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NUCLEAR REGULATORY COMMISSION

10 CFR PART 50

RIN: 3150-AD19

Stabilization and Decontamination Priority, Trusteeship Provisions, and Amount of Property Insurance Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend the provisions of its property insurance regulations applicable to commercial power reactor licensees. The changes are proposed to (1) clarify the scope and timing of the stabilization and decontamination processes after an accident at a covered reactor; (2) specify that the insurance is required to ensure that commercial power reactor licensees will have sufficient funds to carry out their obligation to clean up and decontaminate after an accident; and (3) eliminate the requirement that insurance proceeds after an accident are paid to an independent trustee. In addition, Chairman Carr and Commissioner Rogers support the staff proposal to solicit comments on the appropriate level of required insurance in view of inflation of decontamination and cleanup costs. This proposed rule responds to issues raised in three petitions for rulemaking.

DATES: The comment period expires [insert date 60 days after publication in the Federal Register]. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary, U. S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. (Telephone (301) 492-1960).

Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC.

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FOR FURTHER INFORMATION CONTACT: Robert S. Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-1280.

SUPPLEMENTARY INFORMATION:

I. Background

On August 5, 1987, the Commission published in the Federal Register (52 FR 28963) a final rule that amended 10 CFR 50.54(w). The rule increased the amount of onsite property damage insurance required of commercial power reactor licensees. The purpose of the rule was to provide an assured source of funds for onsite decontamination and cleanup of a power reactor facility after an accident. In particular, the 1987 amendments required licensees to obtain insurance policies in which any proceeds from such policies are to be used for stabilization of a reactor after an accident and then for decontamination of the facility before any other purpose. The rule also required that any insurance proceeds be paid to a trustee, who would be required to disburse funds according to the decontamination priority. The Commission believed that these provisions would effectively protect insurance proceeds from claims by bondholders or their representatives or, in the event of licensee default or bankruptcy, by other creditors. The Commission based this belief on comments submitted by the Association of the Bar of the City of New York (hereinafter referred to as NYC Bar). (See comment number 12 in response to the 1984 proposed rule (49 FR 44645, November 8, 1984)).

Subsequent to publication of the 1987 final rule, the NRC received three petitions for rulemaking that sought (1) clarification of the scope and timing of the stabilization process after an accident at a covered reactor; (2) clarification of the procedures by which the NRC determines and approves expenditures of funds necessary for decontamination and cleanup, and clarification of how such procedures affect both insurers' needs to secure appropriate proofs of loss and when payments may be made for non-cleanup purposes; (3) a change in the terminology of the required insurance from "property" insurance to "decontamination liability" insurance so as to better forestall claims to insurance proceeds by a licensee's bondholders; and

(4) rescission of the provision that proceeds of the required insurance are to be paid to an independent trustee, who will disburse the proceeds for decontamination and cleanup of the facility before any other purpose.

Notice of receipt of the three petitions for rulemaking was published on September 19, 1988 (53 FR 36335). These petitions are (1) Petition for Rulemaking (PRM-50-51) dated June 3, 1988, from Linda S. Stein, Steptoe & Johnson, counsel to American Nuclear Insurers and MAERP Reinsurance Association (ANI/MAERP); (2) Petition for Rulemaking (PRM-50-51A) dated June 21, 1988, from J. B. Knotts, Jr., Bishop, Cook, Purcell & Reynolds, counsel to the Edison Electric Institute (EEI), the Nuclear Utility Management and Resources Council (NUMARC) and several power plant licensees; and (3) Petition for Rulemaking (PRM-50-51B), received July 18, 1988, from Peter D. Lederer, Baker & McKenzie, counsel to Nuclear Mutual Limited and Nuclear Electric Insurance Limited (NML and NEIL-II). Interested persons may examine and copy for a fee the above letters and petitions for rulemaking at the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC.

