

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

[NRC-2023-0110]

RIN 3150-AL01

Inflation Adjustments to the Price-Anderson Act Financial Protection Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to adjust for inflation the maximum total and annual standard deferred premiums specified in the Price-Anderson Act. The NRC must perform this adjustment at least once during each 5-year period following August 20, 2003, as mandated by the Atomic Energy Act of 1954, as amended (AEA).

DATE: This final rule is effective on October 5, 2023.

ADDRESSES: Please refer to Docket ID NRC-2023-0110 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0110. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: Dawn.Forder@nrc.gov. For technical

questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Stewart Schneider, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-4123, email: Stewart.Schneider@nrc.gov and Mable Henderson, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-3760, email: Mable.Henderson@nrc.gov. Both are employees of the NRC.

SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS:

- I. Background
- II. Discussion
- III. Rulemaking Procedure

- IV. Regulatory Flexibility Certification
- V. Regulatory Analysis
- VI. Backfitting and Issue Finality
- VII. Plain Writing
- VIII. National Environmental Policy Act
- IX. Paperwork Reduction Act
- X. Congressional Review Act

I. Background

The NRC's regulations in part 140 of title 10 of the *Code of Federal Regulations* (10 CFR), "Financial Protection Requirements and Indemnity Agreements," implement the financial protection requirements of certain licensees and other persons under section 170 of the AEA, also known as the Price-Anderson Act (Pub. L. 85-256, 71 Stat. 576), as amended and codified at 42 U.S.C. 2210. In 2005, Congress amended section 170 of the AEA (Pub. L. 109-58, 119 Stat. 780) to require the NRC to adjust for inflation the maximum total and annual standard deferred premiums that may be charged to a licensee following a nuclear incident. These adjustments must be performed not less than once during each 5-year period following August 20, 2003, in accordance with the aggregate percentage change in the Consumer Price Index (CPI) (<https://www.bls.gov/cpi>) for all urban consumers published by the Secretary of Labor. The NRC made the first periodic inflation adjustment required by this section on September 29, 2008 (73 FR 56451). The NRC last adjusted this amount in 2018, establishing the current maximum total deferred premium at \$131,056,000, and the maximum annual deferred premium at \$20,496,000 (83 FR 48202; September 24, 2018.) This final rule makes the fourth required periodic inflation adjustment and results in a maximum total premium of \$158,026,000 and an annual standard deferred premium of \$24,714,000.

II. Discussion

Section 170(t) of the AEA (42 U.S.C. 2210(t)) requires the NRC to “adjust the amount of the maximum total and annual standard deferred premium not less than once during each 5-year period following August 20, 2003, in accordance with the aggregate percentage change in the Consumer Price Index,” since the previous adjustment. These amounts are codified in § 140.11, “Amounts of financial protection for certain reactors.” Accordingly, the NRC is amending § 140.11(a)(4) to adjust for the increase in inflation, since the last adjustment to these amounts was made in 2018.

The inflation adjustment that the NRC made on September 24, 2018 (83 FR 48202), which took effect on November 1, 2018, raised the maximum total deferred premium in § 140.11(a)(4) to \$131,056,000 and the maximum annual deferred premium to \$20,496,000. The CPI figure used in calculating this adjustment was 251.588 (May 2018). The inflation adjustment issued in this final rule is based on the change in the CPI between March 2019 and April 2023. During this period the CPI changed from 243.801 to 303.363. This represents an increase of approximately 24.44 percent. The adjustment methodology used to calculate these values is described on the Bureau of Labor Statistics’ website (<https://www.bls.gov>). When this increase is applied to the maximum total and annual standard deferred premiums and rounded to the nearest thousand, the new maximum total deferred premium is \$158,026,000, and the maximum annual deferred premium is \$24,714,000. Section 140.11(a)(4) is amended accordingly.

III. Rulemaking Procedure

This final rule is being issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) does not require an agency to use the public notice and comment process “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” In this instance, the NRC finds, for good cause, that solicitation of public comment on this final rule is unnecessary because the Price-Anderson Act requires these non-discretionary adjustments in the maximum total and annual standard deferred premiums. Requesting public comment on these adjustments, which are made pursuant to a formula required by statute, would not result in a change to the adjusted amount. Consistent with this finding of good cause, and as permitted by 5 U.S.C. 808(2), the NRC has determined that the effective date of this rule will be October 5, 2023.

IV. Regulatory Flexibility Certification

The Regulatory Flexibility Act does not apply to regulations for which a Federal agency is not required by law, including the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C 553(b), to publish a general notice of proposed rulemaking (5 U.S.C. 604). As discussed in this document under Section III, “Rulemaking Procedure,” the NRC is not publishing this final rule for notice and comment. Accordingly, the NRC has determined that the requirements of the Regulatory Flexibility Act do not apply to this final rule.

V. Regulatory Analysis

A regulatory analysis has not been prepared for this final rule. As discussed in this document under Section III, “Rulemaking Procedure,” the Price-Anderson Act requires that the NRC perform this rulemaking according to a formula required by statute. This final rule does not involve an exercise of Commission discretion.

VI. Backfitting and Issue Finality

The NRC has not prepared a backfit analysis for this final rule. This final rule does not involve any provision that would impose a backfit, nor is it inconsistent with any issue finality provision, as those terms are defined in 10 CFR chapter I. These mandatory adjustments are non-discretionary, required by statute, and do not represent any change in position by the NRC with respect to the design, construction, or operation of a licensed facility.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885).

VIII. National Environmental Policy Act

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

IX. Paperwork Reduction Act

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

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

X. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). The Office of Management and Budget has found it to be a major rule as defined in the Congressional Review Act. As explained under Section III, “Rulemaking Procedure,” the NRC has found good cause that solicitation of public comment on this final rule is unnecessary. Therefore, consistent with 5 U.S.C. 808(2), the NRC has determined that the effective date of this rule will be October 5, 2023, in lieu of the customary 60-day delay in effectiveness for “major rules” under the Congressional Review Act.

List of Subjects in 10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalties, 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 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: Atomic Energy Act of 1954, secs. 161, 170, 223, 234 (42 U.S.C. 2201, 2210, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

§ 140.11 [Amended]

2. In § 140.11(a)(4), remove the number “\$131,056,000” and add in its place the number “\$158,026,000”, and remove the number “\$20,496,000” and add in its place the number “\$24,714,000”.

Dated: August 29, 2023.

For the Nuclear Regulatory Commission.

/RA/

Catherine Haney
Acting Executive Director for Operations.