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

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

June 23, 2006

Ms. Pamela Meredith
Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, NW
Washington, DC 20006-3309

Dear Ms. Meredith:

Thank you for your inquiry on behalf of Blue Origin, LLC (Blue Origin), dated February 14, 2006. You asked whether Blue Origin requires a license from the Federal Aviation Administration to operate a launch site. You pointed out that legal considerations should prevent the FAA from requiring Blue Origin to obtain a license to operate a launch site. According to Blue Origin, if a launch licensee does not need a license to operate a private launch site, a launch permittee should not either. Also, you note that the FAA has made official statements that a launch operator operating a private launch site need not obtain a license to operate the site. Until the FAA reaches a decision in its rulemaking governing experimental permits, where the agency has raised this issue for notice and comment, the FAA will not require Blue Origin to obtain a license to operate a launch site. Please, however, advise Blue Origin to keep abreast of developments in that rulemaking.

As described in your correspondence, Blue Origin is developing a reusable suborbital launch vehicle which it plans to operate under a permit issued by the FAA. Blue Origin plans to launch from a private, exclusive use site that it will not offer to others for use. It is the FAA's understanding based on telephone conversations that Blue Origin owns this site. Blue Origin represents that it is designing its launch facilities to comply with the Department of Defense Ammunition and Explosives Safety Standard, DoD 6055.9-STD (Oct. 2005) for its monopropellant, hydrogen peroxide.

The FAA did advise Blue Origin that it must obtain a license to operate a launch site. 49 U.S.C. chapter 701 (Chapter 701) does not define the operation of a launch site. It does define a launch site as "the location on Earth from which a launch takes place ... and necessary facilities at that location." 49 U.S.C. § 70102(7). To operate a launch site in the United States, a person must have a license. 49 U.S.C. § 70104(a). Section 401.5 defines "operation of a launch site" as "the conduct of approved safety operations at a permanent site to support the launching of vehicles and payloads." When promulgating this definition of operation, the Department of Transportation observed that "the operation of a launch site involves continuing operations at a permanent location." Licensing Regulations, 64 Fed. Reg. 11004, 1007 (Apr. 4, 1988). If a person operates a launch site, he or she must obtain a license to do so under 14 CFR part 420. Section 420.3 provides that part 420 applies to a "person seeking a license to operate a launch site or to a person licensed under this part." When the FAA issued part 420, it explained how

only someone offering its site to others needed a license under part 420. The FAA stated in the preamble that "[b]ecause a launch site operator is someone who offers a launch site to others for launch, only someone proposing such an offer need obtain a license to operate a launch site. A launch operator proposing to launch from its own launch site need only obtain a launch license because a launch license will address safety issues related to a specific launch and because the launch license will encompass ground operations." 65 Fed. Reg. 62812, 62836 (Oct. 19, 2000). *See also id.*, at 62815; 64 Fed. Reg. 34316, 34319 (Jun. 25, 1999). Part of the reason that the FAA considered this approach acceptable was because a license to launch encompasses so many hazardous launch processing activities.

Because that reason was flawed and inconsistent with Congress' mandate that the FAA license the operation of a launch site, the FAA is revisiting this issue in a notice of proposed rulemaking issued March 31, 2006, governing experimental permits for suborbital rockets (Permit NPRM). As it explained in the Permit NPRM, the FAA finds that it must revisit this issue for both licenses and permits because the existing approach may leave safety issues unaddressed. The requirements of part 420 are necessary regardless of whether a launch vehicle is present at the launch site.[1] These concerns apply regardless of whether the launch operator is authorized by a license or permit. Additionally, because the scope of a permit may be even more narrow than the scope of a license, the FAA could fail to address other safety issues as well.

Nonetheless, although it is perhaps the part 420 preamble that is inconsistent with existing regulations, the FAA did state in that preamble that a launch licensee operating a private use launch site need not obtain a license to operate a launch site. In this context, the FAA agrees that there is no need to distinguish between operators authorized by a license or permit. Accordingly, for the time being, the FAA will not require Blue Origin to obtain a license to operate a launch site.

Although Blue Origin states that it is willing to abide by part 420 through the terms and conditions of its permit, the FAA will not review the part 420 issues as part of Blue Origin's permit application. This is because if Blue Origin does not require a site license, part 420 does not apply to its activities. The launch of a launch vehicle and the operation of a launch site are two different things, and the regulation of one does not necessarily entail the regulation of the other. For now, to the extent that a requirement of part 420 is part of launch or launch processing, the FAA may apply it as a term and condition of a permit.

[1] Under 49 U.S.C. § 70102(4), Congress defines launch to include activities involved in the preparation of a launch vehicle for launch when those activities take place at a launch site in the United States. This means that when a launch vehicle is not present at a launch site, the other activities at a launch site are not licensed. Some of those activities, such as the storage of explosives and mitigating the effects of lightning, create potential hazards addressed by part 420.

This interpretation was prepared by Laura Montgomery, Senior Attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the office of the Associate Administrator for Commercial Space Transportation. We encourage you to contact us if we can be of further assistance.

Sincerely,

Rebecca MacPherson
Assistant Chief Counsel for Regulations