U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Chief Counsel

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JUL -9 2014

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National Aeronautics and Space Administration
300 E Street, SW
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Dear Ms. Graham:

This responds to your request for a legal interpretation dated May 23, 2014. NASA asks whether the holder of a license or permit under 51 U.S.C. ch. 509 (Chapter 509) must obtain written informed consent from a space flight participant who is a NASA astronaut and a U.S. Government employee, either as a civil servant or a member of the U.S. armed forces. Similarly, you inquire whether a licensee or permittee must obtain informed consent from a space flight participant who is an astronaut employed by one of NASA's international partners (IPs). Additionally, you inquire whether the analysis in the FAA's December 23, 2013 legal interpretation (December interpretation) on the application of the waiver requirements of 51 U.S.C. § 50914 to U.S. Government employees informs the answer to your first questions. NASA and IP astronauts must provide informed consent, and, because informed consent is not a waiver of claims, the analysis differs from the December interpretation.

Chapter 509 and the FAA's implementing regulations require an operator authorized by the FAA to obtain the written informed consent of any space flight participant. As explained in the December interpretation, under Chapter 509, a space flight participant includes NASA and IP astronauts. Both the statute and the regulations are clear on their face, and require the holder of a license or permit to inform a space flight participant about the risks of the launch and reentry, including the safety records of the launch or reentry vehicle type, and that the U.S. Government has not certified the launch vehicle as safe for carrying crew or space flight participants. 51 U.S.C. § 50905(b)(5); 14 C.F.R. § 460.45 (also requiring the operator to provide an opportunity to the space flight participant to ask questions). Section 460.45(f) of the regulations clarifies that the space flight participant must provide consent in writing, and the consent must identify the vehicle to which the consent applies, state that the space flight participant understands the risk and his or her presence on board is voluntary, and be signed and dated by the participant.

The reasoning of the December interpretation does not apply here. In that interpretation the FAA determined that NASA astronauts do not have to sign reciprocal waivers of claims as

51 U.S.C. §50914(b) requires of space flight participants generally. That interpretation was reached because a contrary one would have conflicted with other federal statutes, including the Federal Employees Compensation Act (FECA), its military counterparts, and the Military Personnel and Civilian Employees Claims Act (MPCECA). Here, we have identified no conflicting federal statutes. Likewise, the informed consent requirements do not conflict with the express terms of the 1998 Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America Concerning the Cooperation on the Civil International Space Station (IGA). The IGA is silent regarding informed consent. FECA, its military counterparts, MPCECA, and the IGA all address waivers of claims, not informed consent.

Under Chapter 509 and the FAA's regulations, informed consent is not a waiver. The informed consent requirements provide a form of notice to space flight participants regarding the risks of traveling on a particular space vehicle. Informed consent is not a waiver for two reasons. The two requirements are addressed in separate sections of Chapter 509. Section 50914 explicitly addresses waivers of claims, while section 50905 addresses informed consent. Section 50905 mandates informed consent for all space flight participants, but does not require waivers. Moreover, the legislative history makes clear that Congress did not intend space flight participants to waive claims against operators. Congress considered and rejected requiring space flight participants to waive claims against an operator. *Compare* H.R. 3752, 108th Cong., 2d Sess., § 3 (proposing to amend 49 U.S.C. § 70112(b)(1), now 51 U.S.C. § 50914(b)(1)) *with* P.L. 108-492 (Dec. 23, 2004), H.R. 5382, 108th Cong., 2d Sess., (with no amendments to 49 U.S.C. § 70112(b)(1), now 51 U.S.C. § 50914(b)(1)). Therefore, under Chapter 509 an informed consent signed by a space flight participant (including NASA civil service, military, and IP astronauts) is not a waiver of claims against the launch operator.

This interpretation has been coordinated with the Associate Administrator for Commercial Space Transportation. Please feel free to contact Laura Montgomery, Manager of the Space Law Branch, at (202) 267-3150, or me with any questions or concerns.

Sincerely,

Mark W. Bury
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