(d) TERMS OF INDEMNIFICATION AGREEMENT.—An agreement made under subsection (c) that provides indemnification must also provide for—

(1) notice to the United States of any claim or suit against the user for the death, bodily injury, or loss of or damage to the property; and

(2) control of or assistance in the defense by the United States, at its election, of that suit or claim.

(e) CERTIFICATION OF JUST AND REASONABLE AMOUNT.—No payment may be made under subsection (c) unless the Administrator or the Administrator's designee certifies that the amount is just and reasonable.

(f) PAYMENTS.—Upon the approval by the Administrator, payments under subsection (c) may be made, at the Administrator's election, either from funds available for research and development not otherwise obligated or from funds appropriated for such payments.

(Pub. L. 111–314, § 3, Dec. 18, 2010, 124 Stat. 3344.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
20138	42 U.S.C. 2458b.	Pub. L. 85–568, title III, § 308, as added Pub. L. 96–48, § 6(b)(2), Aug. 8, 1979, 93 Stat. 348.

§ 20139. Insurance for experimental aerospace vehicles

(a) DEFINITIONS.—In this section:

(1) COOPERATING PARTY.—The term ''cooperating party'' means any person who enters into an agreement with the Administration for the performance of cooperative scientific, aeronautical, or space activities to carry out the purposes of this chapter.

(2) DEVELOPER.—The term ''developer'' means a United States person (other than a natural person) who—

(A) is a party to an agreement with the Administration for the purpose of developing new technology for an experimental aerospace vehicle;

(B) owns or provides property to be flown or situated on that vehicle; or

(C) employs a natural person to be flown on that vehicle.

(3) EXPERIMENTAL AEROSPACE VEHICLE.—The term ''experimental aerospace vehicle'' means an object intended to be flown in, or launched into, orbital or suborbital flight for the purpose of demonstrating technologies necessary for a reusable launch vehicle, developed under an agreement between the Administration and a developer.

(4) RELATED ENTITY.—The term ''related entity'' includes a contractor or subcontractor at any tier, a supplier, a grantee, and an investigator or detailee.

(b) IN GENERAL.—The Administrator may provide liability insurance for, or indemnification to, the developer of an experimental aerospace vehicle developed or used in execution of an agreement between the Administration and the developer.

(c) TERMS AND CONDITIONS.—

(1) IN GENERAL.—Except as otherwise provided in this section, the insurance and indemnification provided by the Administration under subsection (b) to a developer shall be provided on the same terms and conditions as insurance and indemnification is provided by the Administration under section 20138 of this title to the user of a space vehicle.

(2) INSURANCE.—

(A) IN GENERAL.—A developer shall obtain liability insurance or demonstrate financial responsibility in amounts to compensate for the maximum probable loss from claims by—

(i) a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with the development or use of an experimental aerospace vehicle; and

(ii) the United States Government for damage or loss to Government property resulting from such an activity.

(B) MAXIMUM REQUIRED.—The Administrator shall determine the amount of insurance required, but, except as provided in subparagraph (C), that amount shall not be greater than the amount required under section 50914(a)(3) of this title for a launch. The Administrator shall publish notice of the Administrator's determination and the applicable amount or amounts in the Federal Register within 10 days after making the determination.

(C) INCREASE IN DOLLAR AMOUNTS.—The Administrator may increase the dollar amounts set forth in section 50914(a)(3)(A) of this title for the purpose of applying that section under this section to a developer after consultation with the Comptroller General and such experts and consultants as may be appropriate, and after publishing notice of the increase in the Federal Register not less than 180 days before the increase goes into effect. The Administrator shall make available for public inspection, not later than the date of publication of such notice, a complete record of any correspondence received by the Administration, and a transcript of any meetings in which the Administration participated, regarding the proposed increase.

(D) SAFETY REVIEW REQUIRED BEFORE ADMINISTRATOR PROVIDES INSURANCE.—The Administrator may not provide liability insurance or indemnification under subsection (b) unless the developer establishes to the satisfaction of the Administrator that appropriate safety procedures and practices are being followed in the development of the experimental aerospace vehicle.

(3) NO INDEMNIFICATION WITHOUT CROSS-WAIVER.—Notwithstanding subsection (b), the Administrator may not indemnify a developer of an experimental aerospace vehicle under this section unless there is an agreement between the Administration and the developer described in subsection (d).

(4) APPLICATION OF CERTAIN PROCEDURES.—If the Administrator requests additional appropriations to make payments under this sec-

tion, like the payments that may be made under section 20138(c) of this title, then the request for those appropriations shall be made in accordance with the procedures established by subsections (d) and (e) of section 50915 of this title.

