

March 7, 1977

SECY-77-129

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

**CONSENT CALENDAR ITEM**

For: The Commissioners

From: Ben C. Rusche, Director  
Office of Nuclear Reactor Regulation

Thru: Executive Director for Operations *JWS*

Subject: AMENDMENTS TO 10 CFR PART 140 - INCREASE  
IN MAXIMUM AMOUNT OF FINANCIAL PROTECTION AVAILABLE  
AND OTHER CHANGES IN NUCLEAR ENERGY LIABILITY POLICY  
AND INDEMNITY AGREEMENT FORMS

Purpose: To consider publication in effective form of  
amendments to 10 CFR Part 140, "Financial Protection  
Requirements and Indemnity Agreements," to increase  
the level of the primary layer of financial protection  
required of certain indemnified licensees, and make  
certain other minor changes, necessitated by enactment  
of Public Law 94-197, in indemnity agreement forms  
and in the facility form of nuclear liability  
insurance policy furnished as financial protection.

Category: This paper covers a minor policy question.

Discussion: Effective January 1, 1977, the two nuclear liability  
insurance pools, Nuclear Energy Liability-Property  
Insurance Association (NEL-PIA) and Mutual Atomic  
Energy Liability Underwriters (MAELU) increased  
their combined underwriting capacity for nuclear  
energy liability insurance from \$125 million to \$140  
million (see Attachment "A"). In view of this  
increase and to comply with the provisions of subsection  
170b. of the Atomic Energy Act of 1954, as amended,  
("the Act") it will be necessary to amend the Commission's  
regulations in Part 140 to increase the amount of  
primary financial protection required for certain

Contact:  
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Ext. 443-6960

B/13

reactor licensees. In addition, in compliance with recent amendments to 10 CFR Part 140 (42 F.R. 46, January 3, 1977), those persons licensed to possess plutonium in the amount of 5 kilograms or more and persons licensed to process plutonium in the amount of 1 kilogram or more for use in plutonium processing and fuel fabrication plants will also be required to provide financial protection in the amount of \$140 million as of August 1, 1977.

Subsection 170a. of the Act requires that licenses issued under section 103 and 104 of the Act have as a license condition a requirement that the licensee have and maintain financial protection as required by the Commission pursuant to subsection 170b. to cover public liability claims resulting from a nuclear incident. Subsection 170b. of the Act provides that for nuclear facilities designed for producing substantial amounts of electricity and having a rated capacity of 100 MW(e) or more, the amount of financial protection<sup>1/</sup> required of the licensee shall be the maximum amount available from private sources. The amendments to Part 140, relating to the amount of financial protection required of these reactor licensees merely conform the Commission's regulations to a statutory requirement.

Subsection 170c. of the Act provides that (a) the aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed \$500 million; and (b) that this amount of indemnity shall be reduced by the amount that the financial protection required exceeds \$60 million.

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<sup>1/</sup> Public Law 94-197 does not by its precise language require maintenance of a "primary" (i.e., nuclear liability insurance) layer and a "secondary" (i.e., retrospective premium) layer of financial protection but merely considers the combination of these two layers as "financial protection." However, the recently published amendment (42 F.R. 46, January 3, 1977) to 10 CFR Part 140 implementing part of Public Law 94-197, distinguishes between the primary and secondary layer of financial protection on the basis of their different insurance characteristics. The amendments in this rule relate solely to increases in the primary layer of financial protection.

The aggregate liability for each nuclear incident is limited to \$560 million. As a result of the increase in the pools' underwriting capacity, Government indemnity will be reduced from its present level of \$435 million to \$420 million (\$560 million less \$140 million) for facilities required to maintain the maximum amount of financial protection.

Although the additional insurance is already available from the pools, the Staff proposes that the amendments (Attachment "B") requiring additional financial protection for reactors of 100 MW(e) or greater be made effective on April 1, 1977, so as to afford the licensees reasonable opportunity to make arrangements for obtaining the additional insurance.

Other changes to Part 140 to implement Public Law 94-197 relate to the extension of indemnity protection to (1) indemnified shipments of new or spent fuel while outside of the United States and any other nation during transit from one NRC licensee to another and (2) stationary nuclear facilities, such as floating nuclear power plants, licensed by the NRC and located in international waters. There is one slight difference between the endorsement to the facility form of nuclear liability insurance policy submitted by NEL-PIA and the amendments to the Commission indemnity agreement forms implementing this change. The endorsement, unlike the indemnity agreement amendments, will not extend coverage at this time to nuclear material being transported to or from a floating nuclear power plant. This coverage would be extended, however, before such a plant would be licensed.

P.L. 94-197 also provided that in the event of an "extraordinary nuclear occurrence" the Commission could enforce provisions in an insurance policy furnished as proof of financial protection and incorporated in indemnity agreements, requiring a licensee to waive any defense based upon a statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew or reasonably could have known of his injury or damage, but in no event more than 20 years after the date of the nuclear incident. Before the enactment of P.L. 94-197, the extension of the time for initiating of

a suit for damages was only 10 years after the date of the nuclear incident. Both the endorsement to the facility form and the indemnity agreement forms implement this change.

