

June 26, 1998

SECY-98-150

FOR: The Commissioners

FROM: L. Joseph Callan /s/
Executive Director for Operations

SUBJECT: FINAL RULE, 10 CFR PART 140, "FINANCIAL PROTECTION
REQUIREMENTS AND INDEMNITY AGREEMENTS"

PURPOSE:

To inform the Commission that the Executive Director for Operations (EDO) intends to publish a final rule within 10 working days of the date of this paper, unless otherwise directed by the Commission, that will increase licensees' retrospective deferred premium based on the rate of inflation, as required by the Price-Anderson Amendments Act of 1988, 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.

DISCUSSION:

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.

Contact: Ira Dinitz, NRR
415-1289

Section 15, "Inflation Adjustment," of Public Law 100-408 (102 Stat. 1066), the Price-Anderson Amendments Act of 1988, enacted on August 20, 1988 (now Section 170t. of the AEA), requires the Commission to adjust the amount of the maximum standard deferred premium (currently \$75.5 million) based on the aggregate percentage change since August 1993 in the Consumer Price Index (CPI) for all urban consumers, as published by the Secretary of Labor. This premium adjustment is required to be made at least once during the period from August 20, 1993, to August 20, 1998. The aggregate percentage increase in the CPI from September 1993 through December 1997 was 11.16 percent. When applied to \$75.5 million, this percentage increase would raise the maximum standard deferred premium to \$83.9 million per reactor per incident. The limit of \$10 million per reactor per incident per calendar year would be unchanged.

To implement this inflation adjustment, unless otherwise directed by the Commission within 10 working days from the date of this paper, the staff proposes to issue revisions to 10 CFR Part 140 as detailed in Attachment 1 under the authority delegated by the Commission to the EDO for development and promulgation of rules as defined in the Administrative Procedure Act (5 U.S.C. 551(4)). The proposed changes would become effective by August 20, 1998, which should be at least 30 days after publication of this final rule in the Federal Register. Because this action by the Commission is essentially ministerial in nature (that is, multiplying \$75.5 million by the percentage increase in the CPI published by the Secretary of Labor and adding this amount to \$75.5 million), there is good cause for omitting notice and public procedure (in the form of a proposed rule) on this action as unnecessary. Attachments 2 through 6 include letters to Congress and other notifications that are necessary accompaniments to this proposed action.

The next inflation adjustment in the amount of the maximum 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.

COORDINATION:

The Office of the General Counsel has no legal objection to the content of this paper.

RECOMMENDATION:

That the Commission note:

- (1) The EDO plans to sign the final rule revising 10 CFR 140.11(a)(4) as given in the proposed Federal Register notice (Attachment 1) 10 working days from the date of this paper, unless otherwise directed by the Commission.
- (2) Ten working days from the date of this paper, unless otherwise directed by the Commission, the EDO will certify that this final rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b).

- (3) The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the Regulatory Flexibility Act.
- (4) This final rule does not contain a new or an amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).
- (5) The final rule does not require a backfit analysis under 10 CFR 50.109.

L. Joseph Callan
Executive Director
for Operations

- Attachments:
1. Proposed Federal Register Notice
 2. Notifications by the Small Business
Regulatory Enforcement Fairness Act
 3. Congressional Letters
 4. Approved for Publication Notice
 5. Public Announcement
 6. Daily Staff Notes

- (3) The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the Regulatory Flexibility Act.
- (4) This final rule does not contain a new or an amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).
- (5) The final rule does not require a backfit analysis under 10 CFR 50.109.

L. Joseph Callan
Executive Director
for Operations

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*See Previous Concurrences

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ATTACHMENT 1

FEDERAL REGISTER NOTICE

NUCLEAR REGULATORY COMMISSION

RIN 3150-AE75

Adjustment of the Maximum

Retrospective Deferred Premium

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.

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 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0011.

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 (50 FR 50241; December 9, 1985).

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.

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. Section 140.11(a)(4) is 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 ____ day of _____, 1998.

