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AEC-R 29/19

March 16, 1961

COPY NO. 43

ATOMIC ENERGY COMMISSION

AMENDMENTS TO 10 CFR PART 140 - FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

Note by the Secretary

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

W. B. McCool

Secretary

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B/4

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Enclosures to this paper filed in Bulky Package

[redacted]

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ATOMIC ENERGY COMMISSION

10 CFR, PART 140 - FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

Report to the Acting Director of Regulation by the Office of the General Counsel and the Division of Licensing and Regulation

THE PROBLEM

1. To consider (a) issuance of amendments to Part 140 adopting the form of indemnity agreements to be entered into with licensees (other than Federal agencies and non-profit educational institutions) required to furnish financial protection under that part of the Commission's regulations; and (b) issuance for public comment of similar agreements to be entered into with Federal agencies and non-profit educational institutions subject to Part 140.

SUMMARY

2. At Regulatory Meeting 63 on March 24, 1960, after consideration of AEC-R 29/9, the Commission approved a Notice of Rulemaking which was subsequently published in the Federal Register on April 7, 1960. Extensive comments were received on the forms of indemnity agreement to be entered into by the Commission with licensees (other than Federal agencies and non-profit educational institutions) subject to the financial protection requirements of Part 140. In addition, comments were received by staff at an industry advisory conference held on June 28, 1960, to consider the proposed forms of indemnity agreement.

Office of the General Counsel and the
Division of Licensing and Regulation

THE PROBLEM

1. To consider (a) issuance of amendments to Part 140 adopting the form of indemnity agreements to be entered into with licensees (other than Federal agencies and non-profit educational institutions) required to furnish financial protection under that part of the Commission's regulations; and (b) issuance for public comment of similar agreements to be entered into with Federal agencies and non-profit educational institutions subject to Part 140.

SUMMARY

2. At Regulatory Meeting 63 on March 24, 1960, after consideration of AEC-R 29/9, the Commission approved a Notice of Rulemaking which was subsequently published in the Federal Register on April 7, 1960. Extensive comments were received on the forms of indemnity agreement to be entered into by the Commission with licensees (other than Federal agencies and non-profit educational institutions) subject to the financial protection requirements of Part 140. In addition, comments were received by staff at an industry advisory conference held on June 28, 1960, to consider the proposed forms of indemnity agreement.

3. The proposed forms of indemnity agreement have been revised in light of the comments received. The revised forms

are set forth in the proposed regulatory amendments contained in Enclosure "B" to this paper. It should be noted that the indemnity agreements set forth in those amendments (Enclosure "B") contain two forms of indemnity agreements; one form to be entered into with licensees furnishing financial protection in the form of nuclear energy liability insurance; the other to be entered into with licensees furnishing financial protection in the form of their own resources. The statement of considerations to be published with these amendments identifies some of the major changes.

4. The forms of indemnity agreement in the regulatory amendments contained in Enclosure "B" do not apply to Federal agencies and non-profit educational institutions. In light of the form of amendments contained in Enclosure "B", Enclosure "C" contains proposed agreements to be entered into with Federal agencies and non-profit educational institutions. If approved by the Commission, they will be published in the Federal Register for public comment. The proposed agreements in Enclosure "C" incorporate the same general approach as those in Enclosure "B", with appropriate changes required to adapt them to the situations of the licensees with which they will be executed.

5. The insurance syndicates have objected to the provisions of Article IV. Enclosure "A" contains a discussion of this problem.

6. Enclosure "D" contains, for the convenience of the Commission, a "marked up" copy of the indemnity agreement in

B) contain two forms of indemnity agreements [illegible] entered into with licensees furnishing financial protection in the form of nuclear energy liability insurance; the other to be entered into with licensees furnishing financial protection in the form of their own resources. The statement of considerations to be published with these amendments identifies some of the major changes.

4. The forms of indemnity agreement in the regulatory amendments contained in Enclosure "B" do not apply to Federal agencies and non-profit educational institutions. In light of the form of amendments contained in Enclosure "B", Enclosure "C" contains proposed agreements to be entered into with Federal agencies and non-profit educational institutions. If approved by the Commission, they will be published in the Federal Register for public comment. The proposed agreements in Enclosure "C" incorporate the same general approach as those in Enclosure "B", with appropriate changes required to adapt them to the situations of the licensees with which they will be executed.

5. The insurance syndicates have objected to the provisions of Article IV. Enclosure "A" contains a discussion of this problem.

6. Enclosure "D" contains, for the convenience of the Commission, a "marked up" copy of the indemnity agreement in Appendix "B" to Enclosure "B", showing changes between the notice of proposed rule-making published in April, 1960, and the form recommended for final adoption by the Commission.

[redacted]

[redacted]

[redacted]

7. Enclosure "E" contains a summary of comments received in response to the notice of proposed rule-making published in April, 1960, together with a brief indication of action taken by the staff in preparing the recommended final form.

STAFF JUDGMENTS

8. The Division of Finance and Office of Public Information concur in the recommendation of this paper.

RECOMMENDATION

9. The Acting Director of Regulation recommends that the Atomic Energy Commission:

a. Approve the amendments to Part 140 contained in Enclosure "B" for publication in the Federal Register to become effective 30 days after the date of publication;

b. Approve publication for public comment of the proposed amendments to Part 140 in Enclosure "C" in conformity with the procedure which allows a sixty-day period after publication for filing written comments by interested persons;

c. Note that the JCAE will be advised by appropriate letter;

d. Note that a news release such as Enclosure "B" will be issued;

e. Note that after receipt of public comments on the proposed amendments in Enclosure "C", the staff will prepare and submit to the Commission amendments adopting final forms of indemnity agreements to be entered into with Federal agencies and non-profit educational institutions;

f. Note that this paper is unclassified.

taken by the Staff in preparing the recommended final form.

STAFF JUDGMENTS

8. The Division of Finance and Office of Public Information concur in the recommendation of this paper.

RECOMMENDATION

9. The Acting Director of Regulation recommends that the Atomic Energy Commission:

a. Approve the amendments to Part 140 contained in Enclosure "B" for publication in the Federal Register to become effective 30 days after the date of publication;

b. Approve publication for public comment of the proposed amendments to Part 140 in Enclosure "C" in conformity with the procedure which allows a sixty-day period after publication for filing written comments by interested persons;

c. Note that the JCAE will be advised by appropriate letter;

d. Note that a news release such as Enclosure "B" will be issued;

e. Note that after receipt of public comments on the proposed amendments in Enclosure "C", the staff will prepare and submit to the Commission amendments adopting final forms of indemnity agreements to be entered into with Federal agencies and non-profit educational institutions;

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[redacted]

[redacted]

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Enclosure to AEC R- 2919

[redacted]

[redacted]

ENCLOSURE "A"

DISCUSSION OF INSURANCE SYNDICATE OBJECTION TO ARTICLE IV

1. Following this Enclosure is a letter dated February 9, 1961, from Nuclear Energy Liability Insurance Association, (with a statement that counsel to MAELU agrees with the thoughts expressed in the letter) which sets forth the syndicate's reasons why they object to the provisions of Article IV (of Appendix "B" to Enclosure "B").

2. Under Article IV, when the Commission determines that the United States will probably be required to make indemnity payments under the agreement,* the Commission shall have the right to require Commission approval for the settlement or defense of any claim or action, which claim or action the licensee or the Commission may be required to indemnify under the agreement; and to appear on behalf of the licensee or other person indemnified, take charge of the action and settle or defend it.

3. The first ground of syndicate objection is legal. The syndicates claim that the Commission's entire rights in this matter are set forth in subsection 170 h. of the Act, which provides, among other things, that the indemnification agreement "shall provide" that,

> "...when the Commission makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General

1. Following this Enclosure is a letter dated February 9, 1961, from Nuclear Energy Liability Insurance Association, (with a statement that counsel to MAELU agrees with the thoughts expressed in the letter) which sets forth the syndicate's reasons why they object to the provisions of Article IV (of Appendix "B" to Enclosure "B").

2. Under Article IV, when the Commission determines that the United States will probably be required to make indemnity payments under the agreement,* the Commission shall have the right to require Commission approval for the settlement or defense of any claim or action, which claim or action the licensee or the Commission may be required to indemnify under the agreement; and to appear on behalf of the licensee or other person indemnified, take charge of the action and settle or defend it.

3. The first ground of syndicate objection is legal. The syndicates claim that the Commission's entire rights in this matter are set forth in subsection 170 h. of the Act, which provides, among other things, that the indemnification agreement "shall provide" that,

> "...when the Commission makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission shall collaborate with any person indemnified <u>and may approve the payment of any claim under the agreement of indemnification</u>, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action."

The syndicates argue, essentially, that the only claims which are "under" the agreement of indemnification are claims which

*i.e., when it appears that liability claims will exceed the amount of financial protection.

[redacted]

[redacted]

the United States is obligated to pay by virtue of the Commission's indemnity agreement; and that this specification in the statute excludes authority for the Commission to require its approval for payment of other claims.

4. The staff does not agree with the insurer's argument. In the first place, the agreement of indemnification deals not only with the obligations of the Commission but also with licensees' obligations. In the case of agreements entered into with licensees who furnish insurance as financial protection, the indemnity agreement requires the maintenance of insurance. In the case of licensees who rely upon their own resources as financial protection, the indemnity agreement (Appendix "C", Article II) sets forth the nature of the licensee's obligations to satisfy public liability claims up to the amount of financial protection. Consequently, in the staff's view the insurer's emphasis on the phrase "under the agreement of indemnification" is artificial and too narrow.

5. Moreover, it is clear from a reading of subsection 170 h., together with subsection 170 e., that Congress was concerned with the need for assuring orderly and fair handling of claims and actions within the general scope of Section 170. For this purpose, in addition to the Commission's general rule-making authority in subsection 161, subsection 170 h. specifically provides,

> "The agreement of indemnification may contain such terms as the Commission deems appropriate to carry out the purposes of this section."

payment of other claims.

4. The staff does not agree with the insurer's argument. In the first place, the agreement of indemnification deals not only with the obligations of the Commission but also with licensees' obligations. In the case of agreements entered into with licensees who furnish insurance as financial protection, the indemnity agreement requires the maintenance of insurance. In the case of licensees who rely upon their own resources as financial protection, the indemnity agreement (Appendix "C", Article II) sets forth the nature of the licensee's obligations to satisfy public liability claims up to the amount of financial protection. Consequently, in the staff's view the insurer's emphasis on the phrase "under the agreement of indemnification" is artificial and too narrow.

5. Moreover, it is clear from a reading of subsection 170 h., together with subsection 170 e., that Congress was concerned with the need for assuring orderly and fair handling of claims and actions within the general scope of Section 170. For this purpose, in addition to the Commission's general rule-making authority in subsection 161, subsection 170 h. specifically provides,

> "The agreement of indemnification may contain such terms as the Commission deems appropriate to carry out the purposes of this section."

6. The Commission's right to require Commission approval for the settlement or payment of claims and actions, and to take charge of the settlement and defense of claims and actions, will apply

[redacted]

under Article IV only "when the Commission determines that the United States will probably be required to make indemnity payments" under the agreement. Assuming, as we must, that the Commission makes such a determination reasonably on the facts before it, the insurers under an Appendix "E" agreement, and the licensee under an Appendix "C" agreement, will be essentially stake-holders. Under these circumstances, it does not appear proper to the staff to permit them to make payments to such claimants, or in such amounts, as the insurers or the licensees, as the case may be, see fit to make.

7. The insurer's representatives have argued strenuously to the staff at the meeting on January 27, 1961 (referred to in their letter) and in many previous meetings during the past several years, that the Commission may be subjected to political pressures to make higher settlements than would be warranted. Recognizing that such pressures may be brought to bear, the staff believes that the Commission and the Attorney General are as likely to resist those pressures, as insurers and licensees are likely to resist similar pressures to which they may be subject and the temptations which they will be under to accord favored treatment to favored claimants.

8. It should be emphasized that Article IV does not require Commission approval, but only reserves the right in the Commission to require its approval in such circumstances as the Commission believes appropriate.

9. This matter is discussed in the statement of considerations

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9. This matter is discussed in the statement of considerations to be published with the amendments.

Enclosure "A"

[redacted]

[redacted]

ANNEX TO ENCLOSURE "A"

Nuclear Energy Liability Insurance Association

60 John Street · New York 38, N. Y.

J. Dewey Dorsett
General Manager

Francis X. Boylan
Assistant General Manager

James B. Donovan
General Counsel

Governing Committee:
Aetna Casualty and Surety Company
Fidelity and Casualty Company of New York
Hartford Accident and Indemnity Company
Indemnity Insurance Company of North America
Maryland Casualty Company
Royal-Globe Insurance Group
St. Paul Fire and Marine Insurance Company
The Travelers Indemnity Company
United States Fidelity and Guaranty Company

February 9, 1961

Mr. Robert Lowenstein, Counsel
Division of Licensing & Regulation
U. S. Atomic Energy Commission
Washington 25, D. C.

Dear Mr. Lowenstein:

During the course of our discussion in Washington on January 27, 1961, Mr. McCullough and I indicated our opposition to Article IV, paragraph 1 of the proposed agreement to be entered into between the Atomic Energy Commission and indemnified commission licensees. Article IV, paragraph 1 provides:

> "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."

