

**§ 140.89**

**10 CFR Ch. I (1-1-10 Edition)**

penalty imposed under section 234 of the Atomic Energy Act:

- (1) For violations of—
  - (i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;
  - (ii) Section 206 of the Energy Reorganization Act;
  - (iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;
  - (iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

[57 FR 55080, Nov. 24, 1992]

**§ 140.89 Criminal penalties.**

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 140 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 140 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§140.1, 140.2, 140.3, 140.4, 140.5, 140.7, 140.8, 140.9, 140.9a, 140.10, 140.14, 140.16, 140.18, 140.19, 140.20, 140.51, 140.52, 140.71, 140.72, 140.81, 140.82, 140.83, 140.84, 140.85, 140.87, 140.89, 140.91, 140.92, 140.93, 140.94, 140.95, 140.96, 140.107, 140.108, and 140.109.

[57 FR 55080, Nov. 24, 1992]

**APPENDIXES TO PART 140**

**§ 140.91 Appendix A—Form of nuclear energy liability policy for facilities.**

While the text of the policy which follows is exemplary of a contract acceptable to the Commission as evidence of the financial protection required of the licensee by section 170 of the Atomic Energy Act of 1954, as amended, variations on this text submitted by the licensee also will be considered by the Commission in determining whether the li-

censee meets the financial protection requirements of the Act. The full text of the policy is published solely for the purpose of completeness. Publication of this text should not be construed as a Commission endorsement of any particular provision pertaining solely to the business relationship between the insurers and the insureds or to any other matter not within the Commission's statutory jurisdiction under the Atomic Energy Act.

**NUCLEAR ENERGY LIABILITY POLICY**

**(FACILITY FORM)**

The undersigned members of \_\_\_\_\_, hereinafter called the "companies," each for itself, severally and not jointly, and in the respective proportions hereinafter set forth, agree with the insured, named in the declarations made a part hereof, in consideration of the premium and in reliance upon the statements in the declarations and subject to the limit of liability, exclusions, conditions and other terms of this policy;

**INSURING AGREEMENTS**

*I. Coverage A—Bodily injury and property damage liability.* To pay on behalf of the insured:

(1) All sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage caused by the nuclear energy hazard, and the companies shall defend any suit against the insured alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy; but the companies may make such investigation, negotiation and settlement of any claim or suit as they deem expedient;

(2) Costs taxed against the insured in any such suit and interest on any judgment therein;

(3) Premiums on appeal bonds and on bonds to release attachments in any such suit, but without obligation to apply for or furnish such bonds;

(4) Reasonable expenses, other than loss of earnings, incurred by the insured at the companies' request.

*Coverage B—Damage to property of an insured away from the facility.* With respect to property damage caused by the nuclear energy hazard to property of an insured which is away from the facility, to pay to such insured those sums which such insured would have been legally obligated to pay as damages therefor, had such property belonged to another.

*Coverage C—Subrogation—Offsite employees.* With respect to bodily injury sustained by any employee of an insured and caused by the nuclear energy hazard, to pay to the workmen's compensation carrier of such insured all sums which such carrier would have

## Nuclear Regulatory Commission

## § 140.91

been entitled to recover and retain as damages from another person or organization, had such person or organization alone been legally responsible for such bodily injury, by reason of the rights acquired by subrogation by the payment of the benefits required of such carrier under the applicable workmen's compensation or occupational disease law. An employer who is a duly qualified self-insurer under such law shall be deemed to be a workmen's compensation carrier within the meaning of this coverage. This Coverage C does not apply to bodily injury sustained by any person who is employed at and in connection with the facility. This Coverage C shall not constitute workmen's compensation insurance as required under the laws of any state.

II. *Definition of insured.* The unqualified word *insured* includes (a) the named insured and (b) any other person or organization with respect to his legal responsibility for damages because of bodily injury or property damage caused by the nuclear energy hazard.

Subdivision (b) above does not include as an insured the United States of America or any of its agencies.

Subject to Condition 3 and the other provisions of this policy, the insurance applies separately to each insured against whom claim is made or suit is brought.

III. *Definitions.* Wherever used in this policy:

*Bodily injury* means bodily injury, sickness or disease, including death resulting therefrom, sustained by any person;

*Property damage* means physical injury to or destruction or radioactive contamination of property, and loss of use of property so injured, destroyed or contaminated, and loss of use of property while evacuated or withdrawn from use because possibly so contaminated or because of imminent danger of such contamination;

*Nuclear material* means source material, special nuclear material or byproduct material;

*Source material, special nuclear material, and byproduct material* have the meanings given them in the Atomic Energy Act of 1954, or in any law amendatory thereof;

*Spent fuel* means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in any nuclear reactor;

*Waste* means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (1) or (2) thereof;

*The facility* means the facility described in the declarations and includes the location designated in Item 3 of the declarations and all property and operations at such location;

*Nuclear facility* means the facility as defined in any Nuclear Energy Liability Policy (Fa-

cility Form) issued by the companies or by

The term *nuclear facility* also means

(1) Any nuclear reactor,

(2) Any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing spent fuel, or (c) handling, processing or packaging waste,

(3) Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium-233 or any combination thereof, or more than 250 grams of uranium-235,

(4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

*Indemnified nuclear facility* means

(1) *The facility* as defined in any Nuclear Energy Liability Policy (Facility Form) issued by the companies or by

(2) Any other nuclear facility,

if financial protection is required pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, with respect to any activities or operations conducted thereat;

*Nuclear reactor* means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

*Nuclear energy hazard* means the radioactive, toxic, explosive or other hazardous properties of nuclear material, but only if:

(1) The nuclear material is at the facility or has been discharged or dispersed therefrom without intent to relinquish possession or custody thereof to any person or organization, or

(2) The nuclear material is in an insured shipment which is (a) in the course of transportation, including handling and temporary storage incidental thereto, within the territorial limits of the United States of America, its territories or possessions, Puerto Rico or the Canal Zone and (b) away from any other nuclear facility;

*Insured shipment* means a shipment of source material, special nuclear material, spent fuel or waste, herein called *material*, (1) to the facility from a nuclear facility owned by the United States of America, but only if the transportation of the material is not by predetermination to be interrupted by the removal of the material from a transporting conveyance for any purpose other than the continuation of its transportation, or (2) from the facility to any other location except an indemnified nuclear facility, but only until the material is removed from a

transporting conveyance for any purpose other than the continuation of its transportation.

IV. *Application of policy.* This policy applies only to bodily injury or property damage (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured, not later than two years after the end of the policy period.

#### EXCLUSIONS

This policy does not apply:

(a) To any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(b) Except with respect to liability of another assumed by the insured under contract, to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured; but this exclusion does not apply to bodily injury to any person who is not employed at and in connection with the facility if the insured has complied with the requirements of the applicable workmen's compensation or occupational disease law respecting the securing of compensation benefits thereunder to his employees;

(c) To liability assumed by the insured under contract, other than an assumption in a contract with another of the liability of any person or organization which would be imposed by law on such person or organization in the absence of an express assumption of liability;

(d) To bodily injury or property damage due to the manufacturing, handling or use at the location designated in Item 3 of the declarations, in time of peace or war, of any nuclear weapon or other instrument of war utilizing special nuclear material or byproduct material;

(e) To bodily injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or conditions incident to any of the foregoing;

(f) To property damage to any property at the location designated in Item 3 of the declarations, other than aircraft, watercraft or vehicles licensed for highway use, provided such aircraft, watercraft or vehicles are not used in connection with the operation of the facility;

(g) To property damage to nuclear material in the course of transportation to or from the facility including handling or storage incidental thereto;

(h) Under Coverage B, to property damage due to neglect of the insured to use all reasonable means to save and preserve the property after knowledge of the occurrence resulting in such property damage.

