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ATOMIC ENERGY COMMISSION

AMENDMENTS TO REGULATIONS GOVERNING FINANCIAL PROTECTION  
REQUIREMENTS AND INDEMNITY AGREEMENTS

Note by the Acting Secretary

The General Manager has requested that the attached report by the Director of Licensing and Regulation be circulated for consideration by the Commission at an early date.

(Harold D. Anamosa)

Acting Secretary

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ATOMIC ENERGY COMMISSION

AMENDMENTS TO REGULATIONS GOVERNING FINANCIAL PROTECTION  
REQUIREMENTS AND INDEMNITY AGREEMENTS

Report to the General Manager by the Director,  
Division of Licensing and Regulation

THE PROBLEM

1. To consider:

a. Publication of a proposed amendment to Part 140 establishing forms of indemnity agreements to be entered into between the AEC and reactor licensees required to furnish proof of financial protection; and

b. Publication of an amendment to Part 140 approving a form of nuclear energy liability insurance policy as proof of financial protection.

SUMMARY

2. At Regulatory Sessions 29 on August 8, 1958, and 43 on April 23, 1959, after consideration of AEC-R 29/3 and AEC-R 29/6, respectively, the Commission approved for publication, two proposed amendments to Part 140. One proposed amendment included a form of indemnity agreement to be entered into between the AEC and nuclear reactor licensees. The second proposed amendment would grant approval to the furnishing of financial protection in the form of the nuclear energy liability insurance policy then available from the NELIA and MAELU organizations.

3. This paper recommends issuance of the amendment set forth in Enclosure "B" to be effective thirty days after publication in the Federal Register. The amendment would approve the furnishing of proof of financial protection in the form of the nuclear energy liability insurance policy now being issued by the NELIA - MAELU organizations. The statement of considerations in Enclosure "B" identifies the major changes in the insurance policy which have been made by the syndicates since August 1958.

[REDACTED]

[REDACTED]

[REDACTED]

4. Enclosure "C" contains a proposed amendment to Part 140 to be issued for further public comment. The proposed amendment would establish the revised forms of indemnity agreement to be executed by the AEC and reactor licensees who are required to furnish proof of financial protection. The changes in the proposed revised form of indemnity agreement are discussed in detail in the statement of considerations to be published with the proposed amendment and in the "Discussion", Enclosure "A".

STAFF JUDGMENTS

5. The Division of Finance and the Office of the General Counsel concur in the recommendation of this paper.

RECOMMENDATION

6. The General Manager recommends that the Atomic Energy Commission:

a. Approve the issuance of the effective amendment to Part 140 substantially in the form contained in Enclosure "B";

b. Approve the proposed amendment contained in Enclosure "C";

c. Note that the amendments in Enclosure "B" will be published in the Federal Register to become effective 30 days after the date of publication;

d. Note that the proposed amendment in Enclosure "C" will be published initially in the Federal Register in conformity with the procedure which allows a sixty-day period after publication for filing written comments or objections by interested persons;

e. Approve the publication of the amendments in Enclosure "C" in final form if after the sixty-day period it appears that there is no need for substantial changes. If substantial changes are indicated, the amendment will be re-submitted to the Commission for approval;

f. Note that the Joint Committee on Atomic Energy will be informed of this action by appropriate letter;

g. Note that a press release will be issued upon publication of the amendments;

h. Note that this paper is unclassified.

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ENCLOSURE "A"

DISCUSSION

1. At Regulatory Sessions 29 and 43 on August 8, 1958 and April 23, 1959 respectively, the Commission approved for publication two proposed amendments to Part 140. One proposed amendment (See AEC-R 29/3) included a form of indemnity agreement to be entered into between the Commission and nuclear reactor licensees. The second proposed amendment (See AEC-R 29/6) would grant approval to the furnishing of financial protection in the form of the nuclear energy liability insurance policy then available from the NELIA and MAELU organizations.

2. Enclosure "D" hereto contains a summary of the principal comments received from interested persons and the staff's evaluation thereof.

3. Enclosure "B" contains an amendment to Part 140 to be effective 30-days after publication in the Federal Register. The amendment would approve the furnishing of proof of financial protection in the form of the nuclear energy liability insurance policy now being issued by the NELIA - MAELU organizations. The statement of considerations in Enclosure "B" identifies the major changes in the insurance policy which have been made by the syndicates since August 1958.

4. Enclosure "C" contains a proposed amendment to Part 140 to be issued for public comment. The amendment would establish the revised forms of indemnity agreements to be executed by the Commission and reactor licensees who are required to furnish proof of financial protection. The statement of considerations in Enclosure "C" identifies the major changes in the revised forms of indemnity agreement.

[REDACTED]

[REDACTED]

[REDACTED]

5. In AEC 785/47 the Commission approved two proposed amendments to the Atomic Energy Act of 1954, as amended. The two amendments are currently pending before the Joint Committee on Atomic Energy. A copy of the Commission's letter dated April 8, 1959 forwarding the two proposed amendments is attached as Enclosure "E". The first of these proposed amendments would amend the Price-Anderson Indemnity Act to remove coverage of liability for damage to "on-site" property. Coverage of liability for damage to on-site property would diminish the \$500 million indemnity available to the general public under the Commission's indemnity agreement. The staff believes that the coverage of liability for damage to on-site property presently provided under the Price-Anderson Indemnity Act was due to a drafting inadvertance and was not intended by the Congress. There does not appear to have been, nor does it appear likely that there will arise any need for government coverage against damage to on-site property. Commercial insurance against damage to on-site property is available from the property insurance syndicates (NEPIA and MAERP). The staff continues to regard enactment of this amendment as being important.

6. The NELIA-MAELU liability insurance policies furnished by reactor licensees as financial protection do not cover liability for damage to on-site property. Accordingly, in order that the licensee furnish financial protection covering such liability, a provision has been incorporated in the proposed indemnity agreement which would require the licensee to indemnify other persons who may be liable for damage to on-site property up to the amount of financial protection. It should be noted also that, from the standpoint of the industry in general, the problem of liability for damage to on-site property has been ameliorated by the inclusion of a provision in the NEPIA-MAERP nuclear energy property insurance policies waiving any rights of subrogation against various classes of suppliers who might be liable for on-site property damage.

[REDACTED]

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7. The other proposed amendment was recommended to Congress because of the absence in nuclear energy liability insurance policies of an automatic reinstatement provision. As a result of the absence of such a provision, payments by the insurer under the policy might result in a gap between the available insurance and the level at which the AEC's \$500 million indemnity obligation becomes effective. The gap might exist until such time as the insurers reinstate the original amount of the policy or other appropriate steps are taken by the licensee. The proposed

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amendment is intended to permit the AEC to fill this gap for a reasonable period of time (not in excess of 90 days) until the insurers have had reasonable opportunity to reinstate or the licensee has had opportunity to furnish the protection in some other form. The proposed amendment included a floor of \$1 million, below which the AEC would have no obligation.

8. Legislation was recommended for specific authority to fill this gap, partly because the statute is ambiguous and partly because of the large ingredient of policy involved in the question whether such a gap should be filled by the AEC.

9. There have been a substantial number of comments received as to the desirability of the AEC's filling this gap and whether there is a need for legislation. The comments are practically unanimous that the AEC should, and has the authority under existing law, to fill this gap. Accordingly, after reconsideration and in light of the comments, the Office of the General Counsel has concluded that, although the statute may be ambiguous, the AEC can remove the ambiguity by an appropriate exercise of its rule-making authority for the purpose of carrying out a principal objective of the Price-Anderson Act; namely, to minimize a potential gap between the amount of financial protection furnished by a licensee and the indemnity protection afforded by the AEC. A new provision has been added to the indemnity agreement for this purpose (see paragraph b. of Item 2 of the Attachment thereto.)

10. In recommending the adoption of this provision, the Office of the General Counsel wishes to call the Commission's attention to the fact that adoption of the provision without specific legislation may open the door to pressures from industry that other potential "gaps" be filled by the AEC. The filling

[REDACTED]

of other gaps (e.g. types of risks or coverage not covered by the nuclear energy liability insurance policies) would tend to diminish the incentives presently existing for licensees and the insurance syndicates to furnish the broadest possible coverage without reliance upon the government.

11. The potential "gap" which might exist in the event of a "common occurrence" is an example of the type of gap which should be filled by the insurance companies and not the AEC. It is discussed in the statement of considerations to be published with the amendment set forth in Enclosure "C".