The paragraph apparently contemplates exercise of Commission control over claims and suits in areas where private insurance will be called upon to perform if the Commission determines that it will probably be required to make indemnity payments for other claims and suits arising out of the same occurrence. Subparagraph (a) specifically assumes the right to approve claims which the licensee "may be required to indemnify". Even though subparagraph (b) of the agreement, referring to the control of the defense of actions by the Commission, tracks the language of

Annex to

General Manager

Francis X. Boylan
Assistant General Manager

James B. Donovan
General Counsel

Maryland Casualty Company
Royal-Globe Insurance Group
St. Paul Fire and Marine Insurance Company
The Travelers Indemnity Company
United States Fidelity and Guaranty Company

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Annex to
Enclosure "A"

[redacted]

[redacted]

subsection (h) of Section 170 of the Atomic Energy Act as amended, the fact that subparagraph (a) makes reference to claims for which the licensee may be required to afford indemnity indicates that the Commission may be attempting to assume the control of actions even where the liabilities at issue will be covered by private insurance.

Legal Basis For Your Position

Unlike many problems which have arisen in connection with the implementation of indemnity afforded by the Price-Anderson Act, the rights and duties of the Commission with respect to claims are clearly spelled out in the Act. Subsection (h) of Section 170 provides:

> "h. The agreement of indemnification may contain such terms as the Commission deems appropriate to carry out the purposes of this section. Such agreement shall provide that, when the Commission makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission shall have final authority on behalf of the United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this Act. Such settlement may include reasonable expenses in connection with the claim incurred by the person indemnified." [Emphasis underscored.]

The proposed agreement does not restrict itself to the statutory grant of authority set forth above. The Act gives the Commission the right to collaborate with persons indemnified and "approve the payment of any claim under the agreement of indemnification". Any conceivable doubt as to whether the Act is referring to claims indemnified by the United States is removed by the last two sentences of subsection (h). The penultimate sentence gives the Commission final authority to approve settlement of "such claims" obviously referring to claims under the agreement of indemnification. The last sentence provides that "such settlement" may include reasonable expenses in connection with the claim incurred by the person indemnified. Obviously, the subsection can only refer to claims indemnified by the United States. The Commission would not reimburse such expenses in any other situation.

Further, we must also take issue with the thought you expressed the other day that you can rely on the general authority of the Commission to do what is necessary to implement the statutory indemnity. Such an agreement might have weight if the statute did not explicitly set forth your authority. Here the statute sets forth in detail the Commission's rights in the area. In the face of such detail, including the grant of a right to collaborate with any person indemnified, it cannot be assumed that the drafters were silent as to the rights of the Commission to control payments in the area of financial protection because they expected the Commission to rely on a general grant of authority.

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[redacted]

It is our conclusion that the Commission lacks the authority to exercise jurisdiction over claims in this area. As we indicated previously, it is also questionable as to just what purpose can be achieved by putting such a provision in the indemnity agreement since the area of insurer-Commission cooperation in the case of a big loss obviously must become the subject of a more detailed regulation or agreement at a later date. Such an assumption of right in the indemnity agreement does not alter the fundamental issue of statutory authority nor does it bind insurers since they are not party to the contract between the licensee and the Commission.

Practical Effect of Commission Interference With Company Claim Practices

The companies fully understand that an incident causing injury or damage likely to involve Government indemnity will require the closest type of cooperation. Nevertheless, widespread company claims experience indicates that a prompt evaluation and settlement of claims substantially reduces loss and expense payments. If, when handling claims from a sizeable nuclear incident, the companies are required to obtain Commission approval before settling claims the inevitable delay will result in increased claims costs and public dissatisfaction.

It should also be borne in mind that insurers are carefully scrutinized by state Insurance Departments with respect to their claims practices whenever question as to the propriety of their actions is raised. See Volume 4 of Examination of Insurance Companies (which was prepared by the New York State Insurance Department) at page 487 et seq. In view of this supervision and the drastic sanctions against insurance companies which are available to State Insurance Departments including revocation of a licensee to do business, it is quite safe to assume that companies will not abandon their present careful claim practices merely because claims are likely to exceed the aggregate limit of the nuclear policy applicable.

As indicated to you the other day, we think that the entire subject of claims handling should be handled by separate conferences and a separate agreement or regulation on the subject.

We would also like to reaffirm our offer to collaborate in every way possible with the Commission on the handling of claims. We do not think that the Commission should decide the amount of settlement we should pay nor do we think that the Commission has a right to take charge of a suit where our interests alone are involved. Nevertheless, we are perfectly willing to consult with the Commission on such matters. Indeed, as a demonstration of our willingness to cooperate, we are willing to voluntarily give the Commission a right to veto claims settlements by us as excessive assuming it is accompanied by reasonable conditions, details of which can be worked out at conferences between insurers and the Commission. Actually, since the only fear expressed by the Commission was that the insurers might be too liberal in settling claims where government indemnity might be called upon to perform, this offer to give the Commission veto power over payments deemed by them to be excessive would seem a sensible solution to the problem.

If there is any further information on this subject that you think would be helpful, I will be more than happy to try and get it for you.

Very truly yours,

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If there is any further information on this subject that you think would be helpful, I will be more than happy to try and get it for you.

Very truly yours,

/s/

DeRoy C. Thomas
Assistant General Manager

P.S. Ashley St. Clair, Counsel to MAELU has authorized me to say that he agrees with the thoughts expressed herein.

Annex to
Enclosure "A"

[redacted]

[redacted]

ENCLOSURE "B"

PART 140 - FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

The following amendments establish the form of indemnity agreement which the Commission will execute with licensees furnishing insurance policies as proof of financial protection (Sec. 140.76); and the form of indemnity agreement which the Commission will enter into with licensees furnishing proof of financial protection in the form of the licensees resources. (Sec. 140.77)

The Commission acknowledges with appreciation the numerous, helpful comments and suggestions which have been received from interested members of the public and participants in industry advisory conferences. These comments have been taken into consideration in adoption of these amendments.

Principal features of the form of indemnity agreement contained in Sec. 140.76, Appendix "B" include the following:

1. The form includes common occurrence provisions (Article I, par. 3; Article II, par. 6; Article III, par. 4) which are similar to the common occurrence provisions in the NELIA and MAELU insurance policy (Appendix "A", Section 140.75). Inclusion of the common occurrence provision in the indemnity agreement goes far towards eliminating a gap in protection which might otherwise exist.

The common occurrence provisions in the proposed indemnity agreement published for public comment in the Federal Register on April 7, 1960, 25 F. R. 2999, did not fully eliminate the gap in coverage which might result from a "common occurrence". As stated in the statement of considerations published with the notice of proposed rule making

The following amendments establish the form of indemnity agreement which the Commission will execute with licensees furnishing insurance policies as proof of financial protection (Sec. 140.76); and the form of indemnity agreement which the Commission will enter into with licensees furnishing proof of financial protection in the form of the licensees resources. (Sec. 140.77)

The Commission acknowledges with appreciation the numerous, helpful comments and suggestions which have been received from interested members of the public and participants in industry advisory conferences. These comments have been taken into consideration in adoption of these amendments.

Principal features of the form of indemnity agreement contained in Sec. 140.76, Appendix "B" include the following:

1. The form includes common occurrence provisions (Article I, par. 3; Article II, par. 6; Article III, par. 4) which are similar to the common occurrence provisions in the NELIA and MAELU insurance policy (Appendix "A", Section 140.75). Inclusion of the common occurrence provision in the indemnity agreement goes far towards eliminating a gap in protection which might otherwise exist.

The common occurrence provisions in the proposed indemnity agreement published for public comment in the Federal Register on April 7, 1960, 25 F. R. 2999, did not fully eliminate the gap in coverage which might result from a "common occurrence". As stated in the statement of considerations published with the notice of proposed rule-making,

> "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

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> 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 ($46,500,000 in the case of NELIA or $13,500,000 in the case of MAELU)."

The Commission requested the insurance pools (Nuclear Energy Liability Insurance Association and Mutual Atomic Energy Liability Underwriters) to consider the adoption of changes in their nuclear energy insurance policies (facility form) to eliminate this possible gap. In a letter dated December 22, 1960 (a copy of which is available for examination in the Commission's Public Document Room 1717 H Street, N. W., Washington 25, D. C.), the pools concluded that:

> "It should be emphasized that we have no objection to assuming liabilities up to $60,000,000 in cases where the applicable limit of policies are equal to or in excess of that amount. Thus far, we have been unable to find a way to limit the loss liability of one pool to its insured by policies issued by the other pool to another insured. As pointed out earlier, if such a clause is not enforced by a court, the companies would be exposed beyond their commitments. The manager of the pools have no authority to expose the member companies in such a manner."

Consequently, the Commission has modified the common occurrence provisions of its indemnity agreement to eliminate this possible gap. (Sec. 140.76, Appendix "B", par. 6, Article II).

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

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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.

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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 in Sec. 140.76, Appendix B, 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)). The Commission has 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 "on-site" property. If such legislation is enacted, paragraph 2b., Article II, of the proposed indemnity agreement (Sec. 140.76, Appendix B) would be deleted and a corresponding change would be made in the provisions of Article III of the agreement. Paragraph 1, Article II, and Article III of the agreement in Sec. 140.77, Appendix C, would also be modified.

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. Accordingly, the form of indemnity agreement in Appendix "B" excludes coverage of damage to on-site property of persons liable for the nuclear incident (Article III, par. 2)

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 in Sec. 140.76, Appendix B, 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)). The Commission has 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 "on-site" property. If such legislation is enacted, paragraph 2b., Article II, of the proposed indemnity agreement (Sec. 140.76, Appendix B) would be deleted and a corresponding change would be made in the provisions of Article III of the agreement. Paragraph 1, Article II, and Article III of the agreement in Sec. 140.77, Appendix C, would also be modified.

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. Accordingly, the form of indemnity agreement in Appendix "B" excludes coverage of damage to on-site property of persons liable for the nuclear incident (Article III, par. 2).

5. A provision is included in the indemnity agreement (Paragraph b. of Item 2 of the Attachment thereto) under which the Commission fills a "gap" between the financial protection and

the Commission's indemnity obligation resulting from payments made by the insurers under a nuclear energy liability insurance policy. The agreement does not include the provision, contained in the form published in April, 1960, establishing a $1,000,000 floor under the Commission's obligation. 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 is included under which the Commission may issue an order requiring the licensee to furnish financial protection in another form (Article II, par. 2(a)).

6. A new article, Article VII, has been added to the indemnity agreement defining the "term" of the indemnity agreement.

7. A number of comments received from members of the public suggest that certain provisions of the indemnity agreement be clarified to indicate more precisely the coverage of the indemnity agreement with respect to the time and place of occurrence of covered "nuclear incidents". The Commission has considered these suggestions, but has not made any change in the text of the agreement with respect to them. It is clear from the definition of "nuclear incident" in paragraph 3, Article I, that the "occurrence or series of occurrences" referred to are those which take place "at the location or in the course of transportation". As stated in the report of the Joint Committee on Atomic Energy on H. R. 7383 (H. R. 435, 85th Cong., 1st Sess.), p. 16, "The occurrence which is the subject of this definition is that event at the site of the licensed activity . . . which may cause damage, rather than the site where the damage may be caused."

From the foregoing, it seems clear also that references in the

published in April, 1960, establishing a $1,000,000 floor under the Commission's obligation. 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 is included under which the Commission may issue an order requiring the licensee to furnish financial protection in another form (Article II, par. 2(a)).

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From the foregoing, it seems clear also that references in the indemnity agreement to "nuclear incidents occurring during the term of this agreement" (Par. 4, Article II; par. 5, Article III), refer to such "occurrence or series of occurrences at the location

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or in the course of transportation"; and that any liability for damages caused by such occurrence or series of occurrences is covered by the agreement if the occurrence or series of occurrences takes place within the term of the agreement even though the damage resulted or became manifest after termination of the term of the agreement.

8. The statement of licensee's obligations under subsection 53 e. (8) of the Atomic Energy Act of 1954, as amended, has been deleted as suggested in a number of comments, and corresponding changes have been made in paragraph 3, Article II. This provision was in paragraph 3, Article II of the form published in April, 1960. The provision formerly in Item 2 b. (2) of the Attachment has also been deleted. These deletions are not considered as affecting the obligations of the various interests involved. Any obligations of the licensee under subsection 53 e. (8) of the Act to indemnify the United States and the Commission from public liability are substantially covered by the insurance form in Sec. 140.75, Appendix "A".

9. Article IV applies in cases where the Commission determines that the United States will probably be required to make indemnity payments under the provisions of the agreement. The Article provides, among other things, that the Commission "shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other person indemnified . . . ." Nuclear Energy Liability Insurance Association and Mutual Atomic Energy Liability Underwriters in their letter of comments dated June 6, 1960 (a copy of which is on file

takes place within the term of the agreement even though the damage resulted or became manifest after termination of the term of the agreement.

8. The statement of licensee's obligations under subsection 53 e. (8) of the Atomic Energy Act of 1954, as amended, has been deleted as suggested in a number of comments, and corresponding changes have been made in paragraph 3, Article II. This provision was in paragraph 3, Article II of the form published in April, 1960. The provision formerly in Item 2 b. (2) of the Attachment has also been deleted. These deletions are not considered as affecting the obligations of the various interests involved. Any obligations of the licensee under subsection 53 e. (8) of the Act to indemnify the United States and the Commission from public liability are substantially covered by the insurance form in Sec. 140.75, Appendix "A".