Apart from the change discussed above, there is one additional non-substantive modification in the present waiver of defenses endorsement submitted by NEL-PIA that differs from the waiver of defenses endorsement now contained in § 140.91. The existing endorsement was amended by addition of a new paragraph 6 published in the Federal Register on November 11, 1971 (36 F.R. 21580). That new paragraph basically provided that a licensee's workers employed at an indemnified site exclusively in connection with the construction of a nuclear reactor for which no operating license had been issued would be permitted to take advantage of the waiver of defenses provisions of the facility form. The nuclear liability insurance pools intended that this paragraph be published as a separate endorsement and not as a part of the general waiver endorsement. Hence, this paragraph is now being retained as a separate endorsement.

Recommendation:

That the Commission:

- (a) Approve publication in the FEDERAL REGISTER of the notice of rule making amending Part 140 (Attachment "B") to become effective on April 1, 1977;
- (b) Find that since the amendments to Part 140 merely conform the Commission's regulations to a statutory requirement, good cause exists for omitting general notice of proposed rule making and public procedure thereon as unnecessary;
- (c) Note that pursuant to § 51.5(d)(2) of the Commission's regulations neither an environmental impact statement nor a negative declaration will be prepared in connection with the subject amendments;
- (d) Note that the waiver of defenses provisions do not presently apply to plutonium processing

and fuel fabrication plant licensees and legislation will be needed before they can be made applicable;

- (e) Note that this rule does not contain any provisions implementing (or interpreting) the Hathaway amendments of Public Law 94-197 regarding exclusion of the cost of investigating and settling claims from funds used for the payment of claims;
- (f) Note that the Joint Committee on Atomic Energy and the Subcommittee on Energy and the Environment of the House Interior and Insular Affairs Committee will be informed by letters such as Attachment "C"; and
- (g) Note that a public announcement such as Attachment "D" will be issued upon filing of the notice of rule making with the FEDERAL REGISTER.

Coordination:

The Office of Executive Legal Director concurs in the recommendations of this paper. The Office of Congressional Affairs concurs in the letters to the JCAE and Subcommittee on Energy and the Environment (Attachment "C") and the Office of Public Affairs concurs in the draft public announcement (Attachment "D").

Sunshine Act:

For an open meeting. OGC and OPE concur.

Anticipated Scheduling: Week of April 11.

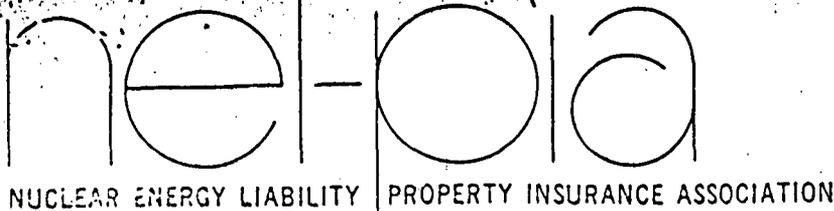


Ben C. Rusche, Director  
Office of Nuclear Reactor Regulation

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Thursday, March 24, 1977.

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LIABILITY UNDERWRITING DEPARTMENT  
Charles R. Bardes, Manager

BURT C. PROOM, CPCU  
General Manager

January 25, 1977

Mr. Jerome Saltzman  
Deputy Chief  
Office of Antitrust & Indemnity  
Directorate of Licensing  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555



Increased Nuclear Energy Liability Insurance Capacity

Dear Mr. Saltzman:

I am pleased to inform you on behalf of the members of NEL-PIA and Mutual Atomic Energy Liability Underwriters that effective immediately the nuclear liability pools are able to provide \$140,000,000 as the maximum combined limit under our nuclear energy liability insurance policies. NEL-PIA's maximum limit will be \$108,500,000 and MAELU's is \$31,500,000. This new maximum limit represents a \$15,000,000 increase from the most recently available limit of \$125,000,000 initially offered in January of 1975.

In addition to the increase in their primary layer, NEL-PIA and MAELU will have available \$30,000,000 of contingent liability capacity starting August 1, 1977. This latter capacity, to be utilized in connection with the Retrospective Premium Plan incorporated in the most recent legislation renewing the Price-Anderson Act, is to act as a buffer in the unlikely event one or more reactor operators are unable to meet the assessment obligation at the time of loss. It should be noted, however, that at a later date the pools would seek reimbursement from the operators for any payments made to cover such defaults.

Also, I am enclosing for your information five endorsements we are attaching to the facility form policies which our insureds are offering to the Commission as proof of financial protection being maintained.

These are:

- 1) NE-33a Waivers of Defense Endorsement - this form replaces NE-33 and amends the maximum time limit within which suit can be brought in the event of an extraordinary occurrence from ten to twenty years.

