U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, DC 20591

September 27, 2024

Jonathan Rupprecht
Rupprecht Law, P.A.
jon@jrupprechtlaw.com

Dear Jonathan Rupprecht:

We received your email dated June 28, 2024, requesting an interpretation of Sections 107.31 and 107.205(c) of Title 14 of the Code of Federal Regulations (CFR). Specifically, you asked whether the two scenarios you outlined would allow for a waiver of the visual line of sight requirement contained in § 107.31. Both scenarios involve the transport of blood or healthy organs for transplant in long range beyond line-of-sight operations. We have determined that your request is appropriate for legal interpretation because it presents a novel question.

Under section 107.31, with vision that is unaided by any device other than corrective lenses, the remote pilot in command, the visual observer (if one is used), and the person manipulating the flight control of a small unmanned aircraft system must be able to see the unmanned aircraft throughout its entire flight. 14 CFR 107.31(a). Under § 107.205(c), the visual line of sight requirement contained in 107.31 is generally subject to a waiver, but no waiver may be issued to allow "the carriage of property of another by aircraft for compensation or hire." FAA agrees with your understanding that there are two ways in which one can obtain a waiver from 107.31: (1) the property being transported is owned by the operator or (2) the property is not being transported for compensation or hire.

It is within this framework that you present two scenarios that you posit may be eligible for § 107.31 waivers:

In the first scenario, a healthcare corporation seeking a waiver would receive title to an organ via gift or purchase, transport it via unmanned aircraft system to one of its patients, and charge the patient or insurance for the transport. This scenario would, you suggest, prevent the organ from being considered "property of another." FAA agrees that property truly owned by the operator would not be subject to restriction on waiver eligibility contained in § 107.205(c). That said, FAA "does not condone the use of any subterfuge designed to give the appearance of ownership of the goods by an aircraft operator." 36 FR 19508. FAA has previously found operators' alleged ownership of products they transported to be "fictional." *Id.* (discussing meat or lobster haulers whose true primary business is the carriage of those products or were paid a fixed rate per pound of cargo by the real owner). Note also, FAA previously has

determined that the carriage of cremated remains is analogous to the carrying of property because "the pilot is entrusted with an item of value and must perform the flight operation to a certain standard for it to be judged a success." *Legal Interpretation to Harris*, (Jan. 30, 2009). Additionally, multiple regulations and statutes outside of FAA authorization might be implicated in the ownership of human tissues. *See e.g.*, 42 U.S.C. § 274e(a) ("Section 301" of the National Organ Transplant Act); Revised Uniform Anatomical Gift Act (2006) (state adaptations vary). FAA relies on information provided by petitioners in reviewing Part 107 waiver requests, including information regarding property ownership. *See* FAA, Part 107 Waiver Section Specific Evaluation Information, available at https://www.faa.gov/sites/faa.gov/files/uas/commercial_operators/part_107_waivers/Part-107-Waiver-Section-Specific-Evaluation-Information.pdf. As such, FAA cautions that the operator would be responsible for ensuring any underlying gifts or sales of human blood or tissues are in alignment with all applicable legal requirements and restrictions.

In the second scenario, the corporation would not receive title to the organs or blood transported but would not be compensated and would not hold itself out for hire. FAA agrees that, based on the limited facts in this hypothetical, the operation would not be subject to restriction on waiver eligibility contained in § 107.205(c) because the operation would not be for compensation or hire. Importantly, however, FAA construes "compensation" broadly to mean anything of value, including valuable good will. *Legal Interpretation to Goldman* (Jun. 14, 2006). Additionally, an operator may hold his or herself out in a variety of ways, including through reputation. *Id.* Even if one limits transportation services to a class or segment of the general public, it may still be considered to be holding out if it expresses a willingness to provide transportation for all of those within this class or segment to the extent of its capacity. *Legal Interpretation to Haberkorn* (Oct. 3, 2011). The determination of whether an operator is holding out is based on the nature and character of the operations involved and depends on the particular facts in each case. *FAA Memorandum to FSDO Mills* (Aug. 11, 2011). Additional facts beyond those presented in your request would be needed for FAA to determine whether a specific operation under this scenario were for compensation or hire and therefore ineligible for a waiver from the line-of-sight requirements of § 107.31. For further assistance in this regard, please contact the Emerging Technologies Division of the Office of Safety Standards (AFS-700) at 9-avs-fs-afs-700-correspondence@faa.gov.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Casey Morris, Honors Attorney in the Regulations Division of the Office of the Chief Counsel in coordination with the Emerging Technologies Division of the Office of Safety Standards (AFS-700).

Sincerely,

LAURA JANE MEGAN-POSCH

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Date: 2024.10.02 06:49:40 -04'00'

Laura Megan-Posch
Assistant Chief Counsel for Regulations