Four comments were received on the petitions for rulemaking, all of which supported the amendments recommended in the petitions. In addition, NYC Bar submitted on June 30, 1988, a clarification and revision of its comments on the earlier property insurance rulemakings and called for rescinding the trusteeship provision that it had supported previously. The NYC Bar's submission was docketed as comment number 36 under the 1984 proposed rule (49 FR 44645, November 8, 1984).

II. Analysis of and Response to Issues Raised by Petitioners

A. Clarification of the scope and timing of the stabilization process after an accident at a covered reactor.

Petitioners' Concerns

Petitioners believe that the stabilization process should be defined and clarified in the rule. Insurers are concerned that, because the

existing rule requires a priority on insurance proceeds first for stabilizing a reactor after an accident and then for decontaminating the reactor, and because proceeds for decontamination but not stabilization are to be paid to an independent trustee, there could be confusion regarding when, to whom, and in what amount proceeds for stabilization should be paid. In addition, petitioners believe that the stabilization priority should not be invoked until the estimated costs of stabilization and decontamination exceed a threshold of $100 million and that this priority should only last for 30 days unless extended by the NRC. These changes would prioritize use of insurance proceeds for relatively more serious accidents in which there would be concern about the availability of adequate funds to protect public health and safety. Petitioners believe that placing a threshold and time limit on the stabilization priority, when coupled with a procedure for estimating and authorizing expenditures for decontamination and cleanup after stabilization has been completed, would simplify the claims payment process and reduce the likelihood that insurance proceeds for cleanup would be tied up while claims by competing parties are being resolved.

NRC Response

The NRC believes that petitioners' recommendations with respect to clarifying the stabilization priority generally merit incorporation in the rule. During the process that culminated in the 1987 rulemaking, the Commission believed, and continues to believe, that stabilization is a relatively brief process occurring in the immediate aftermath of an accident where quick and effective response is necessary. For that reason, the NRC chose not to make stabilization subject to the trusteeship provision. For the same reasons, the Commission did not define the stabilization process in the rule itself. However, petitioners believe that protection of public health and safety would be better served by more explicit treatment of the stabilization process in the NRC's regulations.

The NRC has no reason to dispute petitioners' views and believes that petitioners' proposals in this area do not substantively change the Commission's policy as expressed in the preamble to the 1987 final rule. Consequently, the NRC proposes to accept in large measure petitioners' recommendations, but also proposes to further clarify the stabilization process beyond petitioners' recommended wording. Also, because in certain circumstances initial stabilization could take more than 30 days, the NRC proposes an initial stabilization period not to exceed 60 days, with extensions up to 60 days each, if necessary.

B. Clarification of the procedures by which the NRC determines and approves estimates and expenditure of funds necessary for stabilization, decontamination and cleanup. Clarification of how such procedures affect both insurers' needs to secure appropriate proofs of loss and when payments may be made for non-cleanup purposes.

Petitioners' Concerns

Petitioners expressed several related concerns with respect to the operation of the decontamination priority within the overall coverage of the policy. Petitioners are particularly concerned that the insurance proceeds not needed for stabilization, decontamination, or cleanup would be tied up until cleanup was completed. This could occur both for any coverage exceeding the $1.06 billion that NRC requires and for coverage falling within the $1.06 billion required but in excess of the amount needed for stabilization, decontamination, and cleanup after a particular accident. Thus, once it is determined that a particular accident will require, for example, $500 million for stabilization, decontamination and cleanup, licensees may need early access to the remaining insurance proceeds. Early access to these funds would help the licensee to better cope with any adverse financial effects of the accident and would

reduce the likelihood that a licensee's financial hardship would have an adverse impact on the protection of public health and safety. Additionally, insurers believe that by specifically incorporating in the rule the flexible release of insurance proceeds not needed for accident cleanup without regard to whether such insurance is part of the primary or excess layers being offered[1] they will avoid problems with timing of proof of loss required under the insurance policies and the potential adverse effect such timing could have on the payment of stabilization, decontamination, and cleanup costs. By specifying a mechanism in the rule by which the NRC can approve stabilization, decontamination, and cleanup cost estimates, these problems can be avoided.