Mr: Jerome Saltzman  
January 25, 1977  
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1) (cont.)

This tracks the latest legislation renewing the Price-Anderson Act. Also, "Nuclear Regulatory Commission" has been substituted for Atomic Energy Commission.

- 2) NE-39a in a similar manner replaces NE-39. The changes in the new form replace the reference to NE-33 with NE-33a and substitutes "Nuclear Regulatory Commission" for Atomic Energy Commission.
- 3) NE-44 (which will be used only on policies in effect prior to January 1, 1977) extends the insured shipment coverage under a facility form offered as proof of financial protection being maintained to include shipments in the course of transportation between two points located within the United States of America, its territories or possessions, Puerto Rico or the Canal Zone, while such shipments are in international waters or airspace.
- 4) NE-45 (to be used on all financial protection policies issued to become effective after December 31, 1976) merely combines NE-44 with NE-1 permitting the consolidation of these two forms.
- 5) NE-43E This form which amends Condition 4 of the policy merely reflects the increased primary capacity of the pools. NEL-PIA's endorsement will refer to \$108,500,000 where MAELU's will indicate \$31,500,000.

(Form NE-43D which will be used only by NEL-PIA for all policies in effect on January 1, 1977 incorporates the contents of NE-43E but also includes the revision of NEL-PIA's subscribing companies for 1977. This latter amendment was necessitated due to last minute changes.)

The following endorsements were previously forwarded to you and are enclosed here only for the completion of your records.

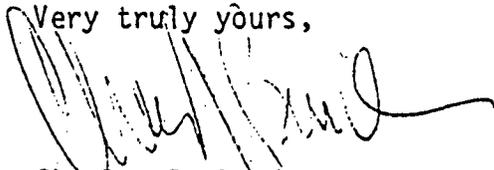
- NE-46 (For use on policies in effect prior to January 1, 1977)  
Clarifies the Pools' responsibility in connection with inspections made by us or on our behalf.
- NE-48 (For use on policies which became effective after December 31, 1976)  
Consolidates the contents of five older endorsements into a single form. These endorsements are NE-14, 32, 37-B, 43C and 46.

The MAELU version of NE-48 will differ slightly from NEL-PIA's version since the address of NEL-PIA (NE-37-B) and the maximum capacity of NEL-PIA NE-43C differ from their MAELU counterparts.

Mr. Jerome Saltzman  
January 25, 1977  
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If you have any questions please contact me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Charles R. Bardes". The signature is written in dark ink and is positioned above the printed name.

Charles R. Bardes

CRB/dh

Enclosures

cc: Mr. Richard McClure

TITLE 10-ENERGY

CHAPTER I - NUCLEAR REGULATORY COMMISSION

PART 140 - FINANCIAL PROTECTION REQUIREMENTS  
AND INDEMNITY AGREEMENTS

Miscellaneous Amendments

The provisions of Section 170 of the Atomic Energy Act of 1954, as amended, (the Act) require production and utilization facility licensees to have and maintain financial protection to cover public liability claims resulting from a nuclear incident. The Commission has exercised its discretionary authority to require persons licensed to possess plutonium in the amount of 5 kilograms or more and persons licensed to process plutonium in the amount of 1 kilogram or more for use in plutonium processing and fuel fabrication plants to also maintain financial protection, at the maximum amount available from private sources. Section 170 of the Act, in conjunction with section 201 of the Energy Reorganization Act of 1974, as amended, requires the Nuclear Regulatory Commission to indemnify the licensee and other persons indemnified, up to the statutory limitation on liability, against public liability claims in excess of the amount of financial protection required. Subsection 170b. of the Act requires that for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100 electrical

ATTACHMENT "B"

megawatts or more, the amount of financial protection\* required shall be the maximum amount available from private sources. For other licensees, the Commission may require lesser amounts of financial protection. Primary financial protection may be in the form of private insurance, private contractual indemnities, self-insurance or other proof of financial responsibility, or a combination of such measures. Nonprofit educational institutions and Federal agencies are exempted by statute from the financial protection requirements.

The insurers who provide the nuclear liability insurance, Nuclear Energy Liability-Property Insurance Association (NEL-PIA) and Mutual Atomic Energy Liability Underwriters (MAELU), have advised the Commission that effective January 1, 1977, the maximum amount of privately nuclear energy liability insurance available was increased from \$125 million to \$140 million. Pursuant to the provisions of subsection 170b. of the Act, the amount of primary financial protection required for facilities having a rated capacity of 100 electrical megawatts or more will be

\* Public Law 94-197 does not by its precise language require maintenance of a "primary" (i.e., nuclear liability insurance) layer and a "secondary" (i.e., retrospective premium) layer of financial protection but merely considers the combination of these two layers as "financial protection." However, the recently published amendments (42 F.R. 46, January 3, 1977) to 10 CFR Part 140 implementing part of Public Law 94-197, distinguish between the primary and secondary layer of financial protection on the basis of their different insurance characteristics. The amendments in this rule relate solely to increases in the primary layer of financial protection.

increased to \$140 million, effective April 1, 1977. In accordance with recent amendments to 10 CFR Part 140, (42 F.R. 46, January 3, 1977), licensees of plutonium processing and fuel fabrication plants required to maintain the maximum amount of financial protection will have to comply with this requirement on August 1, 1977. The following amendments to 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," reflect this requirement.