FOR THE NUCLEAR REGULATORY COMMISSION

L. Joseph Callan
Executive Director
for Operations

ATTACHMENT 2

NOTIFICATIONS REQUIRED BY THE SMALL BUSINESS
REGULATORY ENFORCEMENT FAIRNESS ACT LETTERS

The Honorable Al Gore
President of the United
States Senate
Washington, DC 20510

Dear Mr. President:

Effective by August 20, 1998, the U.S. Nuclear Regulatory Commission will increase the secondary retrospective premium from \$75.5 million per reactor per incident that was effective August 20, 1993, to \$83.9 million. This change reflects the aggregate percentage change (since August 1993) in the Consumer Price Index. Section 170t of the Atomic Energy Act of 1954, as amended, requires that this change be made at least once every 5 years. The increased premiums will be applicable to all large operating nuclear power reactors.

We have determined that this rule is not a "major rule" as defined in 5 USC. 804(2) and have confirmed this determination with the Office of Management and Budget.

Enclosed is a copy of the final rule that is being transmitted to the Office of the Federal Register for publication. This final rule will become effective by August 20, 1998, when it is published in the Federal Register.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Rule

The Honorable Al Gore
 President of the United
 States Senate
 Washington, DC 20510

Dear Mr. President:

Effective by August 20, 1998, the U.S. Nuclear Regulatory Commission will increase the secondary retrospective premium from \$75.5 million per reactor per incident that was effective August 20, 1993, to \$83.9 million. This change reflects the aggregate percentage change (since August 1993) in the Consumer Price Index. Section 170t of the Atomic Energy Act of 1954, as amended, requires that this change be made at least once every 5 years. The increased premiums will be applicable to all large operating nuclear power reactors.

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Sincerely,

Dennis K. Rathbun, Director
 Office of Congressional Affairs

Enclosure: Final Rule

Identical letters sent to:

The Honorable Newt Gingrich
 Speaker of the United States
 House of Representatives
 Washington, DC 20515

Mr. Robert Murphy
 General Counsel
 General Accounting Office
 Room 7175
 441 G Street, N.W.
 Washington, DC 20548

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The Honorable Newt Gingrich
Speaker of the United States
House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Effective by August 20, 1998, the U.S. Nuclear Regulatory Commission will increase the secondary retrospective premium from \$75.5 million per reactor per incident that was effective August 20, 1993, to \$83.9 million. This change reflects the aggregate percentage change (since August 1993) in the Consumer Price Index. Section 170t of the Atomic Energy Act of 1954, as amended, requires that this change be made at least once every 5 years. The increased premiums will be applicable to all large operating nuclear power reactors.

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Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Rule

Mr. Robert Murphy
General Counsel
General Accounting Office
Room 7175
441 G Street, NW.
Washington, DC 20548

Dear Mr. Murphy:

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We have determined that this rule is not a "major rule" as defined in 5 USC. 804(2) and have confirmed this determination with the Office of Management and Budget.

Enclosed is a copy of the final rule that is being transmitted to the Office of the Federal Register for publication. This final rule will become effective by August 20, 1998, when it is published in the Federal Register.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Rule

ATTACHMENT 3

CONGRESSIONAL LETTERS

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Effective by August 20, 1998, the U.S. Nuclear Regulatory Commission will increase the secondary retrospective premium from \$75.5 million per reactor per incident that was effective August 20, 1993, to \$83.9 million. This increase reflects the aggregate percentage change (since August 1993) in the Consumer Price Index. Section 170t of the Atomic Energy Act of 1954, as amended, requires that this change be made at least once every 5 years. The increased premium will be applicable to all large operating nuclear power reactors.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Federal Register Notice

cc: Representative Ralph Hall

The Honorable Dan Schaefer, Chairman
 Subcommittee on Energy and Power
 Committee on Commerce
 United States House of Representatives
 Washington, DC 20515

Dear Mr. Chairman:

Effective by August 20, 1998, the U.S. Nuclear Regulatory Commission will increase the secondary retrospective premium from \$75.5 million per reactor per incident that was effective August 20, 1993, to \$83.9 million. This increase reflects the aggregate percentage change (since August 1993) in the Consumer Price Index. Section 170t of the Atomic Energy Act of 1954, as amended, requires that this change be made at least once every 5 years. The increased premium will be applicable to all large operating nuclear power reactors.

