



OFFICE OF THE
SECRETARY

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

IN RESPONSE, PLEASE
REFER TO: M820701

July 6, 1982

MEMORANDUM FOR: William J. Dircks, Executive Director
for Operations

FROM:

for Samuel J. Chilk Secretary *JCH*

SUBJECT:

STAFF REQUIREMENTS - AFFIRMATION SESSION,
3:00 P.M., THURSDAY, JULY 1, 1982, COMMISSIONERS'
CONFERENCE ROOM (PUBLIC MEETING)

I. SECY-82-202 - Amendment to 10 CFR Part 140, "Financial
Protection Requirements and Indemnity Agreements"

The Commission, by a vote of 4-1* (Commissioner Gilinsky dis-
approving) approved an amendment to 10 CFR 140.9 as modified
by alternative language proposed by Commissioner Ahearne (see
attached copy of rule as approved).

Commissioner Gilinsky disapproved the rule change and noted that
he would have approved if it had been revised to permit issues
relating to the modification of indemnity agreements to be heard
on the underlying change in the operation of the indemnified
facility. Commissioner Asselstine agreed with the modifications
proposed by Commissioner Gilinsky, but voted for the amendment
as approved.

The Commission notes that by memorandum dated December 18, 1981
it requested EDO to delete the appendices to 10 CFR Part 140
including those pertaining to indemnity agreements and to publish
the substance of these appendices in regulatory guides. If EDO,
plans to request reconsideration of the existing Commission
decision, a paper containing the staff rationale is requested
to be submitted to the Commission by July 19, 1982.

* Section 201 of the Energy Reorganization Act, 42 U.S.C.
§ 5841, provides that action of the Commission shall be
determined by a "majority vote of the members present."
Commissioner Roberts was not present when this item was
affirmed, but had previously indicated that he would approve.
Had Commissioner Roberts been present, he would have affirmed
his prior vote. Accordingly, the formal vote of the Commission
was 3-1 in favor of the decision.

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The Commission requested that:

1. The proposed rule be published in the Federal Register allowing 30 days for public comment.
(EDO) (SECY Suspense: 7/19/82)
2. If after expiration of the comment period no significant adverse comments or significant questions have been received and no substantial changes in the text of the rule are indicated, the Executive Director for Operations arrange for publication of the amendment in final form. If significant questions have been received or substantial changes in the text of the rule are indicated, the revised amendment will be submitted to the Commission for approval.
(EDO) (SECY Suspense: 9/1/82)
3. The appropriate Congressional committees be informed.
(OCA/EDO) (SECY Suspense: 7/24/82)
4. The Chief Counsel for Advocacy of the Small Business Administration be informed of the certification and the reasons for it as required by the Regulatory Flexibility Act.
(ADM/EDO) (SECY Suspense: 7/24/82)

Attachment:
As stated

cc: Chairman Palladino
Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine
Commission Staff Offices
PDR - Advance
DCS - 016 Phillips

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

Modification of Indemnity Agreements

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission's regulations provide that if the Commission intends to enter into an indemnity agreement with provisions different than those in a standard form indemnity agreement or intends to modify a standard form indemnity agreement, then the Commission must publish notice of this intent in the Federal Register and allow 15 days for interested persons to file petitions for leave to intervene with respect to the proposed amendment. The Commission is proposing to amend its regulations to retain the public notice provision but delete the opportunity for public intervention and comment.

"The Commission is proposing this action because the scope of public comment appropriate for an action of this type is so restricted that the opportunity for public comment is unnecessary."

DATES: Comment period expires _____, 1982.* Comments received

*Insert date 30 days from publication in the FEDERAL REGISTER.

after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit written comments and suggestions on the proposal to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H Street, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Eric E. Jakel, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-8691.

SUPPLEMENTARY INFORMATION: On April 7, 1960, the Atomic Energy Commission published in the Federal Register (25 FR 2999) proposed amendments to 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements." Among other things the notice proposed an amendment to establish the form of indemnity agreement which the Commission would execute with licensees furnishing insurance policies as proof of financial protection (10 CFR 140.92, Appendix B). The proposed rule did not contain any provisions such as those now present in § 140.9. After consideration of public comments and other relevant information, on April 22, 1961, the Commission published a final rule (26 FR 3455) setting forth, inter alia, the specific provisions of

Appendix B. Through this same notice the Commission adopted § 140.9 in a form identical to its present form. Currently, § 140.9 provides:

§ 140.9 Modifications of indemnity agreements.

The Commission will publish in the FEDERAL REGISTER a notice of the intent to enter into an indemnity agreement, or agreement amending an indemnity agreement, which contains provisions different from the form of the applicable indemnity agreement set forth in the appendices to this part, as such appendices may be amended from time to time. Such notices will provide at least a fifteen day period following the date of publication in the FEDERAL REGISTER in which interested persons may file petitions for leave to intervene with respect to the proposed agreement.

