March 7, 2003

Mr. David T. Norton
Akin Gump Strauss Hauer & Feld L.L.P.
1700 Pacific Avenue
Suite 4100
Dallas, TX
75201

Re: Request for Interpretation Regarding 14 C.F.R. Part 125 Operations

Dear Mr. Norton:

This responds to your interpretation request of January 10, 2003, in which you requested clarification of the FAA's regulations contained in 14 C.F.R. part 125, in particular section 125.11(b). You indicate that you represent an air carrier broker that has become aware of a number of discrepancies between current industry practice and the FAA's part 125 regulations. Specifically you ask "May a Part 125 air carrier contract with, and accept cargo for shipment from, an air cargo broker or freight forwarder that in turn holds itself out to the public as being able to arrange such transportation?" In addition you ask whether any of the following situations would impact the answer to that question:

1. The part 125 carrier has one single contract that is with a broker or forwarder.
2. The Part 125 carrier has a limited number of contracts that are with each broker or forwarder.
3. The part 125 carrier is paid directly by the shipper rather than through the broker.
4. The broker merely introduces the shipper to the part 125 carrier, who then enters into a contract that does not involve the broker.
5. The part 125 carrier does not consolidate cargo, instead carrying only one shipper's cargo at any one time.
6. The part 125 carrier does not advertise to the general public, but only, and discretely contacts one or a limited number of brokers or forwarders.

As you correctly note, section 125.11(b) prohibits certificate holders operating in accordance with part 125 from conducting any operation that results directly or indirectly from holding out to the general public to furnish transportation. To the extent a broker holds out on behalf of the part 125 operator, the holding out would be a violation of section 125.11(6) since this section prohibits both direct and-indirect holding out.

We have recently received information that some certificate holders conducting operations under Part 125 are, in fact, holding out in violation of 125.11(b). The FAA is currently working to address these situations and to rectify any areas of non-compliance.

Additionally, the FAA is reviewing all of its Part 125 operations specifications and available inspector guidance, advisory circulars and other agency guidance and will determine whether amendments are necessary to clarify any areas of the regulations.

The Agency already has modified some operations specifications because it noted during its review that some Part 125 operations specifications mistakenly contained on-demand authorizations. The Agency also is issuing a notice to its field personnel to notify them of the operations specifications modification. Further inspector guidance may be issued in the future.

Sincerely,

James W. Whitlow, Esq.