ENCLOSURE "B"

TITLE 10 -- ATOMIC ENERGY

Chapter I -- Atomic Energy Commission

Part 140 -- FINANCIAL PROTECTION REQUIREMENTS AND  
INDEMNITY AGREEMENTS

On August 28, 1958 (23 F.R. 6681, 6684), and on May 1, 1959 (24 F.R. 3508), the Atomic Energy Commission published for public comment two proposed amendments to Part 140 "Financial Protection Requirements and Indemnity Agreements". One proposed amendment included a form of indemnity agreement to be entered into between the Commission and nuclear reactor licensees. Under the second proposed amendment, the Commission proposed to grant approval by rule to the furnishing of financial protection in the form of the nuclear energy liability insurance policy form then available from the NELIA and MAELU syndicates (Nuclear Energy Liability Association and Mutual Atomic Energy Liability Underwriters, respectively). Following publication of the proposed amendments, interested members of the public have submitted many helpful comments and suggestions. The comments and suggestions received have been taken into consideration by the Commission in the adoption of the following amendments.

The amendment set forth below approves, as proof of financial protection, the revised form of nuclear energy liability insurance policy currently available from NELIA and MAELU (Section 140.75, Appendix "A").

The revised form of nuclear energy liability insurance policy set forth in Appendix "A" has been filed with and approved by a substantial number of state insurance agencies and has been issued by the syndicates to many AEC licensees in lieu of the binders previously in effect. The new insurance policy differs from the

[REDACTED]

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[REDACTED]

form previously published in the Federal Register on August 28, 1958 and May 1, 1959 primarily in the following respects:

1. The new form includes coverage of nuclear incidents occurring in transportation of nuclear materials to the reactor from any location, without regard to whether the transportation originated at a Government facility. The previous form provided coverage during transportation to the reactor only if the transportation was from a facility owned by the United States.

2. The period of prior notice to the Commission before the insurers can make a policy suspension effective has been increased from 12 hours to at least one full business day.

3. The new form excludes coverage for risks resulting from the transportation of "useful" or "commercial" isotopes. The NELIA and MAELU organizations have explained that such coverage is afforded in conventional liability policies.

4. With respect to a common occurrence, the aggregate insurance under all nuclear energy liability insurance policies issued by each syndicate has been expanded from the limit of liability of the highest applicable policy to the total ~~pool~~ capacity, if the facilities involved in the common occurrence have in the aggregate purchased that amount of coverage.

5. At hearings held before the Joint Committee on Atomic Energy on April 29, 1959, (Hearings Before the Joint Committee on Atomic Energy, "Indemnity and Reactor Safety," page 4) Commission representatives testified that, among other things, the phraseology of the common occurrence provision in the insurance policies may cover more situations than intended by the syndicates. To clarify the intent of the insurance syndicates, a statement was subsequently furnished to the Joint Committee on Atomic Energy on behalf of NELIA and MAELU (Hearings, page 42). With respect to the common occurrence provision, the syndicates said:

"The Commission, in the statement made to the Joint Committee, has expressed doubt that the common occurrence provision in the

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policy (condition 4) has the meaning intended, and particularly that it may be construed, under subparagraph (a), to be applicable to bodily injury or property damage resulting from the conflation of fission products discharged from two or more reactors as a result of separate, distinct occurrences at each such reactor. The persons responsible for the policy language did not intend any such result but, on the contrary, intended that if two reactors at different locations 'blow' at or about the same time, the applicable limit of liability of each reactor's policy will be available for resulting claims, and condition 4 will not be applicable. In brief, the pools (MAELU and NELIA) intend subparagraph (a) to apply only to situations where the gradual accumulation of nuclear materials discharged or dispersed over a period of time from two or more nuclear facilities, whether in the course of their normal operation or as a result of undetected malfunction or accidental leakage of effluents. A simple illustration is the contamination of a watershed as the result of the continued operation of two or more facilities for a period of time, without the occurrence of an incident, identifiable in time, at any of the facilities.

"Even if the construction of subparagraph (a) of condition 4 feared by the Commission is possible, the pools could not take advantage of it because of the settled principle of law that if a provision in an insurance policy is ambiguous, the provisions must be given the meaning most favorable to the insured.

"It is submitted that the provisions of the Price-Anderson Act particularly the definition of 'nuclear incident,' and subsection (c) and (e) of section 170, require that with respect to Government indemnity any occurrence or series of occurrences to which the policy's common occurrence provision is applicable should be construed as one nuclear incident. Otherwise the Government would be liable, in such a situation, not for \$500 million but for multiples thereof."

The general approval contained in the following amendment of the form of policy now offered by NELIA and MAELU should not be construed as indicating that it is the only form of nuclear energy liability insurance policy which the Commission will approve. The Commission will accept any other form of nuclear energy liability insurance policy as proof of financial protection under this part if it concludes that such other form provides adequate financial protection under the requirements of the Commission's regulations and applicable legislation.

The Commission will welcome further comments and suggestions concerning these amendments.

Effective thirty days after publication in the Federal Register, Part 140, Title 10 CFR, is amended by adding the following Appendix .

**APPENDIX "A" TO ENCLOSURE B**  
**NUCLEAR ENERGY LIABILITY POLICY**  
**(FACILITY FORM)**

The undersigned members of \_\_\_\_\_, hereinafter called the "companies," each for itself, severally and not jointly, and in the respective proportions hereinafter set forth, agree with the insured, named in the declarations made a part hereof, in consideration of the premium and in reliance upon the statements in the declarations and subject to the limit of liability, exclusions, conditions and other terms of this policy:

**INSURING AGREEMENTS**

**I COVERAGE A — BODILY INJURY AND PROPERTY DAMAGE LIABILITY** To pay on behalf of the insured:

- (1) all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage caused by the nuclear energy hazard, and the companies shall defend any suit against the insured alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy; but the companies may make such investigation, negotiation and settlement of any claim or suit as they deem expedient;
- (2) costs taxed against the insured in any such suit and interest on any judgment therein;
- (3) premiums on appeal bonds and on bonds to release attachments in any such suit, but without obligation to apply for or furnish such bonds;
- (4) reasonable expenses, other than loss of earnings, incurred by the insured at the companies' request.

**COVERAGE B — DAMAGE TO PROPERTY OF AN INSURED AWAY FROM THE FACILITY**

With respect to property damage caused by the nuclear energy hazard to property of an insured which is away from the facility, to pay to such insured those sums which such insured would have been legally obligated to pay as damages therefor, had such property belonged to another.

**COVERAGE C — SUBROGATION — OFFSITE EMPLOYEES**

With respect to bodily injury sustained by any employee of an insured and caused by the nuclear energy hazard, to pay to the workmen's compensation carrier of such insured all sums which such carrier would have been entitled to recover and retain as damages from another person or organization, had such person or organization alone been legally responsible for such bodily injury, by reason of the rights acquired by subrogation by the payment of the benefits required of such carrier under the applicable workmen's compensation or occupational disease law. An employer who is a duly qualified self-insurer under such law shall be deemed to be a workmen's compensation carrier within the meaning of this coverage. This Coverage C does not apply to bodily injury sustained by any person who is employed at and in connection with the facility.

This Coverage C shall not constitute workmen's compensation insurance required under the laws of any state.

**II DEFINITION OF INSURED** The unqualified word "insured" includes (a) the named insured and (b) any other person or organization with respect to his legal responsibility for damages because of bodily injury or property damage caused by the nuclear energy hazard.

Subdivision (b) above does not include as an insured the United States of America or any of its agencies.

Subject to Condition 3 and the other provisions of this policy, the insurance applies separately to each insured against whom claim is made or suit is brought.

**III DEFINITIONS** Wherever used in this policy:

"bodily injury" means bodily injury, sickness or disease, including death resulting therefrom, sustained by any person;

"property damage" means physical injury to or destruction or radioactive contamination of property, and loss of use of property so injured, destroyed, or contaminated, and loss of use of property while evacuated or withdrawn from use because possibly so contaminated or because of imminent danger of such contamination;

"nuclear material" means source material, special nuclear material, or

byproduct material;

"source material," "special nuclear material," and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954, or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in any nuclear reactor;

"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (1) or (2) thereof;

"the facility" means the facility described in the declarations and includes the location designated in Item 3 of the declarations and all property and operations at such location;

"nuclear facility" means "the facility" as defined in any Nuclear Energy Liability Policy (Facility Form) issued by the companies or by \_\_\_\_\_ The term "nuclear facility" also means:

- (1) any nuclear reactor;
- (2) any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing spent fuel or (c) handling, processing or packaging waste;
- (3) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste; and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"indemnified nuclear facility" means

- (1) the facility, as defined in any Nuclear Energy Liability Policy (Facility Form) issued by the companies or by \_\_\_\_\_

- (2) any other nuclear facility, if financial protection is required pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, with respect to any activities or operations conducted thereat;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of nuclear material, but only if:

- (1) the nuclear material is at the facility or has been discharged or dispersed therefrom without intent to relinquish possession or custody thereof to any person or organization, or
- (2) the nuclear material is in an insured shipment which is (a) in the course of transportation, including handling and temporary storage incidental thereto, within the territorial limits of the United States of America, its territories or possessions, Puerto Rico or the Canal Zone and (b) away from any other nuclear facility;

"insured shipment" means a shipment of source material, special nuclear material, spent fuel or waste, herein called "material," (1) to the facility from a nuclear facility owned by the United States of America, but only if the transportation of the material is not by predetermination to be interrupted by the removal of the material from a transporting conveyance for any purpose other than the continuation of its transportation, or (2) from the facility to any other location except an indemnified nuclear facility, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation.

