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TITLE: PR-140 - 63FR39015 - ADJUSTMENT TO THE MAXIMUM
RETROSPECTIVE DEFERRED PREMIUM

CASE REFERENCE: PR-140
63FR39015

KEY WORD: RULEMAKING COMMENTS

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STATUS OF RULEMAKING

PROPOSED RULE:	PR-140	OPEN ITEM (Y/N)	Y
RULE NAME:	ADJUSTMENT TO THE MAXIMUM RETROSPECTIVE DEFERRED PREMIUM		
PROPOSED RULE FED REG CITE:	63FR39015		
PROPOSED RULE PUBLICATION DATE:	07/21/98	NUMBER OF COMMENTS:	0
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NOTES ON:	ISSUED BY THE EDO AS A FINAL RULE.		
STATUS :			
OF RULE :			

HISTORY OF THE RULE

PART AFFECTED: PR-140			
RULE TITLE: ADJUSTMENT TO THE MAXIMUM RETROSPECTIVE DEFERRED PREMIUM			
PROPOSED RULE	PROPOSED RULE	DATE PROPOSED RULE	
SECY PAPER:	SRM DATE: / /	SIGNED BY SECRETARY:	/ /
FINAL RULE	FINAL RULE	DATE FINAL RULE	
SECY PAPER:	SRM DATE: / /	SIGNED BY SECRETARY:	07/24/98

STAFF CONTACTS ON THE RULE

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DOCKET NO. PR-140
(63FR39015)

In the Matter of
ADJUSTMENT TO THE MAXIMUM RETROSPECTIVE
DEFERRED PREMIUM

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
07/23/98	07/15/98	FEDERAL REGISTER NOTICE - FINAL RULE

DOCKETED
USNRC

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OFFICE OF PUBLIC AFFAIRS
NUCLEAR REGULATORY COMMISSION

10 CFR PART 140

RIN 3150-AG01

Adjustment of the Maximum

Retrospective Deferred Premium

DOCKET NUMBER
PROPOSED RULE **PR 140**
(63 FR 39015)

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to increase the maximum secondary retrospective deferred premium, presently established at \$75.5 million per reactor per accident (but not to exceed \$10 million in any 1 year), to \$83.9 million per reactor per accident (but not to exceed \$10 million in any 1 year), for liability insurance coverage in the event of nuclear incidents at licensed, operating, commercial nuclear power plants with a rated capacity of 100,000 kW or more. The change is based on the aggregate percentage change of 11.16 percent in the Consumer Price Index (CPI) from September 1993 through December 1997. This inflation adjustment is required by the Price-Anderson Amendments Act of 1988 (Public Law 100-408, 102 Stat. 1066) to be made at least once each 5 years.

Pub 7/21/98

EFFECTIVE DATE: August 20, 1998.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, telephone 301-415-1289, e-mail *ipd1@nrc.gov*.

SUPPLEMENTARY INFORMATION: Part 140, "Financial Protection Requirements and Indemnity Agreements," provides requirements and procedures for implementing the financial protection requirements for certain licensees and other persons pursuant to Section 170 of the Atomic Energy Act (AEA) of 1954, as amended. Section 140.11(a)(4) specifies the amount of financial protection required of a licensee for a nuclear reactor that is licensed to operate, is designed for the production of electrical energy, and has a rated capacity of 100,000 kW or more. This amount is presently set at the sum of \$200 million and the amount available as secondary financial protection in the form of private liability insurance under an industry retrospective rating plan. These limits are currently \$75.5 million per reactor per incident (plus any surcharge assessed under Subsection 170o.(1)(E) of the AEA) for the maximum standard deferred premium and \$10 million per reactor per incident per calendar year.

Section 15, "Inflation Adjustment," of Public Law 100-408, the Price-Anderson Amendments Act of 1988 ("the Act"), enacted on August 20, 1988, requires the Commission to adjust the amount of the maximum standard deferred premium (currently \$75.5 million) based on inflation. Section 15 of the Act added a new Section 170t to the AEA, which provides as follows:

t. INFLATION ADJUSTMENT. – (1) The Commission shall adjust the amount of the maximum standard deferred premium under subsection b(1) [Section 170b(1) of the AEA] not less than once during each 5-year period following the date of the enactment of the Price-Anderson Amendments Act of 1988 in accordance with the aggregate percentage change in the Consumer Price Index since --

(A) such date of enactment, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection.

(2) For purposes of this subsection, the term "Consumer Price Index" means the Consumer Price Index for all urban consumers published by the Secretary of Labor.

The inflation adjustment required by Section 170t (1)(B) of the AEA must be made at least once during the period from August 20, 1993, to August 20, 1998, and must be in accordance with the aggregate percentage change (since August 1993) in the CPI for all urban consumers, as published by the Secretary of Labor. The aggregate percentage increase in the CPI from September 1993 through December 1997 is 11.16 percent. This number is derived by dividing the September 1993 CPI index by the December 1997 CPI index. When the percentage increase is applied to the current \$75.5 million maximum retrospective deferred premium, the new maximum retrospective deferred premium will increase to \$83.9 million per reactor per incident. The limit of \$10 million per reactor per incident per year will be unchanged.

To implement this inflation adjustment, the Commission is issuing revisions to 10 CFR 140.11(a)(4), which will become effective by August 20, 1998, that will require that large

nuclear power plant licensees maintain, in addition to \$200 million in primary financial protection, a new maximum standard deferred premium of \$83.9 million per reactor per incident (but not to exceed \$10 million in any 1 year). Because this inflation adjustment by the Commission is essentially ministerial in nature, the Commission finds that there is good cause for omitting notice and public procedure (in the form of a proposed rule) on this action as unnecessary, in accordance with the Administrative Procedure Act (5 U.S.C. 553b).

The next inflation adjustment in the amount of the standard deferred premium will be made not later than August 20, 2003, and will be based on the incremental change in the CPI since December 1997.

Environmental Impact: Categorical Exclusion

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

Paperwork Reduction Act Statement

This final rule does not contain a new or an amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0039.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

Because this inflation adjustment is required by statute, no other alternatives were considered. See also the discussion in the Regulatory Flexibility Certification for this rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant impact upon a substantial number of small entities. The rule will potentially affect licensees of approximately 110 nuclear power reactors. Nuclear power plant licensees do not fall within the definition of small businesses as defined in Section 3 of the Small Business Act (15 U.S.C. 632), the Small Business Size Standards of the Small Business Administration (13 CFR Part 121), or the Commission's Size Standards (10 CFR 2.810)

Backfit Analysis

The NRC has determined that this final rule does not require analysis under the backfit rule (10 CFR 50.109(a)(1)) because it is statutorily required and the statute does not confer any discretion on the NRC.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 140

Part 140 - Criminal penalty, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the AEA the Energy Reorganization Act of 1974 (as amended), and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment 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).

2. In § 140.11 the introductory text of paragraph(a) and paragraph (a)(4) are revised to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

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

* * * * *

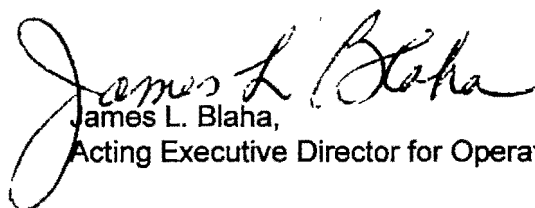
(4) In an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the pro rata share of the aggregate public liability 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 \$83,900,000 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.

* * * * *

Dated at Rockville, Maryland, this 15th day of July, 1998.

FOR THE NUCLEAR REGULATORY COMMISSION


James L. Blaha,
Acting Executive Director for Operations