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prompt claims handling. The Commission, however, believes it has authority under Sections 161 and 170 of the Atomic Energy Act of 1954, as amended, to adopt the provision in question. In connection with the assertion that the provision is impractical, it should be noted that the provision does not require Commission approval, but only reserves to the Commission the right to require Commission approval. It is anticipated that this authority would be exercised only in special circumstances and in such manner as to avoid undesirable delay in the settlement and defense of claims and actions. Discussions have been held with both syndicates looking towards the adoption of an agreement between them and the AEC concerning claims investigations and handling. In light of such arrangements as may be made as the result of those discussions, it may be desirable to reconsider the provisions of Article IV.

10. Article III, paragraph 2, has been revised essentially by adding subparagraphs "(c)" and "(d)". These subparagraphs were added further to implement the exception in subsection 11 u. of the Act for "property which is located at the site of and used in connection with the activity where the nuclear incident occurs."

Changes have also been made in the definition of public liability to exclude indemnity coverage for employees on the transporting vehicle when an incident occurs in the course of transportation.

11. The following amendments also add a provision to subpart A (Section 140.9) applicable to all indemnity agreements subject to Part 140 providing that the Commission will publish at least a fifteen-day prior notice in the Federal Register of its intent to

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Changes have also been made in the definition of public liability to exclude indemnity coverage for employees on the transporting vehicle when an incident occurs in the course of transportation.

11. The following amendments also add a provision to subpart A (Section 140.9) applicable to all indemnity agreements subject to Part 140 providing that the Commission will publish at least a fifteen-day prior notice in the Federal Register of its intent to enter into an indemnity agreement which differs from the applicable form set forth in the appendices in Part 140.

The form indemnity agreements do not affect contractual obligations of suppliers to reactor licensees to repair or replace components furnished by such suppliers.

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The form indemnity agreement in Section 140.77, Appendix "C", applies to licensees who furnish financial protection in the form of their own resources. That form is essentially similar to that in Section 140.76, Appendix "B", except for changes required by the difference in the form of financial protection.

The Commission has entered into temporary indemnity agreements with licensees pending adoption of the forms contained in these amendments. After the effective date of these amendments, the Division of Licensing and Regulation will tender to each licensee subject thereto a definitive indemnity agreement. These definitive agreements will, upon due execution, supersede the temporary indemnity agreements.

Notice is hereby given that the Commission has adopted the following amendments to Part 140, 10 CFR, "Financial Protection Requirements and Indemnity Agreements" to be effective thirty days after publication in the Federal Register.

1. The following section is added:

Section 140.9 Modifications of Indemnity Agreements.

The Commission will publish in the Federal Register a notice of its intent to enter into an indemnity agreement, or agreement amending an indemnity agreement, which contains provisions different from the form of the applicable indemnity agreement set forth in the appendices to this part, as such appendices may be amended from time to time. Such notices will provide at least a fifteen-day period following the date of publication in the Federal Register in which interested persons may file petitions for leave to intervene with respect to the proposed agreement.

in Section 140.76, Appendix "B", except for changes required by the difference in the form of financial protection.

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2. 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 Sec. 140.76, 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 Sec. 140.77, Appendix "C".

(2) The form of indemnity agreement to be entered into by the Commission with any particular licensee under this subpart shall contain such modifications of the applicable form in Sec. 140.76 and 140.77, 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 subpart shall enter into such agreements amending such indemnity agreement as are required by applicable licenses, regulations or orders of the Commission.

3. The following Section 140.76, Appendix "B", is added

APPENDIX "B"

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," "source

form specified in Section 140.14 (a) (2) is set forth in Sec. 140.77, Appendix "C".

(2) The form of indemnity agreement to be entered into by the Commission with any particular licensee under this subpart shall contain such modifications of the applicable form in Sec. 140.76 and 140.77, 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 subpart shall enter into such agreements amending such indemnity agreement as are required by applicable licenses, regulations or orders of the Commission.

3. The following Section 140.76, Appendix "B", is added

APPENDIX "B"

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," "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. Except where otherwise specifically provided, "amount of financial protection" means the amount specified in Item 2 a. and b.

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of the Attachment annexed hereto, as modified by paragraph 6, Article II, with respect to common occurrences.

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

i. 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" in any other agreement or agreements entered into by the Commission under subsection 170 c. or k. 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. or k. of the Act as "the radioactive material" and which is in the course of trans

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

i. 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" in any other agreement or agreements entered into by the Commission under subsection 170 c. or k. 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. or k. 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:

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(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. or k. 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 (a) at the location or, if the nuclear incident occurs in the course of transportation of the

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. or k. 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 (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) 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 is irradiated or to be 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 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

8. "The radioactive material" means source, special nuclear, and byproduct material which (1) is used or to be used in, or is irradiated or to be 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).

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2. (a) In the event of any payment by the insurer or insurers under a policy or policies specified in Item 5 of the Attachment hereto which reduces the aggregate limit of such policy or policies below the amount of financial protection, the licensee will promptly apply to his insurers for reinstatement of the amount specified in Item 2 a. 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, and in the absence of good cause shown to the contrary, 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 and hold harmless all persons indemnified, as their interest may appear, from public liability for damage to property which is at the location.

3. Any obligations of the licensee under paragraph 2 (b) of this Article, and under subsection 53 e. (8) of the Act to indemnify the United States and the Commission from public liability, 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 of financial protection with respect to any nuclear incident, including the reasonable costs of investigating and settling claims and defending suits for damage.

4. The obligations of the licensee under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

5. Upon the expiration or revocation of any license

of policies below the amount of financial protection, the licensee will promptly apply to his insurers for reinstatement of the amount specified in Item 2 a. 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, and in the absence of good cause shown to the contrary, 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 and hold harmless all persons indemnified, as their interest may appear, from public liability for damage to property which is at the location.

3. Any obligations of the licensee under paragraph 2 (b) of this Article, and under subsection 53 e. (8) of the Act to indemnify the United States and the Commission from public liability, 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 of financial protection with respect to any nuclear incident, including the reasonable costs of investigating and settling claims and defending suits for damage.

4. The obligations of the licensee under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

5. 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.

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6. With respect to any common occurrence,

(a) if the sum of the limit of liability of any Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association exceeds $46,500,000, the amount of financial protection specified in Item 2 a. and b. of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $46,500,000 as the limit of liability of the Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association;

(b) if the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds $13,500,000, the amount of financial protection specified in Item 2 a.

Energy Liability Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association exceeds $46,500,000, the amount of financial protection specified in Item 2 a. and b. of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $46,500,000 as the limit of liability of the Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association;

(b) if the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds $13,500,000, the amount of financial protection specified in Item 2 a. and b. of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $13,500,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated

[redacted]

[redacted]

in Item 5 of the Attachment bears to the sum of the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) if any of the other applicable agreements is with a licensee which licensee has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds $60,000,000, the obligations of the licensee shall not exceed a greater proportion of $60,000,000 than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

As used in this paragraph 6, Article II, and 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." As used in this paragraph 6, Article II, "the obligations of the licensee" means the aggregate of the obligations of the licensee under paragraph 2 (b) of this Article II, and under subsection 53 e. (8) of the Act to indemnify the United States

such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) if any of the other applicable agreements is with a licensee which licensee has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds $60,000,000, the obligations of the licensee shall not exceed a greater proportion of $60,000,000 than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

As used in this paragraph 6, Article II, and 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." As used in this paragraph 6, Article II, "the obligations of the licensee" means the aggregate of the obligations of the licensee under paragraph 2 (b) of this Article II, and under subsection 53 e. (8) of the Act to indemnify the United States and the Commission from public liability, together with any public liability satisfied by the insurers under the policy or policies designated in the Attachment, and the reasonable costs of investigating and settling claims and defending suits for damage.

7. 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, the Commission agrees to pay to such person sums which such person would have been obligated to pay if such property had belonged to another; provided, that the obligation of the Commission under this paragraph 2 does not apply with respect to:

(a) property which is located at the location described in Item 4 of the Attachment or at the location described in Item 3 of the declarations attached to any nuclear energy liability insurance policy designated in Item 5 of the Attachment;

(b) property damage due to the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

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, the Commission agrees to pay to such person sums which such person would have been obligated to pay if such property had belonged to another; provided, that the obligation of the Commission under this paragraph 2 does not apply with respect to:

(a) property which is located at the location described in Item 4 of the Attachment or at the location described in Item 3 of the declarations attached to any nuclear energy liability insurance policy designated in Item 5 of the Attachment;

(b) property damage due to the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) the radioactive material.

[redacted]

[redacted]

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 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 (other than such property, described in the proviso to paragraph 2 of this Article), 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 (other than such property described in the proviso to paragraph 2 of this Article), 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 of financial protection established under this agreement and all other applicable agreements; or
(2) $60,000,000.

5. The obligations of the Commission under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

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.

claims for 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 (other than such property, described in the proviso to paragraph 2 of this Article), 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 (other than such property described in the proviso to paragraph 2 of this Article), 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 of financial protection established under this agreement and all other applicable agreements; or
(2) $60,000,000.

5. The obligations of the Commission under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

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

[redacted]

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 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 collaborat 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 or action 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 or action 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

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 or action 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 or action 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.

[redacted]

[redacted]

ARTICLE VI

The licensee agrees to pay to the Commission such fees as are established by the Commission pursuant to regulations or orders of the Commission.

ARTICLE VII

The term of this agreement shall commence as of the date and time specified in Item 6 of the Attachment and shall terminate at the time of expiration of that license specified in Item 3 of the Attachment, which is the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate 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. Termination of the term of this agreement shall not affect any obligation of the licensee or any obligation of the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

established by the Commission pursuant to regulations or orders of the Commission.

ARTICLE VII

The term of this agreement shall commence as of the date and time specified in Item 6 of the Attachment and shall terminate at the time of expiration of that license specified in Item 3 of the Attachment, which is the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate 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. Termination of the term of this agreement shall not affect any obligation of the licensee or any obligation of the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

[redacted]

[redacted]

UNITED STATES ATOMIC ENERGY COMMISSION

Indemnity Agreement No._____

Item 1. Licensee _____

Address _____

Item 2. a. Amount of Financial Protection _____

B. With respect to any nuclear incident, the amount specified in Item 2. a. 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 the amount specified in Item 2. a.

Item 3. License Number or Numbers _____

Item 4. Location _____

_____

_____

Item 5. Insurance Policy No. (s) _____

Item 6. The Indemnity Agreement designated above, of which this Attachment is a part, is effective as of _____M., on the _____ day of _____, 19___.

FOR THE UNITED STATES ATOMIC ENERGY COMMISSION

By _____

FOR THE _____
(Name of Licensee)

By _____

Dated at Germantown, Maryland.

Item 1. Licensee _____

Address _____

Item 2. a. Amount of Financial Protection _____

B. With respect to any nuclear incident, the amount specified in Item 2. a. 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 the amount specified in Item 2. a.

Item 3. License Number or Numbers _____

Item 4. Location _____

_____

_____

Item 5. Insurance Policy No. (s) _____

Item 6. The Indemnity Agreement designated above, of which this Attachment is a part, is effective as of _____M., on the _____ day of _____, 19___.

FOR THE UNITED STATES ATOMIC ENERGY COMMISSION

By _____

FOR THE _____
(Name of Licensee)

By _____

Dated at Germantown, Maryland,
the _____ day of _____,
19___.

[redacted]

[redacted]

3. The following Section 140.77, Appendix "C", is added:

Section 140.77, Appendix "C".

APPENDIX "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 of 1954, as amended (hereinafter referred to as "the Act").

ARTICLE I

As used in this agreement,

1. "Nuclear reactor," "byproduct material," "person," "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

APPENDIX "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 of 1954, as amended (hereinafter referred to as "the Act").

ARTICLE I

As used in this agreement,

1. "Nuclear reactor," "byproduct material," "person," "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

i. 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" in any other agreement or agreements entered into by the Commission under subsection 170 c. or k. 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. or k. 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

section 170 c. or k. 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. or k. 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. or k. 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 or, if the nuclear incident occurs in the course of transportation on the transporting vehicle, and (b) 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 is irradiated or to be 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

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. or k. 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 or, if the nuclear incident occurs in the course of transportation on the transporting vehicle, and (b) 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 is irradiated or to be 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]

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;

(c) If the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation; and

(d) The radioactive material.

3. Any obligations of the licensee under paragraphs 1 and 2 of this Article, and under subsection 53 e. (8) of the Act to indemnify the United States and the Commission from public liability 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.

4. The obligations of the licensee under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

5. Upon the expiration or revocation of any license designated

[redacted]

[redacted]

in the amount of financial protection under applicable Commission regulations and orders.

6. With respect to a common occurrence, if the sum of the amount of financial protection established under this agreement and the amount of financial protection established under all other applicable agreements exceeds $60,000,000, the obligations of the licensee described in paragraph 3 of Article shall not exceed a greater proportion of $60,000,000 than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under 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".

