UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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AFFIRMATION/DISCUSSION AND VOTE

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PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Thursday, May 18, 1989

The Commission met in open session, pursuant to notice, at 3:30 p.m., Lando W. Zech, Jr., Chairman, presiding.

COMMISSIONERS PRESENT:

Lando W. Zech, Jr., Chairman of the Commission
Thomas M. Roberts, Commissioner
Kenneth M. Carr, Commissioner
James R. Curtiss, Commissioner

STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

P-R-O-C-E-E-D-I-N-G-S

3:30 p.m.

CHAIRMAN ZECH: Good afternoon, ladies and gentlemen.

Commissioner Rogers is not present this afternoon.

This is an affirmation session. We have three items to come before us this afternoon.

Before I ask the Secretary to take us through these items, do any of my fellow Commissioners have any comments they'd like to make?

If not, Mr. Secretary, you may proceed.

SECRETARY CHILK: Mr. Chairman, one of the items has been on the schedule for some time. The other two, however, have just been placed on the schedule lately and the Commission needs to vote to hold these on less than one week's notice.

They are SECY-89-146, which is the final rule on financial protection, and 158, which is a decision on Seabrook.

May I have your vote on that, please?

(Ayes.)

SECRETARY CHILK: The first paper is SECY-89-120, Land Disposal of Radioactive Waste. The Commission is being asked by the staff to approve for

publication in *The Federal Register* final amendments to 10 CFR Part 61 which would require disposal of greater than Class C radioactive waste in the nation's high-level radioactive waste repository unless alternative means for disposal have been approved by the Commission.

Chairman Zech, Commissioner Roberts, Carr, Rogers and Curtiss have approved the final amendments to 10 CFR 61.

Would you please affirm your votes.

(Ayes.)

SECRETARY CHILK: The second item is SECY-89-146. It's the issuance of a final rule on financial protection requirements and indemnity agreements.

In this paper, the Commission is being asked to approve issuance by the Executive Director of Operations of a final rule implementing the Price-Anderson Amendments Act of 1988 and to reflect the increase in the amount of primary financial protection being made available on the nuclear insurance pools.

The changes would provide additional insurance to pay public liability claims arising out of a nuclear accident.

Chairman Zech, Commissioners Roberts, Carr,

and Curtiss have approved issuance of the final rule. Commissioner Rogers is on official foreign travel and did not participate in this decision.

Would you please affirm your votes to this paper.

(Ayes.)

SECRETARY CHILK: The third and last item is SECY-89-158. It's a decision on a stay application on Seabrook. The Commission is being asked to approve an order which:

A, denies three separate motions to stay authorization for the issuance of a license to the Public Service Company of New Hampshire to conduct low-power testing at the Seabrook Nuclear Power Plant; and

B, provides a brief housekeeping stay to allow the Court of Appeals for the D.C. Circuit an opportunity to review stay claims filed with the Court and any opposition that might be filed. No license authorizing low-power testing for Seabrook shall be issued before May 25, 1989 at 4:00 p.m. Eastern Daylight Time or such earlier date if the Court denies the stay request now before it.

Chairman Zech, Commissioners Roberts, Carr and Rogers have approved the attached orders, with

corrections identified by the Commission. The order denies the intervenor's motion and approves a brief housekeeping stay for issuing a low-power license until 4:00 p.m. Eastern Daylight Time, May 25th, 1989 or an earlier date if the Court denies the stay request now before it.

Commissioner Curtiss did not participate in this decision.

Would you please affirm your votes.

(Ayes.)

CHAIRMAN ZECH: Is there anything else to come before us this afternoon?

SECRETARY CHILK: I have nothing further.

CHAIRMAN ZECH: If not, we stand adjourned.

(Whereupon, at 3:35 p.m. the above-entitled matter was concluded.)

CERTIFICATE OF TRANSCRIBER

This is to certify that the attached events of a meeting of the United States Nuclear Regulatory Commission entitled:

TITLE OF MEETING: Affirmation/Discussion and Vote

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING: May 18, 1989

were transcribed by me. I further certify that said transcription is accurate and complete, to the best of my ability, and that the transcript is a true and accurate record of the foregoing events.

Carol Lynch

Reporter's name: Peter Lynch

RULEMAKING ISSUE
(Affirmation)

May 3, 1989 SECY-89-146

For: The Commissioners

From: Victor Stello, Jr.
Executive Director for Operations

Subject: ISSUANCE OF A FINAL RULE ON FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

Purpose: To obtain the Commission's approval of the EDO's issuance of the enclosed final rule entitled "Financial Protection Requirements and Indemnity Agreements; Miscellaneous Amendments Necessitated by Changes in the Price-Anderson Act."

