

provide greater clarity to the stakeholders by answering those questions.

### Procedures for Submitting Clarifying Questions

If you wish to submit a request to the FAA for clarification of the Flightcrew Member Duty and Rest Requirements final rule, you must send your request using the below method by June 4, 2012.

1. Post your request on the Federal eRulemaking Portal. To access this electronic docket, go to <http://www.regulations.gov>, enter Docket Number FAA-2012-0358, and follow the online instructions for sending your request electronically.

2. In addition to sending your request to the electronic docket, send a copy via email to the subject matter expert as noted below.

Technical Questions: Dale E. Roberts, Air Transportation Division, Flight Standards Service, Federal Aviation Administration; email [dale.e.roberts@faa.gov](mailto:dale.e.roberts@faa.gov).

Legal Questions: Alex Zektser, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration; email [alex.zektser@faa.gov](mailto:alex.zektser@faa.gov).

The FAA will attempt to reply to the clarifying questions that are submitted by June 4, 2012.

Issued in Washington, DC, on March 26, 2012.

**Rebecca B. MacPherson,**

*Assistant Chief Counsel for Regulations, AGC-200.*

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**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**14 CFR Parts 400, 401, 404, 405, 406, 413, 414, 415, 417, 420, 431, 433, 435, 437, 440, 460**

#### 49 CFR Part 1

**[Docket No. FAA-2012-0232; Amendment Nos. 400-3, 401-7, 404-5, 405-5, 406-7, 413-10, 414-2, 415-5, 417-3, 420-5, 431-3, 433-2, 435-2, 437-1, 440-3, 460-1; 1-114; related to Docket Nos. 28851, 43810, FAA-1999-5535, FAA-1999-5833, FAA-1999-5835, FAA-2000-7953, FAA-2001-8607, FAA-2005-21332, FAA-2005-23449, FAA-2006-24197, FAA-2007-27390; OST Docket No. 1]**

**[RINs 2120-AF99, 2120-AG71, 2120-AG15, 2120-AG72, 2120-AG37, 2120-AH18, 2120-AI50, 2120-AI57, 2120-AI56, 2120-AI88]**

### Correction of Authority Citations for Commercial Space Transportation

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Technical amendment.

**SUMMARY:** In 2010, Congress transferred the statute authorizing the FAA's commercial space transportation regulations. This action is necessary to correct affected citations in the Code of Federal Regulations to reflect this transfer of authority. The intended effect of this action is to make the affected regulations comply with the statute.

**DATES:** These amendments become effective April 5, 2012.

#### FOR FURTHER INFORMATION CONTACT:

Laura Montgomery, Senior Attorney for Commercial Space Transportation, Office of the Chief Counsel, Regulations Division, AGC-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3150; facsimile (202) 267-7971; email [laura.montgomery@faa.gov](mailto:laura.montgomery@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Since 1994, the FAA has operated in the area of commercial space launch activities under the authority delegated by Congress in 49 U.S.C. chapter 701. See Revision of Title 49, United States Code Annotated, "Transportation," Public Law 103-272, 108 Stat. 745, 1130 (1994). The FAA implements these regulations through Title 14, Code of Federal Regulations (14 CFR) chapter III, Commercial Space Transportation.

In 2010, Congress consolidated commercial space laws into a single, unified title of the United States Code. See Enactment of Title 51—National

and Commercial Space Programs, Public Law 111-314, 124 Stat. 3328 (2010). Congress' purpose was "to codify certain existing laws related to national and commercial space programs as a positive law title of the United States Code." *Id.* During this process, 49 U.S.C. chapter 701 was transferred and redesignated as 51 U.S.C. chapter 509. The recodification makes no substantive changes.

The congressional transfer of authority made a number of citations in the Code of Federal Regulations obsolete. See 14 CFR chapter III (2011); 49 CFR 1.47 (2010). This amendment corrects the affected citations to accurately reference the new citations. This amendment does not make substantive changes to the affected regulations.

#### List of Subjects

##### 14 CFR Part 400

Space transportation and exploration.

##### 14 CFR Part 401

Organization and functions (Government agencies), Space safety, Space transportation and exploration.

##### 14 CFR Part 404

Administrative practice and procedure, Space safety, Space transportation and exploration.

##### 14 CFR Part 405

Investigations, Penalties, Space safety, Space transportation and exploration.

