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ATOMIC ENERGY COMMISSION

AMENDMENT TO NUCLEAR ENERGY LIABILITY FORM

Note by the Secretary

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

W. B. McCool  
Secretary

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*W.B. McCool*

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ATOMIC ENERGY COMMISSION

AMENDMENT TO NUCLEAR ENERGY LIABILITY INSURANCE FORM

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

THE PROBLEM

1. To consider a proposed amendatory endorsement to the nuclear energy liability policy (facility form) issued by the nuclear energy liability insurance syndicates.

SUMMARY

2. The Nuclear Energy Liability Insurance Association (NELIA) and the Mutual Atomic Energy Liability Underwriters (MAELU) have requested Commission approval of an amendatory endorsement to the form of nuclear energy liability insurance policy. The proposed endorsement (Appendix "A") would be used in the event that a named insured requests reinstatement of the full amount of liability coverage following payment by the insurers of an incurred loss.

3. The regulations, 10 CFR Part 140, provide, among other things, that the Commission approve the form of financial protection, including the form of the nuclear energy liability insurance policy.

4. Commission approval of the proposed form of endorsement would not obligate the insurers to reinstate coverage following a loss, but would indicate that the Commission considers that this endorsement would constitute satisfactory proof of the reinstatement of financial protection.

5. Under the terms of the present form of liability insurance policy approved by the Commission, the insurers'

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limit of liability is on an aggregate basis, i.e., regardless of the number of incidents or the number and amounts of claims, the limit of the insurers' liability is the amount stated in the policy. Therefore, payment of claims by the insurers for any incident results in equivalent reduction of the stated aggregate limit of liability. This limit may later be restored by agreement between the insured and the insurers.

6. The form of endorsement is proposed at this time because NELIA and MAELU plan to make the first payments under nuclear energy liability policies. A spent fuel cask containing fuel segments from the Dresden reactor was delivered by truck to General Electric's Vallecitos Atomic Laboratory on January 4, 1963. Parts of two trucks used in making the shipment and personal items belonging to a truck driver required decontamination due to leakage from the cask. It was determined that the contamination resulted from a defective weld in the bottom of the cask's inner container as well as a crack in the cask's drain plug. The October 25 letter indicates that MAELU appears to have incurred a liability of approximately \$800. NELIA's letter does not contain an estimate of its liability.

7. The manner in which the proposed endorsement would operate may be illustrated by reference to the described occurrence. In accordance with the terms of its policy with Commonwealth Edison Company, MAELU is required to pay claims arising not only from this occurrence, but also from any later incidents, until all such payments cumulatively total \$13,500,000. If MAELU pays a loss of \$800, the available limit of liability would be reduced thereby to \$13,499,200. Through use of the proposed endorsement the reduced limit would be

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restored to the stated amount of \$13,500,000 for incidents which may occur after the reinstatement becomes effective. The reduced limit of \$13,499,200 would continue to apply to any further payments resulting from the first incident. Of course, subsequent endorsements may also be executed, as appropriate.

8. It should be noted that after the reinstatement becomes effective, payment of a claim made as a result of either the earlier incident or an incident occurring after the reinstatement would reduce each of the two limit of liability levels by the amount of the payment. This is to avoid cumulative liability limits which could result in raising the insurers' aggregate liability at a given point in time above the limit stated in the policy. Using the illustration in Paragraph 7, the endorsement would make it clear that the restored limit of \$13,500,000 for incidents occurring after the reinstatement would be reduced if MAELU pays additional claims under the first incident.

9. Appendix "A" also contains a proposed change in Item 2b. of the Attachment to the form of indemnity agreement for the purpose of clarification. This amendment would make clear that if the stated amount of financial protection in Item 2a. of the Attachment is reduced because of a payment by the insurers, it will be restored to the extent that the aggregate amount of the insurance policies involved is reinstated.

10. It is recommended that the amendments be published in the Federal Register as a proposed rule allowing thirty days for public comment.

#### STAFF JUDGMENTS

11. The Office of the General Counsel and the Office of the Controller concur in the recommendation of this paper. The

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Division of Public Information prepared the draft public announcement. The Office of Congressional Liaison concurs in the draft letter to the Joint Committee on Atomic Energy.

RECOMMENDATION

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

a. Approve publication in the Federal Register of the proposed amendments to section 140.75 and section 140.76, contained in Appendix "A", allowing thirty days for public comment;

b. Note that the JCAE will be advised by letter such as Appendix "B";

c. Note that a public announcement such as Appendix "C" will be issued when the proposed amendments are filed with the Federal Register;

d. Note that the Director, Division of Licensing and Regulation, will send a copy of the proposed amendments to each of the insurance syndicates; and

e. Note that this paper is unclassified.

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APPENDIX "A"

ATOMIC ENERGY COMMISSION  
10 CFR PART 140

FINANCIAL PROTECTION REQUIREMENTS  
AND INDEMNITY AGREEMENTS

Proposed Restoration of Limit of Liability Endorsement

The Nuclear Energy Liability Insurance Association and the Mutual Atomic Energy Liability Underwriters have proposed an endorsement to the form of the nuclear energy liability policy set forth in Appendix "A", 10 CFR Part 140 (25 FR 2944, 26 FR 6641 and 28 FR 7077). Appendix "A" is the form of nuclear energy liability insurance policy issued by the two Associations and approved by the Commission as financial protection under this part. The form of the endorsement, intended by the insurers for use in reinstatement of liability coverage following payment by the insurers of an incurred loss, is set forth in its entirety in the following amendments. The proposed amendments also contain a change, for the purpose of clarification, in the form of indemnity agreement issued by the Atomic Energy Commission and set forth in Appendix "B", 10 CFR Part 140 (26 FR 3455, 26 FR 7770 and 27 FR 2884).

