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

Office of the Chief Counsel

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

MAR 11 2016

Lenny Taylor
Orbital ATK, Inc.
UT-02-YA15
Composites Center
PO Box 160433
Clearfield, UT 84016-0433

Re: Whether a contractor to launch operator is covered by insurance policy that launch operator must obtain in accordance with 14 C.F.R. § 440.9

Dear Mr. Taylor:

This is in response to your November 17, 2015 email requesting a legal interpretation regarding the insurance requirements for a licensed launch. You asked whether your employer, Orbital ATK, Inc. ("Orbital ATK"), in its capacity as a supplier of composite structures, payload fairings, and other launch vehicle components, would "need additional insurance beyond what [the launch operator][1] had been required by law to obtain to cover [Orbital ATK's] potential liability if there were an accident, or [is Orbital ATK] covered by the 'umbrella' amount that the launch provider was required to purchase."[2] In a February 1, 2016 telephone call, you indicated that Orbital ATK was interested in third-party claims and Orbital ATK's claims against the launch licensee, the launch licensee's customers, and their respective contractors and subcontractors.[3]

Although I cannot advise you on whether Orbital ATK should purchase additional insurance beyond the coverage the FAA requires, I trust that the following explanation of a licensee's insurance and reciprocal waiver requirements will help you evaluate your situation.

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[1] In a February 1, 2016 telephone call, you clarified that, for the purposes of this interpretation, the FAA could assume that the company referenced in your November 17, 2015 email would obtain a commercial launch license and that Orbital ATK would serve as a contractor to that company for the licensed launch.

[2] Your request incorrectly assumed that the required amount of insurance covers the "worst case" scenario. The FAA determines the required amount of insurance by determining maximum probable loss, not maximum possible loss.

[3] Unless expressly provided otherwise, the terms used are defined in 14 C.F.R. §§ 401.5 and 440.3. You may find these provisions of the Code of Federal Regulations at www.ecfr.gov, www.gpo.gov/fdsys, and www.faa.gov.

Insurance requirements

Orbital ATK is covered against third-party claims arising out of licensed activities by the policy of liability insurance that the launch licensee is required to obtain by 14 C.F.R. § 440.9. The law requires that the holder of a launch or reentry license,[4] before conducting a launch or reentry under 51 U.S.C. Subtitle V, chapter 509, obtain and maintain in effect a policy (or policies) of liability insurance[5] that protects, among others, the licensee, its customers, and their respective contractors and subcontractors, and the employees of each, involved in licensed activities, as additional insureds to the extent of their respective potential liabilities against (1) covered claims by a third party[6] for bodily injury or property damage resulting from a licensed activity and (2) claims by the United States, its agencies, and its contractors and subcontractors involved in a licensed activity for property damage or loss resulting from a licensed activity. 51 U.S.C. § 50914(a)(1); 14 C.F.R. § 440.9. A licensee is not required to obtain insurance of more than $500,000,000 for third party claims; $100,000,000 for government claims; or the maximum liability insurance available on the world market at reasonable cost for both third-party claims and government claims if the amount is less than those amounts. 51 U.S.C. § 50914(a)(3); 14 C.F.R. § 440.9(c), (e). This insurance policy (or policies) must comply with the standard conditions set forth in 14 C.F.R. § 440.13.

Reciprocal waiver of claims requirement

Under 14 C.F.R. § 440.17, Orbital ATK assumes financial responsibility for property damage it sustains and for bodily injury or property damage sustained by its own employees resulting from licensed activities, regardless of fault. The law requires launch licenses to contain a provision requiring the licensee to make a reciprocal waiver of claims with applicable parties[7] involved in launch services under which each party to the waiver agrees to be responsible for personal injury to, death of, or property damage or loss sustained by it or its own employees resulting from an activity carried out under the applicable license, regardless of fault. 51 U.S.C. § 50914(b)(1)(A); 14 C.F.R. § 440.17(b). Additionally, if the U.S. Government, any agency, or its contractors and subcontractors are involved in the licensed activities, the U.S. Government must make a reciprocal waiver of claims with the licensee, customers of the licensee, contractors and subcontractors of both the licensee and customers, and any space flight participants.[8] 51 U.S.C. § 50914(b)(2); 14 C.F.R. § 440.17(b). Acting on behalf of the Government, the FAA fulfills this responsibility by obtaining reciprocal waivers directly from the licensee and the licensee's customers and requiring the licensee and its customers to "flow down", or extend, the waiver and

