

§ 440.15 Demonstration of compliance.

(a) A licensee or permittee must submit to the FAA evidence of financial responsibility and compliance with allocation of risk requirements under this part, as follows, unless a license or permit order specifies otherwise due to the proximity of the intended date for commencement of licensed or permitted activities:

(1) All reciprocal waiver of claims agreements required under §440.17(c) must be submitted at least 30 days before the start of any licensed or permitted activity involving a customer, crew member, or space flight participant;

(2) Evidence of insurance must be submitted at least 30 days before commencement of any licensed launch or permitted activity, and for licensed reentry no less than 30 days before commencement of launch activities involving the reentry licensee;

(3) Evidence of financial responsibility in a form other than insurance, as provided under §440.9(f), must be submitted at least 60 days before commencement of a licensed or permitted activity; and

(4) Evidence of renewal of insurance or other form of financial responsibility must be submitted at least 30 days in advance of its expiration date.

(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 49 U.S.C. 70112, 70113.

(c) A licensee or permittee must demonstrate compliance as follows:

(1) The licensee or permittee must provide proof of the existence of the insurance required by §440.9 by:

(i) Certifying to the FAA that it has obtained insurance in compliance with the requirements of this part and any applicable license or permit order;

(ii) Filing with the FAA one or more certificates of insurance evidencing insurance coverage by one or more insurers under a currently effective and properly endorsed policy or policies of insurance, applicable to a licensed or permitted activity, on terms and conditions and in amounts prescribed under this part, and specifying policy exclusions;

(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 49 U.S.C. 70112(b)(2), certifying that insurance covering the excluded risks is not commercially available at reasonable cost; and

(iv) Submitting to the FAA, for signature by the Department on behalf of the United States Government, the waiver of claims and assumption of responsibility agreement required by §440.17(c), executed by the licensee or permittee and its customer.

(v) Submitting to the FAA, for signature by the Department on behalf of the United States Government, an agreement to waive claims and assume responsibility required by §440.17(e), executed by each space flight participant.

(vi) Submitting to the FAA, for signature by the Department on behalf of the United States Government, an agreement to waive claims and assume responsibility required by §440.17(f), executed by each member of the crew.

(2) Any certification required by this section must be signed by a duly authorized officer of the licensee or permittee.

(d) Each certificate of insurance required by paragraph (c)(1)(ii) of this section must be signed by the insurer issuing the policy and accompanied by an opinion of the insurance broker that the insurance obtained by the licensee or permittee complies with all the requirements for insurance of this part and any applicable license or permit order.

(e) The licensee or permittee must maintain, and make available for inspection by the FAA upon request, all required policies of insurance and other

§ 440.17

documents necessary to demonstrate compliance with this part.

(f) In the event the licensee or permittee demonstrates financial responsibility using means other than insurance, as provided under § 440.9(f), the licensee or permittee must provide proof that it has met the requirements of this part and of a FAA issued license or permit order.

§ 440.17 Reciprocal waiver of claims requirements.

(a) As a condition of each license or permit, the licensee or permittee must comply with the reciprocal waiver of claims requirements of this section.

(b) The licensee or permittee shall implement a reciprocal waiver of claims with each of its contractors and subcontractors, each customer and each of the customer's contractors and subcontractors, under which each party waives and releases claims against all the other parties to the waiver and agrees to assume financial responsibility for property damage it sustains and for bodily injury or property damage sustained by its own employees, and to hold harmless and indemnify each other from bodily injury or property damage sustained by its employees, resulting from a licensed or permitted activity, regardless of fault.

(c) For each licensed or permitted activity in which the U.S. Government, any agency, or its contractors and subcontractors is involved or where property insurance is required under § 440.9(d), the Federal Aviation Administration of the Department of Transportation, the licensee or permittee, and its customer shall enter into a three-party reciprocal waiver of claims agreement. The three-party reciprocal waiver of claims shall be in the form set forth in Appendix B of this part, for licensed activity, or Appendix C of this part, for permitted activity, of this part or in a form that satisfies the requirements.

(d) The licensee or permittee, its customer, and the Federal Aviation Administration of the Department of Transportation on behalf of the United States and its agencies but only to the extent provided in legislation, must agree in any waiver of claims agreement required under this part to in-

14 CFR Ch. III (1-1-11 Edition)

demnify another party to the agreement from claims by the indemnifying party's contractors and subcontractors arising out of the indemnifying party's failure to implement properly the waiver requirement.

(e) For each licensed or permitted activity in which the U.S. Government, any of its agencies, or its contractors and subcontractors are involved, the Federal Aviation Administration of the Department of Transportation and each space flight participant shall enter into or have in place a reciprocal waiver of claims agreement in the form of the agreement in Appendix E of this part or that satisfies its requirements.

(f) For each licensed or permitted activity in which the U.S. Government, any of its agencies, or its contractors and subcontractors is involved, the Federal Aviation Administration of the Department of Transportation and each crew member shall enter into or have in place a reciprocal waiver of claims agreement in the form of the agreement in Appendix D of this part or that satisfies its requirements.

§ 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 49 U.S.C. 70113, and to the extent the total amount of such covered claims arising out of any particular launch or re-entry:

(1) Exceeds the amount of insurance required under § 440.9(b); and

(2) Is not more than \$1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above that amount.

(b) Payment by the United States under paragraph (a) of this section shall not be made for any part of such