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

Office of the Chief Counsel

800 Independence Ave., SW
Washington, DC 20591

February 15, 2018

Dionne Hamilton
Boeing Space Exploration Counsel
3700 Bay Area Blvd.
Houston, TX 77058

Dear Ms. Hamilton:

I write in response to your August 21, 2017 email requesting a legal interpretation of the 2015 U.S. Commercial Space Launch Competitiveness Act's (CSLCA) effect on a space flight participant's (SFP) reciprocal waiver of claims requirement. Thank you for the opportunity to clarify the matter.

Specifically, you asked whether there was a requirement for a SFP to enter into a reciprocal waiver of claims with a licensee/operator. As you correctly noted, while current FAA regulations do not require SFPs enter into a reciprocal waiver of claims agreement with a licensee, the CSLCA imposes that requirement. Therefore, the FAA intends to honor the statutory requirement and require SFPs enter into reciprocal waiver of claims agreements with licensees of their respective launches.

You also asked whether the FAA will retain the current definition of SFP for purposes of waiver of claims agreements with licensees. The FAA currently requires SFPs enter into waiver of claims agreements with other parties involved in launch services and has provided sample templates in part 440, Appendix E. In addition to waiving their own claims, these templates also require SFPs waive claims on behalf of their heirs. The CSLCA does not alter this requirement. Therefore, the FAA will continue to require SFPs waive claims on behalf of their heirs.

Finally, you wanted to know if the waiver of claims agreement between a SFP and a licensee would be similar in form and substance to other templates in part 440, Appendix E. These templates are merely examples of effective waivers of claims tailored to the specific parties to the agreements. It is fair to say the agreement between a SFP and a licensee, like each template in Appendix E, would be similar in form and substance insofar as each effectively waives claims 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. However, the agreement between a SFP and licensee should be tailored to those specific parties and the particularities of their relationship.

To that end, please contact Pam Underwood, Manager of the Operations Integration Division at (321) 861-7791 for assistance.

We appreciate your patience and trust that the above responds to your questions. This response was prepared by Humberto Ruiz, Attorney in the Regulations Division of the Office of the Chief Counsel. Please contact him at (202) 267-0337 if we can be of further assistance.

Sincerely,



Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

Young, Kim L (FAA)

From: Moore, Anne (FAA)
Sent: Tuesday, August 22, 2017 10:18 AM
To: Young, Kim L (FAA); Peter, Lorelei (FAA)
Subject: RE: Interpretation of CSLA

Yes, please.

Can you assign it to Humberto?

From: Young, Kim L (FAA)
Sent: Tuesday, August 22, 2017 10:13 AM
To: Moore, Anne (FAA); Peter, Lorelei (FAA)
Subject: FW: Interpretation of CSLA

Anne

Please let me know if this is something your branch want to handle.

Thanks

Kim L Young
Management & Program Analyst
Regulations Division, AGC-200
& Federal Register Liaison
(202) 267-3073 office
(202) 267-7971 fax
Kim.L.Young@faa.gov

From: Hamilton, Dionne V [mailto:dionne.v.hamilton@boeing.com]
Sent: Monday, August 21, 2017 5:45 PM
To: Young, Kim L (FAA)
Subject: Interpretation of CSLA

Ms. Young,

Your contact information was provided to me to get a legal interpretation via Lorelei Peter, Assistant Chief Counsel for Regulations. The issue requiring the legal interpretation follows:

The legislative language governing commercial space flight is found in 51 U.S.C. Chapter 509. The 2015 amendments to the Commercial Space Launch Act (CSLA) added the following language to Section 50914 (relevant provisions in italics):

(b) Reciprocal Waiver of Claims.—(1)(A) A launch or reentry license issued or transferred under this chapter shall contain a provision *requiring the licensee* or transferee *to make a reciprocal waiver of claims with applicable parties* involved in launch services or reentry 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.

(B) In this paragraph, the term "*applicable parties" means*—

(i) contractors, subcontractors, and customers of the licensee or transferee;
(ii) contractors and subcontractors of the customers; and
(iii) *space flight participants*.

This language indicates that, under any license issued pursuant to this section, a space flight participant (SFP) would be required to enter into a cross waiver with a licensee. However, it is not clear that the current regulations support this approach. Specifically, the regulations under 14 CFR Part 440 require a cross waiver between the FAA, or its contractors, and a SFP. However, the definition of "contractor" under the regulation does not expressly include licensees, like the commercial companies involved in space flight here. Furthermore, in the 2006 final rule on "Human Space Flight Requirements for Crew and Space Flight Participants" (71 FR 75616-01), the FAA noted that:

". . . the CSLAA and the FAA regulations do not require either a space flight participant or a crew member to agree to waive claims against an operator of a launch or reentry vehicle. . . . nothing in the CSLAA prevents an operator from making a waiver of liability a condition of an agreement between it and a space flight participant or crew member... Neither Congress nor the FAA mandated waivers of claims against an operator."

Because the relevant regulatory language may not account for the recent statutory amendments (given that the regulatory process can lag behind statutory changes), I am requesting clarification regarding the scope of the mandatory cross waiver between a SFP and operators/licensees. Is there a requirement for a SFP to enter into a cross waiver with a licensee/operator? If there is such a requirement, would the definition of SFP include SFP heir(s) as set out in the government and SFP cross waiver in Appendix E to Part 440? If such a waiver is required, is it anticipated that a cross waiver between a SFP and a licensee/operator would be in form and substance similar to the form included in Appendix E to Part 440?

Please feel free to contact me with any clarifying questions. My contact information is below.

Regards,

Dionne Hamilton
Senior Counsel
3700 Bay Area Blvd.
Houston, TX 77058
(281) 226-4972 (office)
(713) 918-9227 (cell)

Notice: This communication may contain privileged or other confidential information. If you are not the intended recipient, or believe that you have received this communication in error, please do not print, copy retransmit, disseminate, or otherwise use the information. Also, please indicate to the sender that you have received this email in error, and delete the copy you received. Thank you.