NRC Response

Although the NRC is not convinced that petitioners' proposed amendments are essential to the efficient payment of stabilization, decontamination, and cleanup costs, petitioners' recommendations in this area are being proposed by the NRC because they are consistent with NRC policy as expressed in the August 5, 1987 rulemaking. As stated in that rulemaking, (52 FR 28963 at 28970.)

> Obviously, the NRC would not interpret a priority in so rigid a manner as to preclude prudent practices necessary to an orderly decontamination, such as equipment purchases, stabilization activities, etc. The decontamination priority was not

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[1]Primary insurance covering the first $500 million in damages is offered by NML or ANI/MAERP. Insurance in excess of the first $500 million in damages is offered by NEIL-II ($825 million) and ANI/MAERP ($400 million). One of the primary policies and both excess policies may be combined for total coverage of $1.725 billion.

> meant to be applied sequentially in that all expenditures on cleanup would have to be made before any others. The priority has been worded to allow licensee flexibility, particularly after a reactor has been stabilized after an accident. Despite possible utility reluctance, the priority should be compatible with the broadest range of actions necessary to protect public health and safety. Further, the decontamination priority is meant to be invoked only when there would be serious concern over the availability of funds for decontamination.

The NRC has proposed modifying petitioners' suggested amendatory language so that NRC responsibilities and concerns are more clearly presented.

C. A change in the terminology of the required insurance from "property insurance" to "decontamination liability" insurance so as to better forestall claims to insurance proceeds by a licensee's bondholders and other possible creditors.

Petitioners' Concerns

Petitioners continue to believe that the NRC decontamination priority directly conflicts with indenture language that requires "property" insurance to be maintained for the benefit of those owning the indentures issued to finance the facility. To effect this requirement, bondholders are to be named the "loss payee" of any property insurance held on the bonded property. Thus, NRC's requirement for "property" insurance directly conflicts with provisions to protect bondholders' interests in the mortgage indentures. The insurers believe that this conflict places them in a position of having to choose to whom to pay the proceeds with the result that they will likely make any insurance proceeds payable jointly to the independent trustee representing the NRC interest in protecting public health and safety and the trustee representing bondholders' interests. Such action could result in extensive litigation and delay in cleanup.

Petitioners recommend a way out of this dilemma. They propose that NRC require "hybrid" insurance policies similar to those currently offered by NEIL-II. A hybrid policy combines a licensee's obligation to stabilize, decontaminate, and clean up its reactor facility with the physical damage loss coverage of traditional property insurance. Because the hybrid policy would incorporate a stabilization and decontamination priority in the amount required by the NRC and because bondholders would not be entitled to proceeds under the stabilization and decontamination obligation portion of the coverage, petitioners believe that claims would be paid for stabilization and decontamination expenses without being challenged by bondholders. Although this hybrid policy currently is in effect only for NEIL-II excess coverage, representatives for ANI/MAERP and NML indicate that they would be willing to offer similar coverage.

NRC Response

NRC has been aware that a hybrid policy similar to that offered by NEIL-II would eliminate the potential problem of claims by bondholders against the stabilization and decontamination portion of insurance proceeds. NRC had been informed of this possibility in comments submitted in the 1984 rulemaking (see particularly comment number 12 from the NYC Bar, (49 FR 44645)). However, the NRC's expressed policy has been not to mandate the terms and conditions of insurance policies unless agreed to by insurers. At the time of the 1987 rulemaking it was not clear that insurers other than NEIL-II and perhaps NML would be willing to offer a hybrid policy. Further, NRC believed that the preamble of the 1987 rule made it clear that it was decontamination insurance that was being required, notwithstanding the general reference to "property" insurance. Thus, the NRC declined to require it explicitly.

However, because hybrid insurance polices now apparently will be available from all insurers and offer a reasonable likelihood of sheltering proceeds

for stabilization and decontamination expenses from bondholders' claims, the NRC proposes to clearly require insurance to cover stabilization and decontamination of the reactor and the reactor station site. Hybrid policies discussed above would satisfy this requirement.

