

compliance with this AD, if any, may be obtained from the Seattle ACO.

#### Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 15, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE (99-159)]

### 14 CFR Parts 1261 and 1267

RIN 2700-AC35

#### Meritorious Claims Which Result From the Conduct of NASA Functions

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The National Aeronautics and Space Administration (NASA) proposes to amend its rules regarding the submission and processing of meritorious claims under section 203 of the National Aeronautics and Space Act of 1958, as amended. NASA regulations currently discuss the submission and processing of meritorious, as well as tort, claims by NASA. This proposal provides separate coverage for meritorious claims in a new part. The proposal reflects the statutes and requirements governing these two types of claims, differences in their processing and settlement by NASA, and differences in their payment.

**DATES:** Comments must be received on or before February 22, 2000.

**ADDRESSES:** Send comments to Associate General Counsel (Contracts), Code GK, National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546-0001. Submit electronic comments and other data to [broan@hq.nasa.gov](mailto:broan@hq.nasa.gov). NASA will consider late comments to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Bernard J. Roan, (202) 358-2072 (voice), (202) 358-4355 (fax), and [broan@hq.nasa.gov](mailto:broan@hq.nasa.gov) (e-mail).

**SUPPLEMENTARY INFORMATION:** 42 U.S.C. 2473(c)(13) governs meritorious claims against NASA for bodily injury, death,

or damage to or loss of real or personal property resulting from the conduct of NASA's functions. Meritorious claims are those claims that NASA decides, as a matter of equity or fairness, to pay, but for which the United States could not be held legally liable to the claimant. 42 U.S.C. 2473(c)(13) authorizes NASA to consider and pay such meritorious claims in amounts of \$25,000 or less and to consider for payment such meritorious claims exceeding \$25,000. In turn, 31 U.S.C. 3104 requires the Secretary of the Treasury to certify payment of any claim exceeding \$25,000 which NASA considers meritorious.

NASA regulations at 14 CFR subpart 1261.3 presently govern the processing of meritorious claims. Subpart 1261.3 discusses tort and meritorious claims without drawing any significant distinctions between the two types of claims. Moreover, subpart 1261.3 does not discuss the relationship between NASA and the Secretary of the Treasury in processing meritorious claims settled by NASA. Addressing meritorious claims separately from tort claims helps to clarify the bases NASA deems acceptable for considering meritorious claims.

The proposed rule creates a new part 1267 of 14 CFR governing NASA's processing of meritorious claims. The new part 1267 establishes specific procedures for considering meritorious claims arising from NASA space launch activities.

The proposed rule applies only to meritorious claims brought by third parties. The proposed rule does not apply to claims arising from NASA space launches for which the United States provides its space launch contractor indemnification against third party claims under other statutory authority. Moreover, the proposed rule, read in conjunction with proposed implementing coverage in the NASA supplement to the Federal Acquisition Regulation, addresses certain insurance requirements levied on space launch contractors for the payment of third party claims which might otherwise be filed as meritorious claims. Finally, the new part 1267 discusses administrative matters, such as filing and documenting meritorious claims, time limitations, processing by NASA officials, and final approval by the NASA General Counsel.

As required by the Regulatory Flexibility Act, NASA certifies that this proposed rule will not have a significant economic impact on small business entities.

These regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

As required by the Unfunded Mandates Reform Act, NASA certifies that this regulation will not compel the expenditure in any 1 year of \$100 million or more by State, local, and tribal governments in the aggregate, or by the private sector. Therefore, the detailed statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

#### List of Subjects

##### 14 CFR Part 1261

Accidents, Administrative practice and procedure, Claims, Tort claims.

##### 14 CFR Part 1267

Accidents, Administrative practice and procedure, Claims, Federal Acquisition Regulations, Government contracts, Government procurement, Space transportation and exploration, Tort claims.