**IV APPLICATION OF POLICY** This policy applies only to bodily injury or property damage (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which

written claim is made against the insured, not later than two years after the end of the policy period.

## EXCLUSIONS

This policy does not apply:

- (a) to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
- (b) except with respect to liability of another assumed by the insured under contract, to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured; but this exclusion does not apply to bodily injury to any person who is not employed at and in connection with the facility if the insured has complied with the requirements of the applicable workmen's compensation or occupational disease law respecting the securing of compensation benefits thereunder to his employees;
- (c) to liability assumed by the insured under contract, other than an assumption in a contract with another of the liability of any person or organization which would be imposed by law on such person or organization in the absence of an express assumption of liability;
- (d) to bodily injury or property damage due to the manufacturing, handling or use at the location designated in Item 3 of the declara-

tions, in time of peace or war, of any nuclear weapon or other instrument of war utilizing special nuclear material or byproduct material;

- (e) to bodily injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;
- (f) to property damage to any property at the location designated in Item 3 of the declarations, other than aircraft, watercraft or vehicles licensed for highway use, provided such aircraft, watercraft or vehicles are not used in connection with the operation of the facility;
- (g) to property damage to nuclear material in the course of transportation to or from the facility including handling or storage incidental thereto;
- (h) under Coverage B, to property damage due to neglect of the insured to use all reasonable means to save and preserve the property after knowledge of the occurrence resulting in such property damage.

## CONDITIONS

**1 PREMIUM** The named insured shall pay the companies the advance premium stated in the declarations, for the period from the effective date of this policy through December 31 following. Thereafter, at the beginning of each calendar year while this policy is in force, the named insured shall pay the advance premium for such year to the companies. The advance premium for each calendar year shall be stated in a written notice given by the companies to the named insured as soon as practicable prior to or after the beginning of such year.

Such advance premiums are estimated premiums only. As soon as practicable after each December 31 and after the termination of this policy, the earned premium for the preceding premium period shall be computed in accordance with the companies' rules, rates, rating plans, premiums and minimum premiums applicable to this insurance. If the earned premium thus computed for any premium period exceeds the advance premium previously paid for such period, the named insured shall pay the excess to the companies; if less, the companies shall return to the named insured the unearned portion paid by such insured.

The named insured shall maintain records of the information necessary for premium computation and shall send copies of such records to the companies as directed, at the end of each calendar year, at the end of the policy period and at such other times during the policy period as the companies may direct.

**2 INSPECTION; SUSPENSION** The companies shall be permitted to inspect the facility and to examine the insured's books and records at any time, as far as they relate to the subject matter of this insurance.

If a representative of the companies discovers a condition which he believes to be unduly dangerous with respect to the nuclear energy hazard, a representative of the companies may request that such condition be corrected without delay. In the event of non-compliance with such request, a representative of the companies may, by notice to the named insured, to any other person or organization considered by the companies to be responsible for the continuance of such dangerous condition, and to the United States Atomic Energy Commission, suspend the insurance with respect to the named insured and such other person or organization effective 12:00 midnight of the next business day of such Commission following the date that such Commission receives such notice. The period of such suspension shall terminate as of the time stated in a written notice from the companies to the named insured and to each such person or organization that such condition has been corrected.

**3 LIMIT OF LIABILITY; TERMINATION OF POLICY UPON EXHAUSTION OF LIMIT** Regardless of the number of persons and organizations who are insureds under this policy, and regardless of the number of claims made and suits brought against any or all insureds because of one or more occurrences resulting in bodily injury or prop-

erty damage caused during the policy period by the nuclear energy hazard, the limit of the companies' liability stated in the declarations is the total liability of the companies for their obligations under this policy and the expenses incurred by the companies in connection with such obligations, including

- (a) payments in settlement of claims and in satisfaction of judgments against the insureds for damages because of bodily injury or property damage, payments made under parts (2), (3) and (4) of Coverage A and payments made in settlement of claims under Coverages B and C;
- (b) payments for expenses incurred in the investigation, negotiation, settlement and defense of any claim or suit, including, but not limited to, the cost of such services by salaried employees of the companies, fees and expenses of independent adjusters, attorneys, fees and disbursements, expenses for expert testimony, inspection and appraisal of property, examination, X-ray or autopsy or medical expenses of any kind;
- (c) payments for expenses incurred by the companies in investigating an occurrence resulting in bodily injury or property damage or in minimizing its effects.

Each payment made by the companies in discharge of their obligations under this policy or for expenses incurred in connection with such obligations shall reduce by the amount of such payment the limit of the companies' liability under this policy.

If, during the policy period or subsequent thereto, the total of such payments made by the companies shall exhaust the limit of the companies' liability under this policy, all liability and obligations of the companies under this policy shall thereupon terminate and shall be conclusively presumed to have been discharged. This policy, if not theretofore canceled, shall thereupon automatically terminate.

Regardless of the number of years this policy shall continue in force and the number of premiums which shall be payable or paid, the limit of the companies' liability stated in the declarations shall not be cumulative from year to year.

**LIMITATION OF LIABILITY; COMMON OCCURRENCE** Any occurrence or series of occurrences resulting in bodily injury or property damage arising out of the radioactive, toxic, explosive or other hazardous properties of

- (a) nuclear material discharged or dispersed from the facility over a period of days, weeks, months or longer and also arising out of such properties of other nuclear material so discharged or dispersed from one or more other nuclear facilities insured by the companies under a Nuclear Energy Liability Policy (Facility Form), or
- (b) source material, special nuclear material, spent fuel or waste in the

course of transportation for which insurance is afforded under this policy and also arising out of such properties of other source material, special nuclear material, spent fuel or waste in the course of transportation for which insurance is afforded under one or more other Nuclear Energy Liability Policies (Facility Form) issued by the companies.

shall be deemed to be a common occurrence resulting in bodily injury or property damage caused by the nuclear energy hazard.

With respect to such bodily injury and property damage (1) the total aggregate liability of the companies under all Nuclear Energy Liability Policies (Facility Form), including this policy, applicable to such common occurrence shall be the sum of the limits of liability of all such policies, the limit of liability of each such policy being as determined by Condition 3 thereof, but in no event shall such total aggregate liability of the companies exceed \$46,500,000; (2) the total liability of the companies under this policy shall not exceed that proportion of the total aggregate liability of the companies, as stated in clause (1) above, which (a) the limit of liability of this policy, as determined by Condition 3, bears to (b) the sum of the limits of liability of all such policies issued by the companies, the limit of liability of each such policy being as determined by Condition 3, thereof.

The provisions of this condition shall not operate to increase the limit of the companies' liability under this policy.

**5 NOTICE OF OCCURRENCE, CLAIM OR SUIT** In the event of bodily injury or property damage to which this policy applies or of an occurrence which may give rise to claims therefor, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to \_\_\_\_\_ or the companies as soon as practicable. If claim is made or suit is brought against the insured, he shall immediately forward to \_\_\_\_\_ or the companies every demand, notice, summons or other process received by him or his representative.

**6 ASSISTANCE AND COOPERATION OF THE INSURED** The insured shall cooperate with the companies and, upon the companies request, attend hearings and trials and assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of any legal proceedings in connection with the subject matter of this insurance. The insured shall not, except at his own cost, make any payment, assume any obligation or incur any expense.

**7 ACTION AGAINST COMPANIES — Coverages A and C** No action shall lie against the companies or any of them unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the companies.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the companies or any of them as parties to any action against the insured to determine the insured's liability, nor shall the companies or any of them be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the companies of any of their obligations hereunder.

**8 ACTION AGAINST COMPANIES — Coverage B** No suit or action on this policy for the recovery of any claim for property damage to which Coverage B applies shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with and unless commenced within two years after the occurrence resulting in such property damage.

**9 INSURED'S DUTIES WHEN LOSS OCCURS — Coverage B** In the event of property damage to which Coverage B applies, the insured shall furnish a complete inventory of the property damage claimed, showing in detail the amount thereof. Within ninety-one days after the occurrence resulting in such property damage, unless such time is extended in writing by the companies, the insured shall tender to the companies a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: identification of such occurrence; the interest of the insured in the property destroyed or damaged; and the amount of each item of property damage claimed; all encumbrances on such property; and all other contracts of insurance, whether valid or not, covering any of such

property. The insured shall include in the proof of loss a copy of all descriptions and schedules in all policies. Upon the companies' request, the insured shall furnish verified plans and specifications of any such property. The insured, as often as may be reasonably required, shall exhibit to any person designated by the companies any of such property, and submit to examinations under oath by any person named by the companies and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, records, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the companies or their representatives, and shall permit extracts and copies thereof to be made.

