

November 12, 1980

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

SECY-80-503

CONSENT CALENDAR ITEM

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For: The Commissioners

From: Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Thru: Executive Director For Operations

Subject: AMENDMENTS TO 10 CFR PART 140 - CHANGES IN NUCLEAR
ENERGY LIABILITY INSURANCE POLICY

Purpose: To obtain Commission approval for the publication
for public comment of a notice of proposed rulemaking
to amend 10 CFR Part 140, "Financial Protection
Requirements and Indemnity Agreements," to make
minor changes in the Facility Form of nuclear liability
insurance policy furnished to licensees as evidence
of financial protection.

Category: This paper covers a minor policy question.

Discussion: American Nuclear Insurers (ANI) has submitted to
the Commission two endorsements to the Facility Form
of nuclear liability insurance policy that both they
and Mutual Atomic Energy Liability Underwriters
(MAELU), the other insurance pool would like to make
effective on January 1, 1981. The endorsements, NE-
50 and NE-51,* modify the definition of "insured
shipment" to conform to the changes made in the
statutory definition of "byproduct material" in

* The changes are combined in one endorsement, form NE-51 to be used
effective January 1, 1981, for policies already issued. The same
changes are included as a part of the amendatory endorsement NE-50
which will be used with newly issued policies effective on or after
January 1, 1981.

Contact:
Ira Dinitz
Extension: 492-8562

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Public Law 95-604, the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). Byproduct material has been redefined in UMTRCA to include uranium mill tailings. The pools have proposed amending the definition of "insured shipment" in the Facility Form policy in order to continue to provide coverage for shipments of tailings otherwise within the scope of the "insured shipment" definition. This change is required since an insured shipment includes only shipments of "source material, special nuclear material, spent fuel or waste" and uranium mill tailings no longer come under the definition of source material. The proposed redefinition of "insured shipment" would add the words "or tailings" to the definition.

The second change the pools are proposing is a modification to Condition 2 of the Facility Form. Condition 2 authorizes the insurers to inspect the facility and related operations, to examine certain books and records, and to suspend insurance as to particular insureds in the event of non-compliance with a request by insurers that a condition be corrected. The revised language would relieve insurers and persons or organizations making inspections or examinations on their behalf of potential liability arising either out of damage to property at the insured facility, or suspension of insurance. In addition, the insurers' inspection rights would be extended to books and records related to any property insurance afforded the insured through ANI. The present language limits inspections to the books and records associated with the Facility Form (liability insurance). The changes facilitate the ability of insurers to conduct inspection activities which are geared to minimizing the risk of losses to the pools. The proposed modification provides that the added provision does not limit the insurers' contractual obligations under the Facility Form or other policy affording the insured property insurance through ANI.

A minor change to Condition 4 of the Facility Form to insert "\$124,000,000" is also proposed. The \$124,000,000 figure reflects the amount of nuclear liability insurance provided by ANI to licensees. The remaining \$36,000,000 of the required \$160,000,000 in primary liability insurance coverage is provided by MAELU. This proposed addition is made in paragraph IV of the Amendatory Endorsement.

The remaining paragraphs of the Amendatory Endorsement are unchanged. Such paragraphs merely reflect previously approved changes to the Facility Form.

Recommendations:

That the Commission:

- (a) Approve for publication in the FEDERAL REGISTER the notice of proposed rule making to amend Part 140 (Attachment "A");
- (b) Note that pursuant to §51.5(d)(2) of the Commission's regulations neither an environmental impact statement negative declaration, or environmental impact appraisal need be prepared in connection with the subject amendments;
- (c) Note that if no significant adverse comments are received on the notice, the proposed rule will be promulgated in effective form by the Executive Director for Operations.

Coordination:

The Office of the Executive Legal Director has no legal objection.

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Harold R. Denton, Director 11/7/80
Office of Nuclear Reactor
Regulation

Enclosure:
(Attachment "A") - Federal Register Notice

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Friday, November 28, 1980.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT November 21, 1980, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of December 8, 1980. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

NUCLEAR REGULATORY COMMISSION
[10 CFR Part 140]

FINANCIAL PROTECTION REQUIREMENTS AND
INDEMNITY AGREEMENTS

Miscellaneous Amendments

AGENCY: U. S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to make several minor changes in the Facility Form of nuclear liability insurance policy furnished by licensees as evidence of financial protection.

DATE: Comments must be received by (30 days from the date of publication in the Federal Register)

ADDRESSES: Written comments or suggestions should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room at 1717 H Street, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Utility Finance Branch, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-8562.

