

2004 and 2005. In 2008, Appellant reported trips as an LLC and shared ownership of this LLC with two other individuals. As stated in the Decision, these businesses, with different organizational forms and ownership structures, are two distinct “persons” under the CHLAP regulations.²

Appellant argues that the Decision misinterprets the legislative history. The CHLAP Final Rule states that two different businesses cannot combine their logbook history to qualify for a permit.³ As explained above, Appellant operated one business during the qualifying period (a sole proprietorship), and a different business during the recent participation period (an LLC). The CHLAP regulations do not allow for Appellant to combine the logbooks from these two different businesses.

Appellant argues RAM issued CHPs to at least fifteen other businesses with histories similar to his. As stated in the Decision, the scope of the appeal does not extend to establishing error in another applicant’s case.⁴ As Appellant states in his Motion, there may be factors present in those other cases not present in Appellant’s case. The appeals process does not extend to identifying the differences between his case and other cases before RAM. The appeals process determines whether the regulations were correctly applied in Appellant’s case.

Appellant claims he should have received a hearing. Appellant had multiple opportunities to submit evidence in support of his appeal. On January 31, 2011, Appellant’s appeal was received.⁵ On April 21, 2011, NAO sent Appellant a letter notifying him that the office had received his appeal and requesting that any additional documentation or information in support of his appeal be submitted to NAO by May 23, 2011.⁶ NAO received additional material supporting Appellant’s claim on May 20, 2011.⁷ As noted in the Decision, because Appellant’s record contained sufficient information on which to reach final judgment, a hearing was not needed in his case.⁸ Further, a hearing may only be ordered if Appellant demonstrated a genuine and substantial issue of adjudicative fact for resolution.⁹ Appellant did not articulate a material issue of fact, which if he proved, would help him prevail in his appeal. Appellant’s arguments on appeal concerned alleged incorrect application of the law and inconsistent actions by RAM in other similar CHP applications. Although these arguments raise legal and policy issues, a hearing will not be ordered on issues of policy or law.¹⁰

In summary, on reconsideration Appellant does not raise an issue that was overlooked in rendering the Decision. Appellant is not the same person that was issued the

² Decision issued, page 5.

³ 75 Fed. Reg. 578 (January 5, 2010).

⁴ Decision issued, page 6.

⁵ Pleadings Tab, Appellant’s appeal received January 31, 2011.

⁶ Appeals Correspondence Tab, Letter from NAO to Appellant dated April 21, 2011.

⁷ Pleadings Tab, Appellant’s submission of additional materials dated May 20, 2011.

⁸ Decision issued, page 2.

⁹ 50 C.F.R. § 679.43(g)(3)(i).

¹⁰ 50 C.F.R. § 679.43(g)(3)(i).