**10 APPRAISAL — Coverage B** In case the insured and the companies shall fail to agree as to the amount of property damage, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire and, failing for fifteen days to agree upon such umpire, then, on request of the insured or the companies, such umpire shall be selected by a judge of a court of record in the state in which the property is located. The appraisers shall then appraise each item of property damage and, failing to agree, shall submit their differences only to the umpire. An award in writing, so itemized, of any two when filed with the companies shall determine the amount of property damage. Each appraiser shall be paid by the party selecting him and the expenses of the appraisal and umpire shall be paid by the parties equally. The companies shall not be held to have waived any of their rights by any act relating to appraisal.

**11 SUBROGATION** In the event of any payment under this policy, the companies shall be subrogated to all the insured's rights of recovery therefor against any person or organization, and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Prior to knowledge of bodily injury or property damage caused by the nuclear energy hazard the insured may waive in writing any right of recovery against any person or organization, but after such knowledge the insured shall not waive or otherwise prejudice any such right of recovery.

The companies hereby waive any rights of subrogation acquired against the United States of America or any of its agencies by reason of any payment under this policy.

The companies do not relinquish, by the foregoing provisions, any right to restitution from the insured out of any recoveries made by the insured on account of a loss covered by this policy of any amounts to which the companies would be entitled had such provisions, or any of them, not been included in this policy.

**12 OTHER INSURANCE** If the insurance afforded by this policy for loss or expense is concurrent with insurance afforded for such loss or expense by a Nuclear Energy Liability Policy (Facility Form) issued to the named insured by \_\_\_\_\_ hereinafter called "concurrent insurance," the companies shall not be liable under this policy for a greater proportion of such loss or expense than the limit of liability stated in the declarations of this policy bears to the sum of such limit and the limit of liability stated in the declarations of such concurrent policy.

If the insured has other valid and collectible insurance (other than such concurrent insurance or any other nuclear energy liability insurance issued by the companies or \_\_\_\_\_ to any person or organization) applicable to loss or expense covered by this policy, the insurance afforded by this policy shall be excess insurance over such other insurance; provided, with respect to any person who is not employed at and in connection with the facility, such insurance as is afforded by this policy for bodily injury to an employee of the insured arising out of and in the course of his employment shall be primary insurance under such other insurance.

**13 CHANGES** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the companies from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy executed by \_\_\_\_\_ on behalf of the companies.

**14 ASSIGNMENT** Assignment of interest by the named insured shall not bind the companies until their consent is endorsed hereon; if, however, the named insured shall die or be declared bankrupt or insolvent, this policy shall cover such insured's legal representative, receiver or trustee as an insured under this policy, but only with respect to his liability as such, and then only provided written notice of his appointment as legal

representative, receiver or trustee is given to the companies within ten days after such appointment.

**11 CANCELLATION** This policy may be canceled by the named insured by mailing to the companies and the United States Atomic Energy Commission written notice stating when, not less than thirty days thereafter, such cancellation shall be effective. This policy may be canceled by the companies by mailing to the named insured at the address shown in this policy and to the United States Atomic Energy Commission written notice stating when, not less than ninety days thereafter, such cancellation shall be effective; provided in the event of non-payment of premium or if the operator of the facility, as designated in the declarations, is replaced by another person or organization, this policy may be canceled by the companies by mailing to the named insured at the address shown in this policy and to the United States Atomic Energy Commission written notice stating when, not less than thirty days thereafter, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the companies shall be equivalent to mailing.

Upon termination or cancellation of this policy, other than as of the end of December 31 in any year, the earned premium for the period this policy has been in force since the preceding December 31 shall be computed in accordance with the following provisions:

- (a) if this policy is terminated, pursuant to Condition 3, by reason of the exhaustion of the limit of the companies' liability, all premium theretofore paid or payable shall be fully earned;
- (b) if the named insured cancels, the earned premium for such period shall be computed in accordance with the customary annual short rate table and procedure, provided if the named insured cancels after knowledge of bodily injury or property damage caused by the nuclear energy hazard, all premiums theretofore paid or payable shall be fully earned;
- (c) if the companies cancel, the earned premium for such period shall be computed pro rata.

Premium adjustment, if any, may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

**16 COMPANY REPRESENTATION**

- (a) Any notice, sworn statement or proof of loss which may be required by the provisions of this policy may be given to any one of the companies, and such notice, statement or proof of loss so given shall be valid and binding as to all companies.

**IN WITNESS WHEREOF**, each of the subscribing companies has caused this policy to be executed and attested on its behalf by the \_\_\_\_\_ of \_\_\_\_\_ and duly countersigned on the declarations page by an authorized representative.

(b) In any action or suit against the companies, service of process may be made on any one of them, and such service shall be deemed valid and binding service on all companies.

(c) \_\_\_\_\_ is the agent of the companies with respect to all matters pertaining to this insurance. All notices or other communications required by this policy to be given to the companies may be given to such agent, at its office at \_\_\_\_\_ with the same force and effect as if given directly to the companies. Any requests, demands or agreements made by such agent shall be deemed to have been made directly by the companies.

**AUTHORIZATION OF NAMED INSURED** Except with respect to compliance with the obligations imposed on the insured by Conditions 5, 6, 7, 8, 9, 10 and 11 of this policy, the named insured is authorized to act for every other insured in all matters pertaining to this insurance. **17**

**CHANGES IN SUBSCRIBING COMPANIES AND IN THEIR PROPORTIONATE LIABILITY** By acceptance of this policy the named insured agrees that the members of \_\_\_\_\_ liable under this policy, and the proportionate liability of each such member, may change from year to year, and further agrees that regardless of such changes: **18**

- (1) each company subscribing this policy upon its issuance shall be liable only for its stated proportion of any obligation assumed or expense incurred under this policy because of bodily injury or property damage caused, during the period from the effective date of this policy to the close of December 31 next following, by the nuclear energy hazard; for each subsequent calendar year, beginning January 1 next following the effective date of this policy, the subscribing companies and the proportionate liability of each such company shall be stated in an endorsement issued to form a part of this policy, duly executed and attested by the \_\_\_\_\_ on behalf of each such company, and mailed or delivered to the named insured;
- (2) this policy shall remain continuously in effect from the effective date stated in the declarations until terminated in accordance with Condition 3 or Condition 13;
- (3) neither the liability of any company nor the limit of liability stated in the declarations shall be cumulative from year to year.

**DECLARATIONS** By acceptance of this policy the named insured agrees that the statements in the declarations are the agreements and representations of the named insured, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements between the named insured and the companies or any of their agents relating to this insurance. **19**

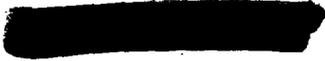
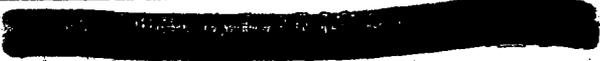
For the subscribing companies

By \_\_\_\_\_

**SUBSCRIBING COMPANIES**

**PROPORTION OF 100%**

Appendix "A" to  
Enclosure B



Nuclear Energy Liability Policy No. \_\_\_\_\_  
(Facility Form)

DECLARATIONS

Item 1. Named Insured \_\_\_\_\_

Address \_\_\_\_\_  
(No. Street Town or City State)

Item 2. Policy Period: Beginning at 12:01 A.M. on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and continuing through the effective date of the cancelation or termination of this policy, standard time at the address of the named insured as stated herein.

Item 3. Description of the Facility:

Location \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Type \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

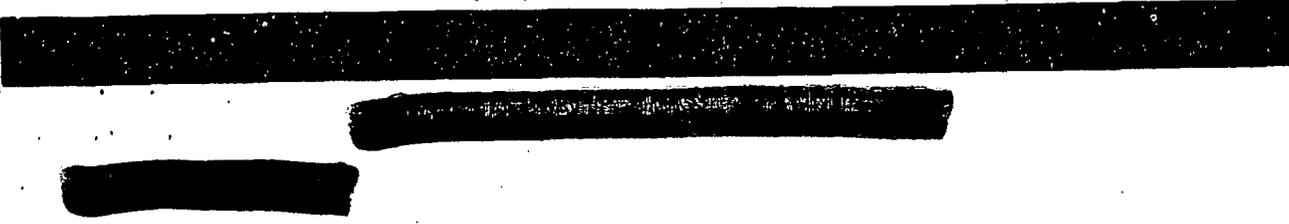
The Operator of the facility is \_\_\_\_\_

Item 4. The limit of the companies' liability is \$ \_\_\_\_\_ subject to all the terms of this policy having reference thereto.