D. Rescission of the requirement that proceeds of the required insurance are to be paid to an independent trustee, who will disburse the proceeds for decontamination and cleanup of the facility before any other purpose.

Petitioners' Concerns

Petitioners believe that the trustee provision contained in 10 CFR 50.54(w)(4) is "unworkable, unnecessary, ineffective and will likely be counterproductive" (PRM-50-51A, p. 5.) (Other petitioners expressed similar thoughts.) According to petitioners, by requiring that insurance proceeds for decontamination and cleanup be disbursed by a bondholders' trustee, NRC is adding a further burden to an already complex process.

As explained in II.C. above, because of mortgage indenture provisions and because petitioners construe NRC as requiring "property" insurance, the independent trustee could be in conflict with the bondholders' trustee and might be reluctant to pay out funds for decontamination and cleanup until such conflict is resolved. Avoiding this conflict -- one primary purpose for the trustee (i.e., to protect against claims by bondholders) -- would be accomplished by NRC's requiring a hybrid policy.

In its comments, the NYC Bar indicated that it no longer recommends that NRC require an independent trustee. (The NRC relied extensively on NYC Bar's comments in the 1987 rulemaking.) Rather, a combination of the hybrid policy, explicit procedures for payment of claims, and recent decisions in bankruptcy cases may more effectively protect decontamination and cleanup expenses from competing claims. Short of bankruptcy, the hybrid insurance policy by itself will protect proceeds for use for stabilization, decontamination, and cleanup.

The NYC Bar believes, along with other petitioners, that insurance policy proceeds can be protected from claims of creditors in a bankruptcy or pre-bankruptcy situation if --

> (1) the insurance policy contains a priority for the payment of decontamination expenses, (2) the policy provides coverage for decontamination expenses only as they are incurred, and (3) the policy requires the utility to use the proceeds received for payment of the decontamination expenses it has incurred. The utility would then have a contractual obligation to use the insurance proceeds for decontamination and not for other purposes. These restrictions should only apply to the extent necessary to protect public health and safety.
>
> In a pre-bankruptcy situation, the licensee would be bound by the terms of its insurance contract. If the policy contains a decontamination priority, it will not be possible to divert the insurance proceeds to other purposes. In addition, if the policy so provided the proceeds for decontamination would not be payable until decontamination expenses were actually incurred, thus the licensee would need to make suitable arrangements for the work to be done before submitting its claim for insurance. Finally, once it were to receive the insurance proceeds, the licensee would be required by its contract to use the proceeds to pay the expenses which form the basis of its insurance claim.
>
> In the post-bankruptcy situation, the trustee in bankruptcy or its equivalent may, subject to court approval, assume or reject executory contracts such as the insurance policy.... Once the trustee assumes the insurance contract (Since the trustee's right to receive up to $1. [illegible] billion of insurance proceeds would depend upon an assumption of the contract, we regard it as unlikely that any trustee would reject it), it too would be bound by the terms of the insurance agreement and would be required to use the insurance proceeds in a manner consistent with that agreement.... Creditors of the bankrupt licensee would have no claim on the insurance proceeds since the utility's right to the proceeds would be conditioned both on its incurring decontamination expenses and on its using the proceeds to pay the expenses which form the basis of its claim.... (We do not think, particularly in the pre-bankruptcy situation, that it is likely third party contractors would be concerned about reimbursement for work undertaken by them. As noted above, payment of the proceeds would be conditioned upon their use to pay the expenses on which the insurance claim is based. It is also likely that a licensee would assign its interest in the insurance proceeds to a contractor, in advance of the bankruptcy, in exchange for the contractor's agreement to perform the cleanup work. The assignment should effectively remove the insurance proceeds from the estate of the bankrupt.) (See comment number 36, 49 FR 44645, pp. 11-13. Parenthetical statements are footnotes in the original text.)