Other changes to Part 140 to implement Pub. L. 94-197 relate to the extension of indemnity protection to (1) indemnified shipments of new or spent fuel while outside of the United States and any other nation during transit from one NRC licensee to another and (2) stationary nuclear facilities, such as floating nuclear power plants, licensed by the NRC and located in international waters. There is one slight difference between the endorsement to the facility form of nuclear liability insurance policy submitted by NEL-PIA and the amendments to the Commission indemnity agreement form implementing this change. The endorsement, unlike the indemnity amendments, will not extend coverage at this time to nuclear material being transported to or from a floating nuclear power plant. This coverage would be extended, however, before such a plant would be licensed.

Pub. L. 94-197 also provided that in the event of an "extraordinary nuclear occurrence" the Commission could enforce provisions in an insurance policy furnished as proof of financial protection and incorporated in indemnity agreements, requiring a licensee to waive any defense based upon a statute of limitations if suit is instituted within 3 years from

the date on which the claimant first knew or reasonably could have known of his injury or damage, but in no event more than 20 years after the date of the nuclear incident. Before the enactment of Pub. L. 94-197, the extension of the time for initiating of a suit for damages was only 10 years after the date of the nuclear incident. Both the endorsement to the facility form and the indemnity agreement forms implement this change as set forth below.

Apart from the change discussed above, there is one additional non-substantive modification in the present waiver of defenses endorsement submitted by NEL-PIA that differs from the waiver of defenses endorsement now contained in § 140.91. The existing endorsement was amended by addition of a new paragraph 6 published in the Federal Register on November 11, 1971 (36 F.R. 21580). That new paragraph basically provided that a licensee's workers employed at an indemnified site exclusively in connection with the construction of a nuclear reactor for which no operating license had been issued would be permitted to take advantage of the waiver of defenses provisions of the facility form. The nuclear liability insurance pools intended that this paragraph be published as a separate endorsement and not as a part of the general waiver endorsement. Hence, this paragraph is now being retained as a separate endorsement.

This rule does not contain any provisions implementing (or interpreting) the amendments to H.R. 8631 introduced by Senator Hathaway, agreed to by

the Senate and contained in Pub. L. 94-197 regarding exclusion of the costs of investigating and settling claims from funds used for the payment of claims.

Since the amendments set out below conform the Commission's regulations to a statutory requirement, the Commission has found that good cause exists for omitting public notice of proposed rule making and public procedure thereon as unnecessary.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Part 140, Code of Federal Regulations, are published as a document subject to codification.

1. The present § 140.11(a)(4) is amended by deleting "\$125,000,000" and substituting therefor "\$140,000,000." Section 140.11(a)(4) which becomes effective on August 1, 1977 is also amended by deleting "\$125,000,000" and substituting "\$140,000,000" therefor.
2. Section 140.13a(a) is amended by deleting the term "\$125 million" and substituting "\$140,000,000" therefor.
3. In § 140.91, Appendix A, Condition 4 is amended by revising the

footnote to read as follows: "For policies issued by Nuclear Energy Liability-Property Insurance Association the amount will be "\$108,500,000"; for policies issued by Mutual Atomic Energy Liability Underwriters, the amount will be "\$31,500,000."

4. In § 140.91, Appendix A, paragraph III of the "Optional Amendatory Endorsement" is amended by revising the footnote to read as follows: "For policies issued by Nuclear Energy Liability-Property Insurance Association the amount will be "\$108,500,000;" for policies issued by Mutual Atomic Energy Liability Underwriters the amount will be "\$31,500,000."

5. In § 140.91, Appendix A, the "Waiver of Defenses Endorsement" is amended by deleting paragraph 6.

6. Section 140.91, Appendix A, is amended by adding the following endorsements:

NUCLEAR ENERGY LIABILITY POLICY  
(FACILITY FORM)  
WAIVER OF DEFENSES ENDORSEMENT  
(Extraordinary Nuclear Occurrence)

The named insured, acting for himself and every other insured under the policy, and the members of -----agree as follows:

ATTACHMENT "B"

1. With respect to any extraordinary nuclear occurrence to which the policy applies as proof of financial protection and which
  - (a) arises out of or results from or occurs in the course the construction, possession, or operation of the facility, or
  - (b) arises out of or results from or occurs in the course of the transportation of nuclear material to or from the facility,

the insureds and the companies agree to waive

- (1) any issue or defense as to the conduct of the claimant or the fault of the insureds, including but not limited to:
  - (i) negligence,
  - (ii) contributory negligence,
  - (iii) assumption of risk, and
  - (iv) unforeseeable intervening causes, whether involving the conduct of a third person, or an act of God,
- (2) any issue or defense as to charitable or governmental immunity, and
- (3) any issue or defense based on any statute of limitations if suit is instituted within three (3) years from the date on which the claimant first knew, or reasonably could have known, of his bodily injury or property damage and the cause thereof, but in no event more than twenty (20) years after the date of the nuclear incident.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action.