Item 5. Advance Premium \$ \_\_\_\_\_

Item 6. These declarations and the schedules forming a part hereof give a complete description of the facility, insofar as it relates to the nuclear energy hazard, except as noted \_\_\_\_\_  
\_\_\_\_\_

Date of Issue \_\_\_\_\_, 19\_\_\_\_. Countersigned by \_\_\_\_\_  
Authorized Representative



**NUCLEAR ENERGY LIABILITY POLICY (FACILITY FORM)**

**AMENDMENT OF TRANSPORTATION COVERAGE  
(Indemnified Nuclear Facility)**

It is agreed that the definition of "insured shipment" in Insuring Agreement III is amended to read:

*"insured shipment"* means a shipment of source material, special nuclear material, spent fuel or waste, herein called "material," (1) to the facility from any location except an indemnified nuclear facility, but only if the transportation of the material is not by predetermination to be interrupted by removal of the material from a transporting conveyance for any purpose other than the continuation of its transportation, or (2) from the facility to any other location, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation."

Effective Date of this Endorsement \_\_\_\_\_ To form a part of Policy No. \_\_\_\_\_

Issued to \_\_\_\_\_

Date of Issue \_\_\_\_\_

For the Subscribing Companies

By \_\_\_\_\_

Endorsement No. \_\_\_\_\_

Countersigned by \_\_\_\_\_

ENCLOSURE "C"

ATOMIC ENERGY COMMISSION

TO CFR Part 1407

FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

The following proposed amendments are intended to establish the form of indemnity agreement which the Commission would execute with licensees furnishing insurance policies as proof of financial protection (Appendix "B"); and to establish the form of indemnity agreement which the Commission would enter into with licensees furnishing proof of financial protection in the form of the licensee's resources (Appendix "C"). The forms of indemnity agreement which the Commission will enter into with non-private education institutes and federal government agencies are in preparation.

The revised proposed form of indemnity agreement contained in Appendix "B" will be entered into by the Commission with licensees who furnish proof of financial protection in the form of the insurance policy in Appendix "A" <sup>Section 140.75</sup> ~~to Enclosure "B"~~. The principal changes in this form of indemnity agreement as compared with that published for public comment on August 28, 1958 and May 1, 1959 include the following:

1. The new form of indemnity agreement includes common occurrence provisions (Article I, par. 3; Article II, par. 7; Article III, par. 4) which are similar to the common occurrence provisions in the NELIA and MAELU insurance policy (Appendix "A", <sup>Section 140.75</sup> ~~to Enclosure "B"~~). Inclusion of the common occurrence provision in the indemnity agreement goes far towards eliminating a gap in protection which might otherwise exist.

[REDACTED]

[REDACTED]

The common occurrence provisions in the indemnity agreement do not fully eliminate the gap in coverage which may result from a "common occurrence." A remaining possible gap is due to the fact that, although the Commission's obligations under the common occurrence provisions begin at an amount equal to the sum of all applicable insurance required under the regulations or \$60,000,000, whichever is lower, NELIA and MAELU limit their responsibility to the capacity of their respective pools; that is, if all of the insurance policies applicable to the common occurrence are issued by one of the syndicates, the obligation of the insurers would not exceed the capacity of the particular syndicate (\$16,500,000 in the case of NELIA or \$13,500,000 in the case of MAELU).

2. Provisions are included (Article I, par. 4(c)) to protect against double coverage in the event a nuclear incident occurs in transportation of nuclear material between two indemnified licensed facilities. Under these provisions, the shipper's agreement would be applicable and the consignee's agreement would not be applicable.

Parenthetically it may be noted that a principal purpose of provisions covering transportation "to the location" is to cover shipments of nuclear fuel directly from a fuel element fabricator's plant to the site of the reactor in which the elements will be used as fuel.

3. Licensees furnishing proof of financial protection in the form of their own resources are required "to indemnify and hold harmless all persons indemnified as their interest may appear from public liability . . ." This obligation includes coverage of liability for damage to on-site property. Because the form of NELIA - MAELU policy does not cover such liability, the indemnity agreement requires licensees furnishing the policies as financial protection to indemnify any person against liability for damage to on-site property (Article II, par. 2(b)).

On April 8, 1959 the Commission recommended to the Congress that the indemnity provisions of the Atomic Energy Act of 1954 (Section 170) be amended to eliminate coverage of liability for damage to so called "site" property. If the recommended amendment is enacted, paragraph

[REDACTED]

[REDACTED]

4. Under the Atomic Energy Act of 1954, as amended, the Commission is required to indemnify against damage to property of persons indemnified, provided that such property is covered under the terms of the financial protection and is not located at the site of, and used in connection with, the activity where the nuclear incident occurs. The financial protection provided by the NELIA - MAELU Policy form covers damage to property of persons indemnified only if the property is away from the site. The form of indemnity agreement in Appendix "B" has been clarified to exclude coverage of damage to on-site property of persons liable for the nuclear incident (Article III, par. 2).

5. A provision has been added to the indemnity agreement (Paragraph b. of Item 2 of the Attachment thereto) under which the Commission would fill a "gap" between the financial protection and the Commission's indemnity obligation, which results from payments made by the insurers under a nuclear energy liability insurance policy. The provision includes a "floor", so that the Commission obligation under this provision would not go below \$1 million. In the event that the licensee does not obtain reinstatement of the amount of financial protection within ninety days after the date of a payment under the policy, a provision has been added under which the Commission may issue an order requiring the licensee to furnish financial protection in another form (Article II, par. 2(a)).

The changes described above with respect to Appendix "B", have been incorporated, as appropriate, in Appendix "C".

Notice is hereby given that the Commission is considering adoption of the following amendments. All interested persons who desire to submit written comments and suggestions for consideration in connection with the proposed amendments should send them to the United States Atomic Energy Commission, Washington 25, D. C., Attention: Director, Division of Licensing and Regulation, within

[REDACTED]

[REDACTED]

[REDACTED]

sixty days after publication of this notice in the Federal Register. Comments received after that period will be considered if it is practicable to do so, but assurance of consideration can not be given except as to comments sent to the Director within the period specified.

1. Amend Section 140.20 (b) to read as follows:

(1) The general form of indemnity agreement to be entered into by the Commission with licensees who furnish financial protection in the form of the nuclear energy liability insurance policy set forth in Appendix "A" is contained in Appendix "B". The general form of indemnity agreement to be entered into by the Commission with licensees who furnish financial protection in the form specified in Section 140.14 (a) (2) is set forth in Appendix "C".

(2) The form of indemnity agreement to be entered into by the Commission with any particular licensee under this part shall contain such modifications of the applicable form in Appendices "B" and "C", as are provided for in applicable licenses, regulations or orders of the Commission.

(3) Each licensee who has executed an indemnity agreement under this part shall enter into such agreements amending such indemnity agreement as are required by applicable licenses, regulations or orders of the Commission.

2. The following Appendix "B" is added:

APPENDIX "B" TO ENCLOSURE "C"

This indemnity agreement # \_\_\_\_\_ is entered into by and between the \_\_\_\_\_ (hereinafter referred to as the "licensee") and the United States Atomic Energy Commission (hereinafter referred to as the "Commission") pursuant to subsection 170 c. of the Atomic Energy Act of 1954, as amended, (hereinafter referred to as "the Act").

ARTICLE I

As used in this agreement,

1. "Nuclear reactor," "byproduct material," "person," "financial protection," "source material," and "special nuclear material" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission;

2. "Amount of financial protection" means the amount specified in Item 2 of the Attachment annexed hereto.

3. (a) "Nuclear incident" means any occurrence or series of occurrences at the location or in the course of transportation causing bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of the radioactive material.

(b) Any occurrence or series of occurrences causing bodily injury, sickness, disease or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive or other hazardous properties of

1. the radioactive material discharged or dispersed from the location over a period of days, weeks, months or longer and also arising out of such properties of other material defined as "the radioactive material"

[REDACTED]

[REDACTED]

[REDACTED]

in any other agreement or agreements entered into by the Commission under subsection 170 c. of the Act and so discharged or dispersed from "the location" as defined in any such other agreement, or

- ii. the radioactive material in the course of transportation and also arising out of such properties of other material defined in any other agreement entered into by the Commission pursuant to subsection 170 c. of the Act as "the radioactive material" and which is in the course of transportation

shall be deemed to be a common occurrence. A common occurrence shall be deemed to constitute a single nuclear incident.

4. "In the course of transportation" means in the course of transportation within the United States, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:

- (a) with respect to transportation of the radioactive material to the location, such transportation is not by pre-determination to be interrupted by the removal of the material from the transporting conveyance for any purpose other than the continuation of such transportation to the location or temporary storage incidental thereto;
- (b) the transportation of the radioactive material from the location shall be deemed to end when the radioactive material is removed from the transporting conveyance for any purpose other than the continuation of transportation or temporary storage incidental thereto;
- (c) "in the course of transportation" as used in this agreement shall not include transportation of the radioactive material to the location if the material

[REDACTED]

[REDACTED]

[REDACTED]

is also "in the course of transportation" from any other "location" as defined in any other agreement entered into by the Commission pursuant to subsection 170 c. of the Act.

5. "Person indemnified" means the licensee and any other person who may be liable for public liability.

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident, except (1) claims under state or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed at the location and in connection with the licensee's possession, use or transfer of the radioactive material; and (2) claims arising out of an act of war.