Petitioners also cite recent decisions by bankruptcy courts that tend to support the view that, notwithstanding the procedural remedies outlined above, expenditures to protect public health and safety would take priority over many other types of claims. In a memorandum attached to PRM-50-51A, petitioner argues that: "A debtor in possession or a trustee may make expenditures to comply with an agency's regulations or orders if the expenditure is necessary to comply with an action by the agency to enforce its police or regulatory power.... Agency enforcement actions to protect public health and safety or the environment constitute valid police powers, and such actions are exempt from the automatic statutory stay of proceedings against the debtor.... Moreover, the Supreme Court has made it clear that a debtor in possession or trustee may not abandon its obligations to comply with laws which are reasonably designed to protect public health or safety.... Proceeds of property insurance are normally part of the bankrupt estate and are treated like any other cash collateral." (Memorandum, pp. 2-3.)

Finally, petitioners maintain that it may be impossible to find someone to act as trustee. Petitioners have assured the NRC that they have made a good-faith effort to obtain trustees but have been unsuccessful. They believe that the reason for their lack of success is twofold. First, trustees with sufficient expertise and resources to manage over $1 billion in insurance proceeds are currently acting as bondholders' trustees. This situation results in a conflict of interest in which potential trustees would be ethically constrained from engaging. Second, trustees are apparently averse to assuming responsibility for disbursing potentially over $1 billion in insurance proceeds and the resulting exposure to possible litigation for wrongful disbursement. Because the trust would only be funded in the event of an accident and because trustees' fees are usually based in part on the amount of assets under management, trustees would only be eligible for modest fees. These fees apparently would be insufficient to compensate trustees for the risk they believe they would be assuming.

NRC Response

The NRC has no evidence to contradict petitioners' assertions that they cannot find persons both willing and able to act as trustees. The NRC also acknowledges that in most, but perhaps not all, situations, the need for a trustee would be mitigated by using a hybrid insurance policy and by recent developments in bankruptcy case law.

At the same time, however, the NRC notes that, if the other proposed changes to 10 CFR 50.54(w) are adopted, some of the potential trustees' concerns should be reduced. For example, the hybrid policy, if it operates as petitioners suggest, would largely eliminate questions of whom to pay and thus should low r the risk of wrongful disbursement. Although for some potential trustees the problems of conflict of interest and inadequate fees would remain, the proposed changes might encourage others to assume the duties of trustee.

The NRC is not as sanguine as petitioners that recent developments in bankruptcy law have eliminated all likelihood of competing claims to insurance proceeds. For example, the recent decision of "In re Smith-Douglass, Inc." (Nos. 87-1683, -1684 (4th Circuit, September 6, 1988)) allowed unconditional abandonment of a hazardous weste site that violated State environmental laws because the estate had no unencumbered assets and the site did not pose any serious public health and safety risks. The court did indicate that it would have found differently if unencumbered assets were available. But the decision does raise again the issues of whether insurance proceeds would be considered unencumbered assets and whether a court would take it upon itself to decide what level of accident cleanup constitutes a "less-than-serious" public health and safety risk.

The NRC concludes that requiring an independent trustee to hold and disburse insurance proceeds may still be warranted in some circumstances. Nevertheless, given the reality of lack of trustee availability, the NRC

proposes to eliminate, at least temporarily, the trustee requirement. The Commission retains the authority to impose such requirements in individual cases, if warranted. At the same time, the NRC will seek authority to receive and retain such funds itself. If the NRC obtains such authority, it will consider whether to exercise such authority and the best method of implementing such authority. The NRC may reinstitute the trusteeship requirement.

III. Level of Insurance

Although not raised by petitioners, the NRC staff believes that this rule should also address the issue of how much insurance should be required. Chairman Carr and Commissioner Rogers agree with the staff proposal and consequently request public comment on this issue.