Background: The "Price-Anderson Amendments Act of 1988" was enacted on August 20, 1988. In order for the Commission's regulations to be consistent with the statutory changes to the Price-Anderson Act effected by the 1988 Amendments and to reflect the increase in the amount of primary financial protection being made available by the nuclear insurance pools, it is necessary for the Commission to amend certain provisions in 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements."

Discussion: SECY 88-316 (November 8, 1988) transmitted to the Commission for its consideration the proposed rule to amend 10 CFR Part 140 so its provisions would conform to changes to the Price-Anderson Act effected by the 1988 Amendments and to increase the amount of primary financial protection required of certain licensees from $160 million to $200 million (the maximum amount currently available from private sources). These changes are essentially ministerial in nature and do not involve any policy questions. After the Commission approved SECY 88-316, the proposed rule to amend 10 CFR Part 140 was published for public comment in the Federal Register (53 FR 51120; Dec. 20, 1988). Two public comments were received in response to the notice.

Contact:
Ira Dinitz, NRR
49-21289

One of the public comments expressed concern that the language amending § 140.11(a)(4) with respect to the potential liability of power reactor licensees for deferred premium assessments contained an ambiguity. The language of the proposed rule indicated that the maximum amount of the standard deferred premium that could be charged a licensee under the retrospective rating plan shall not exceed $63 million per incident but not more than $10 million per facility within one calendar year. The commenter questioned whether the annual limitation prescribed by the statute was merely $10 million per facility or whether the annual limitation was $10 million per incident per facility. A more careful reading of the amended Act indicates that the latter limitation is correct. Thus, the language amending § 140.11(a)(4) has been clarified to provide that the maximum amount of the standard deferred premium that could be charged a licensee under the retrospective rating plan shall not exceed $63 million per incident but not more than $10 million per incident per facility within one calendar year.

A second clarifying change to § 140.11(a)(4), not made in response to any public comment, explicitly states a concept which has been implicitly embodied in the deferred premium system since enactment of the 1975 Amendments to the Price-Anderson Act, i.e., if the entire deferred premium layer is not exhausted by public liability claims arising out of a single nuclear incident, then each licensee does not have to pay the whole standard deferred premium per facility but only its pro rata share of the aggregate claim.

Recommendation: That the Commission approve the EDO's issuance of the enclosed final rule implementing the Price-Anderson Amendments Act of 1988.

Coordination: The Office of the General Counsel has reviewed this paper and has no legal objection.

Victor Stello, Jr.
Executive Director for Operations

Enclosure:
As stated

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. May 19, 1989.

Commission staff office comments, if any, should be submitted to the Commissioners NLT May 12, 1989, 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 May 22, 1989. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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NUCLEAR REGULATORY COMMISSION

10 CFR PART 140

Financial Protection Requirements and Indemnity Agreements; Miscellaneous Amendments Necessitated By Changes in the Price-Anderson Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to conform to changes made to the Price-Anderson Act by "The Price-Anderson Amendments Act of 1988," which was enacted on August 20, 1988. The Commission is also amending its regulations to increase the level of the primary layer of financial protection required of certain indemnified licensees. The provisions of Section 170 of the Atomic Energy Act of 1954, as amended, require production and utilization facility licensees to have and maintain financial protection to cover public liability claims. Therefore, the Commission is amending its regulations to coincide, as statutorily required, with the increase in the level of the primary layer of insurance provided by private nuclear liability insurance pools. This change would provide additional insurance to pay public liability claims arising out of a nuclear incident.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Policy Development and Financial Evaluation Section, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301)492-1289.

SUPPLEMENTARY INFORMATION: On August 20, 1988, "The Price-Anderson Amendments Act of 1988" was enacted as Pub. L. 100-408. This legislation modifies and extends for 15 years (to August 1, 2002) the Price-Anderson Act. On December 20, 1988, the Commission published a proposed rule in the Federal Register (53 FR 51120) requesting comments on amending certain provisions of 10 CFR Part 140 to conform to changes made by Pub. L. 100-408. Two nonsubstantive comments were received on the proposed rule. The first commenter, without indicating a need, requested an extension of the comment period, which the NRC did not believe was warranted. The other commenter requested specific incorporation of certain other regulatory changes, which has been done. First, the requirement for the imposition of a surcharge above the $63 million deferred premium assessment, as specified in subsection 170o.(1)(E) of the Act, has been incorporated into the regulations. Second, the regulations have been clarified to specify that the $10 million annual deferred premium would be assessed on a "per incident" basis as implied in the Act and as clearly indicated in the legislative history.