7. "The location" means the location described in Item 4 of the Attachment hereto.

8. "The radioactive material" means source, special nuclear, and byproduct material which (1) is used or to be used in, or irradiated by the nuclear reactor or reactors subject to the license or licenses designated in the Attachment hereto, or (2) which is produced as the result of operation of said reactor(s).

9. "United States" when used in a geographical sense includes all Territories and possessions of the United States, the Canal Zone and Puerto Rico.

## ARTICLE II

1. At all times during the term of the license or licenses designated in Item 3 of the Attachment hereto, the licensee will maintain financial protection in the amount specified in Item 2 of the Attachment and in the form of the nuclear energy liability insurance policy designated in the Attachment. If more than one license is designated in Item 3 of the Attachment, the licensee agrees to maintain such financial protection until the end of the term of that license which will be the last to expire. The

[REDACTED]

[REDACTED]

licensee shall, notwithstanding the expiration, termination, modification, amendment, suspension or revocation of any license or licenses designated in Item 3 of the Attachment, maintain such financial protection in effect until all the radioactive material has been removed from the location and transportation of the radioactive material from the location has been completed as provided in paragraph 4, Article I, or until the Commission authorizes the termination or the modification of such financial protection. The Commission will not unreasonably withhold such authorization.

2. (a) Upon the occurrence of any event which reduces the limit of liability provided under the said policy, the licensee will promptly apply to his insurers for reinstatement of the amount specified in Item 2 of the Attachment (without reference to paragraph b. of Item 2) and will make all reasonable efforts to obtain such reinstatement. In the event that the licensee has not obtained reinstatement of such amount within ninety days after the date of such reduction, the Commission may issue an order requiring the licensee to furnish financial protection for such amount in another form.

(b) The licensee undertakes and agrees to indemnify and hold harmless all persons indemnified, as their interest may appear, from public liability for damage to property which is at the location.

3. The licensee agrees that it will hold the United States and the Commission harmless from any damages resulting from the use or possession of special nuclear material by the licensee.

4. The obligations of the licensee under paragraphs 2 (b) and 3 of this Article, together with any public liability satisfied by the insurers under the policy or policies designated in the Attachment hereto, shall not in the aggregate exceed the amount

[REDACTED]

[REDACTED]

[REDACTED]

of financial protection with respect to any nuclear incident, including the reasonable costs of investigating and settling claims and defending suits for damage.

5. The obligations of the licensee under paragraphs 2 (b) and 3 of this Article shall apply only with respect to nuclear incidents occurring during the term of the license designated in Item 3 of the Attachment. If more than one license is designated in Item 3 of the Attachment, the obligations of the licensee under paragraphs 2 (b) and 3 of this Article shall apply only with respect to nuclear incidents occurring prior to the end of the term of that license which is the last to expire. The obligations of the licensee under paragraphs 2 (b) and 3 of this Article shall not apply with respect to nuclear incidents occurring prior to the effective date of this agreement as specified in the Attachment.

6. Upon the expiration or revocation of any license designated in Item 3 of the Attachment, the Commission will enter into an appropriate amendment of this agreement with the licensee reducing the amount of financial protection required under this Article; provided, that the licensee is then entitled to a reduction in the amount of financial protection under applicable Commission regulations and orders.

7. With respect to a common occurrence, if the sum of the amounts specified in Item 2 of the Attachment hereto and the Attachments annexed to all other applicable agreements exceeds \$60,000,000, the obligations of the licensee under this agreement shall not exceed a greater proportion of \$60,000,000 than the amount specified in Item 2 of the Attachment hereto bears to the sum of such amount and the amounts specified in Item 2 of the Attachments annexed to all other applicable agreements. As used in this paragraph, and subparagraph 4 (b), Article III, "other

[REDACTED]

[REDACTED]

[REDACTED]

applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170 c. of the Act in which agreement the nuclear incident is defined as a "common occurrence."

8. The obligations of the licensee under this Article shall not be affected by any failure or default on the part of the Commission or the Government of the United States to fulfill any or all of its obligations under this agreement. Bankruptcy or insolvency of any person indemnified other than the licensee, or the estate of any person indemnified other than the licensee, shall not relieve the licensee of any of his obligations hereunder.

#### ARTICLE III

1. The Commission undertakes and agrees to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability.

2. With respect to damage caused by a nuclear incident to property of any person legally liable for the nuclear incident, other than property which is located at the location, the Commission agrees to pay to such person those sums which the Commission would have obligated to pay under this agreement if such property had belonged to another. The obligation of the Commission under this paragraph 2 does not apply to property damage due to neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident.

3. The Commission agrees to indemnify and hold harmless the licensee, and other persons indemnified as their interest may appear, from the reasonable costs of investigating, settling and defending claims for public liability.

4. (a) The obligations of the Commission under this Article shall apply only with respect to such public liability, such

[REDACTED]

[REDACTED]

[REDACTED]

damage to property of persons legally liable for the nuclear incident, and such reasonable costs described in paragraph 3 of this Article as in the aggregate exceed the amount of financial protection:

(b) With respect to a common occurrence, the obligations of the Commission under this Article shall apply only with respect to such public liability, such damage to property of persons legally liable for the nuclear incident, and to such reasonable costs described in paragraph 3 of this Article, as in the aggregate exceed whichever of the following is lower: (1) the sum of the amounts specified in Item 2 of the Attachment hereto and the Attachments annexed to all other applicable agreements; or (2) \$60,000,000.

5. The obligations of the Commission under this Article shall apply only with respect to nuclear incidents occurring during the term of the license designated in Item 3 of the Attachment. If more than one license is designated in Item 3 of the Attachment the obligations of the Commission under this Article shall apply only with respect to nuclear incidents occurring prior to the end of the term of that license which is the last to expire. The obligations of the Commission under this Article shall not apply with respect to nuclear incidents occurring prior to the effective date of this agreement as specified in the Attachment.

6. The obligations of the Commission under this and all other agreements and contracts to which the Commission is a party shall not in the aggregate exceed \$500,000,000 with respect to any nuclear incident.

7. The obligations of the Commission under this Article, except to the licensee for damage to property of the licensee, shall not be affected by any failure on the part of the licensee to fulfill its obligations under this agreement. Bankruptcy or

[REDACTED]

[REDACTED]

[REDACTED]

insolvency of the licensee or any other person indemnified or of the estate of the licensee or any other person indemnified shall not relieve the Commission of any of its obligations hereunder.

ARTICLE IV

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

2. Neither this agreement nor any interest therein nor claim thereunder may be assigned or transferred without the approval of the Commission.

ARTICLE V

The parties agree that they will enter into appropriate amendments of this agreement to the extent that such amendments are required pursuant to the Atomic Energy Act of 1954, as amended, or licenses, regulations or orders of the Commission.



ARTICLE VI

The licensee agrees to pay to the Commission such fees as are established by the Commission pursuant to regulation or order.



UNITED STATES ATOMIC ENERGY COMMISSION

Indemnity Agreement No. \_\_\_\_\_

ATTACHMENT

Item 1. Licensee \_\_\_\_\_

Address \_\_\_\_\_

Item 2.a. Amount of Financial Protection \_\_\_\_\_

b. With respect to any nuclear incident, the amount specified in this Item 2 of this Attachment shall be deemed to be reduced to the extent that any payment made by the insurer or insurers under a policy or policies specified in Item 5 of this Attachment reduces the aggregate amount of such insurance policies below \$ \_\_\_\_\_; provided that (1) the amount specified in this item shall in no event be deemed to be reduced to less than \$1 million; and (2) the amount specified in this item shall not be deemed to be reduced to an amount less than the aggregate amount of insurance available for such nuclear incident under all policies specified in Item 5 of this Attachment.

Item 3. License Number or Numbers \_\_\_\_\_

Item 4. Location \_\_\_\_\_

Item 5. Insurance Policy No.(s) \_\_\_\_\_

The Indemnity Agreement designated above, of which this Attachment is a part, is effective as of \_\_\_\_\_ M., on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, and shall

[REDACTED]

[REDACTED]

[REDACTED]

continue until the effective date of the expiration or termination of the agreement pursuant to the Atomic Energy Act of 1954, as amended, and applicable regulations or orders of the Commission.

FOR THE UNITED STATES ATOMIC ENERGY COMMISSION

By \_\_\_\_\_

FOR THE \_\_\_\_\_  
(Name of Licensee)

By \_\_\_\_\_

Dated at Germantown, Maryland  
the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

3. The following Appendix "C" is added:

APPENDIX "C" TO ENCLOSURE "A"

This indemnity agreement # \_\_\_\_\_ is entered into by and between the \_\_\_\_\_ (hereinafter referred to as the "licensee") and the United States Atomic Energy Commission (hereinafter referred to as the "Commission") pursuant to subsection 170 c. of the Atomic Energy Act of 1954, as amended, (hereinafter referred to as "the Act").