For the reasons set forth in the preamble, NASA proposes to amend 14 CFR parts 1261 and 1267 as follows:

#### PART 1261—PROCESSING OF MONETARY CLAIMS (GENERAL)

##### Subpart 1261.3—Claims Against NASA or Its Employees for Damage to or Loss of Property or Personal Injury or Death—Accruing on or After January 18, 1967

1. The authority citation for subpart 1261.3 is revised to read as follows:

**Authority:** 28 U.S.C. 2671-2680; and 28 CFR part 14.

2. Remove § 1261.301 paragraphs (b) and (c) and redesignate paragraph (d) as (b).

3. Remove § 1261.307 paragraph (b) and redesignate paragraph (c) as (b).

4. Amend § 1261.308 by:

A. Amending paragraph (c) by removing the phrase "pursuant either to the Federal Tort Claims Act, or 42 U.S.C. 2473(c)(13)"; and

B. Removing paragraph (d).

5. Amend § 1261.312 paragraph (a) by removing the phrase "a Voucher for Payment of Tort Claims (NASA Form 616) if the claim has been acted upon pursuant to 42 U.S.C. 2473(c)(13), or".

6. Add part 1267 to read as follows:

#### PART 1267—MERITORIOUS CLAIMS WHICH RESULT FROM THE CONDUCT OF NASA FUNCTIONS

Sec.	
1267.100	Scope of the part.
1267.101	Authorities.
1267.102	Applicability.
1267.103	Definitions.
1267.104	Claims.
1267.105	Presentation of claims.

- 1267.106 Filing and processing third party claims involving launch service contractors.
- 1267.107 Evidence and information required from third party claimants.
- 1267.108 Time limitations for third party claims.
- 1267.109 NASA action on a launch service claim.
- 1267.110 Confidentiality.

**Authority:** 42 U.S.C. 2473(c)(13); 31 U.S.C. 1304.

**§ 1267.100 Scope of the part.**

This part sets forth the procedures for submitting and processing claims against the United States for bodily injury, death, or damage to or loss of real or personal property resulting from the conduct of certain space launch functions by NASA through launch service contractors. This part further designates the NASA officials authorized to act upon these claims.

**§ 1267.101 Authorities.**

42 U.S.C. 2473(c)(13)(A), sec. 203(c)(13)(A) of the National Aeronautics and Space Act of 1958, as amended, authorizes NASA to consider, ascertain, adjust, determine, settle, and pay, on behalf of the United States, any claim made against the United States for \$25,000 or less for bodily injury, death, or damage to or loss of real or personal property resulting from the conduct of NASA's functions as specified in 42 U.S.C. 2473(a). NASA may settle and pay a claim under this authority even though the United States could not be held legally liable to the claimant.

(a) 42 U.S.C. 2473(c)(13)(B) authorizes NASA to consider a claim in excess of \$25,000 which, but for the dollar amount, would otherwise be covered by 42 U.S.C. 2473(c)(13)(A).

(b) 31 U.S.C. 1304, as amended by Public Law 104-316, appropriates amounts to pay settlements of meritorious claims, when certified by the Secretary of the Treasury and in excess of the amount payable from Agency appropriations under 42 U.S.C. 2473.

**§ 1267.102 Applicability.**

(a) One of NASA's primary functions is launching Government and Government-sponsored payloads into space. In recognition of this fact, NASA has determined that launches conducted by NASA through launch service contractors constitute, for purposes of considering claims under 42 U.S.C. 2473(c)(13), the conduct of a NASA function. Accordingly, NASA will include in its contracts for launch services a clause designating the launch as being the conduct of a NASA function and agreeing to consider claims

resulting from the launch under the authority of 42 U.S.C. 2473(c)(13) and the procedures prescribed in this part.

(b) This part does not apply to launches for which the NASA Administrator has provided indemnification pursuant to Public Law 85-804, or to launches for which the Department of Transportation has issued or transferred a license under the Commercial Space Launch Act, 49 U.S.C., Chapter 701.

**§ 1267.103 Definitions.**

(a) *Meritorious claims* are those claims that NASA decides to pay as a matter of equity or fairness, but for which the United States could not be held legally liable to the claimant.

(b) *Third party claimant* means any person or entity, other than NASA, the launch service contractor, or the launch service contractor's subcontractors, at any tier, involved in the performance of launch services pursuant to a contract with NASA. For purposes of this part, employees of the Government, employees of the launch service contractor, and employees of the launch service contractor's subcontractors come within the definition of third party claimant.

**§ 1267.104 Claims.**

(a) For purposes of this part, a meritorious claim arises as a demand by a third party claimant against a NASA launch service contractor for money damages, in a sum certain, for bodily injury, death, or damage to or loss of real or personal property resulting from a launch conducted by NASA through that launch service contractor.

(b) NASA will consider a third party claim, originally made against a launch service contractor, as a claim against the United States for purposes of 42 U.S.C. 2473(c)(13) if the launch services were provided pursuant to a contract containing the clause at NASA Federal Acquisition Regulation Supplement (NFS) 1852.228-XX. Once received and evaluated, NASA will consider a third party claim that is reasonable in amount to be meritorious, unless the gross negligence or willful misconduct of the third party claimant, or any launch service contractor or subcontractor, caused or was an intervening cause in the bodily injury, death, or damage to or loss of real or personal property for which damages are sought.

(c) NASA will forward any meritorious claim that is reasonable in amount and arose out of the conduct of NASA's space launch function to the Secretary of the Treasury for certification for payment from the permanent Judgment Fund pursuant to

31 U.S.C. 1304 and implementing regulations; provided, the claim exceeds \$25,000 and the launch service contractor has exhausted any insurance coverage required by the contract.

**§ 1267.105 Presentation of claims.**

(a) For damage to or loss of real or personal property, the owner of the property or his or her duly authorized agent or legal representative may present a claim.

(b) For bodily injury, the injured person or his or her duly authorized agent or legal representative may present a claim.

(c) For wrongful death, the executor or administrator of the decedent's estate or any other person legally entitled to assert such a claim in accordance with applicable state law may present a claim.

(d) For any loss wholly compensated by insurance, an insurer with the rights of a subrogee may present a claim. For any loss partially compensated by insurance, multiple parties with the rights of subrogees may present claims individually as their respective interests appear, or jointly. An insurer that provides insurance required by the NASA launch service contract may not present a subrogation claim based on that insurance.

(e) If an agent or legal representative presents a claim, it must be presented in the name of the claimant. The agent or legal representative must sign the claim, showing the title or legal capacity of the person signing, accompanied by evidence of the legal authority of the agent or representative to present a claim on behalf of the claimant.

**§ 1267.106 Filing and processing third party claims involving launch service contractors.**

(a) To come under this part, a third party claim arising out of a launch conducted by NASA through a launch service contractor must first be filed with the contractor providing the launch service. If the identity of the cognizant launch service contractor is not apparent, a claimant should contact the nearest NASA Center for information.

(b) The cognizant launch service contractor must promptly process any third party claim received in accordance with the terms of the contract and this part. As an initial matter, the launch service contractor must verify that any third party claim for bodily injury, death, or damage to or loss of real or personal property resulted from a launch conducted by NASA through the launch service contractor. If the claim resulted from a launch by NASA

conducted through the launch service contractor, then the contractor must settle the matter in a reasonable amount, applying any available insurance coverage required by the contract.

(c) If the cognizant launch service contractor finds that the insurance coverage required by the contract has been exhausted, the claim must be given to the NASA contracting officer. The contracting officer must consider any remaining liability as a claim against the United States in accordance with this subpart, the terms of the launch service contract, the Federal Acquisition Regulation (FAR), and the NASA FAR Supplement (NFS). As such, the contracting officer must examine the remaining liability to determine whether the amount claimed is reasonable. For amounts determined to be unreasonable, the contracting officer must refer the claim back to the launch service contractor to conduct further discussions. Ultimately, the contract's disputes clause prescribes procedures for resolving disagreements, if necessary. For amounts determined to be reasonable, the contracting officer must process the claim in accordance with § 1267.109.

**§ 1267.107 Evidence and information required from third party claimants.**

(a) A third party claimant should, insofar as possible, provide competent evidence to the launch service contractor to substantiate the circumstances alleged to have given rise to the claim and the amount claimed. A third party claimant should obtain supporting statements, repair bills, one or more estimates for repair, and other data, if possible. Documentation from disinterested parties should be obtained whenever possible.

(b) With regard to the amount claimed, a third party claimant must notify the launch service contractor of, and provide information concerning, any money or other property received as damages or compensation, or which the third party claimant may be entitled to receive from other sources by reason of the claimed bodily injury, death, or damage to or loss of real or personal property. These other sources of money, damages, or compensation include, but are not limited to, other launch service contractors, insurers, employers, and persons whose conduct may have caused or contributed to the accident or incident.

(c) A third party claimant must provide an English translation of any supporting document written in a foreign language.

**§ 1267.108 Time limitations for third party claims.**

(a) Consistent with the time limitation stipulated in 42 U.S.C. 2473(c)(13)(A), to receive consideration in accordance with this part, a third party claimant must file its claim with the launch service contractor within 2 years after the occurrence of the accident or incident out of which the claim arose. If the launch service contractor receives a third party claim within this time period, but after the launch service contract has expired, or if the claim is still pending when the contract expires, the contracting officer will reserve the matter for resolution during final contract closeout.

(b) A third party claimant has properly filed a claim for purposes of paragraph (a) of this section, when the cognizant launch service contractor receives from the claimant, or the claimant's duly authorized agent or legal representative, a written notification and description of the incident or accident giving rise to the claim, accompanied by substantiation of the amount claimed.

**§ 1267.109 NASA action on a launch service claim.**

(a) The contracting officer must investigate any launch service claim submitted by the launch service contractor. As necessary, the contracting officer may request any NASA office or other Federal agency to assist in the investigation.

(b) The contracting officer must evaluate any launch service claim submitted by a launch service contractor to determine that it is meritorious and reasonable in amount. As part of this evaluation, the contracting officer must verify that the amount requested is over and above any insurance required by the contract and that the launch service contractor or its insurer has, in fact, paid out an amount to the third party claimant equal to the amount of any required insurance coverage.

(c) The NASA General Counsel is NASA's final approving official for claims arising under 42 U.S.C. 2473, in an amount exceeding \$25,000. To pay this type of claim from the permanent indefinite judgment fund, however, 31 U.S.C. 1304 requires certification by the Secretary of the Treasury. Accordingly, to facilitate the processing of claims under this part, the contracting officer must forward to the NASA General Counsel the following documentation:

(1) A short and concise statement of the general facts surrounding the launch service claim as a whole;

(2) Copies of all relevant portions of the launch service contract file and the claim file; and

(3) The contracting officer's analysis of the launch service claim and recommendations regarding payment from the permanent indefinite judgment fund.

(d) The NASA General Counsel must fully evaluate and consider any launch service claim forwarded in accordance with paragraph (c) of this section. If the General Counsel deems the claim to be reasonable, the General Counsel will refer the launch service claim to the Secretary of the Treasury for certification and payment from the permanent indefinite judgment fund pursuant to 31 U.S.C. 1304.

**§ 1267.110 Confidentiality.**

Under the process prescribed in this subpart, NASA officials may gain access to contractor documents and other materials that are privileged, business sensitive, or confidential. In accordance with 18 U.S.C. 1905, NASA officials may not disclose these materials in any manner or to any extent not authorized by law and must take appropriate steps to prevent unauthorized disclosures.

**Daniel S. Goldin,**

*Administrator.*

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**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 250**

[Release No. 35-27110; International Series Release No. 1210; File No. S7-30-99]

**Registered Public-Utility Holding Companies and Internationalization**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Concept release; request for comments.

**SUMMARY:** We are seeking comment on various issues surrounding the acquisition of United States utilities by foreign companies that will register as holding companies following the transaction.

**DATES:** Comments must be submitted on or before February 4, 2000.

**ADDRESSES:** Please send three copies of the comment letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All