AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

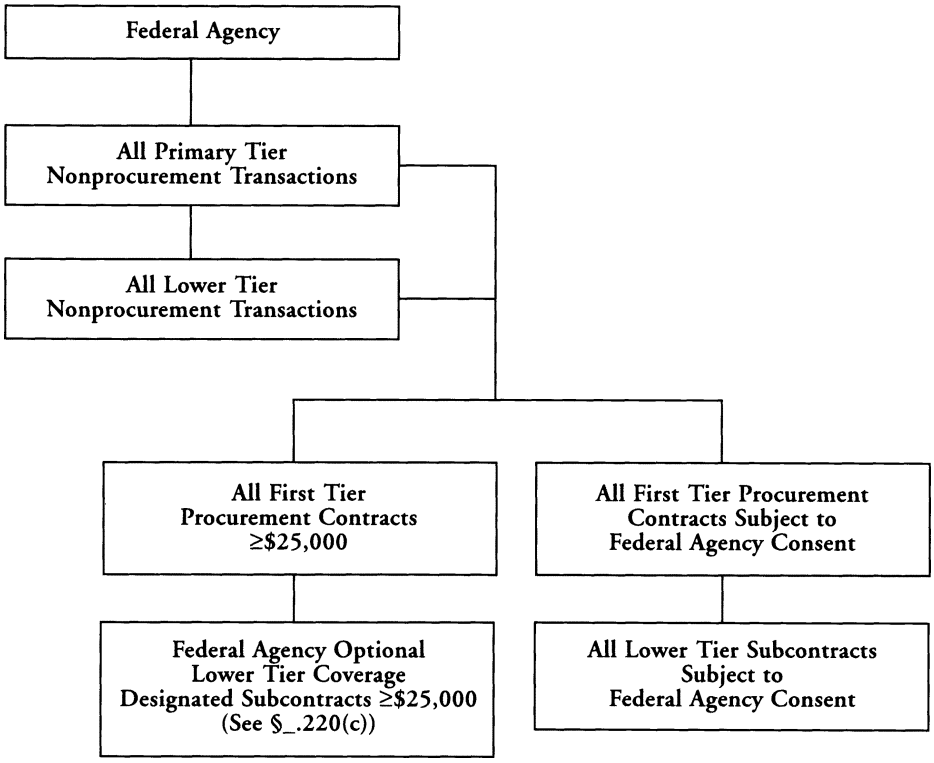
the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect.

(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

Subpart J [Reserved]

APPENDIX TO PART 1265—COVERED TRANSACTIONS

COVERED TRANSACTIONS



PART 1266—CROSS-WAIVER OF LIABILITY

Sec.
1266.100 Purpose.
1266.101 Scope.
1266.102 Cross-waiver of liability for Space Station Freedom activities.
1266.103 Cross-waiver of liability during Shuttle operations.
1266.104 Cross-waiver of liability for NASA expendable launch vehicle (ELV) program launches.

AUTHORITY: 42 U.S.C. 2473 (c)(1) and (c)(5).

SOURCE: 56 FR 48430, Sept. 25, 1991, unless otherwise noted.

§ 1266.100 Purpose.

The purpose of this regulation is to ensure that consistent cross-waivers of liability are included in NASA agreements for Space Station Freedom activities, Shuttle launch services, and NASA Expendable Launch Vehicle (ELV) program launches.

§ 1266.101 Scope.

These provisions at § 1266.102, contained in Article 16 of the ''Intergovernmental Agreement among the United States, the Governments of Member States of the European Space Agency, the Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation and Utilization of the Permanently Manned Civil Space Station,'' form the regulatory basis for cross-waivers to be incorporated in NASA agreements implementing the Intergovernmental Agreement and the memoranda of understanding between the U.S. and its respective international partners on Space Station Freedom. The provisions at § 1266.103 of this part provide the regulatory basis for cross-waiver clauses to be incorporated in agreements for Shuttle launch services that do not involve activities in connection with Space Station Freedom. The provisions at § 1266.104 of this part provide the regulatory basis for cross-waiver clauses to be incorporated in agreements for NASA ELV program launches that do not involve activities in connection with Space Station Freedom.