##### 14 CFR Part 406

Administrative practice and procedure, Space safety, Space transportation and exploration.

##### 14 CFR Part 413

Confidential business information, Human space flight, Reporting and recordkeeping requirements, Space safety, Space transportation and exploration.

##### 14 CFR Part 414

Airspace, Aviation safety, Space transportation and exploration.

##### 14 CFR Part 415

Aviation safety, Environmental protection, Rockets, Space safety, Space transportation and exploration.

##### 14 CFR Part 417

Aviation safety, Reporting and recordkeeping requirements, Rockets, Space safety, Space transportation and exploration.

14 CFR Part 420

Airspace, Human space flight, Space safety, Space transportation and exploration.

14 CFR Part 431

Aviation safety, Environmental protection, Human space flight, Reporting and recordkeeping, Rockets, Space safety, Space transportation and exploration.

14 CFR Part 433

Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 435

Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements, Space safety, Space transportation and exploration.

14 CFR Part 437

Aviation safety, Airspace, Human space flight, Rockets, Space safety, Space transportation and exploration.

14 CFR Part 440

Armed forces, Claims, Federal building and facilities, Government property, Indemnity payments, Insurance, Reporting and recordkeeping requirements, Rockets, Space transportation and exploration.

14 CFR Part 460

Human space flight, Reporting and recordkeeping requirements, Rockets, Space safety, Space transportation and exploration.

49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends chapter III of title 14, Code of Federal Regulations, and subtitle A of title 49, Code of Federal Regulations, as follows:

Title 14—Aeronautics and Space

CHAPTER III—COMMERCIAL SPACE TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 400—BASIS AND SCOPE

■ 1. The authority citation for part 400 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 2. Revise § 400.2 to read as follows:

§ 400.2 Scope.

The regulations in this part set forth the procedures and requirements applicable to the authorization and supervision under 51 U.S.C. Subtitle V, chapter 509, of commercial space transportation activities conducted in the United States or by a U.S. citizen. The regulations in this chapter do not apply to amateur rockets activities, as defined in 14 CFR 1.1, or to space activities carried out by the United States Government on behalf of the United States Government.

PART 401—ORGANIZATION AND DEFINITIONS

■ 3. The authority citation for part 401 is revised to read as follows:

Authority: 51 U.S.C. 50101–50923.

■ 4. Revise the definitions of “act” and “operator” in § 401.5 to read as follows:

§ 401.5 Definitions.

\* \* \* \* \*

Act means 51 U.S.C Subtitle V, Programs Targeting Commercial Opportunities, chapter 509—Commercial Space Launch Activities, 51 U.S.C. 50901–50923.

\* \* \* \* \*

Operator means a holder of a license or permit under 51 U.S.C. Subtitle V, chapter 509.

\* \* \* \* \*

PART 404—REGULATIONS AND LICENSING REQUIREMENTS

■ 5. The authority citation for part 404 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 6. Revise § 404.1 to read as follows:

§ 404.1 Scope.

This part establishes procedures for issuing regulations to implement 51 U.S.C. Subtitle V, chapter 509, and for eliminating or waiving requirements for licensing or permitting of commercial space transportation activities under that statute.

PART 405—INVESTIGATIONS AND ENFORCEMENT

■ 7. The authority citation for part 405 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

PART 406—INVESTIGATIONS, ENFORCEMENT, AND ADMINISTRATIVE REVIEW

■ 8. The authority citation for part 406 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 9. Revise § 406.1(a) introductory text to read as follows:

§ 406.1 Hearings in license, permit, and payload actions.

(a) Pursuant to 51 U.S.C. 50912, the following are entitled to a determination on the record after an opportunity for a hearing in accordance with 5 U.S.C. 554.

\* \* \* \* \*

■ 10. Revise § 406.9(a) to read as follows:

§ 406.9 Civil penalties.

(a) Civil penalty liability. Under 51 U.S.C. 50917(c), a person found by the FAA to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license or permit issued or transferred under the Act, is liable to the United States for a civil penalty of not more than \$110,000 for each violation, as adjusted for inflation. A separate violation occurs for each day the violation continues.

\* \* \* \* \*

■ 11. Revise § 406.117(b), (c)(2), and (c)(3) to read as follows:

§ 406.117 Confidential information.