In the 1987 rulemaking, the NRC concluded that it found no effective way to determine future costs of accident stabilization, decontamination, and cleanup other than by periodic updates of the study from which the current $1.06 billion requirement was derived.[2] The Commission believed that a general index of inflation such as the Consumer Price Index or even the Handy-Whitman construction cost index was too general for escalating the cost of accident cleanup. Subsequent to the 1987 amendments to 10 CFR 50.54(w), the Commission has issued its final decommissioning regulations (53 FR 24018, June 27, 1988). Those regulations, in part, adopted formulas for estimating decommissioning cost based on reactor size and type and future decommissioning costs based on a weighted index of three major decommissioning cost components -- labor, energy, and waste burial costs. Inflation estimates for the labor and energy components will be derived from producer price indices published annually by the Bureau of Labor Statistics of the U.S. Department of Labor. Waste burial charge estimates will be derived from an NRC-published report.

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[2]"Technology, Safety and Costs of Decommissioning Reference Light Water Reactors Following Postulated Accidents," (NUREG/CR-2601) Pacific Northwest Laboratory, November 1982. This report is available for purchase from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082.

Although decommissioning costs and accident cleanup costs are not strictly equivalent, many activities are common to both. The precise formula adopted for estimating future decommissioning costs may not be appropriate for accident cleanup costs; nevertheless, the staff concludes that the methodology used in the decommissioning inflation formula may be appropriate for accident cleanup inflation. Although no specific formula is being proposed at this time, Chairman Carr and Commissioner Rogers are requesting comments on the appropriateness of the methodology and any suggestions for the factors and weights that could be used.

IV. Environmental Assessment and Finding of No Significant Environmental Impact

If adopted, these proposed amendments would (1) clarify the sequence of events covered by required accident cleanup insurance during the period of stabilization and decontamination after an accident; (2) make explicit the requirement for a combined accident decontamination obligation and physical damage loss insurance policy; and (3) rescind the existing requirement that insurance proceeds be paid to and disbursed by an independent trustee. In addition, this notice of proposed rulemaking seeks comments on establishing a methodology for estimating future accident cleanup costs. This action is required to increase the effectiveness of the accident cleanup insurance required under 10 CFR 50.54(w) so that public health and safety is not adversely affected during the cleanup process. The alternative to this action is to maintain the existing rule without change.

Neither this action nor its alternative has any significant impact on the environment. Although changes in insurance requirements may affect the financial arrangements of licensees and may have economic and social consequences, they will not, if adopted, alter the environmental impact of the licensed activities. The alternative to the proposed action likewise would not have any significant impact on the environment. Accordingly for the foregoing reasons, the Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a

major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. No other agencies or persons were contacted for this proposed action, and no other documents related to the environmental impact of this proposed action exist. The foregoing constitutes the environmental assessment and finding of no significant impact for this proposed rule.

V. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule will be submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

VI. Regulatory Analysis

On August 5, 1987, the NRC published in the Federal Register (52 FR 28963) a final rule amending 10 CFR 50.54(w). The rule increased the amount of onsite property damage insurance required to be carried by NRC's commercial power reactor licensees. The rule also required these licensees to obtain insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the 1987 rule, the NRC received three petitions for rulemaking that sought clarification of the stabilization and decontamination priority provisions and rescission of the trusteeship provision. The petitions further stated that the trusteeship provisions may actually have an effect counter to their intended purpose by delaying the payment of claims and thus possibly the cleanup proce[illegible]sed rule developed in response to the petitions for rulemaki[illegible]arify the mechanism by which accident cleanup funds may b[illegible]used for their intended purpose. Even without

formal stabilization and decontamination priority and trusteeship provisions, NRC has authority to take appropriate enforcement action to order cleanup in the unlikely event of an accident.

Chairman Carr and Commissioner Rogers request public comment on the appropriateness and need for developing formulas that would both base the required amount of accident cleanup insurance on reactor size and type and establish a mechanism for changing future insurance amounts to reflect changes in major accident cleanup cost components. Although the effect of these formulas, if developed and adopted, would be to increase the required amount of insurance for some licensees, there should be little impact on insurance costs to licensees because almost all licensees buy the maximum amount of insurance available. Additionally, by rescinding the trusteeship requirement, the Commission would be eliminating licensees' costs to obtain trustee services. Thus, the proposed rule will not create substantial costs for licensees.