7. 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

6. With respect to [illegible]

the amount of financial protection established under this agreement and the amount of financial protection established under all other applicable agreements exceeds $60,000,000, the obligations of the licensee described in paragraph 3 of Article shall not exceed a greater proportion of $60,000,000 than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under 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".

7. 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, the Commission 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 Commission 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 the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) the radioactive material.

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.

obligation of the Commission 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 the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) the radioactive material.

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, (other than

[redacted]

such property described in the proviso to paragraph 2 of this Article) 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 of financial protection established under this agreement and to all other applicable agreements; or (2) $60,000,000.

5. The obligations of the Commission under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

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 insolvency 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 or action

following is lower: (1) the sum of the amounts of financial protection established under this agreement and to all other applicable agreements; or (2) $60,000,000.

5. The obligations of the Commission under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

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 insolvency 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 or action 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 or action the licensee or the Commission may be required to indemnify under this agreement; and

[redacted]

[redacted]

(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 regulations or orders of the Commission.

ARTICLE VII

The term of this agreement shall commence as of the date and time specified in Item 6 of the attachment and shall terminate at the time of expiration of that license specified in Item 3 of the attachment, which is the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate until all the radioactive material has been removed from the location and transportation of the radioactive material from the

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 regulations or orders of the Commission.

ARTICLE VII

The term of this agreement shall commence as of the date and time specified in Item 6 of the attachment and shall terminate at the time of expiration of that license specified in Item 3 of the attachment, which is the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate 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. Termination of the term of this agreement shall not affect any obligation of the licensee or any obligation of the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

[redacted]

[redacted]

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 _____

_____

_____

Item 5. The Indemnity Agreement designated above, of which this Attachment is a part, is effective as of _____M., on the _____ day of _____, 19____.

FOR THE UNITED STATES ATOMIC ENERGY COMMISSION

By_____

FOR THE _____
(Name of Licensee)

BY_____

Dated at Germantown, Maryland, the

_____ day of _____, 19____.

ATTACHMENT

Item 1. Licensee _____

Address _____

Item 2. Amount of Financial Protection _____

Item 3. License Number or Numbers _____

Item 4. Location _____

_____

_____

Item 5. The Indemnity Agreement designated above, of which this Attachment is a part, is effective as of _____M., on the _____ day of _____, 19___.

FOR THE UNITED STATES ATOMIC ENERGY COMMISSION

By _____

FOR THE _____
(Name of Licensee)

BY _____

Dated at Germantown, Maryland, the

_____ day of _____, 19___.

[redacted]

[redacted]

ENCLOSURE "C"

PART 140 - FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

The following proposed amendments are intended to establish the form of indemnity agreement which the Commission will execute with Federal agencies and non-profit educational institutions subject to Part 140. Except for changes made because Federal agencies and non-profit educational institutions are not required to furnish financial protection, the forms of these proposed indemnity agreements are similar to those adopted by the Commission for execution with licensees who furnish financial protection.

Publication of these proposed indemnity agreements has been delayed pending adoption of forms of indemnity agreements to be entered into with licensees who furnish financial protection. The forms of indemnity agreements which the Commission will execute with such licensees are set forth in a notice of rule-making published in this issue of the Federal Register.

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 Secretary, U.S. Atomic Energy Commission, Washington 25, D. C., within 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

The following proposed amendments are intended to establish the form of indemnity agreement which the Commission will execute with Federal agencies and non-profit educational institutions subject to Part 140. Except for changes made because Federal agencies and non-profit educational institutions are not required to furnish financial protection, the forms of these proposed indemnity agreements are similar to those adopted by the Commission for execution with licensees who furnish financial protection.

Publication of these proposed indemnity agreements has been delayed pending adoption of forms of indemnity agreements to be entered into with licensees who furnish financial protection. The forms of indemnity agreements which the Commission will execute with such licensees are set forth in a notice of rule-making published in this issue of the Federal Register.

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 Secretary, U.S. Atomic Energy Commission, Washington 25, D. C., within 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 cannot be given except as to comments filed within the period specified.

1. Amend Section 140.52 to read as follows:

Section 140.52 - Indemnity Agreements

[redacted]

The Commission will execute and issue agreements of indemnity with each Federal agency subject to this subpart pursuant to the regulations in this part or such other regulations as may be issued by the Commission. Such agreements, as to any licensee, shall be effective on:

1. The effective date of the license (issued pursuant to Part 50 of this chapter) authorizing the licensee to operate the nuclear reactor involved;

2. The effective date of the license (issued pursuant to Part 70 of this chapter) authorizing the licensee to possess and store special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of an operating license for the reactor,

whichever is earlier. No such agreement, however, shall be effective prior to September 26, 1957.

b. (1) The general form of indemnity agreement to be entered into with licensees subject to this subpart is contained in Sec. 140.78, Appendix D.

(2) The form of indemnity agreement to be entered into by the Commission with any particular licensee under this subpart shall contain such modifications of the form in Sec. 140.78, as are provided for in applicable licenses, regulations or orders of the Commission.

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

shall be effective on:

1. The effective date of the license (issued pursuant to Part 50 of this chapter) authorizing the licensee to operate the nuclear reactor involved;

2. The effective date of the license (issued pursuant to Part 70 of this chapter) authorizing the licensee to possess and store special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of an operating license for the reactor,

whichever is earlier. No such agreement, however, shall be effective prior to September 26, 1957.

b. (1) The general form of indemnity agreement to be entered into with licensees subject to this subpart is contained in Sec. 140.78, Appendix D.

(2) The form of indemnity agreement to be entered into by the Commission with any particular licensee under this subpart shall contain such modifications of the form in Sec. 140.78, as are provided for in applicable licenses, regulations or orders of the Commission.

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

2. Section 140.72 is amended to read as follows:

Section 140.72 - Indemnity Agreements

a. The Commission will execute and issue agreements of indemnity with each non-profit educational institution subject to

[redacted]

this subpart pursuant to the regulations in this part or such other regulations as may be issued by the Commission. Such agreements, as to any licensee, shall be effective on:

1. The effective date of the license (issued pursuant to Part 50 of this chapter) authorizing the licensee to operate the nuclear reactor involve;

2. The effective date of the license (issued pursuant to Part 70 of this chapter) authorizing the licensee to possess and store special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of an operating license for the reactor,

whichever is earlier. No such agreement, however, shall be effective prior to September 26, 1957.

b. (1) The general form of indemnity agreement to be entered into with licensees subject to this subpart is contained in Sec. 140.79, Appendix E.

(2) The form of indemnity agreement to be entered into by the Commission with any particular licensee under this subpart shall contain such modifications of the form in Sec. 140.79, Appendix E, as are provided for in applicable licenses, regulations or orders of the Commission.

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

3. The following Appendix "D" is added

1. The effective date of the license (issued pursuant to Part 50 of this chapter) authorizing the licensee to operate the nuclear reactor involve;

2. The effective date of the license (issued pursuant to Part 70 of this chapter) authorizing the licensee to possess and store special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of an operating license for the reactor,

whichever is earlier. No such agreement, however, shall be effective prior to September 26, 1957.

b. (1) The general form of indemnity agreement to be entered into with licensees subject to this subpart is contained in Sec. 140.79, Appendix E.

(2) The form of indemnity agreement to be entered into by the Commission with any particular licensee under this subpart shall contain such modifications of the form in Sec. 140.79, Appendix E, as are provided for in applicable licenses, regulations or orders of the Commission.

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

3. The following Appendix "D" is added:

Section 140.78, Appendix "D".

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," "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. (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

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

As used in this agreement,

1. "Nuclear reactor," "byproduct material," "person," "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. (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

i. 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" in any other agreement or agreements entered into by the Commission under subsection 170 c. or k. 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

[redacted]

by the Commission pursuant to subsection 170 c. or k. 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.

3. "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

shall be deemed to constitute a single nuclear incident.

3. "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. or k. of the Act.

[redacted]

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

5. "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 or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; and (2) claims arising out of an act of war.

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

7. "The radioactive material" means source, special nuclear, and byproduct material which (1) is used or to be used in, or is irradiated or to be 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).

8. "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 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,

under state or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; and (2) claims arising out of an act of war.

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

7. "The radioactive material" means source, special nuclear, and byproduct material which (1) is used or to be used in, or is irradiated or to be 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).

8. "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 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, the Commission agrees to pay to such person those sums which such person would have been obligated to pay if such property

[redacted]

[redacted]

had belonged to another; provided, that the obligation of the Commission 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 the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) the radioactive material.

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. 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 (other than such property described in the proviso to paragraph 2 of this Article), 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 of financial protection established under all applicable agreements; or (2) $60,000,000

used in connection with the licensee's possession, use or transfer of the radioactive material;

(b) property damage due to the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) the radioactive material.

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. 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 (other than such property described in the proviso to paragraph 2 of this Article), 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 of financial protection established under all applicable agreements; or (2) $60,000,000. As used in this paragraph "applicable agreements" means each 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."

[redacted]

[redacted]

5. The obligations of the Commission under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

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

ARTICLE III

1. When the Commission determined 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 or action 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 or action 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,

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

ARTICLE III

1. When the Commission determined 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 or action 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 or action 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.

[redacted]

[redacted]

ARTICLE IV

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 V

The licensee agrees to pay to the Commission such fees as are established by the Commission pursuant to regulations or orders of the Commission.

ARTICLE VI

The terms of this agreement shall commence as of the date and time specified in Item 4 of the attachment and shall terminate at the time of expiration of that license specified in Item 2 of the Attachment, which is the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate 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. Termination of the term of this agreement shall not affect any obligation of the licensee or any obligation of the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

are required pursuant to the Atomic Energy Act of 1954, as amended, or licenses, regulations or orders of the Commission.

ARTICLE V

The licensee agrees to pay to the Commission such fees as are established by the Commission pursuant to regulations or orders of the Commission.

ARTICLE VI

The terms of this agreement shall commence as of the date and time specified in Item 4 of the attachment and shall terminate at the time of expiration of that license specified in Item 2 of the Attachment, which is the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate 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. Termination of the term of this agreement shall not affect any obligation of the licensee or any obligation of the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

[redacted]

[redacted]

UNITED STATES ATOMIC ENERGY COMMISSION

Indemnity Agreement No._____

ATTACHMENT

Item 1. Licensee _____

Address _____

Item 2. License Number or Numbers _____

Item 3. Location _____

_____

_____

Item 4. The Indemnity Agreement designated above, of which this Attachment is a part, is effective as of _____M., on the _____ day of _____, 19___.

FOR THE UNITED STATES ATOMIC ENERGY COMMISSION

BY_____

FOR THE_____
(Name of Licensee)

BY_____

Dated at Germantown, Maryland, the

_____ day of _____, 19___.

Item 1. Licensee _____

Address _____

Item 2. License Number or Numbers _____

Item 3. Location _____

_____

_____

Item 4. The Indemnity Agreement designated above, of which this Attachment is a part, is effective as of _____M., on the _____ day of _____, 19____.

FOR THE UNITED STATES ATOMIC ENERGY COMMISSION

BY_____

FOR THE_____
(Name of Licensee)

BY_____

Dated at Germantown, Maryland, the

_____ day of _____, 19___.

Enclosure "C"

[redacted]

4. The following Appendix "E" is added:

Section 140.79, Appendix "E".

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 k. 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," "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. (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

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

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 k. 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," "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. (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

i. 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" in any other agreement or agreements entered

[redacted]

into by the Commission under subsection 170 c. or k. 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. or k. 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.

3. "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

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. or k. 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.

3. "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

[redacted]

[redacted]

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. or k. of the Act.

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

5. "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 Act of employees of persons indemnified who are employed at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, 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.

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

7. "The radioactive material" means source, special nuclear, and byproduct material which (1) is used or to be used in, or is irradiated or to be 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).

8. "United States" when used in a geographical sense includes all Territories and possessions of the United States,

agreement entered into by the Commission pursuant to subsection 170 c. or k. of the Act.

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

5. "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 Act of employees of persons indemnified who are employed at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, 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.

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

7. "The radioactive material" means source, special nuclear, and byproduct material which (1) is used or to be used in, or is irradiated or to be 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).

8. "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. Any obligations of the licensee under subsection 53 e. (8) of the Act to indemnify the United States and the Commission

from public liability shall not in the aggregate exceed $250,000 with respect to any nuclear incident.

2. With respect to damage caused by a nuclear incident to property of any person legally liable for the nuclear incident, the Commission 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 Commission 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 the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) the radioactive material.

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.

the Commission 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 Commission 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 the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) the radioactive material.

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

[redacted]

incident (other than such property described in the proviso to paragraph 2 of this Article) and such reasonable costs described in paragraph 3 of this Article as in the aggregate exceed $250,000.

(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, (other than such property described in the proviso to paragraph 2 of this Article) 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 of financial protection established under all applicable agreements; or (2) $60,000,000. As used in this paragraph, "applicable agreements" means each 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".

5. 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.

6. If the licensee is immune from public liability because it is a state agency, the Commission shall make payments under this agreement in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a state agency.

7. Obligations of the Commission under this Article, except to the licensee for damage to property of [illegible]

(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, (other than such property described in the proviso to paragraph 2 of this Article) 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 of financial protection established under all applicable agreements; or (2) $60,000,000. As used in this paragraph, "applicable agreements" means each 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".

5. 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.