\* \* \* \* \*

(b) Marked information not made public. If a party files a document in a sealed envelope clearly marked “CONFIDENTIAL” the document may not be made available to the public unless and until the administrative law judge or the FAA decisionmaker decides it may be made available to the public in accordance with 51 U.S.C. 50916.

(c) \* \* \*

(2) If the party claims that the information is protected under 51 U.S.C. 50916, and if both the complainant and the respondent agree that the information is protected under that section, the administrative law judge must grant the motion. If one party does not agree that the information is protected under 51 U.S.C. 50916 the administrative law judge must decide. Either party may file an interlocutory appeal of right under § 406.173(c).

(3) If the party claims that the information should be protected on grounds other than those provided by 51 U.S.C. 50916 the administrative law judge must grant the motion if, based on the motion and any response to the motion, the administrative law judge determines that disclosure would be detrimental to safety, disclosure would not be in the public interest, or that the information is not otherwise required to be made available to the public.

\* \* \* \* \*

■ 12. Revise § 406.159(c) to read as follows:

**§ 406.159 Subpoenas.**

\* \* \* \* \*

(c) *Enforcement of subpoena.* Upon a showing that a person has failed or refused to comply with a subpoena, the Secretary may apply to the appropriate district court of the United States to seek enforcement of the subpoena in accordance with 51 U.S.C. 50917(c). A party may request the Secretary to seek such enforcement.

■ 13. Revise § 406.173(c)(3) to read as follows:

**§ 406.173 Interlocutory appeals.**

\* \* \* \* \*

(c) \* \* \*

(3) Failure of the administrative law judge to grant a motion for a confidentiality order based on 51 U.S.C. 50916, under § 406.117(c)(2).

\* \* \* \* \*

**PART 413—LICENSE APPLICATION PROCEDURES**

■ 14. The authority citation for part 413 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

**PART 414—SAFETY APPROVALS**

■ 15. The authority citation for part 414 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

**PART 415—LAUNCH LICENSE**

■ 16. The authority citation for part 415 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

**PART 417—LAUNCH SAFETY**

■ 17. The authority citation for part 417 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

**PART 420—LICENSE TO OPERATE A LAUNCH SITE**

■ 18. The authority citation for part 420 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 19. Revise § 420.41(a) to read as follows:

**§ 420.41 License to operate a launch site—general.**

(a) A license to operate a launch site authorizes a licensee to operate a launch site in accordance with the representations contained in the licensee's application, with terms and conditions contained in any license order accompanying the license, and

subject to the licensee's compliance with 51 U.S.C. Subtitle V, chapter 509 and this chapter.

\* \* \* \* \*

■ 20. Revise § 420.51(b) to read as follows:

**§ 420.51 Responsibilities—general.**

\* \* \* \* \*

(b) A licensee is responsible for compliance with 51 U.S.C. Subtitle V, chapter 509 and for meeting the requirements of this chapter.

**PART 431—LAUNCH AND REENTRY OF A RESUSABLE LAUNCH VEHICLE (RLV)**

■ 21. The authority citation for part 431 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 22. Revise § 431.11 to read as follows:

**§ 431.11 Additional license terms and conditions.**

The FAA may amend an RLV mission license at any time by modifying or adding license terms and conditions to ensure compliance with 51 U.S.C. Subtitle V, chapter 509, and applicable regulations.

**PART 433—LICENSE TO OPERATE A REENTRY SITE**

■ 23. The authority citation for part 433 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

**PART 435—REENTRY OF A REENTRY VEHICLE OTHER THAN A REUSABLE LAUNCH VEHICLE**

■ 24. The authority citation for part 435 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 25. Revise § 435.11 to read as follows:

**§ 435.11 Additional license terms and conditions.**

The FAA may amend a reentry license at any time by modifying or adding license terms and conditions to ensure compliance with 51 U.S.C. Subtitle V, chapter 509, and applicable regulations.

**PART 437—EXPERIMENTAL PERMITS**

■ 26. The authority citation for part 437 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 27. Revise § 437.13 to read as follows:

**§ 437.13 Additional experimental permit terms and conditions.**

The FAA may modify an experimental permit at any time by modifying or adding permit terms and

conditions to ensure compliance with 51 U.S.C. Subtitle V, chapter 509.

**PART 440—FINANCIAL RESPONSIBILITY**

■ 28. The authority citation for part 440 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 29. Revise the introductory text and definition of “financial responsibility” in § 440.3 to read as follows:

**§ 440.3 Definitions.**

Except as otherwise provided in this section, any term used in this part and defined in 51 U.S.C. 50901–50923, or in § 401.5 of this chapter shall have the meaning contained therein. For purposes of this part—

\* \* \* \* \*

*Financial responsibility* means capable of satisfying a liability obligation as required by 51 U.S.C. Subtitle V, chapter 509.

\* \* \* \* \*

■ 30. Revise § 440.5(c)(2) to read as follows:

**§ 440.5 General.**

\* \* \* \* \*

(c) \* \* \*

(2) Any covered claim of a third party for bodily injury or property damage arising out of any particular licensed activity exceeds the amount of financial responsibility required under § 440.9(c) of this part and does not exceed \$1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above such amount, and are payable pursuant to 51 U.S.C. 50915 and § 440.19 of this part. A claim of an employee of any entity listed in paragraphs (1)(ii) through (1)(iii) in the Third party definition in § 440.3 of this part for bodily injury or property damage is not a covered claim;

\* \* \* \* \*

■ 31. Revise § 440.15(b) and (c)(1)(iii) to read as follows:

**§ 440.15 Demonstration of compliance.**

\* \* \* \* \*

(b) Upon a complete demonstration of compliance with financial responsibility and allocation of risk requirements under this part, the requirements of this part shall preempt each and any provision in any agreement between the licensee or permittee and an agency of the United States governing access to or use of United States launch or reentry property or launch or reentry services for a licensed or permitted activity which addresses financial responsibility, allocation of risk and

related matters covered by 51 U.S.C. 50914, 50915.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) In the event of any policy exclusions or limitations of coverage that may be considered usual under § 440.19(c), or for purposes of implementing the Government's waiver of claims for property damage under 51 U.S.C. 50914(b), certifying that insurance covering the excluded risks is not commercially available at reasonable cost; and

\* \* \* \* \*

■ 32. Revise § 440.19(a), (d), (e) introductory text, and (f)(1) to read as follows:

§ 440.19 United States payment of excess third-party liability claims.

(a) The United States pays successful covered claims (including reasonable expenses of litigation or settlement) of a third party against a licensee, a customer, and the contractors and subcontractors of the licensee and the customer, and the employees of each involved in licensed activities, and the contractors and subcontractors of the United States and its agencies, and their employees, involved in licensed activities to the extent provided in an appropriation law or other legislative authority providing for payment of claims in accordance with 51 U.S.C. 50915, and to the extent the total amount of such covered claims arising out of any particular launch or reentry:

\* \* \* \* \*

(d) Upon the expiration of the policy period prescribed in accordance with § 440.11(a), the United States shall provide for payment of claims that are payable under 51 U.S.C. 50915 from the first dollar of loss up to \$1,500,000,000 (as adjusted for inflation occurring after January 1, 1989).

(e) Payment by the United States of excess third-party claims under 51 U.S.C. 50915 shall be subject to:

\* \* \* \* \*

(f) \* \* \*

(1) Prepare a compensation plan outlining the total amount of claims and meeting the requirements set forth in 51 U.S.C. 50915;

\* \* \* \* \*

■ 33. Revise Appendix D to part 440 to read as follows:

Appendix D to Part 440—Agreement for Waiver of Claims and Assumption of Responsibility for a Crew Member

THIS AGREEMENT is entered into this \_\_\_ day of \_\_\_, by and among [name of Crew Member] (the "Crew Member") and

the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of section 440.17(f) of the Commercial Space Transportation Licensing Regulations, 14 CFR chapter III (the "Regulations"). This agreement applies to the Crew Member's participation in activities that the FAA has authorized by license or permit during the Crew Member's employment with [Name of licensee or permittee].

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Crew Member means:

(a) The above-named Crew Member,

(b) All the heirs, administrators, executors, assignees, next of kin, and estate of the above-named Crew Member, and

(c) Anyone who attempts to bring a claim on behalf of the Crew Member or for damage or harm arising out of the Bodily Injury, including Death, of the Crew Member.

License/Permit means License/Permit No. \_\_\_\_\_ issued on \_\_\_\_\_, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee/Permittee, including all license/permit orders issued in connection with the License/Permit.

Licensee/Permittee means the Licensee/Permittee and any transferee of the Licensee under 51 U.S.C. Subtitle V, chapter 509.

United States means the United States and its agencies involved in Licensed/Permitted Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, chapter 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, chapter 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Crew Member hereby waives and releases claims it may have against the United States, and against its respective Contractors and Subcontractors, for Bodily Injury, including Death, or Property Damage sustained by Crew Member, resulting from Licensed/Permitted Activities, regardless of fault.

(b) The United States hereby waives and releases claims it may have against the Crew Member for Property Damage it sustains, and for Bodily Injury, including Death, or Property Damage sustained by its own employees, resulting from Licensed/Permitted Activities, regardless of fault.

3. Assumption of Responsibility

(a) The Crew Member shall be responsible for Bodily Injury, including Death, or Property Damage sustained by Crew Member, resulting from Licensed/Permitted Activities, regardless of fault. The Crew Member shall hold harmless the United States, and the Contractors and Subcontractors of each Party, for Bodily Injury, including Death, or Property Damage sustained by Crew Member, resulting from Licensed/Permitted Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury, including Death, or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

(c) The United States shall be responsible for Property Damage it sustains, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(b) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Crew Member and to agree to be responsible, for any Property Damage the Contractors and Subcontractors sustain and for any Bodily Injury, including Death, or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(b) and 3(c), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims the Contractors and Subcontractors may have against Crew Member and to agree to be responsible, for any Property Damage they sustain, resulting from Permitted Activities, regardless of fault.

5. Indemnification

Crew Member shall hold harmless and indemnify the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss, or damage arising out of claims brought by anyone for Property Damage or Bodily Injury, including Death, sustained by Crew Member, resulting from Licensed/Permitted Activities.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Crew Member shall hold harmless the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury, including Death, or Property Damage, sustained by Crew Member, resulting from Licensed/Permitted Activities, regardless of fault, except to the extent that, as provided in section 6(b) of this Agreement, claims result from willful misconduct of the United States or its agents.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by the United States of any claim by an employee of the United States, respectively, including

a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed/Permitted Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless herein shall not apply to claims for Bodily Injury, including Death, or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, and in the case of the United States, its agents.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

*In witness whereof*, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

I [name of Crew Member] have read and understand this agreement and agree that I am bound by it.

Crew Member

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: \_\_\_\_\_

Its: \_\_\_\_\_

Associate Administrator for Commercial Space Transportation

■ 34. Revise Appendix E to part 440 to read as follows:

#### **Appendix E to Part 440—Agreement for Waiver of Claims and Assumption of Responsibility for a Space Flight Participant**

*This agreement* is entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and among [name of Space Flight Participant] (the "Space Flight Participant") and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of section 440.17(e) of the Commercial Space Transportation Licensing Regulations, 14 CFR chapter III (the "Regulations"). This agreement applies to Space Flight Participant's travel on [name of launch or reentry vehicle] of [name of Licensee or Permittee]. In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

##### 1. Definitions

*Space Flight Participant* means

(a) The above-named Space Flight Participant,

(b) All the heirs, administrators, executors, assignees, next of kin, and estate of the above-named Space Flight Participant, and

(c) Anyone who attempts to bring a claim on behalf of the Space Flight Participant or for damage or harm arising out of the Bodily Injury, including Death, of the Space Flight Participant.

*License/Permit* means License/Permit No. \_\_\_\_\_ issued on \_\_\_\_\_, by the Associate Administrator for Commercial Space

Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee/Permittee, including all license/permit orders issued in connection with the License/Permit.

*Licensee/Permittee* means the Licensee/Permittee and any transferee of the Licensee under 51 U.S.C. Subtitle V, chapter 509.

*United States* means the United States and its agencies involved in Licensed/Permitted Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, chapter 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, chapter 509, or the Regulations, respectively.

##### 2. Waiver and Release of Claims

(a) Space Flight Participant hereby waives and releases claims it may have against the United States, and against its respective Contractors and Subcontractors, for Bodily Injury, including Death, or Property Damage sustained by Space Flight Participant, resulting from Licensed/Permitted Activities, regardless of fault.

(b) The United States hereby waives and releases claims it may have against Space Flight Participant for Property Damage it sustains, and for Bodily Injury, including Death, or Property Damage sustained by its own employees, resulting from Licensed/Permitted Activities, regardless of fault.

