U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

OCT 29 2015

Audrey Powers
Blue Origin, LLC
21218 76th Ave. S.
Kent, WA 98032

Re: Legal Interpretation of Whether 14 C.F.R. § 437.91 Prohibits Carriage of Goods Without Compensation.

Dear Ms. Powers:

We recently received your request for interpretation of Title 14, Code of Federal Regulations (14 C.F.R.) § 437.91. Specifically, you asked whether Blue Origin would violate the "for hire" prohibition in § 437.91 if it flew some number of Amazon Kindles as payloads on a permitted flight of the *New Shepard* vehicle. The answer is no, because Blue Origin will not receive compensation from Amazon for flying the Kindles.

In your request, you state that Amazon requested that Blue Origin fly an unspecified number of Kindles on an upcoming flight of Blue Origin's *New Shepard* vehicle. *New Shepard* is currently operating under Experimental Permit 14-009 from the FAA. You state that Blue Origin would not receive any monetary or quid pro quo compensation for flying the Kindles. Blue Origin would return the Kindles to Amazon after the flight, and Amazon would distribute the Kindles either for free or for sale. Amazon would advertise that the Kindles had flown in space on the *New Shepard* vehicle. You also asked whether it would make a difference if Amazon chose to sell the Kindles rather than giving them away for free.

Title 51 U.S.C. 50906 states that "[n]o person may operate a reusable suborbital rocket under a permit for carrying any property or human being for compensation or hire." 51 U.S.C. 50906(h) (2015); *see also* 14 C.F.R. § 437.91. A permit is to be used for research and development, crew training, or showing compliance with license requirements. 51 U.S.C. 50906(d). Revenue generation is reserved for licensed operations. *Experimental Permits for Reusable Suborbital Rockets*, Final Rule, 72 FR 17001, 17010 (April 6, 2007)

The scenario you described would not violate the "for hire" prohibition in § 437.91, regardless of whether Amazon sells the Kindles or gives them away for free, because Blue Origin, the permittee, will not receive compensation from Amazon for flying the Kindles as a payload.

When promulgating the rule, the FAA contemplated a person placing property on board a permitted vehicle, as long as that person did not provide the permittee compensation for flying the property. *Experimental Permits for Reusable Suborbital Rockets*, 72 FR at 17010. In its preamble to the *Experimental Permits for Reusable Suborbital Rockets* final rule, the FAA stated that, with the exception of goodwill,[1] the definition of "compensation or hire" is the same as that interpreted in the aviation regulations. Specifically, "compensation may include any form of payment, including payment of operating costs such as fuel, a tax deduction if a flight is for charity, payment by a third-party, any non-monetary exchange for carrying a person for free (for example, the operator receives free advertising, parts, or maintenance, and the like), or any exchange of value including the bartering of goods or services in exchange for the transportation." *Id.* Conversely, winning prize money, advertising revenue from logos, and flying space flight participants for free are allowed under § 437.91. *Id.* Blue Origin will not receive any form of compensation as discussed above for flying the Kindles, and therefore will not violate § 437.91.[2]

Although it is not providing compensation to Blue Origin, Amazon is a customer. Section 440.3 defines customer as any person who "has placed property on board the payload for launch, reentry, or payload services . . . ." 14 C.F.R. § 440.3. Amazon meets the definition of customer because it is placing property on board the payload. However, the FAA contemplated non-paying customers for permitted operators. This is demonstrated by the requirement that a permittee execute a waiver of claims with its customers. Specifically, part 440 requires permittees to implement a reciprocal waiver of claims with each of its customers. *See* 14 C.F.R. 440.17(b); *see also* 14 C.F.R. 440 appendix C (providing a template of a waiver of claims and assumption of responsibility for permitted activities with one customer). Blue Origin must, therefore, implement a reciprocal waiver of claims with Amazon but, because Amazon is not providing compensation to Blue Origin for flying its property, the for hire prohibition does not apply.

I hope this information has been helpful. This response was coordinated with the Licensing and Evaluation Division of the Office of Commercial Space Transportation (AST-200). If you have further questions concerning this response, please contact Sabrina Jawed on my staff at 202-267-3073.

Sincerely,

Lorelei Peter
Acting Assistant Chief Counsel for Regulations, AGC-200

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[1] Although carrying goods onboard its vehicle without receiving compensation may generate goodwill, the FAA does not consider goodwill compensation under § 437.91. *Experimental Permits for Reusable Suborbital Rockets*, 72 FR at 17010.

[2] The FAA assumes that Blue Origin will not use the flight of the Kindles for its own advertising purposes.