

National Aeronautics and Space Admin.

§ 1266.102

1266.104 Cross-waiver of liability for NASA expendable launch vehicle (ELV) program launches.

AUTHORITY: 42 U.S.C. 2473 (c)(1) and (c)(5).

SOURCE: 56 FR 48430, Sept. 25, 1991, unless otherwise noted.

§ 1266.100 Purpose.

The purpose of this regulation is to ensure that consistent cross-waivers of liability are included in NASA agreements for Space Station Freedom activities, Shuttle launch services, and NASA Expendable Launch Vehicle (ELV) program launches.

§ 1266.101 Scope.

These provisions at §1266.102, contained in Article 16 of the "Intergovernmental Agreement among the United States, the Governments of Member States of the European Space Agency, the Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation and Utilization of the Permanently Manned Civil Space Station," form the regulatory basis for cross-waivers to be incorporated in NASA agreements implementing the Intergovernmental Agreement and the memoranda of understanding between the U.S. and its respective international partners on Space Station Freedom. The provisions at §1266.103 of this part provide the regulatory basis for cross-waiver clauses to be incorporated in agreements for Shuttle launch services that do not involve activities in connection with Space Station Freedom. The provisions at §1266.104 of this part provide the regulatory basis for cross-waiver clauses to be incorporated in agreements for NASA ELV program launches that do not involve activities in connection with Space Station Freedom.

§ 1266.102 Cross-waiver of liability for Space Station Freedom activities.

(a) The objective of this section is to establish a cross-waiver of liability ("cross-waiver") by the Partner States and related entities in the interest of encouraging participation in exploration, exploitation, and use of outer space through the Space Station. This cross-waiver of liability shall be broadly construed to achieve this objective.

(b) For the purposes of this section:

(1)(i) A *Partner State* is each contracting Party for which the "Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, the Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station" (the "Intergovernmental Agreement") has entered into force, in accordance with Article 25 of the Intergovernmental Agreement.

(ii) A Partner State includes its Cooperating Agency. The National Aeronautics and Space Administration (NASA) for the United States, the European Space Agency (ESA) for the European Governments, the Canadian Space Agency (CSA) for the Government of Canada, and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan's Cooperating Agency in the implementation of that MOU.

(2) The term *related entity* means:

(i) A contractor or subcontractor of a Partner State at any tier;

(ii) A user or customer of a Partner State at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Partner State at any tier. "Contractors" and "subcontractors" include suppliers of any kind.

(3) The term *damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage.

(4) The term *launch vehicle* means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(5) The term *payload* means all property to be flown or used on or in a launch vehicle or the Space Station.

(6) The term *Protected Space Operations* means all launch vehicle activities, Space Station Freedom activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space done in implementation of this Agreement, the MOU's, and implementing arrangements. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles (for example, the Orbital Maneuvering Vehicle), the Space Station, or a payload, as well as related support equipment and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services. *Protected Space Operations* also includes all activities related to evolution of the Space Station, as provided for in Article 14 of the Intergovernmental Agreement. *Protected Space Operations* excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station-related activities in implementation of this Agreement.

(c)(1) Each Partner State agrees to a cross-waiver of liability pursuant to which each Partner State waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this section based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract, against:

(i) Another Partner State;

(ii) A related entity of another Partner State;

(iii) The employees of any of the entities identified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(2) In addition, each Partner State shall extend the cross-waiver of liability as set forth in paragraph (c)(1) of this section to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the Liability Convention where the person, entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this section, this cross-waiver of liability shall not be applicable to:

(i) Claims between a Partner State and its own related entity or between its own related entities;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

§ 1266.103 Cross-waiver of liability during Shuttle operations.

(a) The purpose of this section is to establish a cross-waiver of liability between the parties to Shuttle launch services agreements and to other NASA agreements that involve Shuttle flights, and the parties' related entities, in the interest of encouraging participation in space exploration, exploitation, and investment. The cross-waiver of liability shall be broadly construed to achieve this objective.

(b) As used in this cross-waiver, the term:

(1) *Party* means a person or entity that signs an agreement involving a Shuttle flight;

(2) *Related Entity* means: