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

SEP 2 1 2018

Patrick Egan
sUAS News
P.O. Box 188751
Sacramento, CA 95818

Re: Request for legal interpretation regarding the operational authority of designated UAS test sites

Dear Mr. Egan:

This letter responds to your May 21, 2018 email to my staff that contained several questions relating to the public aircraft operations of the seven designated unmanned aircraft system (UAS) test sites. As you are aware, the Federal Aviation Administration was directed to establish the first six test sites in accordance with Section 332 of the FAA Modernization and Reform Act of 2012 (P.L. 112-095)(FMRA). The seventh was added pursuant to Section 2201 of the FAA Extension, Safety, and Security Act of 2016 (P.L. 114-190). The test ranges were established to ensure the integration of UAS into the national airspace system.

As a matter of operational authority, the test sites were set up as public aircraft operators. You are correct that test sites, when using their public aircraft authority to conduct flight operations of UAS, are subject to the limitations of the public aircraft statute (49 USC 40125).

Your first question asks whether a test site may accept compensation "in exchange for" allowing a business to fly beyond line of sight under its public Certificate of Authorization or Waiver (COA), and whether such a flight would be considered a public aircraft operation (PAO) under §40125.

When operating as a PAO under the statute and using its authority as a PAO to conduct a flight, a test site may not be compensated for conducting a flight. We must caution that this circumstance holds true only for compensation for the actual flight conducted by the test site using its own authority. Compensation is not prohibited for other services that may be provided by a test site, nor would there be an issue with compensating a test site to conduct an operation using an aircraft owner's own authorization to fly, such as a FMRA Section 333 exemption or 14 CFR Part 107 authority. It is also possible that a test site may have acquired other civil authority.

Your second question indicates that if the operation described in your first question is not allowed, whether the business that contracted with the test site would be considered a civil operator required to have some civil authority "because the public COA was not any good."

As we stated in our first reply, the answer is completely dependent on the circumstances surrounding individual flights and the authority under which they are conducted. If a flight

conducted by a test site did not meet the terms of the public aircraft statute, then other authority to operate (held by either the test site or the aircraft owner) would be required.

Your third question regards exclusive lease of aircraft under the public aircraft statute, citing 49 USC 40102(a)(41)(D). That provision applies to state and local governments, and requires that in order for a leased aircraft to be considered a PAO during operation, it must have been the subject of an exclusive use lease for at least 90 days, in addition to complying with all of the requirements of §40125. Your question states "If the aircraft lease is executed and the aircraft is flown 1 minute later, would that violate the statute? Must it sit for 90 days?"

Once the term of an aircraft lease begins, the aircraft may be operated only by (or for) an eligible government entity for at least 90 days (or longer depending on the term of the contract). The exclusive use provision means that the aircraft may be operated only by (or for) the government entity during that term, and that the civil lessor of the aircraft cannot 'take back' its aircraft to operate it as a civil aircraft during that period, even for a brief time during the contract period.

Your fourth question extends this line of reasoning, asking "If the flight can be flown one minute after the contract execution, what is to stop the business from flying as a public aircraft operator and then breaking the 90 day exclusivity agreement knowing the test site won't sue to enforce the contract. Would this be illegal under 18 USC 1001?"

The legal effect of failure to maintain the exclusive use required by the statute is significant. Since the provision is in one of the sections that defines public aircraft status, the failure to maintain the 90-day exclusive lease provision means the government entity failed to qualify as a public aircraft operator, and all of the operations thus fail to qualify as PAO. The statute does not demand a contract, and the FAA is not party to any of the agreements under which an aircraft may be leased. If the parties do not fulfill the lease term required by the statute, the statute acts to deny PAO status regardless of what else the parties do. The terms of an agreement cannot change the law, nor can the parties agree to walk away from the lease with no effect. There is no provision for fulfilled intent, nor does the FAA have any authority to agree that some other term is appropriate. The parties to a lease agreement accept the risk of fulfilling the statutory requirements for public aircraft status by using §40102(a)(41)(D). If a government entity fails to qualify as a PAO under this term, any operations conducted pursuant to the agreement would be considered civil and the operators involved would be held to all of the applicable civil standards for operating an aircraft of its type. The FAA does not speculate on the propriety of considering a criminal complaint under Title 18 of the United States Code since that is not a statute the FAA itself enforces, but arises out of a separate legal process.

Your "background" section suggests that one or more test sites are operating in contravention of their public aircraft authority. Since each operation of an aircraft would have to be considered on its own to discern its provenance, purpose and related compensation, such blanket statements provide no reasonable assurance of correct allegations. If you are aware of specific instances of operation flown as PAO but in contravention to the limitations of the public aircraft statute, please contact the Flight Standards District Office closest to the location of the operations in question.

We appreciate your patience and trust that this responds to your questions. This letter has been prepared by Karen Petronis, Senior Attorney on my staff, and coordinated with the Program and Data Management Branch (AUS-410) of the UAS Integration Office.

Sincerely,

Lorelei D. Peter
Assistant Chief Counsel for Regulations

Young, Kim L (FAA)

From: Petronis, Karen (FAA)
Sent: Wednesday, May 23, 2018 5:11 PM
To: Young, Kim L (FAA)
Cc: Peter, Lorelei (FAA); Castillo, Francisco (FAA)
Subject: FW: Request for a formal legal opinion

Kim-

Please log this in as a request for interpretation.

Karen L. Petronis
Senior Attorney for Regulations
Federal Aviation Administration
Washington DC HQ AGC-210

From: Patrick Egan [mailto:patrick@suasnews.com]
Sent: Monday, May 21, 2018 3:11 PM
To: Petronis, Karen (FAA) <karen.petronis@faa.gov>
Subject: Request for a formal legal opinion

Dear Ms. Petronis,

This is a request for a formal legal opinion.

Questions Presented:
Question 1. If one of the six UAS test sites accepts compensation (money, data, etc.) in exchange for allowing a business to fly beyond line of sight under their public COA, would that flight be allowed under 49 USC 40125 to be a public aircraft operation?

Question 2. If that would not be allowed, would the business that contracted with the test site be considered a civil aircraft and required to comply with either Part 107 or Par 91 which means they were required to have obtain either a 107 or 91 waiver for that flight because the public COA was not any good?

Question 3. 49 USC 40102(a)(41)(D) says that the aircraft must be exclusively leased for 90 days. If the aircraft lease is executed and the aircraft is flown 1 minute later, would that violate the statute? Must it sit for 90 days?

Question 4. If the flight can be flown one minute after the contract execution, what is to stop the business from flying as a public aircraft operator and then breaking the 90 day exclusivity agreement knowing the test site won't sue to enforce the contract? Would this be illegal under 18 USC 1001?

Background. The test sites are charging money to businesses to facilitate nationwide beyond visual line of sight flying. The FAA has indicated that the 6 test sites are public aircraft operators. "The six UAS test sites are the first public operators to receive this type of "blanket" airspace access across the United States, including Alaska and Hawaii."
https://www.faa.gov/news/updates/?newsId=82947 49 USC 40125 prohibits a public aircraft operator from receiving compensation for the flight. How can the operations of the businesses operating under a test site public COA NOT be considered to be civil if they compensate the test sites for the flights?

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Thank you, Patrick Egan
916-275-3908