2. The waivers set forth in paragraph 1. above do not apply to
  - (a) bodily injury or property damage which is intentionally sustained by the claimant or which results from a

nuclear incident intentionally and wrongfully caused by the claimant;

- (b) bodily injury sustained by any claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
- (c) any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under such law.

3. The waivers set forth in paragraph 1. above shall be effective only with respect to bodily injury or property damage to which the policy applies under its terms other than this endorsement; provided, however, that with respect to bodily injury or property damage resulting from an extraordinary nuclear occurrence, Insuring Agreement IV, "Application of Policy", shall not operate to bar coverage for bodily injury or property damage (a) which is caused during the policy period by the nuclear energy hazard and (b) which is discovered and for which written claim is made against the insured not later than twenty (20) years after the date of the extraordinary nuclear occurrence.

Such waivers shall not apply to, or prejudice the prosecution or defense of any claim or portion of claim which is not within the protection afforded under

- (a) the provisions of the policy applicable to the financial protection required of the named insured;
- (b) the agreement of indemnification between the named insured and the Nuclear Regulatory Commission made pursuant to Section 170 of the Atomic Energy Act of 1954, as amended; and

(c) the limit of liability provisions of Subsection 170e. of the Atomic Energy Act of 1954, as amended.

Such waivers shall not preclude a defense based upon the failure of the claimant to take reasonable steps to mitigate damages.

4. Subject to all of the limitations stated in this endorsement and in the Atomic Energy Act of 1954, as amended, the waivers set forth in paragraph 1. above shall be judicially enforceable in accordance with their terms against any insured in an action to recover damages because of bodily injury or property damage to which the policy applies as proof of financial protection.

5. As used herein:

"extraordinary nuclear occurrence" means an event which the Nuclear Regulatory Commission has determined to be an extraordinary nuclear occurrence as defined in the Atomic Energy Act of 1954, as amended.

"financial protection" and "nuclear incident" have the meanings given them in the Atomic Energy Act of 1954, as amended.

"claimant" means the person or organization actually sustaining the bodily injury or property damage and also includes his assignees, legal representatives and other persons or organizations entitled to bring an action for damages on account of such injury or damage.

Effective Date of  
this Endorsement 12:01 A.M. Standard To form a part of Policy No \_\_\_\_\_  
Time

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

For the subscribing  
companies

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

By \_\_\_\_\_  
General Manager

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

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

SUPPLEMENTARY ENDORSEMENT  
WAIVER OF DEFENSES  
REACTOR CONSTRUCTION AT THE FACILITY

It is agreed that in construing the application of paragraph 2.(b) of the Waiver of Defenses Endorsement (NE-33a) with respect to an extraordinary nuclear occurrence occurring at the facility, a claimant who is employed at the facility in connection with the construction of a nuclear reactor with respect to which no operating license has been issued by the Nuclear Regulatory Commission shall not be considered as employed in connection with the activity where the extraordinary nuclear occurrence takes place if:

- (1) The claimant is employed exclusively in connection with the construction of a nuclear reactor, including all related equipment and installations at the facility, and
- (2) No operating license has been issued by the Nuclear Regulatory Commission with respect to the nuclear reactor, and
- (3) The claimant is not employed in connection with the possession, storage, use or transfer of nuclear material at the facility.

Effective Date of  
this Endorsement \_\_\_\_\_ To form a part of Policy No. \_\_\_\_\_  
12:01 A.M. Standard  
Time

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

For the subscribing companies

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

By \_\_\_\_\_  
General Manager

Endorsement No. \_\_\_\_\_ Countersigned by \_\_\_\_\_

NUCLEAR ENERGY LIABILITY POLICY

(FACILITY FORM)

AMENDMENT OF DEFINITION OF  
"NUCLEAR ENERGY HAZARD"  
(Indemnified Nuclear Facility)

It is agreed that:

1. Solely with respect to an "insured shipment" to which the policy applies as proof of financial protection required by the Nuclear Regulatory Commission, subdivision (2) of the definition of "nuclear energy hazard" is amended to read:
  - (2) the nuclear material is in an insured shipment which is away from any other nuclear facility and is in the course of transportation, including handling and temporary storage incidental thereto, within
    - (a) the territorial limits of the United States of America, its territories or possessions, Puerto Rico or the Canal Zone; or
    - (b) international waters or airspace, provided that the nuclear material is in the course of transportation between two points located within the territorial limits described in (a) above and there are no deviations in the course of the transportation for the purpose of going to any other country, state or nation, except a deviation in the course of said transportation for the purpose of going to or returning from a port or place of refuge as the result of an emergency.
2. As used herein, "financial protection" has the meaning given it in the Atomic Energy Act of 1954, as amended.