6. If the licensee is immune from public liability because it is a state agency, the Commission shall make payments under this agreement in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a state agency.

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.

[redacted]

ARTICLE III

1. When the Commission determined 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 or action 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 or action 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 IV

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.

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 or action 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 or action 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 IV

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 V

The licensee agrees to pay to the Commission such fees as are established by the Commission pursuant to regulations or orders of the Commission.

ARTICLE VI

The term of this agreement shall commence as of the date and time specified in Item 4 of the Attachment and shall terminate at the time of expiration of that license specified in Item 2 of the Attachment, which is the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate 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. Termination of the term of this agreement shall not affect any obligation of the licensee or any obligation of the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

expiration of that license specified in Item 2 of the Attachment, which is the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate 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. Termination of the term of this agreement shall not affect any obligation of the licensee or any obligation of the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

[redacted]

UNITED STATES ATOMIC ENERGY COMMISSION

Indemnity Agreement No._____

ATTACHMENT

Item 1. Licensee _____

Address _____

Item 2. License Number or Numbers _____

Item 3. Location _____

_____

_____

Item 4. The Indemnity Agreement designated above, of which this Attachment is a part, is effective as of _____M., on the _____ day of _____, 19__.

FOR THE UNITED STATES ATOMIC ENERGY COMMISSION

BY _____

FOR THE _____
(Name of Licensee)

Dated at Germantown, Maryland, the

_____ day of _____, 19__.

ATTACHMENT

Item 1. Licensee _____

Address _____

Item 2. License Number or Numbers _____

Item 3. Location _____

_____

_____

Item 4. The Indemnity Agreement designated above, of which this Attachment is a part, is effective as of _____M., on the _____ day of _____, 19__.

FOR THE UNITED STATES ATOMIC ENERGY COMMISSION

BY _____

FOR THE _____
(Name of Licensee)

Dated at Germantown, Maryland, the

_____ day of _____, 19__.

[redacted]

[redacted]

Dated at Germantown, Maryland, this _____ day of _____, 1961.

FOR THE ATOMIC ENERGY COMMISSION

Secretary

[redacted]

[redacted]

ENCLOSURE "D"

COMPARISON OF PROPOSED AND RECOMMENDED EFFECTIVE INDEMNITY AGREEMENT FOR EXECUTION WITH INSURED REACTOR LICENSEES

Notice is hereby given that the Commission has adopted the following amendments to Part 140, 10 CFR, "Financial Protection Requirements and Indemnity Agreements" to be effective thirty days after publication in the Federal Register.

1. The following section is added:

Section 140.9 Modifications of Indemnity Agreements.

The Commission will publish in the Federal Register a notice of its intent to enter into an indemnity agreement, or agreement amending an indemnity agreement, which contains provisions different from the form of the applicable indemnity agreement set forth in the appendices to this part, as such appendices may be amended from time to time. Such notices will provide at least a fifteen-day period following the date of publication in the Federal Register in which interested persons may file petitions for leave to intervene with respect to the proposed agreement.

2. 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 Sec. 140.76, Appendix "B". The general form of indemnity agreement to be entered into by the Commission with licensees who furnish financial

INDEMNITY AGREEMENT FOR EXECUTION WITH

INSURED REACTOR LICENSEES

Notice is hereby given that the Commission has adopted the following amendments to Part 140, 10 CFR, "Financial Protection Requirements and Indemnity Agreements" to be effective thirty days after publication in the Federal Register.

1. The following section is added:

Section 140.9 Modifications of Indemnity Agreements.

The Commission will publish in the Federal Register a notice of its intent to enter into an indemnity agreement, or agreement amending an indemnity agreement, which contains provisions different from the form of the applicable indemnity agreement set forth in the appendices to this part, as such appendices may be amended from time to time. Such notices will provide at least a fifteen-day period following the date of publication in the Federal Register in which interested persons may file petitions for leave to intervene with respect to the proposed agreement.

2. 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 Sec. 140.76, 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 Sec. 140.77, Appendix "C".

NOTE: New provisions underlined, deletions shown in /brackets/.

[redacted]

[redacted]

(2) The form of indemnity agreement to be entered into by the Commission with any particular licensee under this subpart shall contain such modifications of the applicable form in Secs. 140.76 and 140.77, 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 subpart shall enter into such agreements amending such indemnity agreement as are required by applicable licenses, regulations or orders of the Commission.

3. The following Section 140.76, Appendix "B", is added

APPENDIX "B"

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. Except where otherwise specifically provided, /A/ "amount

[illegible] and 140.11, 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 subpart shall enter into such agreements amending such indemnity agreement as are required by applicable licenses, regulations or orders of the Commission.

3. The following Section 140.76, Appendix "B", is added

APPENDIX "B"

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. Except where otherwise specifically provided, /A/ "amount of financial protection" means the amount specified in Item 2 a. and b. of the Attachment annexed hereto, /.7 as modified by paragraph 6, Article II, with respect to common occurrences.

Enclosure "D"

[redacted]

[redacted]

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

i. 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" in any other agreement or agreements entered into by the Commission under subsection 170 c. or k. 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. or k. 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

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

i. 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" in any other agreement or agreements entered into by the Commission under subsection 170 c. or k. 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. or k. 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:

[redacted]

(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. or k. 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 (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b)

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. or k. 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 (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; and (2) claims arising out of an act of war.

OFFICIAL USE ONLY

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[redacted]

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 is irradiated or to be 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 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

and byproduct material which (1) is used or to be used in, or is irradiated or to be 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 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.

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insurers under a policy or policies specified in Item 5 of the Attachment hereto, which reduces the aggregate limit of such policy or policies below the amount of financial protection, /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 a. 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, and in the absence of good cause shown to the contrary, 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 /t/ 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./

3. /4./ Any /The/ obligations of the licensee under paragraph 2 /s/ (b) /and 3/ of this Article, and under subsection 53 e. (8) of the Act to indemnify the United States and the Commission from public liability, 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 of financial protection with respect to any nuclear

/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 a. 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, and in the absence of good cause shown to the contrary, 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 /t/ 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./

3. /4./ Any /The/ obligations of the licensee under paragraph 2 /s/ (b) /and 3/ of this Article, and under subsection 53 e. (8) of the Act to indemnify the United States and the Commission from public liability, 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 of financial protection with respect to any nuclear incident, including the reasonable costs of investigating and settling claims and defending suits for damage.

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4. /5./ The obligations of the licensee under this agreement /paragraphs 2(b) and 3 of this Article/ shall apply only with respect to nuclear incidents occurring during the term of this agreement. /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 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./

5. /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.

6. /7./ With respect to any common occurrence,

(a.) if the sum of the limit of liability of any Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association

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 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.7

5. /6.7 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.

6. /7.7 With respect to any common occurrence,

(a.) if the sum of the limit of liability of any Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association exceeds $46,500,000, the amount of financial protection specified in Item 2 a. and b. of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and

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$46,500,000 as the limit of liability of the Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all other nuclear energy liability policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association;

(b) if the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds $13,500,000, the amount of financial protection specified in Item 2 a. and b. of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $13,500,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) if any of the other applicable agreements is with a licensee which licensee has furnished financial

all other nuclear energy liability policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association;

(b) if the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds $13,500,000, the amount of financial protection specified in Item 2 a. and b. of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $13,500,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) if any of the other applicable agreements is with a licensee which licensee has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability Insurance Association

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or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds $60,000,000, the obligations of the licensee shall not exceed a greater proportion of $60,000,000 than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

As used in this paragraph 6, Article II, and 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." As used in this paragraph 6, Article II, "the obligations of the licensee" means the aggregate of the obligations of the licensee under paragraph 2 (b) of this Article II, and under subsection 53 e. (8) of the Act to indemnify the United States and the Commission from public liability, together with any public liability satisfied by the insurers under the policy or policies designated in the Attachment, and the reasonable costs of investigating and settling claims and defending suits for damage. /If the sum of the amounts specified in Item 2 of the Attachment hereto and the Attachments annexed to all other applicable

all other applicable agreements exceeds $60,000,000, the obligations of the licensee shall not exceed a greater proportion of $60,000,000 than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

As used in this paragraph 6, Article II, and 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." As used in this paragraph 6, Article II, "the obligations of the licensee" means the aggregate of the obligations of the licensee under paragraph 2 (b) of this Article II, and under subsection 53 e. (8) of the Act to indemnify the United States and the Commission from public liability, together with any public liability satisfied by the insurers under the policy or policies designated in the Attachment, and the reasonable costs of investigating and settling claims and defending suits for damage. /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

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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 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."/7

7. /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, the Commission 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 Commission under this paragraph 2 does not apply with respect to:

(a) property which is [illegible]

annexed to all other applicable agreements. As used in this paragraph, and 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."/7

7. /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, the Commission 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 Commission under this paragraph 2 does not apply with respect to:

(a) property which is located at the location described in Item 4 of the Attachment or at the location described in Item 3 of the declarations attached to any nuclear energy liability insurance policy designated in Item 5 of the Attachment;

[redacted]

(b) property damage due to the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) the radioactive material.

/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 damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article), and such reasonable costs described

(c) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) the radioactive material.

/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 damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article), and such reasonable costs described in paragraph 3 of this Article as in the aggregate exceed the amount of financial protection.

[redacted]

(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 (other than such property described in the proviso to paragraph 2 of this Article), 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 of financial protection established under this agreement and all other applicable agreements; /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 agreement /Article/ shall apply only with respect to nuclear incidents occurring during the term of this agreement. /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,

property described in the proviso to paragraph 2 of this Article), 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 of financial protection established under this agreement and all other applicable agreements; /specified in Item 2 of the Attachment hereto and the Attachments annexed to all other applicable agreements;/ or (2) $60,000,000.

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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]

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 or action 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 or action 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,

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 or action 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 or action 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.

[redacted]

[redacted]

ARTICLE VI

The licensee agrees to pay to the Commission such fees as are established by the Commission pursuant to regulations or orders /.7 of the Commission.

ARTICLE VII

The term of this agreement shall commence as of the date and time specified in Item 6 of the Attachment and shall terminate at the time of expiration of that license specified in Item 3 of the Attachment, which i the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate 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. Termination of the term of this agreement shall not affect any obligation of the licensee or any obligation of the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

ARTICLE VII

The term of this agreement shall commence as of the date and time specified in Item 6 of the Attachment and shall terminate at the time of expiration of that license specified in Item 3 of the Attachment, which is the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate 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. Termination of the term of this agreement shall not affect any obligation of the licensee or any obligation of the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

[redacted]

UNITED STATES ATOMIC ENERGY COMMISSION

Indemnity Agreement No._____

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. a. 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 the amount specified in Item 2. a. [$_____; 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) _____

Item 6. 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)

b. With respect to any nuclear incident, the amount specified in [this] Item 2. a. 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 the amount specified in Item 2. a. [$_____; 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.]

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FOR THE UNITED STATES ATOMIC ENERGY COMMISSION

By _____

FOR THE _____
(Name of Licensee)

By _____

Dated at Germantown, Maryland
the _____day of _____,
19____.

[redacted]

[redacted]

ENCLOSURE "E"

SUMMARY OF COMMENTS

This Enclosure contains excerpts from comments received by members of the public with respect to the proposed form of indemnity agreements published by the Commission on April 7, 1960, in the Federal Register (25 F. R. 2999). Following each extract is a staff comment indicating action taken, if any, with respect to the comment. For convenience, the extracts are topically arranged so that all comments with respect to particular provisions of the indemnity agreements appear together. References are to provisions of the proposed indemnity agreement to be entered into with licensees who furnish financial protection in the form of liability insurance policies similar to those issued by NELIA and MAELU.

ARTICLE I, Paragraph 1

Commonwealth Edison Co. - "Paragraph 1 of Article I of the proposed indemnity agreement provides that the term 'financial protection' as used in the agreement shall have the meaning given it in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

"The statutory definition of 'financial protection,' however, is based upon two other defined terms: i.e., 'public liability' and 'nuclear incident.' Consequently, the adoption of the statutory meaning of 'financial protection' would incorporate the statutory definition of the basic phrases - 'public liability' and 'nuclear incident.' This appears to be completely reasonable and necessary if the regulations are to properly implement the Act.

"However, the proposed indemnity agreement contains definitions of 'public liability' and 'nuclear incident'

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ARTICLE I, Paragraph 1

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"The statutory definition of 'financial protection,' however, is based upon two other defined terms: i.e., 'public liability' and 'nuclear incident.' Consequently, the adoption of the statutory meaning of 'financial protection' would incorporate the statutory definition of the basic phrases - 'public liability' and 'nuclear incident.' This appears to be completely reasonable and necessary if the regulations are to properly implement the Act.

"However, the proposed indemnity agreement contains definitions of 'public liability' and 'nuclear incident' which conflict with the statutory definitions in a substantial degree. Thus, the agreement's dual definitions of these basic phrases create ambiguities which may substantially affect the scope of the government indemnity.

"It is suggested that in order to properly implement the Act, all statutory definitions should be adopted, without change, in the revision of Part 140, including

[redacted]

the indemnity agreement, in the same manner as was done in the temporary indemnity regulations which are currently effective but will be superseded on May 7, 1960. If the Commission considers it necessary to limit the indemnity to nuclear incident 'at the location' and 'in the course of transportation,' this result could be achieved by addition of a new paragraph to Article III."

