Federal Aviation Regulation No. 41

powered small airplanes notwithstanding their stated applicability to turbine engine powered large transport category airplanes.

As such, the regulation is applicable to operations using two types of aircraft: those certificated under § 135.169(b)(6) and reciprocating and turbopropeller-powered small airplanes included in § 135.399(b). The omission arises since the Eclipse 500 is neither of these two airplane types.

The non-applicability of § 135.399 is further highlighted in the Flight Standardization Board (FSB) report for the Eclipse Model EA-500 (April 6, 2009). In Appendix A, Aircraft Regulatory Compliance Checklist, § 135.399 is not referenced as a regulatory compliance item. In the FSB report for the Cessna CE-510 Mustang, a similar normal category VLJ, § 135.399 is specifically listed with a Cessna compliance comment that the rule does not apply to small turbojet airplanes with fewer than 10 seats. The FSB finding for that statement of compliance is "Agrees."

FAA Guidance

Current guidance in FAA Order 8900.1, Volume 4, Chapter 3, Section 1, Paragraph 4-490 Small Airplane Certification, A. Small Transport Category Airplanes, states that "(s)mall turbojet airplanes certified in the normal category are operated as small, turbine-powered transport category airplanes for the purposes of part 135." This is the language that you referenced in your letter as being the basis for your Principal Operations Inspector (POI) taking the position that operations with the Eclipse must follow the landing limitations of §§ 135.385 and 135.387.

However, the same paragraph acknowledges that while a part 23 normal category airplane may be certified under part 25 as a transport category airplane, manufacturers rarely choose that option. There is no reference in this guidance to a section of the regulations that require, for purposes of part 135, treating small turbojet airplanes certified in the normal category as if they were certified in the transport category. That is because there is no regulatory requirement to base this position on.

Several paragraphs in 8900.1, Volume 4, Chapter 3, Section 2, contradict the above quoted guidance from Paragraph 4-490:

> **4-526 SMALL, TRANSPORT CATEGORY AIRPLANES OPERATED UNDER PART 135.** *A small transport category airplane is an airplane certified in the transport category* of less than 12,500 pounds maximum takeoff weight (MTOW). Section 135.363 and § 135.397(b) apply to small, turbine-powered airplanes and § 135.363 and § 135.397(a) to small, reciprocating-powered transport category airplanes. In summary, the dispatch performance rules for small, transport category airplanes are the same as those for large, transport category airplanes… (emphasis added)

4-528 RULES FOR RELEASE OF SFAR 41.1(b) AIRPLANES.
SFAR 41.1(b) applies to turbopropeller and reciprocating-powered airplanes of more than 12,500 pounds, but not more than 19,000 pounds MTOW, with up to 19 passenger seats.

A. Section 135.399. Section135.399 requires that these SFAR 41.1(b) airplanes be operated within the takeoff and landing weight limitations of the AFM, § 135.385, and § 135.387.

4-529 – RULES FOR RELEASE OF SMALL, NORMAL CATEGORY AIRPLANES WITH LESS THAN 10 SEATS. *Reciprocating or turbopropeller-powered airplanes* certified in the normal category and operated under part 135 with less than 10 passenger seats have specified rules (see Table 4-17). (emphasis added)

In reviewing the current guidance, Paragraph 4-526 limits its discussion to only the part 135 requirements for transport category airplanes and, correctly, does not include small, non-transport category airplanes. Paragraph 4-528 correctly gives guidance on how to apply the first part of § 135.399: those airplanes certificated under § 135.169(b)(6) as noted above. Paragraph 4-529 provides guidance for small normal category airplanes with less than ten seats, but limits its discussion to only reciprocating or turbopropeller-powered airplanes, although the reference in the landing limitations section in Table 4-17 states that there are no landing limitations that apply. The table should reference §§ 135.399(b), 135.385 and 135.387. Unless there are other specific operating requirements in the regulations, as there are in the case of reciprocating or turbopropeller-powered airplanes for purposes of § 135.399, each category of aircraft is to be treated in the category in which it is certified.

The above analysis leads to a conclusion that the performance operating limitations found in § 135.399(b) do not apply to the Eclipse EA-500 because it does not fit into either of the two types of small non-transport category airplanes required to meet the landing limitations of §§ 135.385 and 135.387. If there is a need to include VLJs within these landing limitations, the appropriate program offices within the FAA should evaluate amending the rule.

We will review current guidance with the Flight Standards Service to ensure that it reflects the regulatory language found in § 135.399. We will also review this interpretation with the Great Lakes Region office and the DuPage Flight Standards District Office.

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 Robert H. Frenzel, Manager of the Operations Law Branch of the International Law, Legislation and Regulations Division of the Office of the Chief

Counsel, and coordinated with the Air Transportation division of Flight Standards Service, the Long Beach Aircraft Evaluation Group and the Kansas City Aircraft Evaluation Group.

Sincerely,

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Assistant Chief Counsel for International
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