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

Office of the Chief Counsel

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

JUN -9 2015

Gregory R. Signer
Associate General Counsel
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, TN 37902

Dear Mr. Signer,

Thank you for your letter of October 10, 2014, regarding the proposed operation of an unmanned aircraft system (UAS) by the Tennessee Valley Authority (TVA) for the purpose of dam inspections.

As your letter stated, operations of public aircraft are limited by statute to those entities that qualify for such operations under 49 USC 40102(a)(41) and that carry out a governmental function as defined in 49 USC 40125 (a)(2).

The public aircraft statute states that –

> The term "governmental function" means an activity undertaken by a government, such as national defense, intelligence missions, firefighting, search and rescue, law enforcement (including transport of prisoners, detainees, and illegal aliens), aeronautical research, or biological or geological resource management.

49 USC 40125 (a)(2)

Your proposed governmental function, described as dam inspection, is not included in any of the listed functions. However, as you noted, the FAA does not consider the list to be exclusive since the definition includes the term "such as." Rather, the FAA has found that the list has at its base a description of the core functions of government entities, whether by state governments to operate the core functions as a state, or federal government entities to carry out their basic statutory authorizations, without the additional burden of the aviation safety regulations that apply to civil aviation operations.

The question is whether we may validly expand the statutory description to include dam inspection by the TVA as a matter of public aircraft operation. We believe that such an expansion is acceptable. As described in your letter, the TVA controls 39 dams and the numerous waterways connected to them. Dam and waterway maintenance are the core functions of the TVA since its creation in 1933. There is nothing in the public aircraft statute to suggest that the TVA's use of manned or unmanned aircraft to inspect and maintain the dams and waterways it created and regulates should be considered anything other than a public aircraft operation for a valid governmental function. The TVA may be

issued a Certificate of Authorization or Waiver (COA) using dam inspection and maintenance as its governmental function. You note that since 1959 the TVA power system has been required to be self-financing. That feature of your authorizing legislation eliminates any question of commercial activity as long as the TVA's operations of its UAS remain limited to TVA property and programs under any COAs it may be issued.

The TVA's use of a public aircraft for dam inspection and maintenance could alternatively be read as fulfilling a public works function. While the statutory list also does not contain a public works function, the FAA finds that public works projects such as the inspection and maintenance of dams, waterways, bridges, and roads may all be characterized as valid governmental functions when the projects belong to and are funded by a governmental entity, and the operations do not also constitute a commercial purpose. Similarly, a government entity may conduct a public aircraft operation using a UAS for the purpose of conducting a mandatory code inspection of a construction project. On the other hand, the more general purpose of simply observing a public works or construction project using a UAS would not qualify as a governmental function. In addition, the commercial purpose prohibition in the statute would prevent a governmental entity from charging another entity for operation of the aircraft, or if the aircraft were used in in support of a revenue-generating business that does not constitute a core function of a qualifying government entity.

Any public works operation of a UAS by a government entity would be required to obtain a COA appropriate for the area and activity to be conducted. In the alternative, government entities are eligible to obtain an exemption for UAS operations that do not qualify as public aircraft operations under the statutory restrictions, and will be treated as civil entities under the exemption process.

Guidance on the operation of public aircraft is available in FAA Advisory Circular 00.1.1A, Public Aircraft Operations, dated February 12, 2014, which can be accessed through our website, FAA.gov. This interpretation was prepared by Karen Petronis, Senior Attorney on my staff, and coordinated with the Unmanned Aircraft Systems Integration Office (AFS-80) of the Flight Standards Service. Please feel free to contact my staff if you have further questions regarding this issue.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for Regulations