Staff Comment

The staff does not agree with the Commonwealth proposal that all statutory definitions be adopted without change. This suggestion runs contrary to the general consensus of comments received since consideration of indemnity agreements began several years ago. It is also contrary to the basic purpose of the indemnity agreements which is to clarify the scope and extent of coverage.

The definition of "financial protection" has been deleted from the revised agreement. The assertion that the definitions of "public liability" and "nuclear incident" conflict with the statutory definitions is wrong, in our opinion.

ARTICLE I, Paragraph 3(a)

NELIA-MAELU -- "Section 3(a) of Article I defines nuclear incident in part to mean 'any occurrence or series of occurrences at the location .... causing bodily injury....' It may well be that such a definition will inadvertently deny coverage where a person is injured away from the facility site. For instance, in a situation where gradual leakage of fission products causes injury downstream from a reactor, it could be argued that the occurrence or series of occurrences did not take place at the location.

"To avoid such a result, the contract of indemnity could be amended or a statement clarifying the Commission's intent could be issued by the Commission along the lines of the then General Counsel of the Commission, L. K. Olson's interpretation of the Price-Anderson Act, which appeared in the Federal Register on May 7, 1960."

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[redacted]

[redacted]

Staff Comment

The staff believes that the possible erroneous interpretation suggested in the above comment by NELIA-MAELU is not probable. However, in order to protect the remote possibility of such an interpretation, appropriate statements have been added to the statement of considerations to be published with the rule expressing an intent contrary to such an interpretation.

ARTICLE I, Paragraph 3(b)

NELIA-MAELU -- "We also noticed that in clauses Section 3(b) i and ii of Article I the words 'radioactive material' appear first before and then after the words 'in any other agreement or agreements entered into by the Commission'. We wondered if there was any particular significance behind this transposition."

Staff Comment

There is no significance to the "transposition" referred to. No change was suggested and none was made.

ARTICLE I, Paragraph 4

Pacific Gas & Electric Co. -- "Revise definition of 'in the course of transportation' to provide indemnity to the licensee while radioactive material is in the hands of the processor."

Staff Comment

This comment suggests a change to provide coverage to fuel element fabricators and processors. This suggestion is the subject of a separate staff paper (AEC-R 29/16 considered by the Commission at Regulatory Meeting 88, held December 27, 1960).

ARTICLE I, Paragraph 6

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ARTICLE I, Paragraph 6

Pacific Gas & Electric Co. -- "The definition of 'public liability' is incomplete. We believe it should be the same as it appears in the Atomic Energy Act of 1954."

[redacted]

[redacted]

Staff Comment

The definition of "public liability" in the indemnity agreement is not incomplete. In making this comment, PG&E looked only at paragraph 6, Article I. The substance of the rest of the statutory definition of "public liability" is contained in Article II, par. 2(b) and Article III, par. 2, of the indemnity agreements.

ARTICLE II, Paragraph 1

> LeBoeuf, Lamb and Leiby -- "For the most part the suggestions made in our prior letters appear to have been taken into account in the revisions. We should like, however, to repeat our observation that Article II, paragraph 1 imposes upon a licensee an obligation (to maintain financial protection when a license has, e.g., been revoked) which he may not be able to satisfy."

Staff Comment

The staff considered, and decided against, modifying paragraph 1 so that the licensee would be required to "use his best efforts" to maintain financial protection in the form of insurance. Insertion of the phrase was suggested by a member of LeBoeuf, Lamb and Leiby at an industry advisory meeting. The incorporation of such a provision might relieve the licensee from maintaining insurance if he were unable to do so for financial or other reasons not related to the syndicates' willingness to furnish insurance.

ARTICLE II, Paragraph 2(a)

> Commonwealth Edison Co. -- "This paragraph attempts to deal with the problem resulting from a reduction in the amount of policy coverage due to payment of liability claims. The last sentence of the paragraph provides that, if the licensee fails to obtain reinstatement within 90 days, the Commission may order the licensee to furnish financial protection in the

[illegible] Article I. The substance of the rest of the statutory definition of "public liability" is contained in Article II, par. 2(b) and Article III, par. 2, of the indemnity agreements.

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Staff Comment

The staff considered, and decided against, modifying paragraph 1 so that the licensee would be required to "use his best efforts" to maintain financial protection in the form of insurance. Insertion of the phrase was suggested by a member of LeBoeuf, Lamb and Leiby at an industry advisory meeting. The incorporation of such a provision might relieve the licensee from maintaining insurance if he were unable to do so for financial or other reasons not related to the syndicates' willingness to furnish insurance.

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"In order to provide such a standard in keeping with the provisions of subsection 170(b) of the Act, it is suggested that the last sentence of paragraph 2 (a) of Article II be amended by adding at the end of the sentence the following:

", but in no event shall the amount of financial protection required exceed the amount of liability insurance available from private sources."

"If the amendment suggested above is not adopted, another reasonable and workable approach might be to provide that the Commission may order that the licensee furnish financial protection in the original amount of the policy, unless the licensee shall demonstrate that liability insurance in such amount is not available to him from private sources."

Pacific Gas & Electric Co. -- "Substitute a comma for the period at the end of the last sentence and add "but in no event shall the required amount exceed the amount of liability insurance available from private sources."

Staff Comment

It is difficult to ascertain the real purpose of the suggestions by PG&E and Commonwealth Edison. Since they propose, however, only a limitation upon orders which might in the future be issued by the Commission, the staff considers the adoption of the suggestion is, in any event, unnecessary and would be without operative effect.

NELIA-MAELU -- "Section 2(a) of Article II makes reference to an 'occurrence of any event which reduces the limit of liability' as the point of time from which the 90 day period for the restoration of financial protection begins to run. Where there are delayed emergence cases or where damage results from a slow leakage of fission products, such a condition would be extremely difficult, if not impossible, to fulfill. We suggest that the first sentence of Section 2(a) be altered to provide:

'In the event of any payment under said policy which reduces the limit of liability

", but in no event shall the amount of financial protection required exceed the amount of liability insurance available from private sources."

"If the amendment suggested above is not adopted, another reasonable and workable approach might be to provide that the Commission may order that the licensee furnish financial protection in the original amount of the policy, unless the licensee shall demonstrate that liability insurance in such amount is not available to him from private sources."

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'In the event of any payment under said policy which reduces the limit of liability thereunder to a figure less than the amount specified in Item 2a of the attachment, the licensee will promptly apply to his insurers for reinstatement to the amount specified in Item 2a of the attachment (without reference to paragraph b of Item 2) and will make all reasonable efforts to obtain such reinstatement.'"

Staff Comment

This suggestion has been substantially adopted.

[redacted]

[redacted]

ARTICLE II, Paragraph 2(b)

State of California -- "In the form of agreement published as Appendix B, Article II, paragraph 2(b), the restriction as to public liability 'for damage to property which is at the location' differs from the corresponding paragraph in Appendix C, namely Article II, paragraph 1. It would seem that the latter is the form in which the undertaking should be made. There is a slight typographical error in this paragraph also (Appendix B, Article II, paragraph 2(b), in that 'indemnify' has been written as 'indemnity'."

Staff Comment

The typographical error referred to has been corrected. The remainder of this comment is in error. The difference between paragraph 2 (b), Article II of the agreement published as Appendix B and paragraph 1, Article II, Appendix C, are necessary because in the former case coverage of liability is furnished by insurance policies, except liability for damage to property at the location. The agreement in Appendix C covers situations where the licensee does not furnish an insurance policy and, consequently, undertakes to indemnify from public liability generally.

Westinghouse Electric Corp. -- "In the explanation for the changes in the indemnity agreement (paragraph 3 on page 2999 of the Federal Register), the Commission recites its recommendation to the Congress on April 8, 1959 that coverage against liability of persons other than the licensee for damage to 'on-site' property be eliminated, indicating that Article II 2 (b) would be removed should the Congress enact the proposed legislation. We think that part of the substance of Article II 2 (b) is healthy and should remain, whether or not the proposed legislation becomes law. The difficulty is that a reactor operator is not required to carry NEPIA/MAERP insurance. Absent such insurance, a waiver must be obtained from the reactor operator. Generally, the only person in a position to obtain that waiver is the prime contractor who may or may

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Staff Comment

The typographical error referred to has been corrected. The remainder of this comment is in error. The difference between paragraph 2 (b), Article II of the agreement published as Appendix B and paragraph 1, Article II, Appendix C, are necessary because in the former case coverage of liability is furnished by insurance policies, except liability for damage to property at the location. The agreement in Appendix C covers situations where the licensee does not furnish an insurance policy and, consequently, undertakes to indemnify from public liability generally.

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supplier against liability for damage to on-site property of any third persons. We question whether a supplier may reasonably expect this protection, or even protection which the operator could obtain via a NEPIA/MAERP policy. For this reason, consideration should be given to rewriting the language along the following lines:

> 'The licensee undertakes and agrees to waive any claim against any person indemnified for liability, arising out of or resulting from a nuclear incident, for damage to licensee's property which is at the location'."

Staff Comment

In paragraph 2 (b), Article II, the licensee is furnishing indemnity in some other form than liability insurance against liability for damage to on-site property. This would appear to be the basic approach of the statute. The Westinghouse suggestion would constitute only a waiver of the licensee's claims; and not indemnity protection "in some other form than insurance" (See Sec. 170 b. of the Act).

Consumers Public Power District -- "Paragraph 2 (b) of Article II of the above section provides that the licensee undertakes and agrees to indemnify and hold harmless all persons, as their interests may appear, from public liability for damage to property which is at the location.

"This protection is not available to the licensee through the approved Nuclear Energy Liability Policy (Appendix A) and therefore a loss to the property on the site, belonging to the licensee, a licensee's contractor, or any third party (including Federal government) would have to be paid by the licensee up to the limit of financial responsibility. On-site property coverage was undoubtedly eliminated by NELIA in order to force the licensee to purchase property insurance from NEPIA. In doing so, the insurance industry has created a gap in the coverage available to a licensee.

"The licensee will be exposed to property damage suits of employees for personal property, service organizations called to the site to perform maintenance

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Staff Comment

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> "This protection is not available to the licensee through the approved Nuclear Energy Liability Policy (Appendix A) and therefore a loss to the property on the site, belonging to the licensee, a licensee's contractor, or any third party (including Federal government) would have to be paid by the licensee up to the limit of financial responsibility. On-site property coverage was undoubtedly eliminated by NELIA in order to force the licensee to purchase property insurance from NEPIA. In doing so, the insurance industry has created a gap in the coverage available to a licensee.
>
> "The licensee will be exposed to property damage suits of employees for personal property, service organizations called to the site to perform maintenance work, major construction equipment being used by contractors for plant expansion, as well as major machinery being installed. In addition, the requirement that the licensee hold the government harmless (except for the application of the indemnity agreement) would automatically make the licensee liable for any government property on the site. It is suggested that you review the acceptability of the NELIA policy or fill the gap by altering the provisions of the indemnity agreement."

Staff Comment

The staff sees no basis for rejecting the NELIA-MAELU policy, particularly in view of the probability that coverage of liability for damage to on-site property was inadvertent; and the Commission's recommendation to Congress that such coverage be deleted. There is no "gap" in view of the licensee's undertakings in paragraph 2 (b).

> Commonwealth Edison Co. -- "This provision requires the licensee to indemnify suppliers and all others from public liability for damage to on-site property. The Commission has explained that this provision is necessary in order to prevent dilution of the government indemnity to pay for damage to on-site property. The Commission has also stated that this provision in the indemnity agreement will be deleted if its recommended amendment to the term 'public liability' is enacted.
>
> "We have no objection to the adoption of such amendment. It has always been our view that the indemnity under the Price-Anderson Act would not apply with respect to damage to any on-site property used in connection with the licensed activity. In other words, the amendment would do more than the Price-Anderson Act originally was intended to do. Since we believe that the Price-Anderson Act may reasonably be construed so as to obviate the need for the amendment, we do not consider that paragraph (2) (b) of Article II is required to prevent dilution of the government indemnity."
>
> NELIA-MAELU -- "We have indicated in previous correspondence that Section 2(b) of Article II is unnecessary. The legislative history makes it clear that Congress had no intention of affording indemnity for damage to the facility. For example, H. R. Report No. 435 which accompanied H. R. 7383 reads in part (p. 18):
>
>> "The definition of 'public liability' has language to make it expressly applicable to damage to property of persons indemnified except that which is located at the site of, and used in connection with, the activity where the incident occurs. If there is a reactor incident, there would be no claim for the damages to the reactor which could be included in the indemnification of the Government. However, if the

damage to on-site property was inadvertent; and the Commission's recommendation to Congress that such coverage be deleted. There is no "gap" in view of the licensee's undertakings in paragraph 2 (b).

Commonwealth Edison Co. -- "This provision requires the licensee to indemnify suppliers and all others from public liability for damage to on-site property. The Commission has explained that this provision is necessary in order to prevent dilution of the government indemnity to pay for damage to on-site property. The Commission has also stated that this provision in the indemnity agreement will be deleted if its recommended amendment to the term 'public liability' is enacted.