§ 1266.102 Cross-waiver of liability for Space Station Freedom activities.

(a) The objective of this section is to establish a cross-waiver of liability (''cross-waiver'') by the Partner States and related entities in the interest of encouraging participation in exploration, exploitation, and use of outer space through the Space Station. This cross-waiver of liability shall be broadly construed to achieve this objective.

(b) For the purposes of this section:

(1)(i) A *Partner State* is each contracting Party for which the ''Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, the Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station'' (the ''Intergovernmental Agreement'') has entered into force, in accordance with Article 25 of the Intergovernmental Agreement.

(ii) A Partner State includes its Cooperating Agency. The National Aeronautics and Space Administration (NASA) for the United States, the European Space Agency (ESA) for the European Governments, the Canadian Space Agency (CSA) for the Government of Canada, and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan's Cooperating Agency in the implementation of that MOU.

(2) The term *related entity* means:

(i) A contractor or subcontractor of a Partner State at any tier;

(ii) A user or customer of a Partner State at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Partner State at any tier. ''Contractors'' and ''subcontractors'' include suppliers of any kind.

(3) The term *damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage.

(4) The term *launch vehicle* means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(5) The term *payload* means all property to be flown or used on or in a launch vehicle or the Space Station.

(6) The term *Protected Space Operations* means all launch vehicle activities, Space Station Freedom activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space done in implementation of this Agreement, the MOU's, and implementing arrangements. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or

transfer vehicles (for example, the Orbital Maneuvering Vehicle), the Space Station, or a payload, as well as related support equipment and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services. *Protected Space Operations* also includes all activities related to evolution of the Space Station, as provided for in Article 14 of the Intergovernmental Agreement. *Protected Space Operations* excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station-related activities in implementation of this Agreement.

(c)(1) Each Partner State agrees to a cross-waiver of liability pursuant to which each Partner State waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this section based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract, against:

(i) Another Partner State;

(ii) A related entity of another Partner State;

(iii) The employees of any of the entities identified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(2) In addition, each Partner State shall extend the cross-waiver of liability as set forth in paragraph (c)(1) of this section to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the Liability Convention where the person, entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this section, this cross-waiver of liability shall not be applicable to:

(i) Claims between a Partner State and its own related entity or between its own related entities;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

§ 1266.103 Cross-waiver of liability during Shuttle operations.

(a) The purpose of this section is to establish a cross-waiver of liability between the parties to Shuttle launch services agreements and to other NASA agreements that involve Shuttle flights, and the parties' related entities, in the interest of encouraging participation in space exploration, exploitation, and investment. The cross-waiver of liability shall be broadly construed to achieve this objective.

(b) As used in this cross-waiver, the term:

(1) *Party* means a person or entity that signs an agreement involving a Shuttle flight;

(2) *Related Entity* means:

(i) A contractor or subcontractor of a Party at any tier;

(ii) A user or customer of a Party at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party at any tier. *Contractors* and *Subcontractors* include suppliers of any kind;

(3) *Damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(4) *Payload* means any property to be flown or used on or in the Shuttle; and

(5) *Protected Space Operations* means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space done in implementation of an agreement for Shuttle launch services. Protected Space Operations begin at the signature of the agreement and ends when all activities done in implementation of the agreement are completed. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of: the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. *Protected Space Operations* excludes activities on Earth which are conducted on return from space to develop further a payload's product or process for use other than for Shuttle-related activities necessary to complete implementation of the agreement.

(c)(1) Each Party agrees to a cross-waiver of liability pursuant to which each Party waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this section based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract, against:

(i) Another Party;

(ii) Any Party who has signed a NASA agreement that includes a Shuttle flight;

(iii) A related entity of any party in paragraph (c)(1)(ii) of this section;

(iv) The employees of any of the entities identified in (c)(1)(i) through (c)(1)(iii) of this section.

