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

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

January 27, 2006

Ms. Elizabeth Wadsworth
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RE: U.S. Registered Aircraft Operating Outside of the United States

We received your letter requesting guidance and interpretation of the Federal Aviation Regulations. The facts, as outlined in your letter and subsequent telephone conversations, are as follows:

Your client is a U.S. corporation operating a U.S. registered Boeing 737 aircraft. The corporation has no business purpose other than operating the aircraft, and conducts all of its aircraft operations in Saudi Arabia. The corporation desires to: 1) provide transportation to third parties for a fee in non-common or private carriage in accordance with 14 C.F.R. § 125; and 2) provide transportation for the majority corporate owner and his guests at no charge in accordance with 14 C.F.R. § 91.501(b)(4).

Title 14 C.F.R. § 125 applies to operations of U.S. registered civil airplanes with a seating configuration of 20 or more passengers or a maximum payload capacity of 6000 pounds or more when common carriage is not involved. In order to conduct non-common or private carriage, an operator must hold a part 125 operating certificate. Part 125 certification of foreign based operators is problematic for the following reasons:

First, the Convention on International Civil Aviation ("Chicago Convention") requires operating certificates to be issued by the State of the Operator.[1] The State of the Operator is the State in which the operator's principal place of business or permanent residence is located.[2] Therefore, an operator's principal base of operations (as defined in 14 C.F.R. § 119.3) must be located in the United States in order for the FAA to issue an operating certificate. This rule prevents a country from acting as a flag of convenience for an operator that has no connection with the country other than holding an operating certificate issued by its civil aviation authority. Your client is based and operating exclusively in Saudi Arabia. Thus, the United States is not the State of the Operator, and it would be inconsistent with international law for the FAA to issue an operating certificate.

[1] Convention on International Civil Aviation, Dec. 7, 1944, 15 UNTS 295.

[2] *See* Chicago Convention, annex 6, part 1.

Second, part 125 requirements do not meet (or exceed) the Chicago Convention's standards for international commercial air transport. As a result, several foreign civil aviation authorities have refused to recognize part 125 operating certificates, and some countries have prohibited or limited operations by part 125 operators within their territorial airspace.[3] The FAA's issuance of part 125 certificates to foreign based operators could be viewed as an unlawful interference with a foreign sovereign's authority over its airspace. Accordingly, the FAA has decided that it will not issue part 125 certificates to operators who maintain their principal base of operations outside of the United States, or to operators who conduct operations entirely outside of the United States.[4]

Your second question relates to whether the corporation can operate under § 91.501(b)(4) in Saudi Arabia. In answering that question, it is helpful to first discuss the applicability of part 91 to U.S. registered civil aircraft operating abroad. Section 91.703 (a)(3) states that each person operating a civil aircraft of U.S. registry outside of the United States shall comply with part 91 so long as compliance is not inconsistent with the applicable regulations of the foreign country where the aircraft is operated or with Annex 2 of the Chicago Convention. The FAA has determined that the proposed operations would constitute commercial activities that could not be conducted under part 91 if the aircraft was operated in U.S airspace. The same regulations prohibiting the proposed operations under part 91 in U.S. airspace, would also prohibit the proposed operations under part 91 in Saudi Arabia if:

1) Saudi law is consistent with U.S. law (*e.g.* the Saudi government has adopted the Federal Aviation Regulations); or

2) Saudi law is silent on the issues of common carriage and operations conducted for compensation or hire.

The FAA offers no guidance on the Saudi requirements, but the U.S. regulations prohibiting the proposed operations under part 91 are more fully explained below.

Section 91.501(b)(4) allows an operator to conduct flights for his personal transportation or the transportation of his guests when no charge, assessment or fee is made for the transportation. You suggested in your letter that the corporation should be allowed to operate the aircraft under § 91.501(b)(4) as long as the transportation is limited to the majority owner and his guests. We disagree. The term "operator" in § 91.501(b)(4) applies to individuals operating an aircraft for personal use. It does not apply to corporations operating an aircraft because corporations have no "personal use." Instead, corporations have a "business use" and in this case, the only business of the corporation is to provide transportation by air. The FAA has long held that a corporation created solely to provide transportation by air must possess a commercial operator or air carrier certificate.[5] Limiting the transportation to the corporate owner and his guests does not change this requirement.

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[3] *See Chicago Convention*, part I, chap.5, art. 33 (certificates and licenses will only be recognized by other States when the certification requirements are equal to or above the minimum standards established under this Convention).

[4] There are also practical considerations underlying the requirement for part 125 certificate holders to be principally located in the U.S. The base of operations is the focal point of the FAA's certification and oversight activities. The difficulty and expense of performing these duties would substantially increase if the FAA had to perform them in foreign locations. Moreover, the FAA may not be able to freely enter other countries to conduct safety oversight as needed.

[5] *See* FAA Interpretations 1981-6, 1981-26 and 1989-22, Federal Aviation Decisions, West Publishing Co.

We trust that this interpretation is responsive to your inquiry. The FAA reiterates that it offers no advice on the regulations of a foreign sovereign, and encourages the operator to contact the appropriate foreign civil aviation authority for specific operating requirements. This interpretation was prepared by the Operations Law Branch of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service. Please contact us if we can be of further assistance.

Sincerely,

Rebecca MacPherson
Assistant Chief Counsel for Regulations