Sincerely,

Dennis K. Rathbun, Director
 Office of Congressional Affairs

Enclosure: Federal Register Notice

Identical letters sent to: Senator Bob Graham
 Representative Ralph Hall

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NAME	SCollins	Rathbun
DATE	/ / 98	/ / 98

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The Honorable James N. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Effective by August 20, 1998, the U.S. Nuclear Regulatory Commission will increase the secondary retrospective premium from \$75.5 million per reactor per incident that was effective August 20, 1993, to \$83.9 million. This increase reflects the aggregate percentage change (since August 1993) in the Consumer Price Index. Section 170t of the Atomic Energy Act of 1954, as amended, requires that this change be made at least once every 5 years. The increased premium will be applicable to all large operating nuclear power reactors.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Federal Register Notice

cc: Senator Bob Graham

ATTACHMENT 4
APPROVED FOR PUBLICATION

The Commission delegated to the Executive Director for Operations (10 CFR 1.31(c)) the authority to develop and promulgate rules as defined in the Administrative Procedure Act (5 U.S.C. 551 (4)), subject to the limitations in NRC Management Directive 9.17, "Organization and Functions," Office of the Executive Director for Operations, paragraphs 0213, 038, 039, and 0310.

The enclosed final rule entitled "10 CFR Part 140, Financial Protection Requirements and Indemnity Agreements," amends the regulations in 10 CFR 140.11(a)(4) to increase the retrospective deferred premium, which is presently established at \$75.5 million per reactor per incident (but not to exceed \$10 million in any 1 year), to \$83.9 million per reactor per incident (but not to exceed \$10 million in any 1 year) in accordance with the aggregate percentage change (since August 1993) in the Consumer Price Index for all urban consumers published by the Secretary of Labor.

This final rule does not constitute a significant question of policy, nor does it amend regulations contained in 10 CFR Parts 7, 8, or 9 (Subpart C) concerning matters of policy. I, therefore, find that this rule is within the scope of my rulemaking authority and am proceeding to issue it.

Date

L. Joseph Callan,
Executive Director for Operations

ATTACHMENT 5
PUBLIC ANNOUNCEMENT

PUBLIC ANNOUNCEMENT

NRC INCREASES RETROSPECTIVE PREMIUM TO REFLECT INFLATION REQUIREMENTS FOR NUCLEAR POWER PLANTS

The Nuclear Regulatory Commission has amended its regulations to reflect the increase in the secondary retrospective premium to \$83.9 million from \$75.5 million per reactor per incident to reflect the aggregate percentage change (since August 1993) in the Consumer Price Index. This change is statutorily required at least once every 5 years. The last change was effective August 20, 1993. The new retrospective premium of \$83.9 million will be effective August 20, 1998, for all large operating nuclear power reactors.

ATTACHMENT 6

DAILY STAFF NOTES

DAILY STAFF NOTES

OFFICE OF NUCLEAR REACTOR REGULATION

Final Rule Signed by the EDO

On _____, 1998, the Executive Director for Operations (EDO) approved a final rule that amends 10 CFR 140.11(a)(4) to increase the secondary retrospective premium from \$75.5 million per reactor per incident to \$83.9 million per reactor per incident to reflect the aggregate percentage change (since August 1993) in the Consumer Price Index. This change is statutorily required under Section 170t of the Price-Anderson Act.

This notice informs the Commission that in accordance with the rulemaking authority delegated to the EDO, the EDO has signed this final rule and proposes to forward it on _____ to the Office of the Federal Register for publication, unless otherwise directed by the Commission.