The proposed rule will not have significant impacts on state and local governments and geographical regions, on the environment, or create substantial costs to the NRC or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

VII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant impact upon a substantial number of small entities. The proposed rule affects approximately 113 power reactor licenses. None of the holders of these licenses could be considered small entities.

VIII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule because the proposed rule, if adopted, would not impose a backfit as defined in §50.109 (a)(1). Therefore, a backfit analysis is not required for this proposed rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, 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. 553, the NRC is proposing to adopt the following amendment to 10 CFR Part 50.

PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec.234, 83 Stat. 1224, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846). Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13 and 50.54(dd) also issued under Sec. 108, 68 Stat. 939 as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234).

Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§50.7(a), 50.10(a)-(c), 50.34(a) and (e), 50.44(a)-(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(1), (l)-(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a),(c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§50.49(d), (h), and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)-(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 50.54 is amended by revising paragraph(w) to read as follows:

§50.54 Conditions of licenses.

* * * * *

(w) Each electric utility licensee under this part for a production or utilization facility of the type described in §50.21(b) or §50.22 shall take reasonable steps to obtain insurance available at reasonable costs and on reasonable terms from private sources or to demonstrate to the satisfaction of the Commission that it possesses an equivalent amount of protection covering the licensee's obligation, in the event of an accident at the licensee's reactor, to stabilize and decontaminate the reactor and the reactor station site at which the reactor experiencing the accident is located, Provided that:

(1) The insurance required by paragraph (w) of this section must have a minimum coverage limit for each reactor station site of either $1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less. The required insurance must clearly state that, as and to the extent provided in paragraph (w)(4) of this section, any proceeds must be payable first for stabilization of the reactor and next for decontamination of the reactor and the reactor station site. If a licensee's coverage falls below the required minimum, the licensee shall within 60 days take all reasonable steps to restore its coverage to the required minimum. The required insurance may, at the option of the licensee, be included within policies that also provide coverage for other risks, including, but not limited to, the risk of direct physical damage.

(2) (i) With respect to policies issued or annually renewed on or after , ,[insert a date one year after the effective date of the rule] the proceeds of such required insurance must be dedicated, as and to the extent provided in this paragraph, to reimbursement or payment on behalf of the insured of reasonable expenses incurred or estimated to be incurred by the licensee in taking action to fulfill the licensee's obligation, in the event of an accident at the licensee's reactor, to ensure that the reactor is in, or is returned to, and maintained in, a safe and

stable condition and that radioactive contamination is removed or controlled such that personnel exposures are consistent with the occupational exposure limits in 10 CFR Part 20. These actions must be consistent with any other obligation the licensee may have under this chapter and must be subject to paragraph (w)(4) of this section. As used in this section, an "accident" means an event that involves the release of radioactive material from its intended place of confinement within the reactor or on the reactor station site such that there is a present danger of release offsite in amounts that would pose a threat to public health and safety.

(ii) The stabilization and decontamination requirements set forth in paragraph (w)(4) of this section must apply uniformly to all insurance policies required under paragraph (w) of this section.

(3) The licensee shall report to the NRC on April 1 of each year the current levels of this insurance or financial security it maintains and the sources of this insurance or financial security.

(4)(i) In the event of an accident at the licensee's reactor, whenever the estimated costs of stabilizing the licensed reactor and of decontaminating the reactor and the reactor station site exceed $100 million, the proceeds of the insurance required by paragraph (w) of this section must be dedicated to and used, first, to ensure that the licensed reactor is in, or is returned to, and can be maintained in, a safe and stable condition so as to prevent any significant risk to public health and safety and, second, to decontaminate the reactor and the reactor station site in accordance with the licensee's cleanup plan

as approved by order of the Director of the Office of Nuclear Reactor Regulation. This priority on insurance proceeds shall remain in effect for 60 days or, upon order of the Director, for such longer periods, in increments not to exceed 60 days except as provided for activities under the cleanup plan required in subparagraphs (w)(4)(iii) and (iv), as the Director may find necessary to protect the public health and safety.