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"The definition of 'public liability' has language to make it expressly applicable to damage to property of persons indemnified except that which is located at the site of, and used in connection with, the activity where the incident occurs. If there is a reactor incident, there would be no claim for the damages to the reactor which could be included in the indemnification of the Government. However, if the same organization owned property, for instance in another town, for which nuclear insurance would not be expected, that property could be included in the property to which the indemnity would be applied. Basically, however, this was included because it was brought to the attention of the Joint Committee that even a small research reactor might be located on the campus of a university - if the Commission found such a

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location to be safe - and there would be no way in which that educational institution could obtain atomic insurance on all the rest of its buildings. This is designed to afford protection for off-site property". (Emphasis added)

Staff Comment

This comment on paragraph 2 (b), Article II, runs contrary to the position which the Commission has adopted with respect to coverage of liability for damage to on-site property. It, therefore, has not been adopted by the staff. If the Congress enacts the amendment, proposed by the Commission, deleting coverage of liability for damage to on-site property, paragraph 2(b), Article II, would be deleted.

Pacific Gas & Electric Co. -- "Appendix 'B', Article II, par. 2(b). Delete this subparagraph. It requires the licensee to indemnify suppliers and all others from public liability for damage to on-site property, which we believe is contrary to the intent of the Price-Anderson legislation."

Staff Comment

This suggestion also runs contrary to the position which the Commission has adopted concerning coverage of liability for damage to on-site property. The comment has, therefore, been rejected.

ARTICLE II, Paragraph 3

Westinghouse Electric Corp. -- "As far as Article II 3 of the Indemnity Agreement is concerned we think that, as a matter of policy, the Commission should conclude that, once an indemnity agreement is appropriate, any obligation to indemnify the Commission against third party claims should be removed."

Saxe, Bacon & O'Shea -- "1. Article II, sec. 3,

Staff Comment

This comment on paragraph 2 (b), Article II, runs contrary to the position which the Commission has adopted with respect to coverage of liability for damage to on-site property. It, therefore, has not been adopted by the staff. If the Congress enacts the amendment, proposed by the Commission, deleting coverage of liability for damage to on-site property, paragraph 2(b), Article II, would be deleted.

> Pacific Gas & Electric Co. -- "Appendix 'B', Article II, par. 2(b). Delete this subparagraph. It requires the licensee to indemnify suppliers and all others from public liability for damage to on-site property, which we believe is contrary to the intent of the Price-Anderson legislation."

Staff Comment

This suggestion also runs contrary to the position which the Commission has adopted concerning coverage of liability for damage to on-site property. The comment has, therefore, been rejected.

ARTICLE II, Paragraph 3

> Westinghouse Electric Corp. -- "As far as Article II 3 of the Indemnity Agreement is concerned we think that, as a matter of policy, the Commission should conclude that, once an indemnity agreement is appropriate, any obligation to indemnify the Commission against third party claims should be removed."

> Saxe, Bacon & O'Shea -- "1. Article II, sec. 3, now reads:

> "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."

the statute, as amended, to read:

[redacted]

[redacted]

"Except to the extent that the indemnification and limitation of liability provisions of Section 2210 of the Atomic Energy Act of 1954, as amended, apply hereunder, 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."

Pacific Gas & Electric Co. -- "Substitute Section 53(e)(8) of the Price-Anderson Act which reads as follows: "except to the extent that the indemnification and limits of liability provisions of Section 170 apply, the licensee 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."

NELIA-MAELU -- "Section 3 of Article II gave us some concern. We examined Section 53(e)(8) and noted that it provides in part 'Each license issued pursuant to this Section shall contain and be subject to the following conditions...'. It would seem that since such a condition must be included in each license issued by the Commission, it has no place in the indemnity agreement."

Commonwealth Edison Co. -- "In view of the ambiguity respecting the meaning of Section 53(e)(8) of the Act, it is suggested that paragraph (3) of Article II incorporate the statutory section in its entirety."

General Electric Co. -- "The Commission's March 31, 1960 annual report to the Joint Committee indicates that legal problems arising out of section 53e. (8) of the Act are still under study. One of the legal questions is whether section 53e. (8) has any application where the Commission, pursuant to section 170, requires financial protection and provides indemnity. Because of doubts on this and other points, the Commission should consider omitting paragraph 3 of the proposed indemnity agreement, at least until completion of its study. The Government's position would not be prejudiced by this course."

Staff Comment

In view of the fact that subsection 53(e)(8) is a statutory obligation incorporated in each license pursuant to the regulations in Part 70, paragraph 3 of the proposed indemnity agreement published in April, 1960, has been deleted as redundant.

possession of special nuclear material by the licensee."

Pacific Gas & Electric Co. -- "Substitute Section 53(e)(8) of the Price-Anderson Act which reads as follows: "except to the extent that the indemnification and limits of liability provisions of Section 170 apply, the licensee 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."

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General Electric Co. -- "The Commission's March 31, 1960 annual report to the Joint Committee indicates that legal problems arising out of section 53e. (8) of the Act are still under study. One of the legal questions is whether section 53e. (8) has any application where the Commission, pursuant to section 170, requires financial protection and provides indemnity. Because of doubts on this and other points, the Commission should consider omitting paragraph 3 of the proposed indemnity agreement, at least until completion of its study. The Government's position would not be prejudiced by this course."

Staff Comment

In view of the fact that subsection 53(e)(8) is a statutory obligation incorporated in each license pursuant to the regulations in Part 70, paragraph 3 of the proposed indemnity agreement published in April, 1960, has been deleted as redundant. As a result of this deletion, it was necessary to incorporate references to subsection 53(e)(8) of the Act elsewhere in the indemnity agreement. As noted in the statement of considerations, these changes are not intended to have any substantive effect.

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ARTICLE II, Paragraph 7

NELIA-MAELU -- "Obviously, the common occurrence provisions, Article II Section 7 and Article III Section 4(b), present a problem in view of the fact that the common occurrence provision in a policy issued by either NELIA or MAELU is necessarily limited to the capacity of the pool issuing the policy. As you know, in addition to other considerations, applicable state laws make this establishment of a single pool of both stock and mutual companies impractical.

"We want to make it clear that we have no philosophical objection to a common occurrence policy provision which is geared to joint pool capacity. In fact, the total capacity of both pools will be available in many situations for a common occurrence. However, any such clause must clearly safeguard the member companies of each pool so that they are not exposed to liabilities in excess of their subscribed capacities. Even after a great deal of careful study, our policy draftsmen have been unable to draft such a clause.

"In addition, we are confronted with the fact that there are two pools with distinctly separate capacities. The smaller pool's capacity is 22.5% of the total. MAELU cannot fairly be expected to assume direct liabilities with respect to a common occurrence which may amount to over four times those assumed for a single nuclear incident and over four times the capacity of the pool it represents."

Staff Comment

This matter is discussed in the Statement of Considerations to be published with the amendments. As there noted, the pools have rejected the possibility of their filling this gap. Consequently, the form of indemnity agreement has been revised so that the Commission will fill the gap.

Pacific Gas & Electric Co. -- "Insert in the fourth line following $60,000,000" or the amount of liability insurance available from private sources, whichever is the greater" and in line 5 substitute 'such sum' for $60,000,000."

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Pacific Gas & Electric Co. -- "Insert in the fourth line following $60,000,000" or the amount of liability insurance available from private sources, whichever is the greater" and in line 5 substitute 'such sum' for $60,000,000."

Staff Comment

The provision referred to has been completely redrafted. The staff is not certain as to the purpose of the change suggested by PG&E, but believes that it has no place in the revised provision (See Article II, paragraph 6 of the revised agreement).

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[redacted]

ARTICLE III, Paragraph 2

Saxe, Bacon & O'Shea and Pacific Gas & Electric Co. and NELIA-MAELU -- "There appears to be a typographical error in Article III, sec. 2, in that the word 'been' should be inserted after the word 'have' in the fifth line of the first sentence."

Staff Comment

This suggestion has been adopted.

State of California -- "In Article III, paragraph 2, the phrase 'other than property which is located at the location' may result in ambiguity with respect to a widely dispersed plant, especially where more than one reactor is in operation. It is noted also that the corresponding paragraph in Appendix C has further limitation of the exception by the additional phrase 'and used in connection with the licensee's possession, use or transfer of the radioactive material'. There would seem to be no reason for a difference between these two agreements in this respect. A typographical error appears to have been introduced into this paragraph of Appendix B in the apparent omission of 'been' in the phrase 'would have obligated'."

Staff Comment

The State of California comments set forth above fail to take into account the absence of underlying insurance protection for licensees entering into the form indemnity agreement in Appendix C, and the fact that Article III, paragraph 2, covers situations where, as a matter of law, there is no legal liability because it applies to property of the "person legally liable." "The location" will be defined in the attachment to the agreement.

ARTICLE III, Paragraph 4

Pacific Gas & Electric Co. -- "Article III, par. 4(b). Substitute a comma for the period at the end of this subparagraph and add 'or the amount of liability insurance available from private sources'."

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Staff Comment

If the amount of liability insurance available ($60,000,000) is changed, it will be necessary to amend the indemnity agreements as well as other parts of Part 140.

NELIA-MAELU -- "At the end of Section 4(a), Article III, we suggest the addition of the words 'as specified in Items 2a and 2b of the Attachment.' Such an addition would make it clear that the Commission obligations attaches to financial protection which has been depleted by a prior incident."

Staff Comment

This comment has in effect been adopted by changes in the definition of "amount of financial protection" (See Article I, paragraph 2).

ARTICLE III, Paragraph 5

Saxe, Bacon & O'Shea -- "Article III, sec. 5, provides that the obligations of the Commission shall apply only with respect to nuclear incidents occurring during the term of the license designated in the indemnity agreement. We understand that it is the intention of the statute that the indemnity agreement covers any and all damage from radiation which commenced during the license period and continued thereafter. Should not this be made more clear in Article III, sec. 5."

Staff Comment

To protect against remote possibility of such an interpretation, statements have been concluded in the statement of considerations expressing a contrary intent.

Consumers Public Power District -- "Under paragraph 1 of Article II, the licensee is required to maintain financial protection during the term of the license as well as after expiration, termination, modification, amendment, suspension, or revocation of the license until such time as the radioactive material has been removed from the location. However, under paragraph 5 of Article III, the Commission's obligation to indemnify ceases at the time the license is terminated, suspended or revoked. As a result, the licensee is faced with the potential problem of entering into a clean-up program after abondonment of the project without the protection anticipated by Congress for the general public. The upper-limit of liability of $500,000,000 would be reduced to the level of financial

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Staff Comment

This problem has been obviated by the inclusion of a new Article VII in the revised indemnity agreement defining the term of the indemnity agreement and making it clear that, except as otherwise ordered by the Commission, the term of the indemnity agreement continues until the completion of transportation of the radioactive material from the site.

NELIA-MAELU -- "We think that Section 5 of Article III may suffer from a similar ambiguity (See comment on Paragraph 3(a) of Article I). It provides that the obligations of the Commission apply 'only with respect to nuclear incidents occurring during the term of the license'. In delayed emergence cases or instances when there is a slow buildup of fission products and the injuries become manifest after the expiration of the license, we wonder if it is clear that the indemnity is applicable."

General Electric Co. -- "It was pointed out in the October 1958 comments, that the provisions of paragraph 5 of Article III required clarification. If the paragraph is intended to say more than section 170 would provide in any event, this intent ought to be made clearer."

Allis-Chalmers Manufacturing Co. -- "It is our recommendation that Paragraph 140.76 Appendix B, Article 3, Paragraph 5 be amended by changing the first sentence to read as follows:

> 'The obligations of the Commission under this Article shall apply only with respect to nuclear incidents arising out of or incidental to operation during the term of the license designated in Item 3 of the Attachment.'

"The reason for this suggestion is obvious. Contamination occurring during a license period could linger and cause injury to a person exposed after the license has ended. There are other examples of a similar nature which could be cited."

Staff Comment

[illegible]

agreement and making it clear that, except as otherwise ordered by the Commission, the term of the indemnity agreement continues until the completion of transportation of the radioactive material from the site.

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"The reason for this suggestion is obvious. Contamination occurring during a license period could linger and cause injury to a person exposed after the license has ended. There are other examples of a similar nature which could be cited."

Staff Comment

To protect against the possibility of an erroneous interpretation, statements have been incorporated in the statement of considerations (paragraph 7) expressing a contrary intent.

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ARTICLE III, Paragraph 6

State of California -- "In Article III, paragraph 6, a possibly serious problem may be generated by the omission of a formula for the distribution of aggregate indemnity in the event of a major loss. Presumably the equitable treatment would be pro rata indemnification of all injured parties, although this procedure may be impracticable if some of the claims are long delayed. It may well be argued, too, that the indemnification of the 'person legally liable for the nuclear incident' should be given less consideration than that of the other parties. In any event, some clear statement of the intended distribution seems essential if future disputes are to be avoided."

Staff Comment

This comment raises some fundamental problem which may arise during the course of litigation but which cannot be handled in the indemnity agreement.

ARTICLE IV

NELIA-MAELU -- "We would like to point out that the Commission has exceeded its statutory authority in Article IV section I in that the section provides that where the Commission determines that it will probably be required to make payments under the indemnity agreement it may require prior approval for the settlement of any claim asserted against the licensee, and take charge or defend any action."

