May 29, 1991

Nordstrom
Flight Department
7979 Perimeter Road
Seattle, Washington 98108

Attn: Mr. Chuck Fowler
Aviation Dept. Manager

Dear Mr. Fowler:

This letter is in response to your letter of December 17, 1990, in which you requested our opinion as to whether certain proposed operations may be conducted within the scope of Subpart F of the Federal Aviation Regulations. As I had indicated to you in early January, we were referring your request to our headquarters staff for their review. We have recently received further direction relating to your questions. In your letter, you posed two hypothetical operations involving the use of Nordstrom Company's large and turbine-powered multiengine aircraft and requested our determination as to whether the proposed operations can be conducted pursuant to Subpart F.

Additionally, you provided further information to me during our telephone conversation in January. The situations posed by you are set forth below, followed by our interpretation of the FAR.

Situation #1

A vendor or his representative rides on your aircraft to a Company store site in order to conduct business. Your Company wishes to recover an appropriate portion of the direct operating costs of the flight from the vendor. During our telephone conversations, you indicated that the vendor was traveling solely for the purpose of conducting business with the Company. You further indicated that the aircraft was being operated primarily to transport Company personnel and that the vendor was an additional passenger, that is, that the flight was incidental to the business of the Company and was not made solely for the purpose of transporting the vendor to the Company site. You indicated that you would like to recover from the vendor a pro rata share of the direct operating costs of the flight.

Analysis - FAR 91.501 (b)(5) allows the carriage of guests of a company when the carriage is within the scope of, and incidental to, the business of the company and no charge, assessment, or fee is made for the carriage in excess of the cost of owning, operating and maintaining the airplane. Based upon the information which you have provided, it would be permissible for Nordstrom to carry a vendor on its company aircraft and charge that vendor a pro rata share of the operating cost of the specific flight.

Situation #2

The Company enters into a "time sharing agreement" with a company official or employee, pursuant to which the aircraft will be used for purposes that are outside the scope of the business of the company. The company official or employee would charge his/her guest a pro rata share of the expenses of the flight, calculated with reference to FAR 91.501(d). Based on our telephone conversations, it is my understanding that the proposed lessee (an official or employee of the Nordstrom Company) would use the aircraft for his/her personal use, unconnected with the business of the Nordstrom Company.

Analysis - The regulatory history of Subpart F of Part 91 (formerly Subpart D) indicates that the underlying intent of that Subpart is to upgrade the safety standards of large and turbine-powered aircraft that were being used in private carriage. The history further indicates that the intent of the provisions relating to "time sharing" operations/envisions that the parties participating in such operations both have a corporate identity. The FAA has consistently held that it would be inappropriate to allow the lease of an aircraft from a company to an individual under the provisions of FAR 91.501(b)(6) since that subsection relates to "The carriage of company officials, employees and guests..." Therefore, we are of the opinion that the operation proposed by you, in which Nordstrom’s would lease its aircraft and crew to an officer or employee of the company could not be conducted Pursuant to the "time sharing" provisions of Section 91.501(b) (6). It would appear that such an operation would be permissible under Section 91.501(b)(4)if no charge, assessment or fee was made for the carriage.

I hope that this letter has responded to your request. If we may provide any further information, please do not hesitate to contact our office.

Sincerely yours,

John J. Callahan
Deputy Assistant Chief
Counsel