INSTRUCTIONS: This form is to be used to modify all Nuclear Energy Liability Facility Forms in force on January 1, 1977 which were issued to become effective prior to January 1, 1977 and which are offered by the named insured as proof of financial protection being maintained as required by the Atomic Energy Act of 1954, as amended.

Effective Date of  
this Endorsement \_\_\_\_\_ To form a part of Policy No. \_\_\_\_\_  
12:01 A.M. Standard  
Time

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

Date of Issue \_\_\_\_\_ For the subscribing companies

By \_\_\_\_\_  
General Manager

Endorsement No. \_\_\_\_\_ Countersigned by \_\_\_\_\_

NUCLEAR ENERGY LIABILITY POLICY  
(FACILITY FORM)

AMENDMENT OF DEFINITIONS OF  
"Nuclear Energy Hazard" and "Insured Shipment"  
(Indemnified Nuclear Facility)

It is agreed that:

- I. In Insuring Agreement III, "DEFINITIONS"
  - A. solely with respect to an "insured shipment" to which this policy applies as proof of financial protection required by the Nuclear Regulatory Commission, Subdivision (2) of the definition of "nuclear energy hazard" is amended to read:
    - (2) the nuclear material is in an insured shipment which is away from any other nuclear facility and is in the course of transportation, including the handling and temporary storage incidental thereto, within
      - (a) the territorial limits of the United States of America, its territories or possessions, Puerto Rico or the Canal Zone; or

(b) international waters or airspace, provided that the nuclear material is in the course of transportation between two points located within the territorial limits described in (a) above and there are no deviations in the course of the transportation for the purpose of going to any other country, state or nation, except for a deviation in the course of said transportation for the purpose of going to or returning from a port or place of refuge as the result of an emergency.

B. the definition of "insured shipment" is replaced with the following;

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

II. As used herein, "financial protection" has the meaning given it in the Atomic Energy Act of 1954, as amended.

INSTRUCTIONS: This form is to be used to modify all Nuclear Energy Liability Facility Forms which are issued to become effective on or after January 1, 1977 and which are offered by the named insured as proof of financial protection being maintained as required by the Atomic Energy Act of 1954, as amended.

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

12:01 A.M. Standard  
Time

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

For the subscribing companies

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

By \_\_\_\_\_  
General Manager

Endorsement No. \_\_\_\_\_ Countersigned by \_\_\_\_\_

7. Section 140.92, Appendix B, Article II, paragraph 4(c) is amended by changing "ten years" to "20 years."
8. Section 140.93, Appendix C, Article II, paragraph 4(c), is amended by changing "10 years" to "20 years."
9. Section 140.94, Appendix D, Article II, paragraph 4(c), is amended by changing "10 years" to "20 years."
10. Section 140.95, Appendix E, Article II, paragraph 2(c), is amended by changing "10 years" to "20 years."
11. Section 140.92, Appendix B, Article II, paragraph 8(a), is amended by deleting the amount "\$96,875,000" wherever it appears and substituting therefor "\$108,500,000."

12. Section 140.92, Appendix B, Article II, paragraph 8(b), is amended by deleting the amount "\$28,125,000" wherever it appears and substituting therefor "\$31,500,000."
13. Section 140.92, Appendix B, Article II, paragraph 8(c), is amended by changing the amount "\$125,000,000" to "an amount equal to the sum of \$140,000,000 and the amount available as secondary financial protection."
14. Section 140.92, Appendix B, Article III, paragraph 4(b)(2), is amended by changing "\$125,000,000" to "an amount equal to the sum of \$140,000,000 and the amount available as secondary financial protection."
15. Section 140.93, Appendix C, Article II, paragraph 8, is amended by changing the amount "\$125,000,000" to "an amount equal to the sum of \$140,000,000 and the amount available as secondary financial protection."
16. Section 140.93, Appendix C, Article III, paragraph 4(b)(2), is amended by changing "\$125,000,000" to "an amount equal to the sum of \$140,000,000 and the amount available as secondary financial protection."