"Section 170(h) of the Price-Anderson Act provides in part:

"Such agreement shall provide that, when the Commission makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification..." (Emphasis added)

"Thus, 170(h) clearly and properly restricts Commission

a possibly serious problem may be generated by the omission of a formula for the distribution of aggregate indemnity in the event of a major loss. Presumably the equitable treatment would be pro rata indemnification of all injured parties, although this procedure may be impracticable if some of the claims are long delayed. It may well be argued, too, that the indemnification of the 'person legally liable for the nuclear incident' should be given less consideration than that of the other parties. In any event, some clear statement of the intended distribution seems essential if future disputes are to be avoided."

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NELIA-MAELU -- "We would like to point out that the Commission has exceeded its statutory authority in Article IV section I in that the section provides that where the Commission determines that it will probably be required to make payments under the indemnity agreement it may require prior approval for the settlement of any claim asserted against the licensee, and take charge or defend any action."

"Section 170(h) of the Price-Anderson Act provides in part:

"Such agreement shall provide that, when the Commission makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification..." (Emphasis added)

"Thus, 170(h) clearly and properly restricts Commission approval to 'the payment of any claim under the agreement of indemnification.' The section in no way affords the Commission the right to approve settlement or payment of claims or to assume control of litigation in the area of financial protection.

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"The companies appreciate the fact that an incident which is likely to involve Government indemnity will require the closest type of cooperation and are fully prepared to afford such cooperation.

"Nevertheless, our widespread claims experience indicates that prompt claims handling reduces loss and expense payments. In addition, prompt settlements avoid public dissatisfaction. In our judgment, the provision of section 1 is impractical in addition to being beyond the scope of the Commission authority. We, therefore, urge amendment to section 1 of Article IV as follows:

"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 or action 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 or action the Commission may be required to indemnify under this agreement; and (b) with respect to any such claim or action included within clause (a) foregoing, 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 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."

Staff Comment

These comments are discussed in Enclosure "A".

ARTICLE V

Saxe, Bacon & O'Shea -- "We suggest that Article V be amended to provide that any subsequent amendment to the indemnity agreement will not reduce or cut down any obligation or liability of the Commission which had occurred prior to the amendment."

Nevertheless, our widespread claims experience indicates that prompt claims handling reduces loss and expense payments. In addition, prompt settlements avoid public dissatisfaction. In our judgment, the provision of section 1 is impractical in addition to being beyond the scope of the Commission authority. We, therefore, urge amendment to section 1 of Article IV as follows:

> "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 or action 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 or action the Commission may be required to indemnify under this agreement; and (b) with respect to any such claim or action included within clause (a) foregoing, 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 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."

Staff Comment

These comments are discussed in Enclosure "A".

ARTICLE V

Saxe, Bacon & O'Shea -- "We suggest that Article V be amended to provide that any subsequent amendment to the indemnity agreement will not reduce or cut down any obligation or liability of the Commission which had occurred prior to the amendment."

Staff Comment

The staff does not believe it is appropriate to incorporate limitations as to the scope of future amendments. There would, in any event, be serious doubt as to the validity of an amendment which reduces or cuts down previously accrued liabilities of the Commission.

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ARTICLE VI

State of California -- "There is a minor typographical error in Article VI in that 'licensee' appears as 'license'."

Staff Comment

This typographical error has been corrected.

ATTACHMENT, ITEM 2

Westinghouse Electric Corp. -- "The attachment to the Indemnity Agreement, Item 2b, leaves a blank $_____ amount which is, apparently, to be the same as that stated under Item 2a. Lest there be any thought the amount is negotiable or an amount different from that in Item 2a, it might be well to substitute 'the amount specified in Item 2a' for '$_____.'"

Staff Comment

This suggestion has been adopted.

NELIA-MAELU -- "We want to warmly congratulate the Commission on its decision that the Price-Anderson Act permits the Government indemnity to slide down to meet financial protection which has been depleted by a prior incident. However, in looking at Clause (1) of Item 2b of the Attachment we wonder if the limitation is not utterly inconsistent with such a decision. It would seem that once it is decided that the Price-Anderson Act permits attachment of the indemnity at a point where financial protection has been reduced by a prior incident, there is no statutory justification for the million dollar limitation.

"Further, we also question the effect of Clause (2) of Item 2b of the Attachment. We have already indicated in conferences with members of the Commission staff, that some facility operators have expressed a desire to purchase a facility from the pools with an aggregate limit of liability in excess of the amount of financial protection required would not be applied where an incident involving government indemnity takes place. It would seem that Clause 2 would cast serious doubt on the validity of such a procedure. Although we are uncertain as to the purpose of this clause, we are of the view that its omission would not

Staff Comment

This typographical error has been corrected.

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Staff Comment

This suggestion has been adopted.

NELIA-MAELU -- "We want to warmly congratulate the Commission on its decision that the Price-Anderson Act permits the Government indemnity to slide down to meet financial protection which has been depleted by a prior incident. However, in looking at Clause (1) of Item 2b of the Attachment we wonder if the limitation is not utterly inconsistent with such a decision. It would seem that once it is decided that the Price-Anderson Act permits attachment of the indemnity at a point where financial protection has been reduced by a prior incident, there is no statutory justification for the million dollar limitation.

"Further, we also question the effect of Clause (2) of Item 2b of the Attachment. We have already indicated in conferences with members of the Commission staff, that some facility operators have expressed a desire to purchase a facility from the pools with an aggregate limit of liability in excess of the amount of financial protection required would not be applied where an incident involving government indemnity takes place. It would seem that Clause 2 would cast serious doubt on the validity of such a procedure. Although we are uncertain as to the purpose of this clause, we are of the view that its omission would not effect the substance of the agreement."

Staff Comment

The comment regarding clause (2) was adopted by revision of Item 2 of the Attachment. The comment regarding clause (1) was also adopted.

[redacted]

[redacted]

Commonwealth Edison Co. -- "Consistent with the suggested changes to Section 140.11 and paragraph 2(a) of Article II of the indemnity agreement, it is submitted that Item 2.a. of the Attachment to Appendix "B" should be amended to read as follows:

"2.a. Amount of Financial Protection - $_____, but in any event not more than the amount of liability insurance available to licensee from private sources."

Staff Comment

This comment has not been adopted. If the amount of insurance available to the licensee from private sources ($60,000,000) should be reduced, the Commission would have to take appropriate action to amend Part 140 and the indemnity agreements.

ATTACHMENT, ITEM 5

Saxe, Bacon & O'Shea -- "We also suggest that the termination provision (Attachment to indemnity agreement) be amended to make it clear that the indemnity agreement shall continue in effect until the expiration or termination of the license under which it is issued. This could be accomplished by substituting 'license' for 'agreement' where last used."

Staff Comment

The suggestions made in this comment have in substance been adopted in the new Article VII defining the "term" of the agreements.

GENERAL COMMENTS

Le Boeuf, Lamb & Leiby -- "In the attachment to the agreement form applicable to licensees furnishing proof of protection in the form of commercial insurance (Appendix "B", § 140.76) the Commission has tried to exercise its rule-making power to close one, but only one, 'gap' between such insurance and governmental indemnification. This action is somewhat puzzling. If the Commission believes that it has authority to close gaps, why does it not close all the gaps since

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"From the standpoint of the public and of private industry the Commission is to be commended for its

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objective but there is unfortunately doubt whether the method proposed to achieve the objective would be honored by the courts. In our opinion, it would still be desirable to secure legislation, as originally contemplated, to close this and other gaps, unless the insurance companies themselves will close the gaps."

Staff Comment

During the testimony at JCAE hearings in 1960, Commission representatives testified that the Commission is authorized to fill the gaps referred to.

Consumers Public Power District -- "Under Appendix "B" (or Appendix "C"), it is not clear that the form provides the necessary flexibility to offer the licensee the opportunity to combine his own financial resources with the insurance from the nuclear energy pools. In many cases it may be to the advantage of the licensee to combine these two ingredients in various ways to meet the total financial responsibility requirements of the Commission's regulations."

Staff Comment

It is clear under Part 140 that licensees may furnish financial protection in the form of insurance and also their own resources. No licensee has to date proposed doing so. If a licensee should wish to do so, some modification of the standard forms in Appendix "B" or "C" would be necessary. The regulation includes authority to make such modification in individual cases if needed.

General Electric Co.:

"Meshing Indemnity and Insurance - Gaps in Coverage. The Commission (so long as it permits operation of a facility pursuant to license) is obligated under the Price-Anderson Act to provide indemnity which begins at the point where, under an approved policy, no further amounts are available from

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[redacted]

"The appropriate solution to this gap problem is for the insurers to revise their 'common occurrence' clause so that the total capacity of the two pools is available for a 'common occurrence.' However, failing such a revision, the statute will require revision of Appendix "B".

"On-site Liability. The provisions with respect to liability for damage to on-site property have been revised so that the licensee is required to provide indemnity against such liability regardless of whether the licensee obtains NELIA or MAELU insurance or affords some other form of financial protection. This eliminates one incongruity in the previously published indemnity forms.

"However, the indemnity forms still appear to contemplate that there will be a single figure for financial protection based (for large plants) on the amount of NELIA-MAELU insurance available. The licensee's indemnity obligations with respect to liability for on-site property, the licensee's section 53e.(8) obligation, and the insurer's liability under a NELIA-MAELU policy would all be subject to a total ceiling based on this amount. The result is that the $500,000,000 Government indemnity could apply to claims based on damage to on-site property.

"If the legislation proposed by the Commission fails of enactment, there should be a reexamination of the provision that the amount of the indemnity obligation with respect to liability for on-site property should be included in a single amount of financial protection measured by the availability of NELIA-MAELU insurance. Instead two amounts of required financial protection might be established - one for liability for damage to the plant measured by the amount of insurance available from the property syndicates, NEPIA and MAERP, and the other for all other public liability. This would mitigate and perhaps entirely eliminate the concern that some part of the $500,000,000 Government indemnity would be available to pay claims based on damage to on-site property.

"Direct Payment by the Government. For the reasons stated in the October 1958 comments, a provision for direct payment by the Government (after exhaustion of the amount available under the insurance policy) of claims which are either settled or brought to judgment, would be desirable.

"Miscellaneous. Two other points may be made briefly.

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"Miscellaneous. Two other points may be made briefly.

(i) The statute contemplates that the indemnity will be operative regardless of fault of any degree on the part of the person indemnified. It might be desirable to so provide explicitly in the indemnity agreement.

(ii) It would appear desirable to publish all licensee indemnity agreements and to provide that amendments would be made only after interested persons had had an opportunity to comment (see October 1958 comments, pages 20-21). A comparable practice would be appropriate for contract indemnities."

Staff Comment

The revised indemnity agreement fills the so-called "common occurrence gap." If the legislation recommended by the Commission to delete coverage on all site property is not enacted at this session it may be desirable to consider the suggestion made by G. E. that two amounts of financial protection be established. The other comments by G. E. are not considered to warrant modification of the indemnity agreement; the indemnity agreement does not purport to deal with settlement or judgment procedures; and it would probably only confirm matters to provide that indemnity operates regardless of fault, since liability is the operative fact rather than fault or negligence. The publication suggestion has been subsequently adopted.

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ENCLOSURE "F"

DRAFT NEWS RELEASE

AEC APPROVES FORMS OF INDEMNITY AGREEMENTS

The Atomic Energy Commission has approved the forms of indemnity agreements which it will enter into with those licensees who are required to maintain public liability insurance or other financial protection.

Under the Atomic Energy Act, the Commission must require financial protection of each organization it licenses to operate a nuclear reactor, and AEC must indemnify these licensees against public liability up to $500 million per nuclear incident. Financial protection is not required of non-profit educational institutions or federal agencies, but they are indemnified under the law.

The Commission may, at its discretion, require financial protection of licensees other than reactor operators who use radioactive materials. The Commission now is studying the question whether it should require financial protection of materials licensees and extend indemnity to them.

The forms for indemnity agreements with reactor licensees who are required to furnish financial protection were issued in proposed form for public comment in April of 1960. In addition, comments were received by AEC at an industry advisory conference held June 28, 1960. These comments were taken into consideration in adoption of the amendments to Commission regulations.

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The Commission has approved two forms of indemnity agreements. One form will be used for licensees who furnish financial protection through nuclear energy liability insurance. The other form of ageeement will be for licensees who furnish financial protection in the form of their own resources. In the past the

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Commission has entered into temporary indemnity agreements with licensees. These will be replaced by the new forms of definitive agreements.

The amendment to Commission regulations, 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," will be effective 30 days after publication in the Federal Register on _____.

In addition to this action, the Commission is issuing for public comment the proposed form of indemnity agreements which would apply to non-profit educational institutions and federal agencies. As noted above, such licensees are not required to maintain financial protection. All interested persons who desire to submit written comments and suggestions for consideration in connection with these proposed forms should send them to the Secretary, U.S. Atomic Energy Commission, Washington 25, D. C., within sixty days after publication in the Federal Register on _____.

Copies of the two definitive forms for indemnity agreements with licensees who are required to maintain financial protection, and the text of the proposed amendment with respect to indemnity agreements with non-profit educational institutions and federal agencies, are available for public inspection in the Commission's Public Document Room, 1717 H Street NW, Washington 25, D. C. Copies may be obtained by writing to the Director, Division of Licensing and Regulation, U.S. Atomic Energy Commission, Washington 25, D. C.

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