

RULEMAKING ISSUE
(Negative Consent)

July 8, 2003

SECY-03-0114

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations /RA/

SUBJECT: FINAL RULE, 10 CFR PART 140, "FINANCIAL PROTECTION
REQUIREMENTS AND INDEMNITY AGREEMENTS"

PURPOSE:

To inform the Commission that the Executive Director for Operations (EDO) intends to publish a final rule within 10 working days of the date of this paper, unless otherwise directed by the Commission, that will increase licensees' retrospective deferred premium based on the rate of inflation. This action is required by the Price-Anderson Amendments Act of 1988, for liability insurance coverage in the event of nuclear incidents at licensed, operating, commercial nuclear power plants with a rated capacity of 100,000 kW or more and also reflects the increase in primary nuclear liability insurance to \$300 million, which became effective on January 1, 2003.

DISCUSSION:

Part 140, "Financial Protection Requirements and Indemnity Agreements," provides requirements and procedures for implementing the financial protection requirements for certain licensees and other persons pursuant to Section 170 of the Atomic Energy Act (AEA) of 1954, as amended. Section 140.11(a)(4) specifies the amount of financial protection required of a licensee for a nuclear reactor that is licensed to operate, is designed for the production of electrical energy, and has a rated capacity of 100,000 kW or more. This amount is presently set at the sum of \$300 million and the amount available as secondary financial protection in the

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form of private liability insurance under an industry retrospective rating plan. These limits are currently \$83.9 million per reactor per incident (plus any surcharge assessed under Subsection 170o.(1)(E) of the AEA for the maximum standard deferred premium and \$10 million per reactor per incident per calendar year.

Section 15, "Inflation Adjustment," of Public Law 100-408 (102 Stat. 1066), the Price-Anderson Amendments Act of 1988, enacted on August 20, 1988, (now Section 170t. of the AEA), requires the Commission to adjust the amount of the maximum standard deferred premium (currently \$83.9 million) based on the aggregate percentage change since August 1998 in the Consumer Price Index (CPI) for all urban consumers, as published by the Secretary of Labor. This premium adjustment is required to be made at least once during the period from August 20, 1998 to August 20, 2003. The aggregate percentage increase in the CPI from September 1998 through March 2003 was 12.59 percent. When applied to \$83.9 million, this percentage increase would raise the maximum standard deferred premium to \$94.5 million per reactor per incident. The limit of \$10 million per reactor per incident per calendar year would be unchanged.

To implement this inflation adjustment, unless otherwise directed by the Commission, the staff proposes to issue revisions to 10 CFR Part 140 within 10 working days from the date of this paper as detailed in Attachment 1 under the authority delegated by the Commission to the EDO for development and promulgation of rules as defined in the Administrative Procedure Act (5 U.S.C. 551(4)). The proposed changes would become effective by August 20, 2003, which should be at least 30 days after publication of this final rule in the Federal Register. Because this action by the Commission is essentially ministerial in nature (that is, multiplying \$83.9 million by the percentage increase in the CPI published by the Secretary of Labor and adding this amount to \$83.9 million), there is good cause for omitting notice and public procedure (in the form of a proposed rule) on this action as it is unnecessary. Attachments 2 and 3 include other notifications that are necessary accompaniments to this proposed action.

The next inflation adjustment in the amount of the maximum standard deferred premium will be made before August 20, 2008, and will be based on the incremental change in the CPI since March 2003.

COORDINATION:

The Office of the General Counsel has no legal objection to the content of this paper. The Office of the Chief Financial Officer has reviewed this final rule for resource implications and has no objections.

RECOMMENDATION:

That the Commission note:

- (1) The EDO plans to sign the final rule revising 10 CFR 140.11(a)(4) as given in the proposed Federal Register notice (Attachment 1) 10 working days from the date of this paper, unless otherwise directed by the Commission.

- (2) Staff requests action within 10 days. Action will not be taken until the SRM is received. We consider this action to be within the delegated authority of the EDO.
- (3) This final rule does not contain a new or an amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).
- (4) The final rule does not require a backfit analysis under 10 CFR 50.109.

/RA/

William D. Travers
Executive Director
for Operations

Attachments:

1. Federal Register Notice
2. Authority Statement
3. Notice for Final Rule

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ADAMS Accession Nos.:

SECY: ML031630849
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*See previous concurrence **Concurrence by email ***Concurrence by ltr.

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