(d) CROSS-WAIVERS.—

(1) ADMINISTRATOR AUTHORIZED TO WAIVE.—The Administrator, on behalf of the United States, and its departments, agencies, and instrumentalities, may reciprocally waive claims with a developer or cooperating party and with the related entities of that developer or cooperating party under which each party to the waiver agrees to be responsible, and agrees to ensure that its own related entities are responsible, for damage or loss to its property for which it is responsible, or for losses resulting from any injury or death sustained by its own employees or agents, as a result of activities connected to the agreement or use of the experimental aerospace vehicle.

(2) LIMITATIONS.—

(A) CLAIMS.—A reciprocal waiver under paragraph (1) may not preclude a claim by any natural person (including, but not limited to, a natural person who is an employee of the United States, the developer, the cooperating party, or their respective subcontractors) or that natural person's estate, survivors, or subrogees for injury or death, except with respect to a subrogee that is a party to the waiver or has otherwise agreed to be bound by the terms of the waiver.

(B) LIABILITY FOR NEGLIGENCE.—A reciprocal waiver under paragraph (1) may not absolve any party of liability to any natural person (including, but not limited to, a natural person who is an employee of the United States, the developer, the cooperating party, or their respective subcontractors) or such a natural person's estate, survivors, or subrogees for negligence, except with respect to a subrogee that is a party to the waiver or has otherwise agreed to be bound by the terms of the waiver.

(C) INDEMNIFICATION FOR DAMAGES.—A reciprocal waiver under paragraph (1) may not be used as the basis of a claim by the Administration, or the developer or cooperating party, for indemnification against the other for damages paid to a natural person, or that natural person's estate, survivors, or subrogees, for injury or death sustained by that natural person as a result of activities connected to the agreement or use of the experimental aerospace vehicle.

(D) WILLFUL MISCONDUCT.—A reciprocal waiver under paragraph (1) may not relieve the United States, the developer, the cooperating party, or the related entities of the developer or cooperating party, of liability for damage or loss resulting from willful misconduct.

(3) EFFECT ON PREVIOUS WAIVERS.—This subsection applies to any waiver of claims entered into by the Administration without regard to the date on which the Administration entered into the waiver.

(e) RELATIONSHIP TO OTHER LAWS.—

(1) SECTION 20138.—This section does not apply to any object, transaction, or operation to which section 20138 of this title applies.

(2) SECTION 50919(g)(1).—The Administrator may not provide indemnification to a developer under this section for launches subject to license under section 50919(g)(1) of this title.

(f) TERMINATION.—

(1) IN GENERAL.—The provisions of this section shall terminate on December 31, 2010.

(2) EFFECT OF TERMINATION ON AGREEMENT.—The termination of this section shall not terminate or otherwise affect any cross-waiver agreement, insurance agreement, indemnification agreement, or other agreement entered into under this section, except as may be provided in that agreement.

(Pub. L. 111–314, § 3, Dec. 18, 2010, 124 Stat. 3345.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
20139	42 U.S.C. 2458c.	Pub. L. 85–568, title III, § 309, formerly title III, as added Pub. L. 106–74, title IV, § 435(a), Oct. 20, 1999, 113 Stat. 1097; designated § 309 and amended Pub. L. 106–391, title III, § 324(a)(2), (b), Oct. 30, 2000, 114 Stat. 1599, 1600; Pub. L. 109–155, title VII, § 702, Dec. 30, 2005, 119 Stat. 2936.

In subsection (d)(3), the words ''without regard to the date on which the Administration entered into the waiver'' are substituted for ''without regard to whether it was entered into before, on, or after the date of enactment of this Act'' to avoid an ambiguity in the law. Literally, the words ''the date of enactment of this Act'' mean July 29, 1958, the date of enactment of Public Law 85–568. However, the intended meaning of the words ''the date of enactment of this Act'' is probably October 20, 1999, the date of enactment of Public Law 106–74. The question as to which date is actually intended is rendered inconsequential by the words ''before, on, or after''.

§ 20140. Appropriations

(a) AUTHORIZATION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out this chapter, except that nothing in this chapter shall authorize the appropriation of any amount for—

(A) the acquisition or condemnation of any real property; or

(B) any other item of a capital nature (such as plant or facility acquisition, construction, or expansion) which exceeds $250,000.

(2) AVAILABILITY.—Sums appropriated pursuant to this subsection for the construction of facilities, or for research and development activities, shall remain available until expended.

(b) USE OF FUNDS FOR EMERGENCY REPAIRS OF EXISTING FACILITIES.—Any funds appropriated for the construction of facilities may be used for emergency repairs of existing facilities when such existing facilities are made inoperative by major breakdown, accident, or other circumstances and such repairs are deemed by the Administrator to be of greater urgency than the construction of new facilities.