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June 23, 1961

ATOMIC ENERGY COMMISSION

AMENDMENT TO NUCLEAR ENERGY LIABILITY INSURANCE FORM

Note by the Secretary

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

W. B. McCool
Secretary

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ATOMIC ENERGY COMMISSION

AMENDMENT TO NUCLEAR ENERGY LIABILITY INSURANCE FORM

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

The Problem

1. To consider proposed changes in the nuclear energy liability insurance policy (facility form) issued by the nuclear energy liability insurance syndicates.

SUMMARY

2. At Regulatory Meeting 97 on March 29, 1961 (AEC-R 29/20) the Commission approved publication in the Federal Register, for public comment, of the proposed amendment to Section 140.75 of Part 140, "Financial Protection Requirements and Indemnity Agreements," contained in Appendix "A" hereof. The amendment would add an amendatory endorsement to the facility form of liability insurance policy issued by Nuclear Energy Liability Insurance Association ("NELIA") and Mutual Atomic Energy Liability Underwriters ("MAELU"). The endorsement, which the syndicates have requested AEC approve, is intended to eliminate certain possible ambiguities occasioned by use of "companies" in different senses in different parts of the policy. The staff, after discussion with the syndicates, concluded that the endorsement is simply for clarification and does not effect material changes in the provisions of the policies.

3. Notice of the proposed amendment containing the endorsement was published in the Federal Register on April 14, 1961, with a 30-day period provided for public comment. That period expired May 14, 1961. No public comments were received. In view of the nature and purpose of the endorsement, and the insurance syndicates' desire to put it into effect as soon as possible, the staff has concluded that the proposed amendment should be approved as an effective rule.

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[REDACTED]

[REDACTED]

STAFF JUDGMENTS

4. The Division of Finance and Office of Public Information concur with the recommendation of this paper.

RECOMMENDATION

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

- a. Approve the amendment to Part 140 contained in Appendix "A" hereof to become effective on publication in the Federal Register.
- b. Note that a news release such as Appendix "B" will be issued.
- c. Note that the Acting Director, Division of Licensing and Regulation, will inform the insurance syndicates of the Commission's action by letter such as Appendix "C".
- d. Note that the JCAE will be informed by appropriate letter.

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APPENDIX "A"

ATOMIC ENERGY COMMISSION

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

NOTICE OF PROPOSED RULE-MAKING

Nuclear Energy Liability Insurance Association has requested Commission approval of an amendatory endorsement which the Commission understands the Association and Mutual Atomic Energy Liability Underwriters propose to place on all nuclear energy liability insurance policies (facility form). The form of the endorsement is set forth in its entirety in the following amendments.

Notice of the proposed approval of the endorsements by the Commission was published in the Federal Register on April 14, 1961 (26 F.R. 3204). In publishing that notice, the Commission stated that the endorsements do not appear to effect material changes in the provisions of the policies. No public comments have been received on the notice.

Notice is hereby given that the following amendment is adopted to be effective upon publication in the Federal Register.

Amend § 140.75, Appendix A, by adding the following at the end thereof:

OPTIONAL AMENDATORY ENDORSEMENT
(Facility Form)

It is agreed that:

- I. The first sentence of the definition of nuclear facility is amended to read:

"nuclear facility" means "the facility" as defined in any Nuclear Energy Liability Policy (Facility Form) issued by _____ or by _____.

- II. The definition of "indemnified nuclear facility" is replaced by the following:

"indemnified nuclear facility" means

- (1) "the facility" as defined in any Nuclear Energy Liability Policy (Facility Form) issued by _____ or by _____ or

- (2) any other nuclear facility,

if financial protection is required pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, with respect to any activities or operations conducted thereat;

- III. Condition 4 is replaced by the following:

LIMITATION OF LIABILITY; COMMON OCCURRENCE. Any occurrence or series of occurrences resulting in bodily injury or

property damage arising out of the radioactive, toxic, explosive, or other hazardous properties of

- (a) nuclear material discharged or dispersed from the facility over a period of days, weeks, months or longer and also arising out of such properties of other nuclear material so discharged or dispersed from one or more other nuclear facilities insured under any Nuclear Energy Liability Policy (Facility Form) issued by _____ or,
- (b) source material, special nuclear material, spent fuel or waste in the course of transportation for which insurance is afforded under this policy and also arising out of such properties of other source material, special nuclear material, spent fuel or waste in the course of transportation for which insurance is afforded under one or more other Nuclear Energy Liability Policies (Facility Form) issued by _____.

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

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

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

- IV. The second paragraph of Condition 12 "Other Insurance" is amended to read:

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

APPENDIX "B"

AEC AMENDS REGULATIONS ON NUCLEAR
ENERGY LIABILITY INSURANCE POLICY

The Atomic Energy Commission has amended its regulations to approve an amendatory endorsement to policies which are issued by the two nuclear energy liability insurance syndicates, Nuclear Energy Liability Association of New York City and Mutual Atomic Energy Liability Underwriters of Chicago.

The change will eliminate certain ambiguities which might have arisen in the insurance policies issued by the syndicates in the past because of the necessity of using the word "companies" in different senses in different parts of the policy.

The approved amendment to AEC regulations is identical to the one submitted for public comment on April 14. It will become effective _____

The Commission must, by law, require financial protection of each organization it licenses to operate a nuclear reactor and AEC must indemnify these licensees up to \$500 million per nuclear incident. Indemnity applies to public liability in excess of the required amount of financial protection. Financial protection is not required of non-profit educational institutions or federal agencies, but they are indemnified under the law.

AEC regulations permit licensees to furnish financial protection in the form of a nuclear energy liability policy which is set forth in Appendix "A" of the regulation, 10 CFR Part 140. This form is identical to the insurance policy issued by the two syndicates.

[REDACTED]

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APPENDIX "C"

DRAFT LETTER TO MR. DeROY C. THOMAS, ASSISTANT GENERAL
MANAGER, NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

Our letter of April 7, 1961 informed you that the Atomic Energy Commission had approved publication in the Federal Register, for public comment, of a proposed amendment to Section 140.75 of the regulations in 10 CFR Part 140 to approve the proposed amendatory endorsement attached to your letter of August 4, 1960. The period provided in the notice for receipt of public comments expired May 14, 1961. No public comments were received.

This letter will inform you that the Commission has approved the amendment to Section 140.75 to become effective upon publication in the Federal Register. The publication date is _____, 1961. A copy of the Federal Register notice is enclosed.