##### 3. Assumption of Responsibility

(a) Space Flight Participant shall be responsible for Bodily Injury, including Death, or Property Damage sustained by the Space Flight Participant resulting from Licensed/Permitted Activities, regardless of fault. Space Flight Participant shall hold harmless the United States, and its Contractors and Subcontractors, for Bodily Injury, including Death, or Property Damage sustained by Space Flight Participant from Licensed/Permitted Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury, including Death, or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

(c) The United States shall be responsible for Property Damage it sustains, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations.

##### 4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(b) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive

and release all claims they may have against Space Flight Participant, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury, including Death, or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(b) and 3(c), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Space Flight Participant, and to agree to be responsible, for any Property Damage the Contractors and Subcontractors sustain, resulting from Permitted Activities, regardless of fault.

##### 5. Indemnification

Space Flight Participant shall hold harmless and indemnify the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims brought by anyone for Property Damage or Bodily Injury, including Death, sustained by Space Flight Participant, resulting from Licensed/Permitted Activities.

##### 6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Space Flight Participant shall hold harmless the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury, including Death, or Property Damage, sustained by Space Flight Participant, resulting from Licensed/Permitted Activities, regardless of fault, except to the extent that, as provided in section 6(b) of this Agreement, claims result from willful misconduct of the United States or its agents.

##### 7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by the United States of any claim by an employee of the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed/Permitted Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless herein shall not apply to claims for Bodily Injury, including Death, or Property Damage resulting from willful misconduct of any of the Parties, the Contractors, Subcontractors, and agents of the United States, and Space Flight Participant.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

*In witness whereof*, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

I [name of Space Flight Participant] have read and understand this agreement and agree that I am bound by it.

Space Flight Participant

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Federal Aviation Administration of the  
Department of Transportation on Behalf  
of the United States Government

By: \_\_\_\_\_

Its: \_\_\_\_\_

Associate Administrator for Commercial  
Space Transportation

## PART 460—HUMAN SPACE FLIGHT REQUIREMENTS

■ 35. The authority citation for part 460 is revised to read as follows:

**Authority:** 51 U.S.C. 50901–50923.

### Title 49—Transportation

#### Subtitle A—Office of the Secretary of Transportation

## PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

■ 36. The authority citation for part 1 continues to read as follows:

**Authority:** 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597; Pub. L. 107–295, 116 Stat. 2064; Pub. L. 108–136, 117 Stat. 1392; Pub. L. 101–115, 103 Stat. 691; Pub. L. 108–293, 118 Stat. 1028; Pub. L. 109–364, 120 Stat. 2083; Pub. L. 110–140, 121 Stat. 1492; Pub. L. 110–432, 122 Stat. 4848.

■ 37. Revise § 1.47(v) to read as follows:

### § 1.47 Delegations to Federal Aviation Administrator.

\* \* \* \* \*

(v) Carry out the functions vested in the Secretary by 51 U.S.C. Subtitle V.

\* \* \* \* \*

Issued in Washington, DC, on March 25, 2012.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

[FR Doc. 2012–8196 Filed 4–4–12; 8:45 am]

**BILLING CODE 4910–13–P**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 230, 240 and 260

[Release Nos. 33–9308; 34–66703; 39–2484; File No. S7–22–11]

RIN 3235–AL16

### Exemptions for Security-Based Swaps Issued by Certain Clearing Agencies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** We are adopting exemptions under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939 for security-based swaps issued by certain clearing agencies satisfying certain conditions. The final rules exempt transactions by clearing agencies in these security-based swaps from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions, as well as exempt these security-based swaps from Exchange Act registration requirements and from the provisions of the Trust Indenture Act, provided certain conditions are met.

**DATES:** *Effective Date:* The final rules are effective April 16, 2012.

**FOR FURTHER INFORMATION CONTACT:** Andrew Schoeffler, Special Counsel, Office of Capital Markets Trends, Division of Corporation Finance, at (202) 551–3860, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

**SUPPLEMENTARY INFORMATION:** We are adopting Rule 239 under the Securities Act of 1933 (“Securities Act”).<sup>1</sup> We are also adopting Rule 12a–10 and an amendment to Rule 12h–1 under the Securities Exchange Act of 1934 (“Exchange Act”)<sup>2</sup> and Rule 4d–11 under the Trust Indenture Act of 1939 (“Trust Indenture Act”).<sup>3</sup>

### I. Background and Summary

On July 21, 2010, the President signed the Dodd-Frank Act into law.<sup>4</sup> Title VII of the Dodd-Frank Act (“Title VII”) provides the Securities and Exchange Commission (“SEC”) or the “Commission”) and the Commodity Futures Trading Commission (“CFTC”) with the authority to regulate over-the-counter (“OTC”) derivatives in light of the recent financial crisis.

