

FREDERIC W. COOK & Co., INC.

2121 AVENUE OF THE STARS, SUITE 2500 LOS ANGELES, CA 90067 - TEL. (310) 277-5070
NEW YORK • CHICAGO • LOS ANGELES • SAN FRANCISCO • ATLANTA

August 6, 2010

Docket Operations, M-30
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Room W12-140
West Building Ground Floor
Washington, DC 20590-0001

Re: Docket Number FAA-2010-0667

Dear Sir or Madam:

This letter contains comments by Frederic W. Cook & Co., Inc. (“FWC”) with respect to the FAA’s recent proposal (the “Proposal”) to modify the Schwab Interpretation. The Schwab Interpretation holds that personal travel by company employees is not within section 91.501(b)(5) of 14 CFR, which specifies the circumstances under which company employees and others may reimburse the company for use of a company airplane without violating Subpart F of Part 91.

FWC is a national firm that specializes in providing executive compensation advice, primarily to compensation committees and boards of directors of large public companies. By way of illustrating the breadth of our practice, recent statistics indicate that we provide consulting advice to approximately 30% of the S&P 250 companies. Accordingly, our practice continually brings us into contact with issues raised by executive use of corporate aircraft.

The current Schwab Interpretation can often produce a situation in which the board of directors of the company wants reimbursement and the executive would be willing to reimburse the company for the costs of personal use, but the company is unable to accept payment. This is an unsatisfactory state of affairs for both the board and the shareholders of the company, neither of which wants to provide this additional amount to the executive. The FAA’s proposed interpretation increases the situations in which the company can receive reimbursement, a result that we support.

There are, however, two issues that we believe warrant further consideration by the FAA. As we read the Proposal, each flight would require a determination that it was of “a routine personal nature” in order to be eligible for reimbursement. We think this is the wrong standard.

The theory of the Proposal is that a business purpose is served by transporting the executive on company aircraft whenever the executive might need to be and could be recalled from his or her personal business. Accordingly, the required distinction between reimbursable flights and non-reimbursable flights should hinge on whether the executive would be willing to be recalled in the event of a business emergency. If, for example, the executive is away from the office for medical reasons, it is unlikely that he or she can be recalled, whatever the business emergency. With regard to non-medical personal absences, it should be left to the individual executive to make a pre-flight determination as to whether he or she could be recalled. Our personal experience is that some business executives would, if necessary, abandon any personal activity and return to corporate business if required by the circumstances.

Accordingly, the test for reimbursability should not depend on an inherently ambiguous inquiry into whether a personal trip is "routine" or not, but should hinge on whether the executive is willing to certify that he or she will abandon the trip if required for business purposes.

Second, the Proposal should clarify that, in cases where reimbursement is permitted, the company can require reimbursement of any amount up to the executive's proportionate share of the total costs of the airplane. The current language states that the charge cannot exceed "the cost of owning, operating, and maintaining the plane." Commentators differ on how to apply this standard and confusion has been increased by the fact that the SEC, which requires reporting of airplane personal use in proxy statements for certain executives, uses an incremental cost standard in determining what needs to be reported. It would improve the administration of the rules and benefit shareholders if the revised Proposal explicitly stated that an executive could be charged his or her full proportionate share of all costs related to airplane usage, including, for example, capital costs and market depreciation.

Respectfully submitted,



David E. Gordon
Managing Director
Frederic W. Cook & Co., Inc.