Section 170 of the Atomic Energy Act of 1954, as amended, (the Act) requires production and utilization facility licensees to have and maintain financial protection to cover public liability claims resulting from a nuclear incident or precautionary evacuation. Section 170 also 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 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available from private sources. Primary financial protection may be in the form of private insurance, private contractual indemnities, self-insurance or other proof of financial responsibility, or combination of such measures.

The insurers who provide the nuclear liability insurance, American Nuclear Insurers (ANI) and Mutual Atomic Energy Liability Underwriters (MAELU), have advised the Commission that the maximum amount of primary nuclear energy liability insurance available has been increased from $160 million to $200 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 100,000 electrical kilowatts or more will be increased to $200 million.

Environmental Impact: Categorical Exclusion

The Commission has determined that this rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) Existing requirements were approved by the Office of Management and Budget approval number 3150-0039.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) the Commission hereby certifies that this rule will not have a significant economic effect on a substantial number of small entities. This rule applies only to nuclear power plant licensees which are electric utility companies dominant in their service areas. These licensees are not "small entities" as set forth in the Regulatory Flexibility Act and do not meet the standards set forth for small businesses in Small Business Administration regulations in 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, that a backfit analysis is not required for this rule. These amendments are required to conform NRC regulations to

statutory directives and do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 140

Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 140.

PART 140 - FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

1. The authority citation for Part 140 continues to read as follows:

AUTHORITY: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 140.11(a), 140.12(a), 140.13, and 140.13a are issued under sec. 161b., 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and § 140.6 is issued under sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 140.11, paragraph (a)(4) is revised and the introductory text (a) is provided for the convenience of the user to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

(a) Each licensee is required to have and maintain financial protection:

* * * * *

(4) In an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the pro rata share of the aggregate public liability claims and costs, excluding costs payment of which is not authorized by section 170o.(1)(D), in excess of that covered by primary financial protection) for each nuclear reactor which is licensed to operate and which is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more: Provided, however, That under such a plan for deferred premium charges for each nuclear reactor which is licensed to operate, no more than $63,000,000 with respect to any nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) and no more than $10,000,000 per incident within one calendar year shall be charged.

* * * * *

3. In § Section 140.13a, paragraph (a) is revised to read as follows:

§ 140.13a Amount of financial protection required for plutonium processing and fuel fabrication plants.

(a) Each holder of a license issued pursuant to Part 70 of this chapter to possess and use plutonium at a plutonium processing and fuel fabrication plant is required to have and maintain financial protection in the form specified in § 140.14 in the amount of $200,000,000. Proof of financial protection shall be filed with the Commission in the manner in § 140.15 prior to issuance of the license under Part 70 of this chapter.

* * * * *

4. Section 140.92, Appendix B, is amended as follows:

a. Article I, paragraphs 1 and 7 are revised.

b. Article II, paragraph 4(c), introductory text of paragraph 8, and paragraphs 8(a), 8(b), and 8(c) are revised.

c. Article III, paragraph 4(b) is revised.

d. Article VIII, paragraph 1 is revised.

§ 140.92 Appendix B -- Form of indemnity agreement with licensees furnishing insurance policies as proof of financial protection.

* * * * *

ARTICLE I

* * * * *

1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

7. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

ARTICLE II

* * * * *

4. * * *

(c) Any issue or defense based on any 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 and the cause thereof.

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. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

* * * * *

8. With respect to any common occurrence,

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

by Nuclear Energy Liability Insurance Association exceeds $155,000,000 the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $155,000,000 as the limit of liability of the Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association;

(b) If the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds $45,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $45,000,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) If any of the other applicable agreements is with a person who has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters, and

if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

* * * * *

ARTICLE III

* * * * *

4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under this agreement and all other applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection.

* * * * *

ARTICLE VIII

* * * * *

1. Each licensee is required to have and maintain financial protection in an amount specified in Item 2a and b of the Attachment annexed hereto, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges); Provided, however, That under such a plan for deferred premium charges, such charges for each nuclear reactor which is licensed to operate shall not exceed $63,000,000 with respect to any single nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) nor exceed $10,000,000 per incident within one calendar year. If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

* * * * *

5. Section 140.93, Appendix C, is amended as follows:

a. Article I, paragraphs 1 and 7 are revised.

b. Article II, paragraphs 4(c) and 8 are revised.

c. Article III, paragraph 4(b) is revised.

d. Article VIII, paragraph 1 is revised.

§ 140.93 Appendix C -- Form of indemnity agreement with licensees furnishing proof of financial protection in the form of licensee's resources.