Actions needed to bring the reactor to and maintain the reactor in a safe and stable condition may include one or more of the following, as appropriate:

(A) Shutdown of the reactor;
(B) Establishment and maintenance of long-term cooling with stable decay heat removal;
(C) Maintenance of sub-criticality;
(D) Control of radioactive releases; and
(E) Securing of structures, systems, or components to minimize radiation exposure to onsite personnel or to the offsite public or to facilitate later decontamination or both.

(ii) The licensee shall inform the Director of the Office of Nuclear Reactor Regulation in writing when the reactor is and can be maintained in a safe and stable condition so as to prevent any significant risk to the public health and safety. Within thirty (30) days after the licensee informs the Director that the reactor is in this condition, or at such earlier time as the licensee may elect or the Director may for good cause direct, the licensee shall prepare and submit a cleanup plan for the Director's approval. The cleanup plan must identify and contain an estimate of the cost of each cleanup operation that will be required to decontaminate the reactor sufficiently

to permit the licensee either to resume operation of the reactor or to apply to the Commission under §50.82 of this part for authority to decommission the reactor and to surrender the license voluntarily. Cleanup operations may include one or more of the following, as appropriate:

(A) Processing any contaminated water generated by the accident and by decontamination operations to remove radioactive materials;

(B) Decontamination of surfaces inside the auxiliary and fuel handling buildings and the reactor building to levels consistent with the Commission's occupational exposure limits in 10 CFR Part 20, and decontamination or disposal of equipment;

(C) Decontamination or removal and disposal of internal parts and damaged fuel from the reactor vessel; and

(D) Cleanup of the reactor coolant system.

(iii) Following review of the licensee's cleanup plan, the Director will order the licensee to complete all operations that the Director finds are necessary to decontaminate the reactor sufficiently to permit the licensee either to resume operation of the reactor or to apply to the Commission under §50.82 for authority to decommission the reactor and to surrender the license voluntarily. The Director shall approve or disapprove, in whole or in part for stated reasons, the licensee's estimate of cleanup costs for such operations. Such order may not be effective for more than 1 year, at which time it may be renewed. Each subsequent renewal order, if imposed, may be effective for not more than 6 months.

(iv) Of the balance of the proceeds of the required insurance not already expended to place the reactor in a safe and stable condition pursuant to paragraph (a)(2)(i) of this section an amount sufficient to cover the expenses of completion of those decontamination operations that are the subject of the Director's order shall be dedicated to such use. Provided that, upon certification to the Director of the amounts expended previously and from time to time for stabilization and decontamination and upon further certification to the Director as to the sufficiency of the dedicated amount remaining, policies of insurance may provide for payment to the licensee or other loss payees of amounts not so dedicated, and the licensee may proceed to use in parallel (and not in preference thereto) any insurance proceeds not so dedicated for other purposes.

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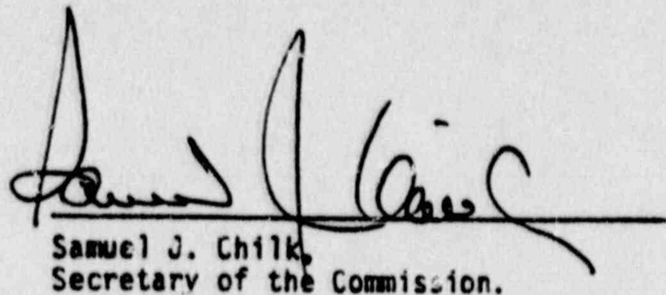
Dated at Rockville, Maryland, this 27th day of October, 1989.

For the Nuclear Regulatory Commission.



Samuel J. Chilk,
Secretary of the Commission.