#### CONDITIONS

1. *Premium*—(1) *Definitions.* With reference to the premium for this policy: *advance premium*, for any calendar year, is the estimated standard premium for that calendar year;

*Standard premium*, for any calendar year, is the premium for that calendar year computed in accordance with the companies' rules, rates, rating plans (other than the Industry Credit Rating Plan), premiums and minimum premiums applicable to this insurance;

*Reserve premium* means that portion of the standard premium paid to the companies and specifically allocated under the Industry Credit Rating Plan for incurred losses. The amount of the *reserve premium* for this policy for any calendar year during which this policy is in force is the amount designated as such in the Standard Premium Endorsement for that calendar year;

*Industry reserve premium*, for any calendar year, is the sum of the reserve premiums for that calendar year for all Nuclear Energy Liability Policies issued by the Nuclear Energy Liability Insurance Association and Mutual Atomic Energy Liability Underwriters and subject to the Industry Credit Rating Plan;

*Policy refund ratio*, for any calendar year, is the ratio of the named insured's reserve premium for that calendar year to the industry reserve premium for that calendar year;

*Incurred losses* means the sum of:

(1) All losses and expenses by Nuclear Energy Liability Insurance Association and Mutual Atomic Energy Liability Underwriters, and

(2) All reserves for unpaid losses and expenses as estimated by Nuclear Energy Liability Insurance Association and Mutual Atomic Energy Liability Underwriters because of obligations assumed and the expenses incurred in connection with such obligations by members of Nuclear Energy Liability Insurance Association and Mutual Atomic Energy Liability Underwriters under all Nuclear Energy Liability Policies issued by Nuclear Energy Liability Insurance Association and Mutual Atomic Energy Liability Underwriters and subject to the Industry Credit Rating Plan;

*Reserve for refunds*, at the end of any calendar year, is the amount by which (1) the sum of all industry reserve premiums for the period from January 1, 1957 through the end of such calendar year exceeds (2) the total for the same period of (a) all incurred losses, valued as of the next following July 1, and (b) all reserve premium refunds made under the Industry Credit Rating Plan by members of Nuclear Energy Liability Insurance Association and Mutual Atomic Energy Liability Underwriters;

*Industry reserve premium refund*, for any calendar year, is determined by multiplying the reserve for refunds at the end of the ninth

## Nuclear Regulatory Commission

## § 140.91

calendar year thereafter by the ratio of the industry reserve premium for the calendar year for which the premium refund is being determined to the sum of such amount and the total industry reserve premiums for the next nine calendar years thereafter, provided that the industry reserve premium refund for any calendar year shall in no event be greater than the industry reserve premium for such calendar year.

(2) *Payment of advance and standard premiums.* The named insured shall pay the companies the advance premium stated in the declarations, for the period from the effective date of this policy through December 31 following. Thereafter, at the beginning of each calendar year while this policy is in force, the named insured shall pay the advance premium for such year to the companies. The advance premium for each calendar year shall be stated in the Advance Premium Endorsement for such calendar year issued to the named insured as soon as practicable prior to or after the beginning of such year.

As soon as practicable after each December 31 and after the termination of this policy, the standard premium for the preceding calendar year shall be finally determined and stated in the Standard Premium Endorsement for that calendar year. If the standard premium so determined exceeds the advance premium previously paid for such calendar year, the named insured shall pay the excess to the companies; if less, the companies shall return to the named insured the excess portion paid by such insured.

The named insured shall maintain records of the information necessary for premium computation and shall send copies of such records to the companies as directed, at the end of each calendar year, at the end of the policy period and at such other times during the policy period as the companies may direct.

(3) *Use of reserve premiums.* All reserve premiums paid or payable for this policy may be used by the members of Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters to discharge their obligations with respect to incurred losses whether such losses are incurred under this policy or under any other policy issued by the Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters.

(4) *Reserve premium refunds.* A portion of the reserve premium for this policy for the first calendar year of any group of ten consecutive calendar years shall be returnable to the named insured provided there is a reserve for refunds at the end of the tenth calendar year.

(5) *Computation of reserve premium refunds.* The reserve premium refund due the named insured for any calendar year shall be determined by multiplying any industry reserve premium refund for such calendar year by

the policy refund ratio for such calendar year. The reserve premium refund for any calendar year shall be finally determined as soon as practicable after July 1 of the tenth calendar year thereafter.

(6) *Final premium.* The final premium for this policy shall be the sum of the standard premiums for each calendar year, or portion thereof, during which this policy remains in force less the sum of all refunds of reserve premiums due the named insured under the provisions of this Condition 1.

(7) *Reserve premium refund agreement.* Each member of Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters subscribing this policy for any calendar year, or portion thereof, thereby agrees for itself, severally and not jointly, and in the respective proportion of its liability assumed under this policy for that calendar year, to return to the named insured that portion of any reserve premium refund due the named insured for that calendar year, determined in accordance with the provisions of this Condition 1.

2. *Inspection; suspension.* The companies shall be permitted to inspect the facility and to examine the insured's books and records at any time, as far as they relate to the subject-matter of this insurance.

If a representative of the companies discovers a condition which he believes to be unduly dangerous with respect to the nuclear energy hazard, a representative of the companies may request that such condition be corrected without delay. In the event of noncompliance with such request, a representative of the companies may, by notice to the named insured, to any other person or organization considered by the companies to be responsible for the continuance of such dangerous condition, and to the United States Atomic Energy Commission, suspend the insurance with respect to the named insured and such other person or organization effective 12:00 midnight of the next business day of such Commission following the date that such Commission receives such notice. The period of such suspension shall terminate as of the time stated in a written notice from the companies to the named insured and to each such person or organization that such condition has been corrected.

3. *Limit of liability; termination of policy upon exhaustion of limit.* Regardless of the number of persons and organizations who are insureds under this policy, and regardless of the number of claims made and suits brought against any or all insureds because of one or more occurrences resulting in bodily injury or property damage caused during the policy period by the nuclear energy hazard, the limit of the companies' liability stated in the declarations is the total liability of the companies for their obligations under this

§ 140.91

10 CFR Ch. I (1-1-10 Edition)

policy and the expenses incurred by the companies in connection with such obligations, including.

(a) Payments in settlement of claims and in satisfaction of judgments against the insureds for damages because of bodily injury or property damage, payments made under parts (2), (3) and (4) of Coverage A and payments made in settlement of claims under Coverages B and C;

(b) Payments for expenses incurred in the investigation, negotiation, settlement and defense of any claim or suit, including, but not limited to, the cost of such services by salaried employees of the companies, fees and expenses of independent adjusters, attorneys' fees and disbursements, expenses for expert testimony, inspection and appraisal of property, examination, X-ray or autopsy or medical expenses of any kind;

(c) Payments for expenses incurred by the companies in investigating an occurrence resulting in bodily injury or property damage or in minimizing its effects.

Each payment made by the companies in discharge of their obligations under this policy or for expenses incurred in connection with such obligations shall reduce by the amount of such payment the limit of the companies' liability under this policy.

If, during the policy period or subsequent thereto, the total of such payments made by the companies shall exhaust the limit of the companies' liability under this policy, all liability and obligations of the companies under this policy shall thereupon terminate and shall be conclusively presumed to have been discharged. This policy, if not theretofore canceled, shall thereupon automatically terminate.

Regardless of the number of years this policy shall continue in force and the number of premiums which shall be payable or paid, the limit of the companies' liability stated in the declarations shall not be cumulative from year to year.

4. *Limitation of liability; common occurrence.* Any occurrence or series of occurrences resulting in bodily injury or property damage arising out of the radioactive, toxic, explosive or other hazardous properties of

(a) Nuclear material discharged or dispersed from the facility over a period of days, weeks, months or longer and also arising out of such properties of other nuclear material so discharged or dispersed from one or more other nuclear facilities insured by the companies under a Nuclear Energy Liability Policy (Facility Form), or

(b) Source material, special nuclear material, spent fuel or waste in the course of transportation for which insurance is afforded under this policy and also arising out of such properties of other source material, special nuclear material, spent fuel or waste in the course of transportation for which insurance is afforded under one or more other

Nuclear Energy Liability Policies (Facility Form) issued by the companies, shall be deemed to be a common occurrence resulting in bodily injury or property damage caused by the nuclear energy hazard.

With respect to such bodily injury and property damage (1) the total aggregate liability of the companies under all Nuclear Energy Liability Policies (Facility Form), including this policy, applicable to such common occurrence shall be the sum of the limits of liability of all such policies, the limit of liability of each such policy being as determined by Condition 3 thereof, but in no event shall such total aggregate liability of the companies exceed \$ \_\_\_\_\_;<sup>1</sup> (2) the total liability of the companies under this policy shall not exceed that proportion of the total aggregate liability of the companies, as stated in clause (1) above, which (a) the limit of liability of this policy, as determined by Condition 3, bears to (b) the sum of the limits of liability of all such policies issued by the companies, the limit of liability of each such policy being as determined by Condition 3, thereof.

The provisions of this condition shall not operate to increase the limit of the companies' liability under this policy.

5. *Notice of occurrence, claim, or suit.* In the event of bodily injury or property damage to which this policy applies or of an occurrence which may give rise to claims therefor, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to \_\_\_\_\_ or the companies as soon as practicable. If claim is made or suit is brought against the insured, he shall immediately forward to \_\_\_\_\_ or the companies every demand, notice, summons or other process received by him or his representative.

6. *Assistance and cooperation of the insured.* The insured shall cooperate with the companies and, upon the companies' request, attend hearings and trials and assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of any legal proceedings in connection with the subject matter of this insurance. The insured shall not, except at his own cost, make any payment, assume any obligation or incur any expense.

<sup>1</sup>For policies issued by Nuclear Energy Liability-Property Insurance Association the amount will be "\$124,000,000," for policies issued by Mutual Atomic Energy Liability Underwriters, the amount will be "\$36,000,000."