ARTICLE I

As used in this agreement,

1. "Nuclear reactor," "byproduct material," "person," "financial protection," "source material," and "special nuclear material" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission;

2. "Amount of financial protection" means the amount specified in Item 2 of the Attachment annexed hereto;

3. (a) "Nuclear incident" means any occurrence or series of occurrences at the location or in the course of transportation causing bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of the radioactive material.

(b) Any occurrence or series of occurrences causing bodily injury, sickness, disease or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive or other hazardous properties of

1. the radioactive material discharged or dispersed from the location over a period of days, weeks, months

[REDACTED]

[REDACTED]

[REDACTED]

or longer and also arising out of such properties of other material defined as "the radioactive material" in any other agreement or agreements entered into by the Commission under subsection 170 c. of the Act and so discharged or dispersed from "the location" as defined in any such other agreement, or

11. the radioactive material in the course of transportation and also arising out of such properties of other material defined in any other agreement entered into by the Commission pursuant to subsection 170 c. of the Act as "the radioactive material" and which is in the course of transportation

shall be deemed to be a common occurrence. A common occurrence shall be deemed to constitute a single nuclear incident.

4. "In the course of transportation" means in the course of transportation within the United States, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:

- (a) with respect to transportation of the radioactive material to the location, such transportation is not by pre-determination to be interrupted by the removal of the material from the transporting conveyance for any purpose other than the continuation of such transportation to the location or temporary storage incidental thereto;
- (b) the transportation of the radioactive material from the location shall be deemed to end when the radioactive material is removed from the transporting conveyance for any purpose other than the continuation of transportation or temporary storage incidental thereto;

(c) "in the course of transportation" as used in this agreement shall not include transportation of the radioactive material to the location if the material is also "in the course of transportation" from any other "location" as defined in any other agreement entered into by the Commission pursuant to subsection 170 c. of the Act.

5. "Person indemnified" means the licensee and any other person who may be liable for public liability.

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident, except (1) claims under state or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed at the location and in connection with the licensee's possession, use or transfer of the radioactive material; and (2) claims arising out of an act of war.

7. "The location" means the location described in Item 4 of the Attachment hereto.

8. "The radioactive material" means source, special nuclear, and byproduct material which (1) is used or to be used in, or irradiated by, the nuclear reactor or reactors subject to the license or licenses designated in the Attachment hereto, or (2) which is produced as the result of operation of said reactor(s).

9. "United States" when used in a geographical sense includes all Territories and possessions of the United States, the Canal Zone and Puerto Rico.

#### ARTICLE II

1. The licensee undertakes and agrees to indemnify and hold harmless all persons indemnified, as their interest may appear, from public liability.

[REDACTED]

[REDACTED]

[REDACTED]

2. With respect to damage caused by a nuclear incident to property of any person legally liable for the incident, the licensee agrees to pay to such person those sums which such person would have been obligated to pay if such property had belonged to another; provided, that the obligation of the licensee under this paragraph 2 does not apply with respect to:

- (a) Property which is located at the location and used in connection with the licensee's possession, use or transfer of the radioactive material;
- (b) Property damage due to neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident.

3. The licensee agrees that it will hold the United States and the Commission harmless from any damages resulting from the use or possession of special nuclear material by the licensee.

4. The obligations of the licensee under paragraphs 1, 2, and 3 of this Article shall not in the aggregate exceed the amount of financial protection with respect to any nuclear incident, including the reasonable costs of investigating and settling claims and defending suits for damage.

5. The obligations of the licensee under paragraphs 1, 2, and 3 of this Article shall apply only with respect to nuclear incidents occurring during the term of the license designated in Item 3 of the Attachment. If more than one license is designated in Item 3 of the Attachment, the obligations of the licensee under paragraphs 1, 2, and 3 of this Article shall apply only with respect to nuclear incidents occurring prior to the end of the term of that license which is the last to expire. The

[REDACTED]

[REDACTED]

obligations of the licensee under paragraphs 1, 2, and 3 of this Article shall not apply with respect to nuclear incidents occurring prior to the effective date of this agreement as specified in the Attachment.

6. Upon the expiration or revocation of any license designated in Item 3 of the Attachment, the Commission will enter into an appropriate amendment of this agreement with the licensee reducing the amount of financial protection required under this Article; provided, that the licensee is then entitled to a reduction in the amount of financial protection under applicable Commission regulations and orders.

7. With respect to a common occurrence, if the sum of the amounts specified in Item 2 of the Attachment hereto and the Attachments annexed to all other applicable agreements exceeds \$60,000,000, the obligations of the licensee under this agreement shall not exceed a greater proportion of \$60,000,000 than the amount specified in Item 2 of the Attachment hereto bears to the sum of such amount and the amounts specified in Item 2 of the Attachments annexed to all other applicable agreements. As used in this paragraph, and in subparagraph 4 (b), Article III, "other applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170 c. of the Act in which agreement the nuclear incident is defined as a "common occurrence".

8. The obligations of the licensee under this Article shall not be affected by any failure or default on the part of the Commission or the Government of the United States to fulfill any or all of its obligations under this agreement. Bankruptcy or insolvency of any person indemnified other than the licensee, or the estate of any person indemnified other than the licensee, shall not relieve the licensee of any of his obligations hereunder.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE III

1. The Commission undertakes and agrees to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability.

2. With respect to damage caused by a nuclear incident to property of any person legally liable for the nuclear incident, other than property which is located at the location and used in connection with the licensee's possession, use or transfer of the radioactive material, the Commission agrees to pay to such person those sums which the Commission would have been obligated to pay under this agreement if such property had belonged to another. The obligation of the Commission under this paragraph 2 does not apply to property damage due to neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident.

3. The Commission agrees to indemnify and hold harmless the licensee, and other persons indemnified as their interest may appear, from the reasonable costs of investigating, settling and defending claims for public liability.

4. (a) The obligations of the Commission under this Article shall apply only with respect to such public liability, such damage to property of persons legally liable for the nuclear incident, and such reasonable costs described in paragraph 3 of this Article as in the aggregate exceed the amount of financial protection.

(b) With respect to a common occurrence, the obligations of the Commission under this Article shall apply only with respect to such public liability, such damage to property of persons legally liable for the nuclear incident and to such

reasonable costs described in paragraph 3 of this Article as in the aggregate exceed whichever of the following is lower: (1) sum of the amounts specified in Item 2 of the Attachment hereto and the Attachments annexed to all other applicable agreements; or (2) \$60,000,000.

5. The obligations of the Commission under this Article shall apply only with respect to nuclear incidents occurring during the term of the license designated in Item 3 of the Attachment. If more than one license is designated in Item 3 of the Attachment the obligations of the Commission under this Article shall apply only with respect to nuclear incidents occurring prior to the end of the term of that license which is the last to expire. The obligations of the Commission under this Article shall not apply with respect to nuclear incidents occurring prior to the effective date of this agreement as specified in the Attachment.

6. The obligations of the Commission under this and all other agreements and contracts to which the Commission is a party shall not in the aggregate exceed \$500,000,000 with respect to any nuclear incident.

7. Obligations of the Commission under this Article, except to the licensee for damage to property of the licensee, shall not be affected by any failure on the part of the licensee to fulfill its obligations under this agreement. Bankruptcy or insolvency of the licensee or any other person indemnified or of the estate of the licensee or any other person indemnified shall not relieve the Commission of any of its obligations hereunder.

#### ARTICLE IV

1. When the Commission determined that the United States will probably be required to make indemnity payments under the

[REDACTED]

[REDACTED]

[REDACTED]

provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

2. Neither this agreement nor any interest therein nor claim thereunder may be assigned or transferred without the approval of the Commission.

#### ARTICLE V

The parties agree that they will enter into appropriate amendments of this agreement to the extent that such amendments are required pursuant to the Atomic Energy Act of 1954, as amended, or licenses, regulations or orders of the Commission.

#### ARTICLE VI

The licensee agrees to pay to the Commission such fees as are established by the Commission pursuant to regulation or order.

UNITED STATES ATOMIC ENERGY COMMISSION

Indemnity Agreement No. \_\_\_\_\_

ATTACHMENT

- Item 1. Licensee \_\_\_\_\_  
Address \_\_\_\_\_
- Item 2. Amount of Financial Protection \_\_\_\_\_  
\_\_\_\_\_
- Item 3. License Number or Numbers \_\_\_\_\_
- Item 4. Location \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Indemnity Agreement designated above, of which this Attachment is a part, is effective as of \_\_\_\_\_ M., on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and shall continue until the effective date of the expiration or termination of the agreement pursuant to the Atomic Energy Act of 1954, as amended, and applicable regulations or orders of the Commission.

