

**RULEMAKING ISSUE**  
(Negative Consent)

July 8, 2003

SECY-03-0114

FOR: The Commissioners

FROM: William D. Travers  
Executive Director for Operations /RA/

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. This action is 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 and also reflects the increase in primary nuclear liability insurance to \$300 million, which became effective on January 1, 2003.

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 \$300 million and the amount available as secondary financial protection in the

CONTACT: Ira Dinitz, NRR/DRIP/RPRP  
301-415-1289

form of private liability insurance under an industry retrospective rating plan. These limits are currently \$83.9 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 (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 \$83.9 million) based on the aggregate percentage change since August 1998 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, 1998 to August 20, 2003. The aggregate percentage increase in the CPI from September 1998 through March 2003 was 12.59 percent. When applied to \$83.9 million, this percentage increase would raise the maximum standard deferred premium to \$94.5 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, the staff proposes to issue revisions to 10 CFR Part 140 within 10 working days from the date of this paper 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, 2003, 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 \$83.9 million by the percentage increase in the CPI published by the Secretary of Labor and adding this amount to \$83.9 million), there is good cause for omitting notice and public procedure (in the form of a proposed rule) on this action as it is unnecessary. Attachments 2 and 3 include 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 before August 20, 2008, and will be based on the incremental change in the CPI since March 2003.

#### COORDINATION:

The Office of the General Counsel has no legal objection to the content of this paper. The Office of the Chief Financial Officer has reviewed this final rule for resource implications and has no objections.

#### 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) Staff requests action within 10 days. Action will not be taken until the SRM is received. We consider this action to be within the delegated authority of the EDO.
- (3) 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.).
- (4) The final rule does not require a backfit analysis under 10 CFR 50.109.

*/RA/*

William D. Travers  
Executive Director  
for Operations

Attachments:

1. Federal Register Notice
2. Authority Statement
3. Notice for Final Rule

**NUCLEAR REGULATORY COMMISSION**

**10 CFR PART 140**

**RIN 3150-AH23**

**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 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. Currently established at \$83.9 million per reactor per incident (but not to exceed \$10 million in any 1 year), the maximum secondary retrospective deferred premium is being increased to \$94.5 million per reactor per incident (but not to exceed \$10 million in any 1 year). The change is based on the aggregate percentage change of 12.59 percent in the Consumer Price Index (CPI) from September 1998 through March 2003. The Price-Anderson Amendments Act of 1988 requires that this inflation adjustment be made at least once each 5 years. The increase in the primary nuclear liability insurance layer, which was increased on January 1, 2003, to \$300 million, is also reflected in this rule.

**EFFECTIVE DATE:** August 20, 2003.

**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](mailto: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 currently set at the sum of \$300 million (effective January 1, 2003) 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 \$83.9 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 \$83.9 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, 1998, to August 20, 2003, and must be in accordance with the aggregate percentage change (since August 1998) in the CPI for all urban consumers, as published by the Secretary of Labor. The aggregate percentage increase in the CPI from September 1998 through March 2003 is 12.59 percent. This number is derived by dividing the September 1998 CPI index by the March 2003 CPI index. When the percentage increase is applied to the current \$83.9 million maximum retrospective deferred premium, the new maximum retrospective deferred premium will increase to \$94.5 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 revising 10 CFR 140.11(a)(4), effective August 20, 2003, to require large nuclear power plant licensees to maintain, in addition to \$300 million in primary financial protection, a new maximum standard deferred premium of \$94.5 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 comment (in the form of a proposed rule) on this action as unnecessary, in accordance with the Administrative Procedure Act of 1946 (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, 2008, and will be based on the incremental change in the CPI since March 2003.

### **Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such standards is inconsistent with applicable law or is otherwise impractical. The NRC is amending its regulations to increase the maximum

secondary retrospective deferred premium 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. This action does not constitute the establishment of a standard that contains generally applicable requirements.

### **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 3150-0011.

### **Public Protection Notification**

If a means used to impose 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**

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of

nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

### **Backfit Analysis**

The NRC has determined that the backfit rule does not apply to this final rule. A backfit analysis is not required for this final rule because this amendment is mandated by the Price-Anderson Amendments Act of 1988 (Pub. L. 100-408).

### **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**

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 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: 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, paragraph (a)(4) is revised to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

(a) \* \* \*

(4) In an amount equal to the sum of \$300,000,000 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 \$94,500,000 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 \_\_\_\_\_, 2003.

For the Nuclear Regulatory Commission.

\_\_\_\_\_  
William D. Travers  
Executive Director for Operations

Approved for Publication

The Commission delegated to the Executive Director for Operations (10 CFR 1.32(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 specified 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 currently established at \$83.9 million per reactor per incident (but not to exceed \$10 million in any 1 year), to \$94.5 million per reactor per incident (but not to exceed \$10 million in any 1 year) in accordance with the aggregate percentage change (since August 1998) in the Consumer Price Index for all urban consumers published by the Secretary of Labor. The change in primary nuclear liability insurance, which was increased to \$300 million on January 1, 2003, is also reflected in this rule.

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

\_\_\_\_\_  
William D. Travers,  
Executive Director for Operations

## OFFICE OF NUCLEAR REACTOR REGULATION

### Notice of Final Rule Signed by the EDO

On [month/day], 2003, 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 \$83.9 million per reactor per incident to \$94.5 million per reactor per incident to reflect the aggregate percentage change (since August 1998) in the Consumer Price Index. This change is statutorily required under Section 170t of the Atomic Energy Act of 1954, as amended.

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 [ten full working days from the date the rule is signed] to the Office of the Federal Register for publication, unless otherwise directed by the Commission.

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.

The final rule can be found in ADAMS at **ML031630889**.