## Nuclear Regulatory Commission

## § 140.91

7. *Action against companies—Coverages A and C.* No action shall lie against the companies or any of them unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the companies.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the companies or any of them as parties to any action against the insured to determine the insured's liability, nor shall the companies or any of them be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the companies of any of their obligations hereunder.

8. *Action against companies—Coverage B.* No suit or action on this policy for the recovery of any claim for property damage to which Coverage B applies shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with and unless commenced within two years after the occurrence resulting in such property damage.

9. *Insured's duties when loss occurs—Coverage B.* In the event of property damage to which Coverage B applies, the insured shall furnish a complete inventory of the property damage claimed, showing in detail the amount thereof. Within ninety-one days after the occurrence resulting in such property damage, unless such time is extended in writing by the companies, the insured shall render to the companies a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: identification of such occurrence; the interest of the insured in the property destroyed or damaged, and the amount of each item of property damage claimed; all encumbrances on such property; and all other contracts of insurance, whether valid or not, covering any of such property. The insured shall include in the proof of loss a copy of all descriptions and schedules in all policies. Upon the companies' request, the insured shall furnish verified plans and specifications of any such property. The insured, as often as may be reasonably required, shall exhibit to any person designated by the companies any of such property, and submit to examinations under oath by any person named by the companies and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, records, bills, invoices and

other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the companies or their representatives, and shall permit extracts and copies thereof to be made.

10. *Appraisal—Coverage B.* In case the insured and the companies shall fail to agree as to the amount of property damage, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire and, failing for fifteen days to agree upon such umpire, then, on request of the insured or the companies, such umpire shall be selected by a judge of a court of record in the state in which the property is located. The appraisers shall then appraise each item of property damage and, failing to agree, shall submit their differences only to the umpire. An award in writing, so itemized, of any two when filed with the companies shall determine the amount of property damage. Each appraiser shall be paid by the party selecting him and the expenses of the appraisal and umpire shall be paid by the parties equally. The companies shall not be held to have waived any of their rights by any act relating to appraisal.

11. *Subrogation.* In the event of any payment under this policy, the companies shall be subrogated to all the insured's rights of recovery therefor against any person or organization, and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Prior to knowledge of bodily injury or property damage caused by the nuclear energy hazard the insured may waive in writing any right or recovery against any person or organization, but after such knowledge the insured shall not waive or otherwise prejudice any such right of recovery.

The companies hereby waive any rights of subrogation acquired against the United States of America or any of its agencies by reason of any payment under this policy.

The companies do not relinquish, by the foregoing provisions, any right to restitution from the insured out of any recoveries made by the insured on account of a loss covered by this policy of any amounts to which the companies would be entitled had such provisions, or any of them, not been included in this policy.

12. *Other insurance.* If the insurance afforded by this policy for loss or expense is concurrent with insurance afforded for such loss or expense by a Nuclear Energy Liability Policy (Facility Form) issued to the named insured by \_\_\_\_\_ hereinafter called "concurrent insurance," the companies shall not be liable under this policy for a greater proportion of such loss or expense

than the limit of liability stated in the declarations of this policy bears to the sum of such limit and the limit of liability stated in the declarations of such concurrent policy.

If the insured has other valid and collectible insurance (other than such concurrent insurance or any other nuclear energy liability insurance issued by the companies or \_\_\_\_\_ to any person or organization) applicable to loss or expense covered by this policy, the insurance afforded by this policy shall be excess insurance over such other insurance; provided, with respect to any person who is not employed at and in connection with the facility, such insurance as is afforded by this policy for bodily injury to an employee of the insured arising out of and in the course of his employment shall be primary insurance under such other insurance.

13. *Changes.* Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or stop the companies from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed except by endorsement issued to form a part of this policy executed by \_\_\_\_\_ on behalf of the companies.

14. *Assignment.* Assignment of interest by the named insured shall not bind the companies until their consent is endorsed hereon; if, however, the named insured shall die or be declared bankrupt or insolvent, this policy shall cover such insured's legal representative, receiver or trustee as an insured under this policy, but only with respect to his liability as such, and then only provided written notice of his appointment as legal representative, receiver or trustee is given to the companies within ten days after such appointment.

15. *Cancellation.* This policy may be canceled by the named insured by mailing to the companies and the United States Nuclear Regulatory Commission written notice stating when, not less than thirty days thereafter, such cancellation shall be effective. This policy may be canceled by the companies by mailing to the named insured at the address shown in this policy and to the United States Nuclear Regulatory Commission written notice stating when, not less than ninety days thereafter, such cancellation shall be effective; provided in the event of non-payment of premium or if the operator of the facility, as designated in the declarations, is replaced by another person or organization, this policy may be canceled by the companies by mailing to the named insured at the address shown in this policy and to the United States Nuclear Regulatory Commission written notice stating when, not less than thirty days thereafter, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of can-

cellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the companies shall be equivalent to mailing.

Upon termination or cancellation of this policy, other than as of the end of December 31 in any year, the earned premium for the period this policy has been in force since the preceding December 31 shall be computed in accordance with the following provisions:

(a) If this policy is terminated, pursuant to Condition 3, by reason of the exhaustion of the limit of the companies' liability, all premium theretofore paid or payable shall be fully earned;

(b) If the named insured cancels, the earned premium for such period shall be computed in accordance with the customary annual short rate table and procedure, provided if the named insured cancels after knowledge of bodily injury or property damage caused by the nuclear energy hazard, all premiums theretofore paid or payable shall be fully earned;

(c) If the companies cancel, the earned premium for such period shall be computed pro rata.

Premium adjustment, if any, may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

16. *Company representation.* (a) Any notice, sworn statement or proof of loss which may be required by the provisions of this policy may be given to any one of the companies, and such notice, statement or proof of loss so given shall be valid and binding as to all companies.

(b) In any action or suit against the companies, service of process may be made on any one of them, and such service shall be deemed valid and binding service on all companies.

(c) \_\_\_\_\_ is the agent of the companies with respect to all matters pertaining to this insurance. All notices or other communications required by this policy to be given to the companies may be given to such agent, at its office at \_\_\_\_\_ with the same force and effect as if given directly to the companies. Any requests, demands or agreements made by such agent shall be deemed to have been made directly by the companies.

17. *Authorization of named insured.* Except with respect to compliance with the obligations imposed on the insured by Conditions 5, 6, 7, 8, 9, 10 and 11 of this policy, the named insured is authorized to act for every other insured in all matters pertaining to this insurance.

18. *Changes in subscribing companies and in their proportionate liability.* By acceptance of this policy the named insured agrees that the members of \_\_\_\_\_ liable under this

**Nuclear Regulatory Commission**

**§ 140.91**

policy, and the proportionate liability of each such member, may change from year to year, and further agrees that regardless of such changes:

(1) Each company subscribing this policy upon its issuance shall be liable only for its stated proportion of any obligation assumed or expense incurred under this policy because of bodily injury or property damage caused, during the period from the effective date of this policy to the close of December 31 next following, by the nuclear energy hazard; for each subsequent calendar year, beginning January 1 next following the effective date of this policy, the subscribing companies and the proportionate liability of each such company shall be stated in an endorsement issued to form a part of this policy, duly executed and attested by the \_\_\_\_\_ of \_\_\_\_\_ on behalf of each such company, and mailed or delivered to the named insured;

(2) This policy shall remain continuously in effect from the effective date stated in the declarations until terminated in accordance with Condition 3 or Condition 15;

(3) Neither the liability of any company nor the limit of liability stated in the declarations shall be cumulative from year to year.

19. *Declarations.* By acceptance of this policy the named insured agrees that the statements in the declarations are the agreements and representations of the named insured, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements between the named insured and the companies or any of their agents relating to this insurance.

In Witness Whereof, each of the subscribing companies has caused this policy to be executed and attested on its behalf by the \_\_\_\_\_ of \_\_\_\_\_ and duly countersigned on the declarations page by an authorized representative.

For the subscribing companies.

By \_\_\_\_\_

*Subscribing Companies Proportion of 100%*

NUCLEAR ENERGY LIABILITY POLICY  
No. \_\_\_\_\_ (FACILITY FORM)

**DECLARATIONS**

Item 1. Named Insured \_\_\_\_\_  
Address \_\_\_\_\_

(No. Street Town or City State)

Item 2. Policy Period: Beginning at 12:01 a.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and continuing through the effective date of the cancellation or termination of this policy, standard time at the address of the named insured as stated herein.

Item 3. Description of the Facility:

Location \_\_\_\_\_  
Type \_\_\_\_\_

The Operator of the facility is \_\_\_\_\_.

Item 4. The limit of the companies' liability is \$ \_\_\_\_\_ subject to all the terms of this policy having reference thereto.

Item 5. Advance Premium \$ \_\_\_\_\_.

Item 6. These declarations and the schedules forming a part hereof give a complete description of the facility, insofar as it relates to the nuclear energy hazard, except as noted \_\_\_\_\_

Date of Issue \_\_\_\_\_, 19\_\_\_\_.

Countersigned by \_\_\_\_\_  
(Authorized representative)

**NUCLEAR ENERGY LIABILITY POLICY  
(FACILITY FORM)**

**AMENDMENT OF TRANSPORTATION COVERAGE  
(INDEMNIFIED NUCLEAR FACILITY)**

It is agreed that the definition of *insured shipment* in Insuring Agreement III is amended to read: *insured shipment* means a shipment of source material, special nuclear material, spent fuel or waste, herein called *material*, (1) to the facility from any location except an indemnified nuclear facility, but only if the transportation of the material is not by predetermination to be interrupted by removal of the material from a transporting conveyance for any purpose other than the continuation of its transportation, or (2) from the facility to any other location, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation.

Effective date of this endorsement \_\_\_\_\_ to form a part of Policy No. \_\_\_\_\_.

Issued to \_\_\_\_\_  
Date of Issue \_\_\_\_\_.

For the subscribing companies.

By \_\_\_\_\_  
Countersigned by \_\_\_\_\_  
Endorsement No. \_\_\_\_\_.

**OPTIONAL AMENDATORY ENDORSEMENT  
(FACILITY FORM)**

It is agreed that:

I. The first sentence of the definition of nuclear facility is amended to read: *nuclear facility* means *the facility* as defined in any Nuclear Energy Liability Policy (Facility Form) issued by \_\_\_\_\_ or by \_\_\_\_\_.

II. The definition of *indemnified nuclear facility* is replaced by the following: *indemnified nuclear facility* means

- (1) *the facility* as defined in any Nuclear Energy Liability Policy (Facility Form) issued by \_\_\_\_\_ or by \_\_\_\_\_ or
- (2) any other nuclear facility,

if financial protection is required pursuant to the Atomic Energy Act of 1954, or any law

§ 140.91

10 CFR Ch. I (1-1-10 Edition)

amendatory thereof; with respect to any activities or operations conducted thereat:

III. Condition 4 is replaced by the following:

Limitation of liability; common occurrence. Any occurrence or series of occurrences resulting in bodily injury or property damage arising out of the radioactive, toxic, explosive, or other hazardous properties of

(a) nuclear material discharged or dispersed from the facility over a period of days, weeks, months or longer and also arising out of such properties of other nuclear material so discharged or dispersed from one or more other nuclear facilities insured under any Nuclear Energy Liability Policy (Facility Form) issued by \_\_\_\_\_ or,

(b) source material, special nuclear material, spent fuel or waste in the course of transportation for which insurance is afforded under this policy and also arising out of such properties of other source material, special nuclear material, spent fuel or waste in the course of transportation for which insurance is afforded under one or more other Nuclear Energy Liability Policies (Facility Form) issued by \_\_\_\_\_.

shall be deemed to be a common occurrence resulting in bodily injury or property damage caused by the nuclear energy hazard.

With respect to such bodily injury and property damage (1) the total aggregate liability of the members of \_\_\_\_\_, under all Nuclear Energy Liability Policies (Facility Form), including this policy, applicable to such common occurrence shall be the sum of the limits of liability of all such policies, the limit of liability of each such policy being as determined by Condition 3 thereof, but in no event shall such total aggregate liability of such members exceed \$ \_\_\_\_\_;<sup>1</sup> (2) the total liability of the companies under this policy shall not exceed that proportion of the total aggregate liability of the members of \_\_\_\_\_, as stated in clause (1) above, which (a) the limit of liability of this policy, as determined by Condition 3, bears to (b) the sum of the limits of liability of all such policies issued by such members the limit of liability of each such policy being as determined by Condition 3 thereof.

The provisions of this condition shall not operate to increase the limit of the companies' liability under this policy.

IV. The second paragraph of Condition 12 *Other Insurance* is amended to read:

*If the insured has other valid and collectable insurance (other than such concurrent insurance or any other nuclear energy liability insur-*

*ance issued by \_\_\_\_\_ or to any person or organization) applicable to loss or expense covered by this policy the insurance afforded by this policy shall be excess insurance over such other insurance; provided, with respect to any person who is not employed at and in connection with the facility, such insurance as is afforded by this policy for bodily injury to an employee of the insured arising out of and in the course of his employment shall be primary insurance under such other insurance.*

NUCLEAR ENERGY LIABILITY POLICY

(FACILITY FORM)

RESTORATION OF LIMIT OF LIABILITY ENDORSEMENT

It is agreed that:

1. Payments made by the companies under this policy have reduced the limit of the companies' liability, stated in Item 4 of the declarations, to \$ \_\_\_\_\_.

2. Such reduced limit is restored to the amount stated in Item 4 of the declarations. Such restored limit applies to obligations assumed or expenses incurred because of bodily injury or property damage caused during the period from the effective date of this endorsement to the termination of the policy, by the nuclear energy hazard.

NOTE: When the reduction of the limit of liability results from a clearly identifiable nuclear event and restoration is offered retroactive to the effective date of the policy for claims other than those resulting from said event, above paragraph 2 will be replaced by the following:

2. Such reduced limit is restored to the amount stated in Item 4 of the declarations, except with respect to bodily injury or property damage resulting from (describe nuclear event).

3. The reduced limit of liability stated in paragraph 1 above, and the limit of liability stated in Item 4 of the declarations, as restored by this endorsement, shall not be cumulative; and each payment made by the companies after the effective date of this endorsement for any loss or expense covered by the policy shall reduce by the amount of such payment both the reduced limit of liability stated in paragraph 1 above and the limit of liability stated in Item 4 of the declarations, as restored by this endorsement, regardless of which limit of liability applies with respect to bodily injury or property damage out of which such loss or expense arises.

Effective date of this endorsement \_\_\_\_\_ to form a part of Policy No. \_\_\_\_\_  
Issued to \_\_\_\_\_  
Date of Issue \_\_\_\_\_  
For the subscribing companies \_\_\_\_\_

By \_\_\_\_\_

<sup>1</sup>For policies issued by Nuclear Energy Liability-Property Insurance Association the amount will be "\$124,000,000," for policies issued by Mutual Atomic Energy Liability Underwriters, the amount will be "\$36,000,000."

**Nuclear Regulatory Commission**

**§ 140.91**

Countersigned by \_\_\_\_\_  
Endorsement No. \_\_\_\_\_.

NUCLEAR ENERGY LIABILITY POLICY  
(FACILITY FORM)  
AMENDATORY ENDORSEMENT

This policy does not apply to bodily injury or property damage with respect to which the insured is entitled to indemnity from the United States Nuclear Regulatory Commission under the provisions of Indemnity Agreement No. \_\_\_\_\_ between the United States Nuclear Regulatory Commission and \_\_\_\_\_, dated \_\_\_\_\_, as now in effect or as hereafter amended.

\* \* \* \* \*

Effective date of this endorsement to form a part of Policy No. \_\_\_\_\_.

Issued to \_\_\_\_\_.  
Date of issue \_\_\_\_\_.  
For the subscribing companies \_\_\_\_\_

By \_\_\_\_\_  
Countersigned by \_\_\_\_\_  
Endorsement No. \_\_\_\_\_.

NUCLEAR ENERGY LIABILITY POLICY  
(FACILITY FORM)

WAIVER OF DEFENSES ENDORSEMENT  
(*Extraordinary Nuclear Occurrence*)

The named insured, acting for himself and every other insured under the policy, and the members of \_\_\_\_\_ agree as follows:

1. With respect to any extraordinary nuclear occurrence to which the policy applies as proof of financial protection and which—

(a) Arises out of or results from or occurs in the course of the construction, possession, or operation of the facility, or

(b) Arises out of or results from or occurs in the course of the transportation of nuclear material to or from the facility, the insureds and the companies agree to waive

(1) Any issue or defense as to the conduct of the claimant or the fault of the insureds, including, but not limited to:

- (i) Negligence,
- (ii) Contributory negligence,
- (iii) Assumption of risk, and
- (iv) Unforeseeable intervening causes whether involving the conduct of a third person or an act of God,

(2) Any issue or defense as to charitable or governmental immunity, and

(3) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his bodily injury or property damage and the cause thereof, but in no event more than

10 years after the date of the nuclear incident.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action.

2. The waivers set forth in paragraph 1 above do not apply to

(a) Bodily injury or property damage which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(b) Bodily injury sustained by any claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(c) Any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under such law.

3. The waivers set forth in paragraph 1 above shall be effective only with respect to bodily injury or property damage to which the policy applies under its terms other than this endorsement.

Such waivers shall not apply to, or prejudice the prosecution or defense of any claim or portion of claim which is not within the protection afforded under—

(1) The provisions of the policy applicable to the financial protection required of the named insured,

(2) The agreement of indemnification between the named insured and the Nuclear Regulatory Commission made pursuant to section 170 of the Atomic Energy Act of 1954, as amended, and

(3) The limit of liability provisions of subsection 170 e. of the Atomic Energy Act of 1954, as amended.