SUPPLEMENTARY INFORMATION: American Nuclear Insurers (ANI) submitted to the Commission in June 1980 two endorsements to the Facility Form of nuclear liability insurance policy that both they and Mutual Atomic Energy Liability Underwriters (MAELU), the other insurance pool would like to make effective on January 1, 1981.^{1/} The endorsements, NE-50 and NE-51,^{2/} modify the definition of "insured shipment" to conform to the changes made in the statutory definition of byproduct material" in Public Law 95-604, the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). Byproduct material has been redefined in the UMTRCA to include tailings. The pools have proposed amending the definition of "insured shipment" in the Facility Form policy in order to continue to provide coverage for shipments of tailings otherwise within the scope of the "insured shipment" definition. This change is required since an insured shipment includes only shipments of "source material, special nuclear material, spent fuel or waste" and uranium mill tailings no longer come under the definition of source material. The proposed redefinition of "insured shipment" would add the words "or tailings" to the definition. See paragraph I.D. of the proposed Amendatory Endorsement and paragraph 2 of the proposed Amendment of Definition, below.

^{1/} The endorsements are available for public inspection and copying at the NRC Public Document Room, 1717 H Street, NW, Washington, D.C.

^{2/} The changes are combined in one endorsement, form NE-51 to be used effective January 1, 1981, for policies already issued. The same changes are included as a part of the amendatory endorsement NE-50 which will be used with newly issued policies effective on or after January 1, 1981.

The second change the pools are proposing is a modification to Condition 2 of the Facility Form. Condition 2 authorizes the insurers to inspect the facility and related operations, to examine certain books and records, and to suspend insurance as to particular insureds in the event of noncompliance with a request by insurers that a condition be corrected. The revised language would relieve insurers and persons or organizations making inspections or examinations on their behalf of potential liability arising either out of damage to property at the insured facility, or suspension of insurance. In addition the insurers' inspection rights would be extended to books and records related to any property insurance afforded the insured through ANI. The present language limits inspections to the books and records associated with the Facility Form (liability insurance). The changes facilitate the ability of insurers to conduct inspection activities which are geared to minimizing the risk of losses to the pools. The proposed modification provides that the added provision does not limit the insurers' contractual obligations under the Facility Form or other policy affording the insured property insurance through ANI. See paragraph III of the proposed Amendatory Endorsement and paragraph 1 of the proposed Amendment of Definition, below.

A minor change to Condition 4 of the Facility Form to insert "\$124,000,000" is also proposed. The \$124,000,000 figure reflects the amount of nuclear liability insurance provided by ANI to licensees.

The remaining \$36,000,000 of the required \$160,000,000 in primary liability insurance coverage is provided by MAELU. This proposed addition is made in paragraph IV of the Amendatory Endorsement.

The remaining paragraphs of the Amendatory Endorsement set out below are unchanged. Such paragraphs merely reflect previously approved changes to the Facility Form.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, notice is hereby given that the following amendments to Title 10, Chapter I, Part 140, Code of Federal Regulations, are contemplated:

1. Section 140.91, Appendix A, is amended by adding the following endorsements to read as follows:

AMENDATORY ENDORSEMENT
(Indemnified Nuclear Facility)

It is agreed that:

I. In Insuring Agreement III, "DEFINITIONS"

- A. 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 Nuclear Energy Liability Insurance Association or by Mutual Atomic Energy Liability Underwriters.

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ATTACHMENT "A"

- B. 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 Nuclear Energy Liability Insurance Association or by Mutual Atomic Energy Liability Underwriters, 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;

- C. 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 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

- D. The definition of "insured shipment" is replaced with the following:

"insured shipment" means shipment of source material, special nuclear material, spent fuel or waste, or tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, 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.

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

- II. Insuring Agreement IV is replaced by the following:

IV APPLICATION OF POLICY This policy applies only to bodily injury or property damage (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured, not later than ten years after the end of the policy period.

- III. Condition 2 is replaced by the following:

2 INSPECTION; SUSPENSION The companies shall at any time be permitted but not obligated to inspect the facility and all operations relating thereto and to examine the insured's books and records as far as they relate to the subject of this insurance and any property insurance afforded the insured through American Nuclear Insurers. If a representative of the companies discovers a condition which he believes to be unduly dangerous with respect to the nuclear energy hazard, a representative of the companies may request that such condition be corrected without delay. In

the event of noncompliance with such request, a representative of the companies may, by notice to the named insured, to any other person or organization considered by the companies to be responsible for the continuation of such dangerous condition, and to the United States Nuclear Regulatory Commission, suspend this insurance with respect to the named insured and such other person or organization effective 12:00 midnight of the next business day of such Commission following the date that such Commission receives such notice. The period of such suspension shall terminate as of the time stated in a written notice from the companies to the named insured and to each such person or organization that such condition has been corrected.