* * * * *

ARTICLE I

* * * * *

1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

7. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of

war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b), if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

ARTICLE II

* * * * *

4. * * *

(c) Any issue or defense based on any 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 and the cause thereof.

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. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

* * * * *

8. With respect to a common occurrence, if the sum of the amount of financial protection established under this agreement and the amount of financial protection established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee described in paragraph 3 of this Article shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements. As used in this paragraph, and in Article III, "other applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170c. or k. of the Act in which agreement the nuclear incident is defined as a "common occurrence".

* * * * *

ARTICLE III

* * * * *

4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to

Paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under this agreement and to all other applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection.

* * * * *

ARTICLE VIII

* * * * *

1. Each licensee is required to have and maintain financial protection in an amount specified in Item 2 annexed hereto, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges): Provided, however, That under such a plan for deferred premium charges, such charges for each nuclear reactor which is licensed to operate shall not exceed $63,000,000 with respect to any single nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) nor exceed $10,000,000 per incident within one calendar year. If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

* * * * *

6. Section 140.94, Appendix D, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, paragraphs 4(c) and 6 are revised.

§ 140.94 Appendix D -- Form of indemnity agreement with Federal agencies.

* * * * *

ARTICLE I

* * * * *

1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including

all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

ARTICLE II

* * * * *

4. * * *

(c) Any issue or defense based on any 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 and the cause thereof.

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. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

* * * * *

6. With respect to a common occurrence, the obligations of the Commission under this Article shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amount of financial protection established under all applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection. As used in this Article "applicable agreements" means each agreement entered into by the Commission pursuant to subsection 170c. or k. of the Act in which agreement the nuclear incident is defined as "common occurrence."

* * * * *

7. Section 140.95, Appendix E, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, paragraph 2(c) is revised.

c. Article III, paragraph 4(b) is revised.

d. Article IV, paragraph 1 is revised.

§ 140.95 Appendix E -- Form of indemnity agreement with nonprofit educational institutions.

* * * * *

ARTICLE I

* * * * *

1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or

precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

ARTICLE II

* * * * *

2. * * *

(c) Any issue or defense based on any 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 and the cause thereof.

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. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

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ARTICLE III

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4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under all applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection. As used in this Article "applicable agreements" means each agreement entered into by the Commission pursuant to subsection 170c. or k. of the Act in which agreement the nuclear incident is defined as a "common occurrence."

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ARTICLE IV

1. When the Commission determines that the United states will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim including such legal costs of the licensee as are approved by the Commission and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

* * * * *

8. Section 140.107, Appendix G, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, introductory text of paragraph 6 and paragraphs 6(a), 6(b), and 6(c) are revised.

c. Article III, paragraph 4(b) is revised.

§ 140.107 Appendix G -- Form of indemnity agreement with licensees processing plutonium for use in plutonium processing and fuel fabrication plants and furnishing insurance policies as proof of financial protection.

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ARTICLE I

* * * * *

1. "Byproduct material," "person," "source material," "special nuclear material," "precautionary evacuation," and "extraordinary nuclear occurrence" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or

precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

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ARTICLE II

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6. With respect to any common occurrence,

(a) If the sum of the limit of liability of any Nuclear Energy Liability-Property Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability-Property Insurance Association exceeds $155,000,000, the amount of financial protection specified in

Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $155,000,000 as the limit of liability of the Nuclear Energy Liability-Property Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability-Property Insurance Association;

(b) If the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds $45,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $45,000,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) If any of the other applicable agreements is with a person who has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability-Property Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection

established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

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ARTICLE III

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4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed $200,000,000.

* * * * *

9. Section 140.108, Appendix H, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, paragraph 6 is revised.

c. Article III, paragraph 4(b) is revised.

§ 140.108 Appendix H -- Form of indemnity agreement with licensees possessing plutonium for use in plutonium processing and fuel fabrication plants and furnishing proof of financial protection in the form of the licensee's resources.

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ARTICLE I

* * * * *

1. "Byproduct material," "person," "source material," "special nuclear material," "precautionary evacuation," and "extraordinary nuclear occurrence" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are

employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

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ARTICLE II

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6. With respect to any common occurrence, if the sum of the amount of financial protection established under this agreement and the amount of financial protection established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee described in paragraph 3 of this Article shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other

applicable agreements. As used in this paragraph, and in Article III, "other applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170c. or k. of the Act in which agreement the nuclear incident is defined as a "common occurrence."

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ARTICLE III

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4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed $200,000,000.

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Dated at Rockville, MD, this of 1989.

For The Nuclear Regulatory Commission.

Victor Stello, Jr.
Executive Director for Operations