Such waivers shall not preclude a defense based upon the failure of the claimant to take reasonable steps to mitigate damages.

4. Subject to all of the limitations stated in this endorsement and in the Atomic Energy Act of 1954, as amended, the waivers set forth in paragraph 1 above shall be judicially enforceable in accordance with their terms against any insured in an action to recover damages because of bodily injury or property damage to which the policy applies as proof of financial protection.

5. As used herein:

*Extraordinary nuclear occurrence* means an event which the Nuclear Regulatory Commission has determined to be an extraordinary nuclear occurrence as defined in the Atomic Energy Act of 1954, as amended, *financial protection* and *nuclear incident* have the meanings given them in the Atomic Energy Act of 1954, as amended.

*Claimant* means the person or organization actually sustaining the bodily injury or property damage and also includes his assignees, legal representatives and other persons or organizations entitled to bring an action for damages on account of such injury or damage.

NUCLEAR ENERGY LIABILITY POLICY  
(FACILITY FORM)  
AMENDATORY ENDORSEMENT  
(Application of Policy)

It is agreed that insuring agreement IV of the policy, captioned *Application of Policy* is amended to read as follows: Application of Policy. This policy applies only to bodily injury or property damage: (1) Which is caused during the policy period by the nuclear energy hazard, and (2) which is discovered and for which written claim is made against the insured, not later than 10 years after the end of the policy period.

NUCLEAR ENERGY LIABILITY POLICY  
(FACILITY FORM)  
WAIVER OF DEFENSE ENDORSEMENT  
(Extraordinary Nuclear Occurrence)

The named insured, acting for himself and every other insured under the policy, and the members of \_\_\_\_\_ agree as follows:

1. With respect to any extraordinary nuclear occurrence to which the policy applies as proof of financial protection and which
  - (a) Arises out of or results from or occurs in the course the construction, possession, or operation of the facility, or
  - (b) Arises out of or results from or occurs in the course of the transportation of nuclear material to or from the facility.

the insured and the companies agree to waive.

- (1) Any issue or defense as to the conduct of the claimant or the fault of the insureds, including but not limited to:
  - (i) Negligence,
  - (ii) Contributory negligence,
  - (iii) Assumption of risk, and
  - (iv) Unforeseeable intervening causes, whether involving the conduct of a third person, or an act of God,
- (2) Any issue or defense as to charitable or governmental immunity, and

- (3) Any issue or defense based on any statute of limitations if suit is instituted within three (3) years from the date on which the claimant first knew, or reasonably could have known, of his bodily injury or property damage and the cause thereof, but in no event more than twenty (20) years after the date of the nuclear incident.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action.

2. The waivers set forth in paragraph 1. above do not apply to

- (a) Bodily injury or property damage which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
- (b) Bodily injury sustained by any claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(c) Any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under such law.

3. The waivers set forth in paragraph 1. above shall be effective only with respect to bodily injury or property damage to which the policy applies under its terms other than this endorsement; provided, however, that with respect to bodily injury or property damage resulting from an extraordinary nuclear occurrence. Insuring Agreement IV, "Application of Policy," shall not operate to bar coverage for bodily injury or property damage (a) which is caused during the policy period by the nuclear energy hazard and (b) which is discovered and for which written claim is made against the insured not later than twenty (20) years after the date of the extraordinary nuclear occurrence.

Such waivers shall not apply to, or prejudice the prosecution or defense of any claim or portion of claim which is not within the protection afforded under

- (a) The provisions of the policy applicable to the financial protection required of the named insured;
- (b) The agreement of indemnification between the named insured and the Nuclear Regulatory Commission made pursuant to section 170 of the Atomic Energy Act of 1954, as amended; and

**Nuclear Regulatory Commission**

**§ 140.91**

(c) The limit of liability provisions of Sub-section 170e. of the Atomic Energy Act of 1954, as amended.

Such waivers shall not preclude a defense based upon the failure of the claimant to take reasonable steps to mitigate damages.

4. Subject to all of the limitations stated in this endorsement and in the Atomic Energy Act of 1954, as amended, the waivers set forth in paragraph 1. above shall be judicially enforceable in accordance with their terms against any insured in an action to recover damages because of bodily injury or property damage to which the policy applies as proof of financial protection.

5. As used herein:

*Extraordinary nuclear occurrence* means an event which the Nuclear Regulatory Commission has determined to be an extraordinary nuclear occurrence as defined in the Atomic Energy Act of 1954, as amended.

*Financial protection* and *nuclear incident* have the meanings given them in the Atomic Energy Act of 1954, as amended.

*Claimant* means the person or organization actually sustaining the bodily injury or property damage and also includes his assignees, legal representatives and other persons or organizations entitled to bring an action for damages on account of such injury or damage.

Effective date of this endorsement \_\_\_\_\_ to form a part of Policy No. \_\_\_\_\_,

12:01 A.M. Standard Time

Issued to \_\_\_\_\_.

Date of issue \_\_\_\_\_.

Endorsement No. \_\_\_\_\_.

For the subscribing companies:

By \_\_\_\_\_,

General Manager

Countersigned by \_\_\_\_\_.

**SUPPLEMENTARY ENDORSEMENT WAIVER OF DEFENSES**

**REACTOR CONSTRUCTION AT THE FACILITY**

It is agreed that in construing the application of paragraph 2.(b) of the Waiver of Defenses Endorsement (NE-33a) with respect to an extraordinary nuclear occurrence occurring at the facility, a claimant who is employed at the facility in connection with the construction of a nuclear reactor with respect to which no operating license has been issued by the Nuclear Regulatory Commission shall not be considered as employed in connection with the activity where the extraordinary nuclear occurrence takes place if:

(1) The claimant is employed exclusively in connection with the construction of a nuclear reactor, including all related equipment and installations at the facility and

(2) No operating license has been issued by the Nuclear Regulatory Commission with respect to the nuclear reactor, and

(3) The claimant is not employed in connection with the possession, storage, use or transfer of nuclear material at the facility.

Effective date of this endorsement \_\_\_\_\_ to form a part of Policy No. \_\_\_\_\_,

12:01 A.M. Standard Time

Issued to \_\_\_\_\_.

Date of issue \_\_\_\_\_.

Endorsement No. \_\_\_\_\_.

For the subscribing companies:

By \_\_\_\_\_,

General Manager

Countersigned by \_\_\_\_\_.

**NUCLEAR ENERGY LIABILITY POLICY**

**(FACILITY FORM)**

**AMENDMENT OF DEFINITION OF *Nuclear Energy Hazard* (INDEMNIFIED NUCLEAR FACILITY)**

It is agreed that: 1. Solely with respect to an *insured shipment* to which the policy applies as proof of financial protection required by the Nuclear Regulatory Commission, subdivision (2) of the definition of *nuclear energy hazard* is amended to read:

(2) The nuclear material is in an insured shipment which is away from any other nuclear facility and is in the course of transportation, including handling and temporary storage incidental thereto, within

(a) The territorial limits of the United States of America, its territories or possessions, Puerto Rico or the Canal Zone; or

(b) International waters or airspace, provided that the nuclear material is in the course of transportation between two points located within the territorial limits described in (a) above and there are no deviations in the course of the transportation for the purpose of going to any other country, state or nation, except a deviation in the course of said transportation for the purpose of going to or returning from a port or place of refuge as the result of an emergency.

2. As used herein, *financial protection* has the meaning given it in the Atomic Energy Act of 1954, as amended.

**INSTRUCTIONS**—This form is to be used to modify all Nuclear Energy Liability Facility Forms in force on January 1, 1977 which were issued to become effective prior to January 1, 1977 and which are offered by the named insured as proof of financial protection being maintained as required by the Atomic Energy Act of 1954, as amended.

Effective date of this Endorsement \_\_\_\_\_ To form a part of Policy No. \_\_\_\_\_,

12:01 A.M. Standard Time

Issued to \_\_\_\_\_.

Date of issue \_\_\_\_\_.

Endorsement No. \_\_\_\_\_.

For the subscribing companies:

By \_\_\_\_\_,

General Manager

§ 140.91

10 CFR Ch. I (1-1-10 Edition)

Countersigned by \_\_\_\_\_.

NUCLEAR ENERGY LIABILITY POLICY

(FACILITY FORM)

AMENDMENT OF DEFINITIONS OF Nuclear Energy Hazard AND Insured Shipment (INDEMNIFIED NUCLEAR FACILITY)

It is agreed that: I. In Insuring Agreement III, DEFINITIONS

A. Solely with respect to an insured shipment to which this policy applies as proof of financial protection required by the Nuclear Regulatory Commission, Subdivision (2) of the definition of nuclear energy hazard is amended to read:

(2) The nuclear material is in an insured shipment which is away from any other nuclear facility and is in the course of transportation, including the handling and temporary storage incidental thereto, within

(a) The territorial limits of the United States of America, its territories or possessions, Puerto Rico or the Canal Zone; or

(b) International waters or airspace, provided that the nuclear material is in the course of transportation between two points located within the territorial limits described in (a) above and there are no deviations in the course of the transportation for the purpose of going to any other country, state or nation, except for a deviation in the course of said transportation for the purpose of going to or returning from a port or place of refuge as the result of an emergency.

B. The definition of insured shipment is replaced with the following:

Insured shipment means a shipment of source material, special nuclear material, spent fuel or waste, herein called material, (1) to the facility from any location except an indemnified nuclear facility, but only if the transportation of the material is not by pre-determination to be interrupted by removal of the material from a transporting conveyance for any purpose other than the continuation of its transportation, or (2) from the facility to any other location, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation.

II. As used herein, financial protection has the meaning given it in the Atomic Energy Act of 1954, as amended.

INSTRUCTIONS—This form is to be used to modify all Nuclear Energy Liability Facility Forms which are issued to become effective on or after January 1, 1977 and which are offered by the named insured as proof of financial protection being maintained as required by the Atomic Energy Act of 1954, as amended.

Effective date of this endorsement \_\_\_\_\_ To form a part of Policy No. \_\_\_\_\_ 12:01 A.M. standard time

Issued to \_\_\_\_\_.

Date of issue \_\_\_\_\_.

Endorsement No. \_\_\_\_\_.

For the subscribing companies:

By \_\_\_\_\_,

General Manager.

Countersigned by \_\_\_\_\_.

NE-50 (1/1/80), AMENDATORY ENDORSEMENT

(Indemnified Nuclear Facility)

It is agreed that:

I. In Insuring Agreement III:

DEFINITIONS

A. The first sentence of the definition of nuclear facility is amended to read: nuclear facility means the facility as defined in any Nuclear Energy Liability Policy (Facility Form) issued by Nuclear Energy Liability Insurance Association or by Mutual Atomic Energy Liability Underwriters.

B. The definition of indemnified nuclear facility is replaced by the following: indemnified nuclear facility means

(1) the facility as defined in any Nuclear Energy Liability Policy (Facility Form) issued by Nuclear Energy Liability Insurance Association or by Mutual Atomic Energy Liability Underwriters, or

(2) any other nuclear facility, if financial protection is required pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, with respect to any activities or operations conducted thereat;

C. Solely with respect to an insured shipment to which this policy applies as proof of financial protection required by the Nuclear Regulatory Commission, Subdivision (2) of the definition of nuclear energy hazard is amended to read:

(2) The nuclear material is in an insured shipment which is away from any other nuclear facility and is in the course of transportation, including the handling and temporary storage incidental thereto, within

(a) The territorial limits of the United States of America, its territories or possessions, or Puerto Rico; or Canal Zone; or

(b) International waters or airspace, provided that the nuclear material is in the course of transportation between two points located within the territorial limits described in (a) above and there are no deviations in the course of the transportation for the purpose of going to any other country, state or nation, except a deviation in the course of said transportation for the purpose of going to or returning from a port or place of refuge as the result of an emergency.

D. The definition of insured shipment is replaced with the following:

insured shipment means shipment of source material, special nuclear material, spent fuel or waste, or tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, herein called

## Nuclear Regulatory Commission

## § 140.91

*material*, (1) to the facility from any location except an indemnified nuclear facility, but only if the transportation of the material is not by predetermination to be interrupted by removal of the material from a transporting conveyance for any purpose other than the continuation of its transportation, or (2) from the facility to any other location, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation.

E. As used herein, *financial protection* has the meaning given it in the Atomic Energy Act of 1954, as amended.

II. Insuring Agreement IV is replaced by the following:

IV. APPLICATION OF POLICY. This policy applies only to bodily injury or property damage (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured, not later than ten years after the end of the policy period.

III. Condition 2 is replaced by the following:

2. INSPECTION: SUSPENSION. The companies shall at any time be permitted but not obligated to inspect the facility and all operations relating thereto and to examine the insured's books and records as far as they relate to the subject of this insurance and any property insurance afforded the insured through American Nuclear Insurers. If a representative of the companies discovers a condition which he believes to be unduly dangerous with respect to the nuclear energy hazard, a representative of the companies may request that such condition be corrected without delay. In the event of non-compliance with such request, a representative of the companies may, by notice to the named insured, to any other person or organization considered by the companies to be responsible for the continuation of such dangerous condition, and to the United States Nuclear Regulatory Commission, suspend this insurance with respect to named insured and such other person or organization effective 12:00 midnight of the next business day of such Commission following the date that such Commission receives such notice. The period of such suspension shall terminate as of the time stated in a written notice from the companies to the named insured and to each such person or organization that such condition has been corrected.

Neither the right to make such inspections and examinations nor the making thereof nor any advice or report resulting therefrom shall constitute an undertaking, on behalf of or for the benefit of the insured or others, to determine or warrant that such facility or operations are safe or healthful, or are in compliance with any law, rule or regulation. In consideration of the issuance or continu-

ation of this policy, the insured agrees that neither the companies nor any persons or organizations making such inspections or examinations on their behalf shall be liable with respect to injury to or destruction of property at the facility, or any consequential loss or expense resulting therefrom, or any loss resulting from interruption of business or manufacture, arising out of the making of or a failure to make any such inspection or examination, or any report thereon, or any such suspension of insurance, but this provision does not limit the contractual obligations of the companies under this policy or any policy affording the insured property insurance through American Nuclear Insurers.

IV. Condition 4 is replaced by the following:

4. LIMITATION OF LIABILITY: COMMON OCCURRENCE. Any occurrence or series of occurrences resulting in bodily injury or property damage arising out of the radioactive, toxic, explosive or other hazardous properties of

(a) nuclear material discharged or dispersed from the facility over a period of days, weeks, months or longer and also arising out of the properties of other nuclear material so discharged or dispersed from one or more other nuclear facilities insured under any Nuclear Energy Liability Policy (Facility Form) issued by Nuclear Energy Liability Insurance Association, or

(b) source material, special nuclear material, spent fuel or waste in the course of transportation for which insurance is afforded under this policy and also arising out of such properties of other source material, special nuclear material, spent fuel or waste in the course of transportation for which insurance is afforded under one or more other Nuclear Energy Liability Policies (Facility Form) issued by Nuclear Energy Liability Insurance Association, shall be deemed to be a common occurrence resulting in bodily injury or property damage caused by the nuclear energy hazard.

With respect to such bodily injury and property damage (1) the total aggregate liability of the members of the Nuclear Energy Liability Insurance Association under all Nuclear Energy Liability Policies (Facility Form), including this policy, applicable to such common occurrence shall be the sum of the limits of liability of all such policies, the limit of liability of each such policy being as determined by Condition 3 thereof, but in no event shall such total aggregate liability of such members exceed \$124,000,000; (2) the total liability of the companies under this policy shall not exceed that proportion of the total aggregate liability of the members of Nuclear Energy Liability Insurance Association, as stated in clause (1) above, which (a) the limit of liability of this policy, as determined by Condition 3, bears to (b)

the sum of the limits of liability of all such policies issued by such members, the limit of liability of each such policy being as determined by Condition 3 thereof.

The provisions of this condition shall not operate to increase the limit of the companies' liability under this policy.

V. The second paragraph of Condition 12, *Other Insurance*, is amended to read:

If the insured has other valid and collectible insurance (other than such concurrent insurance or any other nuclear energy liability insurance issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters to any person or organization) applicable to loss or expense covered by this policy, the insurance afforded by this policy shall be excess insurance over such other insurance; provided, with respect to any person who is not employed at and in connection with the facility, such insurance as is afforded by this policy for bodily injury to an employee of the insured arising out of and in the course of his employment shall be primary insurance under such other insurance.

VI. Paragraph (c) of Condition 16, *Company Representation*, is amended to read:

(c) Nuclear Energy Liability Insurance Association is the agent of the companies with respect to all matters pertaining to this insurance. All notices or other communications required by this policy to be given to the companies may be given to such agent, at its office at the Exchange, Suite 245, 270 Farmington Avenue, Farmington, Connecticut 06032, with the same force and effect as if given directly to the companies. Any requests, demand or agreements made by such agent shall be deemed to have been made directly by the companies.

Effective Date of this Endorsement \_\_\_\_\_  
12:01 a.m. Standard Time to form a part of policy No. \_\_\_\_\_.

Issued to \_\_\_\_\_ For the subscribing companies.

Date of Issue \_\_\_\_\_.

By \_\_\_\_\_ General Manager.

Endorsement No. \_\_\_\_\_  
NE-50 (1/1/81)

NE-51 (1/1/81)—AMENDMENT OF DEFINITION OF CONDITION 2 *Inspection; Suspension AND Insured Shipment*

*(Indemnified Nuclear Facility)*

It is agreed that:

(1) Condition 2 *Inspection; Suspension* is replaced by the following:

2. *Inspection; Suspension*. The companies shall at any time be permitted but not obligated to inspect the facility and all operations relating thereto and to examine the insured's books and records as far as they relate to the subject of this insurance and any property insurance afforded the insured through American Nuclear Insurers. If a rep-

resentative of the companies discovers a condition which he believes to be unduly dangerous with respect to the nuclear energy hazard, a representative of the companies may request that such conditions be corrected without delay. In the event of non-compliance with such requests, a representative of the companies may, by notice to the named insured, to any other person or organization considered by the companies to be responsible for the continuation of such dangerous condition, and to the United States Nuclear Regulatory Commission, suspend this insurance with respect to the named insured and such other person or organization effective 12:00 midnight of the next business day of such Commission following the date that such Commission receives such notice. The period of such suspension shall terminate as of the time stated in a written notice from the companies to the named insured and to each such person or organization that such condition has been corrected.

Neither the right to make such inspections and examinations nor the making thereof nor advice or report resulting therefrom shall constitute an undertaking, on behalf of or for the benefit of the insured or others, to determine or warrant that such facility or operations are safe or healthful, or are in compliance with any law, rule or regulation. In consideration of the issuance or continuation of this policy, the insured agrees that neither the companies nor any persons or organizations making such inspections or examinations on their behalf shall be liable with respect to injury to or destruction of property at the facility, or any consequential loss or expense resulting therefrom, or any loss resulting from interruption of business or manufacture, arising out of the making of or a failure to make any such inspection or examination, or any report thereon, or any such suspension of insurance, but this provision does not limit the contractual obligations of the companies under this policy or any policy affording the insured property insurance through American Nuclear Insurers.

(2) The definition of *insured shipment* in Insuring Agreement III, *Definitions*, is replaced by the following: *insured shipment* means a shipment of source material, special nuclear material, spent fuel, waste, or tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content herein called *material*, (1) to the facility from any location except an indemnified nuclear facility, but only if the transportation of the material is not by predetermination to be interrupted by removal from a transporting conveyance for any purpose other than the continuation of its transportation, or (2) from the facility to

## Nuclear Regulatory Commission

§ 140.91

any other location, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation.

Effective Date of this Endorsement \_\_\_\_\_  
12:01 a.m. Standard Time to form a part of Policy No. \_\_\_\_\_

Issued to \_\_\_\_\_ For the subscribing companies.

Date of Issue \_\_\_\_\_.

By \_\_\_\_\_ General Manager.

Endorsement No. \_\_\_\_\_  
NE-51 (1/1/81)

### AMENDMENT OF COVERAGE ENDORSEMENT FOR WORKERS CLAIMS

(FACILITY FORM)

NE-64(1/1/88)

#### Preamble

1. The insurance and rating plan presently used by Nuclear Energy Liability Insurance Association (NELIA) and Mutual Atomic Energy Liability Underwriters (MAELU) do not make a distinction between workers claims arising from catastrophic events and those arising from lesser events;

2. NELIA and MAELU believe that the lack of such a distinction will adversely affect their ability to continue to attract from world markets very large amounts of nuclear energy liability insurance for the nuclear industry;

3. NELIA and MAELU want to avoid this potential loss of capacity and to continue to provide nuclear energy liability insurance for workers claims. Accordingly NELIA and MAELU desire to restructure their present insurance programs, including this policy, effective January 1, 1988.

Now, Therefore, the Named Insured and the companies do hereby agree as follows:

#### 1. Definitions

When used in reference to this endorsement:

*This policy* means the policy of which this endorsement forms a part;

*Nuclear related employment* means all work performed at one or more than one nuclear facility in the United States of America or in connection with the transportation of nuclear material to or from any such facility. All of a worker's nuclear related employment shall be considered as having begun on the first day of such employment, regardless of the number of employers involved or interruptions in such employment;

*Worker* refers to a person who is or was engaged in nuclear related employment;

*Workers claims* means claims for damages because of bodily injury to a worker caused by the radioactive, toxic, explosive or other hazardous properties of nuclear material and

arising out of or in the course of the worker's nuclear related employment;

*Extraordinary nuclear occurrence* means an event which the United States Nuclear Regulatory Commission has determined to be an *extraordinary nuclear occurrence* as defined in the Atomic Energy Act of 1954, or in any law amendatory thereof.

#### 2. Application of This Endorsement

This endorsement applies only to such insurance as is afforded by this policy for workers claims which do not arise in whole or in part out of an extraordinary nuclear occurrence.

#### 3. Exclusion of New Workers Claims

This policy does not apply to bodily injury to a worker which arises in whole or in part out of nuclear related employment that begins on or after January 1, 1988.

#### 4. Application of Policy to Workers Claims Not Excluded

With respect to such insurance as is afforded by this policy for workers claims which are not excluded, Insuring Agreement IV does not apply and the following Insuring Agreement IV-A does apply:

*IV-A Application of Policy to Workers Claims.* This policy applies only to bodily injury (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured not later than the close of December 31, 1997.

#### 5. Availability of Supplemental Insurance

NELIA and MAELU are offering to make insurance under one or more Master Worker Policies available to all holders of Nuclear Energy Liability Policies (Facility Form). *This offer is contingent on sufficient support from policy holders, and may be withdrawn or modified by Nelia or Maelu as they deem necessary or appropriate.*

The Master Workers Policies will provide, under their separate terms and conditions, coverage for new workers claims. Premiums will be subject to a separate Industry Retrospective Rating Plan.

*Coverage under the new master worker policies is not automatic. A written request must be submitted to Nelia or Maelu through regular market channels.*

It is understood and agreed that all of the provisions of this endorsement shall remain in full force and effect without regard to this section 5, and without regard to whether or not the Named Insureds become insureds under the Master Worker Policies, or whether or not NELIA or MAELU terminate such policies or withdraw or modify their offer to underwrite such policies.

Executed for the companies

§ 140.91

10 CFR Ch. I (1-1-10 Edition)

Date \_\_\_\_\_  
By \_\_\_\_\_  
(Signature or Authorized Officer)

\_\_\_\_\_  
(Print or Type Name and Title of Officer)  
Executed for the Named Insured

\_\_\_\_\_  
(Named Insured—Type or Print)  
Date \_\_\_\_\_  
By \_\_\_\_\_  
(Signature of Authorized Officer)

\_\_\_\_\_  
(Print or Type Name and Title of Officer)  
Effective Date of this Endorsement

12:01 a.m. Standard Time  
To form a part of Policy No. \_\_\_\_\_  
Issued to \_\_\_\_\_  
Date of Issue \_\_\_\_\_  
For the subscribing companies  
By \_\_\_\_\_  
General Manager  
Endorsement No. \_\_\_\_\_  
Countersigned by \_\_\_\_\_

AMENDMENT OF COVERAGE ENDORSEMENT FOR WORKERS CLAIMS (FACILITY FORM) NE-66(1/188)

It is agreed that:

1. Definitions

When used in reference to this endorsement:

*This policy* means the policy of which this endorsement forms a part;

*Nuclear related employment* means all work performed at one or more than one nuclear facility in the United States of America or in connection with the transportation of nuclear material to or from any such facility. All of a worker's nuclear related employment shall be considered as having begun on the first day of such employment, regardless of the number of employers involved or interruptions in such employment;

*Worker* refers to a person who is or was engaged in nuclear related employment;

*Workers claims* means claims for damages because of bodily injury to a worker caused by the radioactive, toxic, explosive or other hazardous properties of nuclear material and arising out of or in the course of the worker's nuclear related employment;

*Extraordinary nuclear occurrence* means an event which the United States Nuclear Regulatory Commission has determined to be an *extraordinary nuclear occurrence* as defined in the Atomic Energy Act of 1954, or in any law amendatory thereof.

2. Application of This Endorsement

This endorsement applies only to such insurance as is afforded by this policy for

workers claims which do not arise in whole or in part out of an extraordinary nuclear occurrence.

3. Exclusion of New Workers Claims

This policy does not apply to bodily injury to a worker which arises in whole or in part out of nuclear related employment that begins on or after January 1, 1988.

4. Application of Policy to Workers Claims Not Excluded

With respect to such insurance as is afforded by this policy for workers claims which are not excluded, Insuring Agreement IV does not apply and the following Insuring Agreement IV-A does apply:

IV-A APPLICATION OF POLICY TO WORKERS CLAIMS

This policy applies only to bodily injury (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured not later than the close of December 31, 1997.

5. Availability of Supplemental Insurance

NELIA and MAELU are offering to make insurance under one or more Master Worker Policies available to all holders of Nuclear Energy Liability Policies (Facility Form). *This offer is contingent on sufficient support from policyholders, and may be withdrawn or modified by NELIA or MAELU as they deem necessary or appropriate.*

The Master Worker Policies will provide, under their separate terms and conditions, coverage for new workers claims. Premiums will be subject to a separate Industry Retrospective Rating Plan.