Neither the right to make such inspections and examinations nor the making thereof nor any advice or report resulting therefrom shall constitute an undertaking,, on behalf of or for the benefit of the insured or others, to determine or warrant that such facility or operations are safe or healthful, or are in compliance with any law, rule or regulation. In consideration of the issuance or continuation of this policy, the insured agrees that neither the companies nor any persons or organizations making such inspections or examinations on their behalf shall be liable with respect to injury to or destruction of property at the facility, or any consequential loss or expense resulting therefrom, or any loss resulting from interruption of business or manufacture, arising out of the making of or a failure to make any such inspection or examination, or any report thereon, or any such suspension of insurance, but this provision does not limit the contractual obligations of the companies under this policy or any policy affording the insured property insurance through American Nuclear Insurers.

IV. Condition 4 is replaced by the following:

- 4 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 the properties or 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 Nuclear Energy Liability Insurance Association, 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 Nuclear Energy Liability Insurance Association,

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 the Nuclear Energy Liability Insurance Association 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 \$124,000,000; (2) the total liability of the companies under this policy shall not exceed that proportion of the total aggregate liability of the members of Nuclear Energy Liability Insurance Association, 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.

V. 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 Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters 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.

VI. Paragraph (c) of Condition 16, "COMPANY REPRESENTATION", is amended to read:

(c) Nuclear Energy Liability Insurance Association is the agent of the companies with respect to all matters pertaining to this insurance. All notices or other communications required by this policy to be given to the companies may be given to such agent, at its office at The Exchange, Suite 245, 270 Farmington Avenue, Farmington, Connecticut 06032, with the same force and effect as if given directly to the companies. Any requests, demand or agreements made by such agent shall be deemed to have been made directly by the companies.

Effective Date of
this Endorsement 12:01 A.M. Standard Time To form a part of policy No. _____

Issued to _____

For the subscribing companies

Date of Issue _____

By _____
General Manager

Endorsement No. _____

Countersigned by _____

NE-50 (1/1/81)

ATTACHMENT "A"

AMENDMENT OF DEFINITION OF CONDITION 2 "INSPECTION; SUSPENSION" AND
"INSURED SHIPMENT"
(Indemnified Nuclear Facility)

It is agreed that:

1.) Condition 2 "INSPECTION; SUSPENSION" is replaced by the following:

2 INSPECTION ; SUSPENSION The companies shall at any time be permitted but not obligated to inspect the facility and all operations relating thereto and to examine the insured's books and records as far as they relate to the subject of this insurance and any property insurance afforded the insured through American Nuclear Insurers. If a representative of the companies discovers a condition which he believes to be unduly dangerous with respect to the nuclear energy hazard, a representative of the companies may request that such condition be corrected without delay. In the event of noncompliance with such request, a representative of the companies may, by notice to the named insured, to any other person or organization considered by the companies to be responsible for the continuation of such dangerous condition, and to the United States Nuclear Regulatory Commission, suspend this insurance with respect to the named insured and such other person or organization effective 12:00 midnight of the next business day of such Commission following the date that such Commission receives such notice. The period of such suspension shall terminate as of the time stated in a written notice from the companies to the named insured and to each such person or organization that such condition has been corrected.

Neither the right to make such inspection and examinations nor the making thereof nor any advice or report resulting therefrom shall constitute an undertaking, on behalf of or for the benefit of the insured or others, to determine or warrant that such facility or operations are safe or healthful, or are in compliance with any law, rule or regulation. In consideration of the issuance or continuation of this policy, the insured agrees that neither the companies nor any person or organizations making such inspections or examinations on their behalf shall be liable with respect to injury to or destruction of property at the facility, or any consequential loss or

expense resulting therefrom, or any loss resulting from or manufacture, arising out of the making of or a failure to make any such inspection or examination, or any report thereon, or any such suspension of insurance, but this provision does not limit the contractual obligations of the companies under this policy or any policy affording the insured property insurance through American Nuclear Insurers 2.) The definition of "insured shipment" in Insuring Agreement III, "DEFINITIONS", is replaced by the following:

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

Effective date of this Endorsement _____ To form a part of Policy No. _____

Issued to _____ 12:01 A.M. Standard Time

Date of Issue _____ For the subscribing companies

By _____ General Manager

Endorsement No. _____ Countersigned by _____

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Secs. 161(b) and (1), Pub. L. 83-703, 68 Stat. 948, 949 (42 U.S.C. 2201(b), (1)); Sec. 170, Pub. L. 85-256, 71 Stat. 576, Pub. L. 94-197, 89 Stat. 1111 (42 U.S.C. 2210); Sec. 201, Pub. L. 93-438, as amended, 88 Stat. 1242, 89 Stat. 413 (42 U.S.C. 5841).

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel Chilk
Secretary of the Commission

Dated at Washington, DC,
this day of

1980.

ATTACHMENT "A"