FOR THE UNITED STATES ATOMIC ENERGY COMMISSION

BY \_\_\_\_\_

FOR THE \_\_\_\_\_  
(Name of Licensee)

BY \_\_\_\_\_

Dated at Germantown, Maryland, the  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

ENCLOSURE "D"

SUMMARY OF PRINCIPAL PUBLIC COMMENTS CONCERNING THE NELIA-  
MAELU POLICY AND THE INDEMNITY AGREEMENT

The NELIA-MAELU Policy

1. Transportation coverage

Several organizations pointed out that the definition of "nuclear energy hazard" in the policy form published in August, 1958, excludes coverage of nuclear incidents occurring in the course of transportation to the reactor unless such transportation is from a facility owned by the United States.

Staff Judgment

The new form of policy now available from the NELIA-MAELU syndicates eliminates this gap. It provides coverage of nuclear incidents occurring in the course of transportation of nuclear materials to the reactor from any location, without regard to whether the transportation originated at a Government facility.

2. Two-year limitation of liability

Some comments noted that the 1958 policy form provided that it applies only to bodily injury or property damage for which written claim is made against the insured not later than two years after the end of the policy period. This provision may result in exclusion from coverage of a significant portion of the insured's liability. Suggestions were received that the insurance coverage should coincide with the applicable state statute of limitations, or, as an alternative that the two-year discovery period might be increased to ten years.

[REDACTED]

[REDACTED]

[REDACTED]

Staff Judgment

This matter has been discussed by the staff with the insurance syndicates on a number of occasions.

There does not appear to be any significant likelihood that the syndicates will extend the period. The syndicates insist that this is not a real problem unless the policy is cancelled and that the syndicates are not likely to cancel any policy without good cause. The problem will be dealt with in a separate staff paper.

3. Suspension

The policy form previously provided that insurance may be suspended after notification to the licensee of an unduly dangerous situation and twelve hours' notice to the Commission. Several representatives of the reactor industry considered this provision as permitting arbitrary action, possibly allowing the insurers to avoid substantial liability payments. A longer period of prior notice to the Commission and to the licensee was deemed desirable.

Staff Judgment

As indicated in Annex ~~"A"~~<sup>"B"</sup> to Enclosure ~~"A"~~<sup>"B"</sup> hereto, the new form of policy has increased the period of prior notice to assure at least 24 hours' notice to the Commission.

4. Common occurrence

Some comments observed that a potential gap in coverage could result from application of the "common occurrence" clause by which the insurers undertake to restrict their total liability for certain types of incidents where damage is from two or more covered facilities. Under this clause, the liability of insurers resulting from an occurrence or series

[REDACTED]

[REDACTED]

[REDACTED]

of occurrences involving two or more shipments of nuclear material in transit or dispersed from two or more reactor sites is limited to the capacity of the pools issuing the applicable insurance policies. In order to close this potential gap, it was suggested that the agreement also contain a "common occurrence" provision. Further discussion of this problem is contained in the statement of considerations in <sup>ENCLOSURE</sup> Annex "B" to Enclosure "A" hereto.

Staff Judgment

As suggested, the indemnity agreement in <sup>ENCLOSURE</sup> Annex "C" has been revised to include a common occurrence provision.

5. Subrogation

Several interested persons urged that the subrogation provision be deleted from the policy. The need for such a provision was questioned in light of the fact that coverage under the policy extends to any person liable for an insured incident.

Staff Judgment

All persons, other than agencies of the United States, legally liable for a covered nuclear incident are within the protection of the policy. The staff accordingly sees no loss of coverage resulting from the inclusion of such subrogation provisions in the policy. It should be noted that, after strong urging by the staff, the syndicates revised the subrogation provisions of previous form policies to exclude any right of subrogation against the United States.

Proposed AEC Indemnity Agreement

1. Effective date of indemnity

Several organizations suggested that, where receipt of fuel elements precedes the issuance of the license authorizing

[REDACTED]

[REDACTED]

the operation of the reactor, indemnity agreements and financial protection requirements should be effective as of the time elements are transported to the reactor site.

Staff Judgment

This suggestion has been adopted. The provisions of Section 140.13 of the amendments to Part 140 in AEC-R 29/7 are designed to provide coverage of the risks described.

2. Coverage of On-Site Property

Under the proposed indemnity agreement (Art. III, par. 1), coverage is provided for any legal liability (except for on-site employee claims under workmen's compensation or for war risk claims) arising out of a nuclear incident, including the liability of a supplier for damage to property at the reactor site.

Staff Judgment

The staff believes the above coverage is required by law. One of the proposed legislative amendments now before the JCAE and approved by the Commission in AEC 785/47 would authorize the elimination of coverage of liability for damage to on-site property used in connection with the operation of the reactor. The problem is minimized in the revised indemnity agreement, the "summary" section of this staff paper.

3. Possible gap following payments under NELIA-MAELU policy

The form of nuclear liability policy offered by NELIA-MAELU contains an aggregate-limit-of-liability provision; thus, any payment by the insurers reduces the coverage available to the licensee and his suppliers under the policy. Furthermore, there is no provision in the policies for automatic reinstatement of amounts paid under the policy. Concern was expressed that a gap might result between the amount of insurance

[REDACTED]

[REDACTED]

[REDACTED]

actually available under the policy and the amount of financial protection required to be maintained. Suggestions were made that the indemnity protection provided under the agreement be revised to fill this potential "gap".

Staff Judgment

The revised indemnity agreement in Annex ~~"B"~~<sup>"C"</sup> to Enclosure ~~"A"~~<sup>"B"</sup> contains provisions designed to permit the Commission's indemnity to fill the gap resulting from the aggregate limit of insurance approach taken by the insurers. A discussion of this gap and the proposed resolution thereof is contained in the "summary" section of this staff paper.

4. Holding the U.S. and the Commission harmless

Comments were received questioning the Commission's conclusion that licensees subject to the financial protection requirements of Part 140 remain subject to the "hold harmless provision" of subsection 53 e. (8) up to the amount of financial protection required.

In addition, it was suggested that the obligations of a licensee under subsection 53 e. (8) be clarified.

Staff Judgment

The staff believes that the above stated conclusion as to the Price-Anderson amendment to section 53 e. (8) of the Act is consistent with the intent of the Price-Anderson Act. Clarification of the provision might possibly be accomplished by amendment of the indemnity agreement. However, the staff believes that further consultation with the insurance syndicates is desirable to determine the extent of the coverage of their policies of the liability imposed on the licensee by section 53 e. (8) and any agency interpretation thereof.

[REDACTED]

[REDACTED]

[REDACTED]

5. Bankruptcy and insolvency clause

Suggestions were made that the indemnity agreement contain a bankruptcy and insolvency clause similar to that included in the NELIA-MAEIU policy. Under such a provision, the bankruptcy or insolvency of a person indemnified would not relieve the Commission or the licensee of its indemnity obligations. In the absence of such a provision, insolvency might have the effect of limiting liability to the assets of the licensee or of his insurer.

Staff Judgment

The revised form of indemnity agreement in Annex ~~"B"~~ to Enclosure ~~"A"~~ includes bankruptcy and insolvency clauses of the type described.

6. Investigation and settlement of claims

Comments suggested further coordination between the Commission and the insurers relative to claims settlement procedures. It was suggested that the duties of persons indemnified to the insurers and the Commission regarding the reporting of claims and cooperation in the settlement or litigation of claims be clarified. In addition, it was further suggested that the AEC should make direct payments of any claim once the validity of such claim is established, rather than requiring the persons liable to make payments in the first instance and then seek reimbursement of such payments from the Commission.

Staff Judgment

This problem of claims investigation and settlement procedures is under discussion by the staff with representatives of the insurance industry and the Department of Justice. Pending completion of these discussions, many of the provisions

[REDACTED]

[REDACTED]

[REDACTED]

relating to the investigation and settlement of claims contained in the 1958 proposed form of indemnity agreement have been deleted from the revised form of indemnity agreement set forth in Annex ~~"B"~~ <sup>Part 140 - "C"</sup> to Enclosure ~~"A"~~. Upon completion of the discussions with the insurers and the Department of Justice, the staff will propose amendments to Part 140 which will establish the obligations of the parties with respect to the investigation and settlement of claims.

ENCLOSURE "E"

AMENDMENTS TO THE ACT CURRENTLY PENDING BEFORE JCAE

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Subsection 11 u. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"u. The term 'public liability' means any legal liability arising out of or resulting from a nuclear incident, except: (i) claims under State or Federal Workmen's Compensation Acts of employees or persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii), whenever used in subsections 170 a., c. and k., claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. 'Public liability' also includes damage to property of persons indemnified: Provided, That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs."

SEC. 2 The following sentence is added at the end of subsection 170 c. of the Atomic Energy Act of 1954:

"Where the amount of financial protection maintained by the licensee in the form of liability insurance is reduced by reason of payment by the insurer of claims or costs of investigating and settling claims and defending suits for damage, the Commission may indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability in excess of the remaining financial protection or one million dollars, whichever is higher, arising from nuclear incidents occurring prior to the payment of such claims or costs or during such period of time, not to exceed 90 days, following such payment as the Commission determines will afford reasonable opportunity to furnish financial protection in the amount required."