(2) In addition, each Party shall extend the cross-waiver of liability as set forth in paragraph (c)(1) of this section to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this section.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (Mar. 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762) where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this section, this cross-waiver of liability shall not be applicable to:

(i) Claims between a Party and its own related entity or between its own related entities;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Contract claims between the Parties based on the express contractual provisions of the agreement;

(vi) Claims for damage based on a failure of the Parties or their related entities to flow down the cross-waiver.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

§ 1266.104 Cross-waiver of liability for NASA expendable launch vehicle (ELV) program launches.

(a) The purpose of this section is to establish a cross-waiver of liability between the parties to agreements for NASA ELV program launches, and the parties' related entities, in the interest

of encouraging space exploration and investment. The cross-waiver of liability shall be broadly construed to achieve this objective.

(b) As used in this section, the term:

(1) *Party* means a person or entity that signs an agreement involving an ELV launch;

(2) *Related Entity* means:

(i) A contractor or subcontractor of a Party at any tier;

(ii) A user or customer of a Party at any tier; or

(iii) a contractor or subcontractor of a user or customer of a Party at any tier. *Contractors* and ''Subcontractors'' include suppliers of any kind.

(3) *Damage* means:

(i) Bodily injury to, or other impairment to health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(4) *Payload* means any property to be flown or used on or in an ELV; and

(5) *Protected Space Operations* means all expendable launch vehicle and payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of the agreement. Protected Space Operations begins at the signature of the agreement and ends when all activities done in implementation of the agreement are completed. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of: expendable launch vehicles (ELV), transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services. *Protected Space Operations* excludes activities on Earth which are conducted on return from space to develop further a payload's product or process for use other than for ELV-related activities necessary to complete implementation of the agreement.

(c)(1) Each Party agrees to a cross-waiver of liability pursuant to which each Party waivers all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this section based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract, against:

(i) Another Party;

(ii) A related entity of another Party;

(iii) The employees of any of the entities identified in paragraphs (c)(1)(i) and (ii) of this section.

(2) In addition, each Party shall extend the cross-waiver of liability as set forth in paragraph (c)(1) of this section to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects (Mar. 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this section, this cross-waiver shall not be applicable to:

(i) Claims between a Party and its own related entity or between its own related entities;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Contract claims between the Parties based on the express contractual provisions of the agreement;

(vi) Claims for damage based on a failure of the Parties or their related entities to flow-down the cross-waiver.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. app. 2615) is applicable.

PART 1267—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
1267.100 What does this part do?
1267.105 Does this part apply to me?
1267.110 Are any of my Federal assistance awards exempt from this part?
1267.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1267.200 What must I do to comply with this part?
1267.205 What must I include in my drug-free workplace statement?
1267.210 To whom must I distribute my drug-free workplace statement?
1267.215 What must I include in my drug-free awareness program?
1267.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1267.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1267.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1267.300 What must I do to comply with this part if I am an individual recipient?
1267.301 [Reserved]

Subpart D—Responsibilities of NASA Awarding Officials

1267.400 What are my responsibilities as a NASA awarding official?

Subpart E—Violations of This Part and Consequences

1267.500 How are violations of this part determined for recipients other than individuals?
1267.505 How are violations of this part determined for recipients who are individuals?
1267.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1267.515 Are there any exceptions to those actions?

Subpart F—Definitions

1267.605 Award.
1267.610 Controlled substance.
1267.615 Conviction.
1267.620 Cooperative agreement.
1267.625 Criminal drug statute.
1267.630 Debarment.
1267.635 Drug-free workplace.
1267.640 Employee.
1267.645 Federal agency or agency.
1267.650 Grant.
1267.655 Individual.
1267.660 Recipient.
1267.665 State.
1267.670 Suspension.

AUTHORITY: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 2473c.

SOURCE: 68 FR 66557, 66575, Nov. 26, 2003, unless otherwise noted.

Subpart A—Purpose and Coverage

§ 1267.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ 1267.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either—

(1) A recipient of an assistance award from NASA; or

(2) A(n) NASA awarding official. (See definitions of award and recipient in §§ 1267.605 and 1267.660, respectively.)

(b) The following table shows the subparts that apply to you: