

**§ 440.7 Determination of maximum probable loss.**

(a) The FAA will determine the maximum probable loss (MPL) from covered claims by a third party for bodily injury or property damage, and the United States, its agencies, and its contractors and subcontractors for covered property damage or loss, resulting from a permitted or licensed activity. The maximum probable loss determination forms the basis for financial responsibility requirements issued in a license or permit order.

(b) The FAA issues its determination of maximum probable loss no later than ninety days after a licensee or permittee has requested a determination and submitted all information required by the FAA to make the determination. The FAA will consult with Federal agencies that are involved in, or whose personnel or property are exposed to risk of damage or loss as a result of, a licensed or permitted activity before issuing a license or permit order prescribing financial responsibility requirements, and shall notify the licensee, or permittee, if interagency consultation may delay issuance of the MPL determination.

(c) Appendix A of this part contains information requirements for obtaining a maximum probable loss determination. Any person requesting a determination of maximum probable loss must submit the information required by Appendix A, unless the FAA has waived a requirement. In lieu of submitting required information, a person requesting a maximum probable loss determination may designate and certify certain information previously submitted for a prior determination as complete, valid, and equally applicable to its current request. The requester is responsible for the continuing accuracy and completeness of information submitted under this part and must promptly report any changes in writing.

(d) The FAA will amend a determination of maximum probable loss required under this section at any time prior to completion of licensed or permitted activities as warranted by supplementary information provided to or obtained by the FAA after the MPL determination is issued. Any change in financial responsibility requirements as a result of an amended MPL determination shall be set forth in a license or permit order.

(e) The FAA may make a determination of maximum probable loss at any time other than as set forth in paragraph (b) of this section upon request by any person.

**§ 440.9 Insurance requirements for licensed or permitted activities.**

(a) As a condition of each license or permit, a licensee or permittee must comply with all insurance requirements of this section and of a license or permit issued by the FAA, or otherwise demonstrate the required amount of financial responsibility.

(b) A licensee or permittee must obtain and maintain in effect a policy or policies of liability insurance, in an amount determined by the FAA under paragraph (c) of this section, that protects the following persons as additional insureds to the extent of their respective potential liabilities against covered claims by a third party for bodily injury or property damage resulting from a licensed or permitted activity:

(1) The licensee or permittee, its customer, and their respective contractors and subcontractors, and the employees of each, involved in a licensed or permitted activity;

(2) The United States, its agencies, and its contractors and subcontractors involved in a licensed or permitted activity; and

(3) Government personnel.

(c) The FAA will prescribe for each licensee or permittee the amount of insurance required to compensate the total of covered third-party claims for bodily injury or property damage resulting from a licensed or permitted activity in connection with any particular launch or reentry. A covered third-party claim includes a claim by the United States, its agencies, and its contractors and subcontractors for damage or loss to property other than property for which insurance is required under paragraph (d) of this section. The amount of insurance required is based upon the FAA's determination of maximum probable loss; however, it will not exceed the lesser of:

(1) \$500 million; or

(2) The maximum liability insurance available on the world market at a reasonable cost, as determined by the FAA.

(d) The licensee or permittee must obtain and maintain in effect a policy or policies of insurance, in an amount determined by the FAA under paragraph (e) of this section, that covers claims by the United States, its agencies, and its contractors and subcontractors involved in a licensed or permitted activity for property damage or loss resulting from a licensed or permitted activity. Property covered by this insurance must include all property owned, leased, or occupied by, or within the care, custody, or control of, the United States and its agencies, and its contractors and subcontractors involved in a licensed or permitted activity, at a Federal range facility. Insurance must protect the United States and its agencies, and its contractors and subcontractors involved in a licensed or permitted activity.

(e) The FAA will prescribe for each licensee or permittee the amount of insurance required to compensate claims for property damage under paragraph (d) of this section resulting from a licensed or permitted activity in connection with any particular launch or reentry. The amount of insurance is based upon a determination of maximum probable loss; however, it will not exceed the lesser of:

(1) \$100 million; or

(2) The maximum available on the world market at a reasonable cost, as determined by the FAA.

(f) In lieu of a policy of insurance, a licensee or permittee may demonstrate financial responsibility in another manner meeting the terms and conditions for insurance of this part. The licensee or permittee must describe in detail the method proposed for demonstrating financial responsibility and how it ensures that the licensee or permittee is able to cover claims as required under this part.

**§ 440.11 Duration of coverage for licensed launch, including suborbital launch, or permitted activities; modifications.**

(a) Insurance coverage required under § 440.9, or other form of financial responsibility, shall attach when a licensed launch or permitted activity starts, and remain in full force and effect as follows:

(1) Until completion of licensed launch or permitted activities at a launch or reentry site; and

(2) For orbital launch, until the later of—

(i) Thirty days following payload separation, or attempted payload separation in the event of a payload separation anomaly; or

(ii) Thirty days from ignition of the launch vehicle.

(3) For a suborbital launch, until the later of—

(i) Motor impact and payload recovery; or

(ii) The FAA's determination that risk to third parties and Government property as a result of licensed launch or permitted activities is sufficiently small that financial responsibility is no longer necessary. That determination is made through the risk analysis conducted before the launch to determine MPL and specified in a license or permit order.

(b) Financial responsibility required under this part may not be replaced, canceled, changed, withdrawn, or in any way modified to reduce the limits of liability or the extent of coverage, nor expire by its own terms, prior to the time specified in a license or permit order, unless the FAA is notified at least 30 days in advance and expressly approves the modification.

**§ 440.12 Duration of coverage for licensed reentry; modifications.**

(a) For reentry, insurance coverage required under § 440.9, or other form of financial responsibility, shall attach upon commencement of licensed reentry, and remain in full force and effect as follows:

(1) For ground operations, until completion of licensed reentry at the reentry site; and

(2) For other licensed reentry activities, 30 days from initiation of reentry flight; however, in the event of an abort that results in the reentry vehicle remaining on orbit, insurance shall remain in place until the

FAA's determination that risk to third parties and Government property as a result of licensed reentry is sufficiently small that financial responsibility is no longer necessary, as determined by the FAA through the risk analysis conducted to determine MPL and specified in a license order.

(b) Financial responsibility required under this part may not be replaced, canceled, changed, withdrawn, or in any way modified to reduce the limits of liability or the extent of coverage, nor expire by its own terms, prior to the time specified in a license order, unless the FAA is notified at least 30 days in advance and expressly approves the modification.

**§ 440.13 Standard conditions of insurance coverage.**

(a) Insurance obtained under § 440.9 must comply with each of the following terms and conditions of coverage:

(1) Bankruptcy or insolvency of an insured, including any additional insured, shall not relieve an insurer of any of its obligations under any policy.

(2) Policy limits shall apply separately to each occurrence and, for each occurrence to the total of claims arising out of a licensed or permitted activity in connection with any particular launch or reentry.

(3) Except as provided in this section, each policy must pay claims from the first dollar of loss, without regard to any deductible, to the limits of the policy. A licensee or permittee may obtain a policy containing a deductible amount if the amount of the deductible is placed in an escrow account or otherwise demonstrated to be unobligated, unencumbered funds of the licensee or permittee, available to compensate claims at any time claims may arise.

(4) No policy may be invalidated by any action or inaction of the licensee or permittee or any additional insured, even by nonpayment by the licensee or permittee of the policy premium, and each policy must insure the licensee or permittee and each additional insured regardless of any breach or violation of any warranties, declarations, or conditions contained in the policies by the licensee or permittee or any additional insured (other than a breach or violation by the licensee, permittee or an additional insured, and then only as against that licensee, permittee or additional insured).

(5) Each exclusion from coverage must be specified.

(6) Insurance shall be primary without right of contribution from any other insurance that is carried by the licensee or permittee or any additional insured.

(7) Each policy must expressly provide that all of its provisions, except the policy limits, operate in the same manner as if there were