Since the Commission adopted § 140.9 over 20 years ago, this section has only been used twice in situations involving nuclear power plants (and the Standard Form indemnity agreements contained in the Appendices to 10 CFR Part 140). In both instances an NRC licensee requested Commission approval of a plan to move spent fuel from one of its nuclear power facilities to a different nuclear power facility (for which it was also the licensee). The request involved the transportation of spent fuel from the first facility to the second facility, storage of the spent fuel at the second facility, and Commission extension of indemnity coverage to the storage of this spent fuel at the second facility. The first instance involved Commission approval of a request by Carolina Power and Light Company to transport spent fuel generated at its H. B. Robinson facility to its Brunswick facility for the purpose of storage and to have the storage indemnified (42 FR 44617, September 6, 1977).

The second instance involved Commission approval of a similar request by Duke Power Company with respect to its Oconee and McGuire facilities (46 FR 55024, November 5, 1981).

To ensure that the fuel irradiated at the first reactor would be covered by Price-Anderson Act indemnity during storage at the second reactor, the NRC had to make a minor modification to the definition of "radioactive material" in Article I, paragraph 9, of the indemnity agreement applicable to the storing reactor. (See 10 CFR 140.92, Appendix B.) However, under the existing provisions of § 140.9, the Commission must publish notice of the specific amendment and allow 15 days for interested persons to file petitions for leave to intervene with respect to the proposed agreement, even where it makes only a small change of several words in the standard form of indemnity agreement.

The Commission has interpreted § 140.9 to mean that it only need solicit and consider written public comments on whether the language proposed to modify the indemnity agreements effectively implements the Commission's policy decision to exercise its discretionary authority to extend Price-Anderson indemnity coverage in any given situation. See 42 FR 44617, September 6, 1977; 46 FR 55024, November 5, 1981. Comments addressing any other issue are not considered relevant.

"Because granting a hearing or requesting public comment on such an insubstantial point as the precise wording of an amendment to the standard indemnity agreement is not meaningful, the Commission is proposing to delete the second sentence of this as unnecessary.

"This does not affect an interested person's opportunity to comment on health and safety aspects of the underlying activity. To the extent an amendment to the indemnity agreement reflects a change in the underlying activity, there will be an opportunity to raise issues in the context of a proceeding to amend the facility or material licenses. For example, in the situations described above, the separate proceedings to amend the appropriate facility and material licenses provided an opportunity to discuss whether the spent fuel generated at one reactor site could be transported to and stored at a second reactor site without unduly endangering the public health and safety.

PAPERWORK REDUCTION ACT STATEMENT:

Pursuant to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the NRC has made a determination that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

REGULATORY FLEXIBILITY CERTIFICATION:

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C.

605(b), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule affects the licensing and operation of nuclear reactors. The companies and institutions that own these reactors do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or in the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Since the companies that will be affected by this rule are dominant in their service areas, this rule does not fall within the purview of the Act.

LIST OF SUBJECTS IN 10 CFR PART 140:

Extraordinary nuclear occurrence, insurance, intergovernmental relations, nuclear materials, nuclear power plants and reactors, penalty, reporting requirements.

PROPOSED RULE CHANGE:

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 adoption of the following amendment to 10 CFR Part 140, is contemplated.

PART 140 - FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS.

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

AUTHORITY: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, 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. Remove the authority citations following: §§ 140.2, 140.3, 140.5, 140.6, 140.7, 140.10, 140.11, 140.13a, 140.14, 140.18, 140.20, 140.21, 140.22, 140.91, 140.92, 140.93, 140.94, 140.95, 140.107, and 140.108.

Section 140.9 is revised to read as follows:

§ 140.9 Modification of indemnity agreements.

The Commission will publish in the FEDERAL REGISTER a notice of the intent to enter into an indemnity agreement, or agreement amending an indemnity agreement, which contains provisions different from the form of the applicable indemnity agreement set forth in the

- 3 -
appendices to this part, as such appendices may be amended from
time to time.

Dated at Washington, D.C. this day of , 1982.

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Chilk
Secretary of the Commission

Rod Buckles
2150 Grove Valley Ave.
Palm Harbor, Fl. 33563
Sept. 8, 1982

Director
Division of Rules and Records
U.S. Nuclear Regulatory Commission
Washington D.C.

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-82-425

Rec'd 9-13-82

Dear Sir:

This is a Freedom of Information Act
Request for the following documents to be
placed in the Public Document Room:

SECY - 82-232

SECY - 82-202

Thank You,
Rod Buckles

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