Pursuant to the Atomic Energy Act of 1954, as amended, and the Administrative Procedure Act of 1946, notice is hereby given that the Commission is considering adoption of the following amendments of 10 CFR Part 140. 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, United States Atomic Energy Commission, Washington 25, D.C., within thirty 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 140.75, Appendix "A", by adding the following at the end thereof:

NUCLEAR ENERGY LIABILITY POLICY

(FACILITY FORM)

RESTORATION OF LIMIT OF LIABILITY ENDORSEMENT

It is agreed that:

1. Payments made by the companies under this policy have reduced the limit of the companies' liability, stated in Item 4 of the declarations, to \$ \_\_\_\_\_.
2. Such reduced limit is restored to the amount stated in Item 4 of the declarations. Such restored limit applies to obligations assumed or expenses incurred because of bodily injury or property damage caused during the period from the effective date of this endorsement to the termination of the policy, by the nuclear energy hazard.
3. The reduced limit of liability stated in paragraph 1 above, and the limit of liability stated in Item 4 of the declarations, as restored by this endorsement, shall not be cumulative; and each payment made by the companies after the effective date of this endorsement for any loss or expense covered by the policy shall reduce by the amount of such payment both the reduced limit of liability stated in paragraph 1 above and the limit of liability stated in Item 4 of the declarations, as restored by this endorsement, regardless of which limit of liability applies with respect to bodily injury or property damage out of which such loss or expense arises.

Effective date of this endorsement \_\_\_\_\_ to form a part of

Policy No. \_\_\_\_\_

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

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

For the subscribing companies \_\_\_\_\_

By \_\_\_\_\_

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

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

2. Amend section 140.76, Appendix "B", by revising Item 2b. of the Attachment to read as follows:

With respect to any nuclear incident, the amount specified in Item 2a of this Attachment shall be deemed to be (i) 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 2a and (ii) restored to the extent that, following such reduction, the aggregate amount of such insurance policies is reinstated.

Authority: (Section 161, 68 Stat. 948; 42 U.S.C. 2201; section 170, 71 Stat. 576; 42 U.S.C. 2210)

Dated at Washington, D. C., this \_\_\_\_\_ day of \_\_\_\_\_, 1963.

FOR THE UNITED STATES ATOMIC ENERGY COMMISSION

\_\_\_\_\_  
Woodford B. McCool, Secretary



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APPENDIX "B"

DRAFT LETTER TO JOINT COMMITTEE ON ATOMIC ENERGY

1. Recently the Nuclear Energy Liability Insurance Association (NELIA) and the Mutual Atomic Energy Liability Underwriters (MAELU) requested consideration of an amendatory endorsement to the form of nuclear energy liability insurance policy required as basic financial protection under 10 CFR Part 140. The endorsement, proposed as an amendment to the regulation, would be used in the event that a named insured requests reinstatement of the full amount of liability coverage following payment by the insurers of an incurred loss. Commission approval of the proposed form of endorsement would not obligate the insurers to reinstate coverage following a loss, but would indicate that the Commission considers that this endorsement would constitute satisfactory proof of the reinstatement of financial protection.

2. A change is also proposed in the Attachment to the form of indemnity agreement for the purpose of clarification. This amendment would make clear that if the stated amount of financial protection is reduced because of a payment by the insurers, it would be restored to the extent that the aggregate amount of the insurance policies involved is reinstated.

3. The Commission has approved the publication of this amendment as a proposed rule allowing thirty days for public comment. A copy of the Federal Register notice is enclosed for your information.

[REDACTED]

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APPENDIX "C"

AEC PROPOSES CHANGES IN INDEMNITY REGULATIONS TO INCORPORATE  
AMENDMENT TO FORM OF LIABILITY INSURANCE POLICY

1. The Atomic Energy Commission proposes to incorporate into its indemnity regulations an addition to the form of the policy issued by the two nuclear energy liability insurance syndicates for use in the event of an incurred loss.

2. The addition to the form of insurance policy would provide that when a claim for loss is paid, the limit of the insurance syndicates' liability would be reinstated so that the total insurance coverage is not reduced. There is no such provision in the present policies issued by the two syndicates, Nuclear Energy Liability Insurance Association and Mutual Atomic Energy Liability Underwriters.

3. The Commission must, by law, require financial protection of each organization it licenses to operate a nuclear reactor or other production or utilization facility, and the AEC must indemnify these licenses against public liability up to \$500 million per nuclear incident. Indemnity applies to liability in excess of the required amount of financial protection. Financial protection is not required of nonprofit educational institutions and Federal agencies, even though they are indemnified under the law.

4. The Commission's regulations permit licensees to furnish financial protection in the form of a nuclear energy liability insurance policy which is set forth in the regulations. The insurance policies issued by the two syndicates are identical with this form. When a change or addition is proposed in the policies, it must be approved by the AEC.

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5. Comments or suggestions regarding this proposed change in Commission regulations, 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements", may be sent to the Secretary, U.S. Atomic Energy Commission, Washington 25, D.C. within 30 days after publication of notice in the Federal Register on \_\_\_\_\_.