17. Section 140.94, Appendix D, Article II, paragraph 6, is amended by changing "\$125,000,000" to "an amount equal to the sum of \$140,000,000 and the amount available as secondary financial protection."
18. Section 140.95, Appendix E, Article III, paragraph 4(b)(2), is amended by changing "\$125,000,000" to "an amount equal to the sum of \$140,000,000 and the amount available as secondary financial protection."
19. Section 140.92, Appendix B, Article I, the prefatory language of paragraph 5, is amended to read as follows:

"'In the course of transportation' means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:"

20. Section 140.93, Appendix C, Article I, the prefatory language of paragraph 5 is amended to read as follows:

"'In the course of transportation' means in the course of transportation within the

United States, or in the course of transportation outside the United States and any other nation, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:"

21. Section 140.94, Appendix D, Article I, the prefatory language of paragraph 4, is amended to read as follows:

"'In the course of transportation' means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:"

22. Section 140.95, Appendix E, Article I, the prefatory language of paragraph 4, is amended to read as follows:

"'In the course of transportation' means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation,

including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:"

23. Section 140.107, Appendix G, Article I, the prefatory language of paragraph 4, is amended to read as follows:

"'In the course of transportation' means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:"

24. Section 140.108, Appendix H, Article I, the prefatory language of paragraph 4, is amended to read as follows:

"'In the course of transportation' means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:"

25. Section 140.107, Appendix G, Article II, paragraph 6(a), is amended by deleting the amount "\$96,875,000" wherever it appears and substituting therefor "\$108,500,000."
26. Section 140.107, Appendix G, Article II, paragraph 6(b), is amended by deleting the amount "\$28,125,000" wherever it appears and substituting therefor "\$31,500,000."
27. Section 140.107, Appendix G, Article II, paragraph 6(c), is amended by changing the amount "\$125,000,000" to "an amount equal to the sum of \$140,000,000 and the amount available as secondary financial protection."
28. Section 140.107, Appendix G, Article III, paragraph 4(b), is amended by changing the amount "\$125,000,000" to "\$140,000,000."
29. Section 140.108, Appendix H, Article II, paragraph 6(a), is amended by deleting the amount "\$96,875,000" wherever it appears and substituting therefor "\$108,500,000."
30. Section 140.108, Appendix H, Article II, paragraph 6(b), is amended by deleting the amount "\$28,125,000" wherever it appears and substituting therefor "\$31,500,000."

31. Section 140.108, Appendix H, Article II, paragraph 6(c), is amended by changing the amount "\$125,000,000" to "an amount equal to the sum of \$140,000,000 and the amount available as secondary financial protection."
32. Section 140.108, Appendix H, Article III, paragraph 4(b), is amended by changing the amount "\$125,000,000" to "\$140,000,000."

Effective date: The foregoing amendments become effective on April 1, 1977.

(Sec. 161, Pub. Law 83-703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 170, Pub. Law 85-256, 71 Stat. 576, Pub. Law 94-197, 89 Stat. 1111 (42 U.S.C. 2210); Sec. 201, Pub. Law 93-438, as amended, 88 Stat. 1242, 89 Stat. 415 (42 U.S.C. 5841))

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 1977.

FOR THE NUCLEAR REGULATORY COMMISSION.

\_\_\_\_\_  
Secretary of the Commission

ATTACHMENT "B"

Mr. George F. Murphy, Jr.  
Executive Director  
Joint Committee on Atomic Energy  
Congress of the United States  
Washington, D.C. 20510

Dear Mr. Murphy:

Enclosed for the information of the Joint Committee on Atomic Energy is a notice of rule making adopting amendments to 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," which increases the amount of financial protection required of licensees of power reactors with a rated capacity of 100 MW(e) or more. In addition, the notice implements in the regulations certain other provisions of Public Law 94-197 enacted on December 31, 1975.

The two nuclear energy liability insurance pools have notified the Commission that effective January 1, 1977 the maximum available liability insurance would be increased from \$125 million to \$140 million. The enclosed notice of rule making reflects this increase and is to be effective on April 1, 1977 so as both to afford licensees reasonable opportunity for obtaining the additional insurance and to allow the Commission time to modify its indemnity agreements. At the time the increased insurance is purchased, Government indemnity will be reduced from \$435 million to \$420 million for each nuclear incident.

The enclosed notice also implements in the regulations certain provisions of Public Law 94-197. That law provided among other things for the

ATTACHMENT "C"

Mr. George F. Murphy, Jr.

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extension of indemnity protection to (1) indemnified shipments of new or spent fuel while outside of the United States and any other nation during transit from one NRC licensee to another and (2) stationary nuclear facilities such as floating nuclear power plants, licensed by the NRC and located in international waters. There is one slight difference between the endorsement to the facility form of nuclear liability insurance policy submitted by the insurance pools and the amendment to the Commission indemnity agreement forms implementing this change. The endorsement, unlike the indemnity agreement amendments will not extend coverage at this time to nuclear material being transported to or from a floating nuclear power plant. This coverage would be extended, however, before such a plant would be licensed.

P.L. 94-197 also provided that in the event of an "extraordinary nuclear occurrence" the Commission could enforce provisions in an insurance policy furnished as proof of financial protection and incorporated in indemnity agreements, requiring a licensee to waive any defense based upon a statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew or reasonably could have known of his injury or damage, but in no event more than 20 years after the date of the nuclear incident. Before the enactment of P.L. 94-197, the extension of the time for initiating of a suit for damages was only 10 years after the date of the nuclear incident. Both the endorsement to

Mr. George F. Murphy, Jr.

