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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 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.

[Doc. No. FAA–2005–23449, 71 FR 75632, Dec. 15, 2006, as amended by Amdt. 440–3, 77 FR 20533, Apr. 5, 2012]

### § 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 and each of its contractors and subcontractors, each customer, and each customer's contractors and subcontractors, must enter into a reciprocal waiver of claims agreement under which each party waives and releases claims against all the other parties to the waiver and against any other customer, 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.

(1) The licensee or permittee must extend the reciprocal waiver of claims requirements to each of its contractors and subcontractors involved in launch or reentry services, and each of its first-tier customers.

(2) Any first-tier customer must extend the reciprocal waiver of claims requirements to each of its contractors and subcontractors involved in launch or reentry services, and each of its customers.

(3) Any part 440 customer must extend the reciprocal waiver of claims requirements to each of its contractors and subcontractors involved in launch or reentry services, and each of its customers.

(c) For each licensed or permitted activity in which the United States, 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 each first-tier customer must enter into a reciprocal waiver of claims agreement. The reciprocal waiver of claims must be in the form set forth in appendix B of this part for a licensed activity, in appendix C of this part for a permitted activity, or in a form that otherwise provides all the same obligations and benefits. The reciprocal waiver of claims must provide that:

(1) Each party to the reciprocal waiver of claims, including the United States but only to the extent provided in legislation:

(i) Waives and releases claims it may have against each other party to the reciprocal waiver of claims, any customer, and against their respective contractors and subcontractors, for property damage it sustains and for bodily injury or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault;

(ii) Assumes responsibility for property damage it sustains and for bodily injury or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault. A licensee or permittee and each first-tier customer shall each hold harmless and indemnify each other, the United States, any other customer, and the contractors and subcontractors of each for bodily injury or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault; and

(iii) Extends the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, to its

contractors and subcontractors involved in launch and reentry services, and, for each customer, to its contractors and subcontractors involved in launch and reentry services, and customers, by requiring them to waive and release all claims as follows:

(A) For each contractor and subcontractor of the licensee or permittee, all claims against any customer, the United States, and each of their respective contractors and subcontractors, and to agree to be responsible for property damage they sustain and to be responsible, hold harmless and indemnify any customer, the United States, and each of their respective contractors and subcontractors, for bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault;

(B) For each contractor and subcontractor of any customer, all claims against the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors, and to agree to be responsible for property damage they sustain and to be responsible, hold harmless and indemnify the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors, for bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault;

(C) For each contractor and subcontractor of the United States, all claims against the licensee or permittee, any customer, and each of their respective contractors and subcontractors, and to agree to be responsible for property damage they sustain and to be responsible, hold harmless and indemnify the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors, for bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e);

(D) For each part 440 customer, all claims against the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors; and to agree to be responsible for property damage they sustain and to be responsible, hold harmless and indemnify the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors, for bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault; and

(2) For the following parties—

(i) The licensee or permittee must hold harmless and indemnify each first-tier customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them from and against liability, loss or damage arising out of claims that any of licensee's or permittee's contractors and subcontractors may have for property damage sustained by them and for bodily injury or property damage sustained by their employees, resulting from licensed or permitted activities and arising out of the indemnifying party's failure to implement properly the waiver requirement. The requirement of paragraph (c)(2)(i) of this section to hold harmless and indemnify the United States and its servants, agents, subsidiaries, employees and assignees, or any of them, does not apply when:

(A) Claims result from willful misconduct of the United States or its agents;

(B) Claims for property damage sustained by the United States or its contractors and subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e);

(C) For licensed activity, claims by a third party for bodily injury or property damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c), and do not exceed $1,500,000,000 (as adjusted for inflation after January 1,

1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19; or

(D) The licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c).

(ii) Each first-tier customer must hold harmless and indemnify the licensee or permittee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that any of each first-tier customer's customers, contractors, or subcontractors, may have for property damage sustained by them and for bodily injury or property damage sustained by their employees, resulting from licensed or permitted activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(iii) The Federal Aviation Administration of the Department of Transportation on behalf of the United States, but only to the extent provided in legislation, must hold harmless and indemnify the licensee or permittee, each first-tier customer, any part 440 customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that contractors and subcontractors of the United States may have for property damage sustained by them and for bodily injury or property damage sustained by their employees, resulting from licensed or permitted activities and arising out of the indemnifying party's failure to implement properly the waiver requirement to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e).

(d) For each licensed or permitted activity in which the United States or its contractors and subcontractors are involved, the Federal Aviation Administration of the Department of Transportation and each space flight participant must enter into or have in place a reciprocal waiver of claims agreement. The reciprocal waiver of claims must be in the form set forth in appendix E of this part, or in a form that otherwise provides all the same obligations and benefits.

(1) The reciprocal waiver of claims must provide that each space flight participant:

(i) Waive and release claims he or she may have against the United States, and against each of its contractors and subcontractors, for bodily injury or property damage sustained by the space flight participant, resulting from licensed or permitted activities, regardless of fault;

(ii) Assume responsibility for bodily injury or property damage, sustained by the space flight participant, resulting from licensed or permitted activities, regardless of fault;

(iii) Hold harmless the United States, and its contractors and subcontractors, for bodily injury or property damage, sustained by the space flight participant, resulting from licensed or permitted activities, regardless of fault; and

(iv) Hold harmless and indemnify the United States and its 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 sustained by the space flight participant, resulting from licensed or permitted activities.

(2) The reciprocal waiver of claims must provide that the United States:

(i) Waive and release claims it may have against the space flight participant for property damage it sustains, and for bodily injury or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault;

(ii) Assume responsibility for property damage it sustains, and for bodily injury 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 § 440.9(c) and (e), respectively;

(iii) Assume responsibility 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 § 440.9(e);

(iv) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against the space flight participant, and to agree to be responsible, for any property damage they sustain and for any bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault; and

(v) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against the space flight participant, and to agree to be responsible, for any property damage they sustain, resulting from permitted activities, regardless of fault.

(e) For each licensed or permitted activity in which the United States or its contractors and subcontractors is involved, the Federal Aviation Administration of the Department of Transportation and each crew member must enter into or have in place a reciprocal waiver of claims agreement. The reciprocal waiver of claims must be in the form set forth in appendix D of this part, or in a form that otherwise provides all the same obligations and benefits.

(1) The reciprocal waiver of claims must provide that each crew member:

(i) Waive and release claims he or she may have against the United States, and against each of its contractors and subcontractors, for bodily injury or property damage sustained by the crew member, resulting from licensed or permitted activities, regardless of fault;

(ii) Assume responsibility for bodily injury or property damage, sustained by the crew member, resulting from licensed or permitted activities, regardless of fault;

(iii) Hold harmless the United States, and its contractors and subcontractors, for bodily injury or property damage, sustained by the crew member, resulting from licensed or permitted activities, regardless of fault; and

(iv) 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 sustained by the crew member, resulting from licensed or permitted activities.

(2) The reciprocal waiver of claims must provide that the United States:

(i) Waive and release 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 or permitted activities, regardless of fault;

(ii) Assume responsibility for property damage it sustains, and for bodily injury 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 § 440.9(c) and (e), respectively;

(iii) Assume responsibility 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 § 440.9(e);

(iv) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against the crew member and to agree to be responsible, for any property damage they sustain

and for any bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault; and

(v) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against the crew member and to agree to be responsible, for any property damage they sustain, resulting from permitted activities, regardless of fault.

(f) Any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify pursuant to this section does not apply to claims for bodily injury or property damage resulting from willful misconduct of any of the parties to the reciprocal waiver of claims, the contractors and subcontractors of any of the parties to the reciprocal waiver of claims, and in the case of licensee or permittee and customers and the contractors and subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

[Doc. No. FAA–2005–23449, 71 FR 75632, Dec. 15, 2006, as amended by Amdt. 440-2, 76 FR 8630, Feb. 15, 2011; Doc. No. FAA–2014–1012, Amdt. 440–4, 81 FR 55122, Aug. 18, 2016]

### § 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:

(b) Payment by the United States under paragraph (a) of this section shall not be made for any part of such claims for which bodily injury or property damage results from willful misconduct by the party seeking payment.

(c) The United States shall provide for payment of claims by third parties for bodily injury or property damage that are payable under 49 U.S.C. 70113 and not covered by required insurance under § 440.9(b), without regard to the limitation under paragraph (a)(1) of this section, because of an insurance policy exclusion that is usual. A policy exclusion is considered usual only if insurance covering the excluded risk is not commercially available at reasonable rates. The licensee must submit a certification in accordance with § 440.15(c)(1)(iii) of this part for the United States to cover the claims.

(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:

(1) Prompt notice by the licensee to the FAA that the total amount of claims arising out of licensed activities exceeds, or is likely to exceed, the required amount of financial responsibility. For each claim, the notice must specify the nature, cause, and amount of the claim or lawsuit associated with the claim, and the party or parties who may otherwise be liable for payment of the claim;

(2) Participation or assistance in the defense of the claim or lawsuit by the United States, at its election;

(3) Approval by the FAA of any settlement, or part of a settlement, to be paid by the United States; and

(4) Approval by Congress of a compensation plan prepared by the FAA and submitted by the President.

(f) The FAA will:

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

(2) Recommend sources of funds to pay the claims; and

(3) Propose legislation as required to implement the plan.