Title VII provides that the CFTC will regulate “swaps,” the SEC will regulate “security-based swaps,” and the CFTC and SEC will jointly regulate “mixed swaps.”<sup>5</sup> Title VII amends the Exchange

Act to require, among other things, the following: (1) Transactions in security-based swaps must be submitted for clearing to a clearing agency if such security-based swap is one that the Commission has determined is required to be cleared, unless an exception from mandatory clearing applies;<sup>6</sup> (2) transactions in security-based swaps must be reported to a registered security-based swap data repository (“SDR”) or the Commission;<sup>7</sup> and (3) if a security-based swap is subject to mandatory clearing, transactions in security-based swaps must be executed on an exchange or a registered or exempt security-based swap execution facility (“security-based SEF”), unless no exchange or security-based SEF makes such security-based swap available for trading or the security-based swap transaction is subject to the clearing exception in Exchange Act Section 3C(g).<sup>8</sup>

Title VII seeks to ensure that, wherever possible and appropriate, security-based swaps are cleared.<sup>9</sup>

Exchange Act (“CEA”) [7 U.S.C. 1a(18)], as redesignated and amended by Section 721 of the Dodd-Frank Act. In April 2011, the SEC and the CFTC jointly proposed rules and interpretations to further define the terms “swap,” “security-based swap,” and “security-based swap agreement.” See *Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, Release No. 33–9204 (Apr. 29, 2011), 76 FR 29818 (May 23, 2011), corrected in Release No. 33–9204A (June 1, 2011), 76 FR 32880 (June 7, 2011). In December 2010, the SEC and the CFTC jointly proposed rules and interpretations to further define the terms “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant.” See *Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”*, Release No. 34–63452 (Dec. 7, 2010), 75 FR 80174 (Dec. 21, 2010) (“Intermediaries Definitions Release”).

<sup>6</sup> See Public Law 111–203, § 763(a) (adding Exchange Act Section 3C [15 U.S.C. 78c–3]).

<sup>7</sup> See Public Law 111–203, §§ 763(i) and 766(a) (adding Exchange Act Sections 13(m)(1)(G) and 13A(a)(1) [15 U.S.C. 78m(m)(1)(G) and 78m–1(a)(1)], respectively).

<sup>8</sup> See Public Law 111–203, § 763(a) (adding Exchange Act Section 3C [15 U.S.C. 78c–3]). See also Public Law 111–203, § 761 (adding Exchange Act Section 3(a)(77) [15 U.S.C. 78c(a)(77)] (defining the term “security-based swap execution facility”), and *Registration and Regulation of Security-Based Swap Execution Facilities*, Release No. 34–63825 (Feb. 2, 2011) 76 FR 10948 (Feb. 28, 2011) (“Security-Based SEF Proposing Release”). See footnote 12 below for a discussion of the clearing exception in Exchange Act Section 3C(g) [15 U.S.C. 78c–3(g)].

<sup>9</sup> See, e.g., Report of the Senate Committee on Banking, Housing, and Urban Affairs regarding The Restoring American Financial Stability Act of 2010, S. Rep. No. 111–176 at 34 (stating that “[s]ome parts of the OTC market may not be suitable for clearing and exchange trading due to individual business needs of certain users. Those users should retain the ability to engage in customized, uncleared

<sup>1</sup> 15 U.S.C. 77a *et seq.*

<sup>2</sup> 15 U.S.C. 78a *et seq.*

<sup>3</sup> 15 U.S.C. 77aaa *et seq.*

<sup>4</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

<sup>5</sup> Section 712(d) of the Dodd-Frank Act provides that the Commission and the CFTC, in consultation with the Board of Governors of the Federal Reserve System, shall jointly further define the terms “swap,” “security-based swap,” “swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap participant,” “eligible contract participant,” and “security-based swap agreement.” These terms are defined in Sections 721 and 761 of the Dodd-Frank Act and, with respect to the term “eligible contract participant,” in Section 1a(18) of the Commodity