

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

In the Matter of: SUN QUEST EXECUTIVE AIR CHARTER, INC.

FAA Order No. 2011-1

Docket No. CP08WP0004
FDMS No. FAA-2008-0238¹

Served: January 5, 2011

ORDER REQUESTING FURTHER BRIEFING²

For the reasons set forth below, this order gives the parties the opportunity to submit briefs on the issues described in this order. These briefs are limited to the specific issues set forth in this order.

In its Complaint, the Federal Aviation Administration (FAA) alleged, among other things, that Sun Quest Executive Air Charter (Sun Quest) failed to record the flight time of Sun Quest Captain Mark Smith for the Los Angeles Police Department (LAPD). In failing to record this flight time, the FAA alleged, Sun Quest violated 14 C.F.R. § 135.63(a)(4)(vii), which provides that each Part 135 certificate holder must keep an individual record of each pilot used in Part 135 operations, including the pilot's flight time in sufficient detail to determine compliance with the flight time limitations of Part 135. As the FAA has pointed out, 14 C.F.R. § 135.267 requires Part 135 certificate

¹ Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing at the following Internet address: www.regulations.gov.

² The Administrator's civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are available on the Internet at the following address: www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty. In addition, Thomson Reuters/West Publishing publishes Federal Aviation Decisions. Finally, the decisions are available through LEXIS (TRANS library) and WestLaw (FTRAN-FAA database). For additional information, see the Web site.

holders to track “other commercial flying.” The FAA alleges that Captain Smith’s flying for the LAPD was “other commercial flying.” Sun Quest’s defense was that the LAPD helicopter was a “public aircraft,” and as such, was beyond the FAA’s regulatory reach.

Neither the statute nor the regulations define the term “other commercial flying.” However, there are a number of legal interpretations issued by the Regulations Division of the Office of the FAA Chief Counsel, stating that “[o]ther commercial flying’ means any nonmilitary flying as a required crewmember, other than in air transportation, for which the crewmember is paid for his or her services.” Letter from Assistant Chief Counsel for Regulations to Richard Martinelli (March 11, 2009), 2009 WL 737336; Letter from Assistant Chief Counsel for Regulations to Ryan Koepp (March 6, 2008); Letter from Assistant Chief Counsel for Regulations to Jeff J. Jacober (June 24, 1991); and Letter from Assistant Chief Counsel for Regulations to Manager, NE-FSDO-03 (October 31, 1990).

These interpretations do not directly address the circumstances of the instant case. It is also unclear whether the original interpretation setting forth the definition of “other commercial flying,” which is quite old and on which the other interpretations were based, still applies, given changes in the statute and regulations. In particular, the definition of “public aircraft” has changed over the years, and it is unclear whether the definition of “other commercial flying” in the interpretations cited above takes into account changes in the definition of “public aircraft.” (The definition refers to “nonmilitary aircraft,” and military aircraft are a subset of public aircraft.) Further, the existing interpretation does not provide a rationale for exempting only military flying. For these reasons, briefs are requested on the issue of what should now be the definition of “other commercial flying.”

Briefing Schedule

The parties must file³ their briefs on the above issues no later than 30 days after the issuance of this order. The parties may file reply briefs no later than 20 days after service of the opening briefs. The parties must serve each other with the opening and any reply briefs.

[Original signed by J. Randolph Babbitt]

J. RANDOLPH BABBITT
ADMINISTRATOR
Federal Aviation Administration

³ When filing their briefs, the parties should use the appropriate address for the Hearing Docket as set forth in 14 C.F.R. § 13.210(a).