[4] For the purposes of 51 U.S.C. § 50914, "a permit shall be considered a license" and "the holder of a permit shall be considered a licensee." 51 U.S.C. § 50906(i). Accordingly, chapter 509's insurance requirements and mandatory reciprocal waivers of claims apply to permittees as well as licensees.

[5] Alternatively, the licensee and permittee may demonstrate the required amount of financial responsibility. 14 C.F.R. § 440.9(a). However, this interpretation does not address the option to demonstrate financial responsibility because your request asked only about purchasing insurance.

[6] A covered third-party claim includes a claim by the United States, its agencies, and its contractors and subcontractors for damage or loss to property other than property for which insurance is required under 14 C.F.R. § 440.9(d). 14 C.F.R. § 440.9(c).

[7] Applicable parties means contractors, subcontractors, and customers of the licensee; contractors and subcontractors of the customers; and space flight participants. 51 U.S.C. § 50914(b)(1)(B).

[8] The government's "waiver applies only to the extent that claims are more than the amount of insurance or demonstration of financial responsibility required under subsection (a)(1)(B) of [51 U.S.C. § 50914]." 51 U.S.C. § 50914(b)(2).

release of claims to their contractors and subcontractors involved in licensed activities. The licensee, its customers, and the FAA must agree in any waiver of claims agreement to indemnify another party to the agreement from claims by the indemnifying party's contractors and subcontractors arising out of the indemnifying party's failure to properly implement the waiver requirement. 14 C.F.R. § 440.17(d).

I hope this response has been helpful to you. If you have any additional questions or require further information, please feel free to contact my office at (202) 267-3073. This response was prepared by Benjamin Berlin, an attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Licensing and Evaluation Division in the FAA's Office of Commercial Space Transportation.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

Powell, Ebony (FAA)

From: Taylor, Lenny <lenny.taylor@orbitalatk.com>
Sent: Tuesday, November 17, 2015 3:38 PM
To: Berlin, Ben (FAA)
Subject: Indemnification Question

Under the existing regulatory requirements, a commercial launch provider in the U.S. is required to acquire insurance at an amount set by the FAA based on their assessment of the risks and possible damage from a launch incident. My understanding is that it represents the "worst case" scenario, but is capped at X dollars, at which point the Federal Government would step in and cover any additional costs. To date, there hasn't been an event that has exceeded the insurance requirements levied on the launch provider. (Kudos to the FAA!)

So, for discussions sake, assuming that the FAA goes through their process and comes up with a "worst case" valuation of $400M as the required amount of insurance coverage for a specific launch. The provider (again for the sake of this situation, United Launch Alliance obtains insurance up to that amount for the launch in order to obtain their commercial launch license for the planned launch event.

My question; As a major supplier to ULA, providing composite structures, payload fairings, etc., do I need additional insurance beyond what they had been required by law to obtain to cover my potential liability if there were an incident, or am I covered by the "umbrella" amount that the launch provider was required to purchase.

My interest derives from the fact that as a "team member" and subcontractor to ULA I want to do everything possible to reduce the costs associated with launches, but obviously can't afford to play "you bet your company" by going "naked" into a launch in terms of indemnification.

Our indemnification of Government launches are covered via other means, but the commercial arena is still somewhat undefined.

I asked this question a couple of months ago and have yet to receive a response from the FAA so I'm asking again. Thanks for your consideration of this most important issue.

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