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the facility form and the indemnity agreement forms implement this change as set forth in the enclosed notice.

Also, enclosed for your information is a copy of a public announcement that we plan to issue in the next few days on this matter.

Sincerely,

Ben C. Rusche, Director  
Office of Nuclear Reactor  
Regulation

Enclosures:

1. Notice of rule making
2. Public announcement

The Honorable Morris Udall, Chairman  
Subcommittee on Energy and the Environment  
Committee on Interior and Insular Affairs  
United States House of Representatives  
Washington, D. C. 20515

Dear Mr. Chairman:

Enclosed for the information of the Subcommittee on Energy and the Environment is a notice of rule making adopting amendments to 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," which increases the amount of financial protection required of licensees of power reactors with a rated capacity of 100 MW(e) or more. In addition, the notice implements in the regulations certain other provisions of Public Law 94-197 enacted on December 31, 1975.

The two nuclear energy liability insurance pools have notified the Commission that effective January 1, 1977 the maximum available liability insurance would be increased from \$125 million to \$140 million. The enclosed notice of rule making reflects this increase and is to be effective on April 1, 1977 so as both to afford licensees reasonable opportunity for obtaining the additional insurance and to allow the Commission time to modify its indemnity agreements. At the time the increased insurance is purchased, Government indemnity will be reduced from \$435 million to \$420 million for each nuclear incident.

The enclosed notice also implements in the regulations certain provisions of Public Law 94-197. That law provided among other things for the

ATTACHMENT "C"

extension of indemnity protection to (1) indemnified shipments of new or spent fuel while outside of the United States and any other nation during transit from one NRC licensee to another and (2) stationary nuclear facilities such as floating nuclear power plants, licensed by the NRC and located in international waters. There is one slight difference between the endorsement to the facility form of nuclear liability insurance policy submitted by the insurance pools and the amendment to the Commission indemnity agreement forms implementing this change. The endorsement, unlike the indemnity agreement amendments will not extend coverage at this time to nuclear material being transported to or from a floating nuclear power plant. This coverage would be extended, however, before such a plant would be licensed.

P.L. 94-197 also provided that in the event of an "extraordinary nuclear occurrence" the Commission could enforce provisions in an insurance policy furnished as proof of financial protection and incorporated in indemnity agreements, requiring a licensee to waive any defense based upon a statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew or reasonably could have known of his injury or damage, but in no event more than 20 years after the date of the nuclear incident. Before the enactment of P.L. 94-197, the extension of the time for initiating of a suit for damages was only 10 years after the date of the nuclear incident. Both the endorsement to the facility form and the indemnity agreement forms implement this change as set forth in the enclosed notice.

The Honorable Morris Udall

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Also, enclosed for your information is a copy of a public announcement that we plan to issue in the next few days on this matter.

Sincerely,

Marcus A. Rowden  
Chairman

Enclosures:

1. Notice of Rule Making
2. Public Announcement

## NRC ADOPTS AMENDMENTS TO INDEMNITY REGULATIONS

The Nuclear Regulatory Commission is amending its regulations to conform them to statutory requirements of the Price-Anderson Act. That Act provides financial protection to the public in the event of a serious nuclear accident involving certain activities and facilities licensed by the NRC.

The amendments:

--increase from \$125 million to \$140 million the amount of private nuclear liability primary insurance which NRC licensees subject to the Act are required to have;

--extend coverage to shipments of nuclear fuel which may move outside U.S. territorial limits during transit from one licensed nuclear facility to another;

--extend coverage to stationary nuclear facilities, such as floating nuclear plants, licensed by the NRC and located beyond territorial limits; and

--raise the time limit for filing claims from 10 years to 20 years after the date of a serious nuclear accident.

Amendments increasing the amount of private liability insurance licensees must have reflect a January 1 increase in the underwriting

ATTACHMENT "D"

capacity of two private insurance pools -- the Nuclear Energy Liability-Property Insurance Association and the Mutual Atomic Energy Liability Underwriters. Under the Act, licensees with reactors capable of producing 100 megawatts of electrical power or more, and those authorized to possess or process significant quantities of plutonium, must maintain financial protection equal to the total primary insurance available from the pools.

Under legislation extending the Act to August 1, 1987, the primary layer of insurance will continue to be provided by the insurance pools. A secondary layer will be in the form of "retrospective premiums" which will be assessed against each licensee in the event of an accident for which claims exceed the pools' underwriting capacity.

The retrospective premium was set by the NRC at \$5 million for each licensed power reactor, the maximum allowed by law. By about 1980, the time the two layers reach \$560 million, Government indemnity will cease and the limit on liability will be allowed to increase on an annual basis. The amount of the increase will depend on the number of reactors licensed that year multiplied by the amount of the retrospective premium.

The amendments to Part 140 now being adopted take effect April 1, 1977 and are published in the \_\_\_\_\_ Federal Register.