*Coverage under the new master worker policies is not automatic. A written request must be submitted to NELIA or MAELU through regular market channels.*

It is understood and agreed that all of the provisions of this endorsement shall remain in full force and effect without regard to this Section 5, and without regard to whether or not the Named Insureds become insureds under the Master Worker Policies, or whether or not NELIA or MAELU terminate such policies or withdraw or modify their offer to underwrite such policies.

*Explanation of Use of This Endorsement:* This endorsement is a mandatory endorsement which is to be attached to new Facility Form Policies issued on or after January 1, 1988.

Effective Date of this Endorsement \_\_\_\_\_  
12:01 a.m. Standard Time \_\_\_\_\_  
To form a part of Policy No. \_\_\_\_\_  
Issued to \_\_\_\_\_  
Date of Issue \_\_\_\_\_  
For the subscribing companies \_\_\_\_\_

**Nuclear Regulatory Commission**

**§ 140.91**

By \_\_\_\_\_  
General Manager  
Endorsement No. \_\_\_\_\_  
Countersigned by \_\_\_\_\_

**NUCLEAR ENERGY LIABILITY  
INSURANCE ASSOCIATION**

**NUCLEAR ENERGY LIABILITY POLICY**

Facility Worker Form, herein called Master  
Worker Policy, NMWP-1(1/1/88)

The undersigned members of Nuclear Energy Liability Insurance Association, hereinafter called the *companies*, each itself severally and not jointly, and in the respective proportion hereinafter set forth, agree with the insureds named in Item 1 of the Declarations of each Certificate, hereinafter called the *Named Insureds*, in consideration of the payment of the premium, and subject to all of the provisions of the applicable Certificate and of this policy, as follows:

*I—Relation Between the Master Worker Policy  
and Certificates*

No insurance is provided by this policy except through a Certificate issued to form a part hereof. The insurance then applies separately to the persons and organizations who are defined in Section IV as insureds under each such Certificate, except with respect to the Amount of Insurance Available.

The Amount of Insurance Available through such a Certificate to any person or organization who is an insured thereunder is limited as provided in Section VIII of this policy.

*II—Definitions*

When used in reference to this policy:

*Bodily injury* means bodily injury, sickness or disease, including death resulting therefrom;

*Byproduct material* has the meaning given in the Atomic Energy Act of 1954, or in any law amendatory thereof;

*Certificate*, unless qualified, refers to a Certificate of Insurance (including Declarations and endorsements forming a part thereof) issued to form a part of this policy or of a MAELU Policy;

*Claims costs* means, with reference to claims or suits the companies have the right and duty to defend under this policy;

(1) Cost taxed against the insured in such suits and interest on any judgments therein;

(2) Premiums on appeal bonds and on bonds to release attachments in such suits (but the companies have no obligation to apply for or furnish such bonds);

(3) Reasonable expenses, other than loss of earnings, incurred by the insured at the companies' request;

(4) Payments for expenses incurred in the investigation, negotiation, settlement and

defense of such claims or suits, including, but not limited to, the cost of such allocated claims services by employees of the companies, fees and expenses of independent adjusters, attorneys' fees and disbursements, expenses for expert testimony, examination, x-ray or autopsy or medical expenses of any kind;

(5) Payments for expenses incurred by the companies in investigating an occurrence resulting in bodily injury or in minimizing its effects;

*Discovery period* means the period defined in Section VI B hereof;

*Extraordinary nuclear occurrence* means an event which the United States Nuclear Regulatory Commission has determined to be an *extraordinary nuclear occurrence* as defined in the Atomic Energy Act of 1954, or in any law amendatory thereof;

*Insured contract* means that part of a contract or agreement made prior to bodily injury to a new worker under which the insured assumes the tort liability of a third person to pay damages because of such bodily injury. *Tort liability* means a liability that would be imposed by law on the third person in the absence of an express assumption of liability by the third person;

*Insured facility* means a facility with respect to which insurance is provided through a Certificate;

*Insured shipment* means a shipment of source material, special nuclear material, spent fuel or waste (herein called *material*):

(1) To the facility from any location other than an insured facility, but only if the transportation of the material is not by pre-determination to be interrupted by removal of the material from a transporting conveyance for any purpose other than the continuation of its transportation; or

(2) From the facility to any other location, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation;

*MAELU* means Mutual Atomic Energy Liability Underwriters;

*MAELU Policy* means a Nuclear Energy Liability Policy (Facility Worker Form) written by members of MAELU;

*NELIA* means Nuclear Energy Liability Insurance Association;

*New worker* refers to a person who is or was engaged in nuclear related employment that begins on or after January 1, 1988;

*New worker's claim* means a claim for damages because of bodily injury to a new worker caused by the radioactive, toxic, explosive or other hazardous properties of nuclear material and arising out of or in the course of the new worker's nuclear related employment;

*Non-ratable incurred losses* has the meaning given in Attachment 1 to this policy;

§ 140.91

10 CFR Ch. I (1-1-10 Edition)

*Nuclear energy hazard* means the radioactive, toxic, explosive or other hazardous properties of nuclear material which is:

(1) At the facility as described in the applicable Certificate issued to form a part of this policy or has been discharged or dispersed therefrom without intent to relinquish possession of custody thereof to any other person or organization; or

(2) In an insured shipment that is away from any other insured nuclear facility and is in the course of transportation, including handling and temporary storage incidental thereto within:

(a) The territorial limits of the United States of America, its territories or possessions or Puerto Rico; or

(b) International waters or airspace, provided that:

(i) The nuclear material is in the course of transportation between two points located within the territorial limits described in (a) above; and

(ii) There are no deviations in the course of the transportation for the purpose of going to any other country, state or nation, except to a port or place of refuge in an emergency;

*Nuclear facility* means any of the following and includes the site on which any of them is located, all operations conducted on such site and all premises used for such operations:

(1) The facility as described in any Certificate;

(2) Any nuclear reactor;

(3) Any equipment or device designed or used for:

(a) Separating the isotopes of uranium or plutonium;

(b) Processing or utilizing spent fuel; or

(c) Handling, processing or packaging waste;

(4) Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(5) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste;

*Nuclear material* means source material, special nuclear material or byproduct material;

*Nuclear reactor* means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

*Nuclear related employment* means all work performed at one or more than one nuclear facility in the United States of America or in connection with the transportation of nuclear material to or from any such facility.

All of a new worker's nuclear related employment shall be considered as having begun on the first day of such employment, regardless of the number of employers involved or interruptions in such employment;

*Policy period* means the period defined in Section VI A hereof;

*Ratable incurred losses* has the meaning given in Attachment 1 to this policy;

*Source material* has the meaning given in the Atomic Energy Act of 1954, or in any law amendatory thereof, and also includes tailings or wastes produced by the extraction of uranium or thorium from ore processed primarily for its source material content;

*Special nuclear material* has the meaning given in the Atomic Energy Act of 1954, or in any law amendatory thereof;

*Spent fuel* means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in any nuclear reactor;

*The facility* refers to the facility described in the Declarations of a Certificate. It includes the location described in Item 3 thereof and all property and operations at such location;

*Waste* means any waste material that contains byproduct material and results from the operation by any person or organization of:

(1) Any nuclear reactor; or

(2) Any equipment or device designed or used for:

(a) Separating the isotopes of uranium or plutonium;

(b) Processing or utilizing spent fuel; or

(c) Handling, processing or packaging such waste material.

III—Coverage

In the event that a new worker's claim is made against a person or organization who is an insured under a Certificate issued to form a part of this policy:

(1) The companies shall pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury to which this policy applies, sustained by a new worker and caused by the nuclear energy hazard.

The companies shall have the right and duty to defend any suit against the insured alleging such injury and seeking damages payable under the terms of this policy. But the companies may make such investigation and settlement of any claim or suit seeking such damages as they deem appropriate.

(2) The companies shall also pay, as part of the Amount of Insurance Available under this policy, the claims costs relating to any such claim or suit.

(3) The companies' obligation to pay damages and claims costs, and to defend any claim and suit ends when the Policy Aggregate Limit has been exhausted pursuant to the provisions of Section VIII.

## Nuclear Regulatory Commission

§ 140.91

### IV—Definition of Insured

When used in reference to a Certificate issued to form a part of this policy, the unqualified word *insured* means:

(1) each insured named in Item 1 of the Declarations of the Certificate; and

(2) any other person or organization with respect to legal responsibility for damages because of bodily injury to a new worker caused by the nuclear energy hazard applicable to the Certificate. This subsection (2) does not include as an insured the United States of America or any of its agencies except the Tennessee Valley Authority.

### V—Exclusions

This policy does not apply:

(1) To any obligation for which the insured or any carrier as his insurer may be held liable under any worker's compensation, unemployment compensation or disability benefits law, or under any similar law;

(2) To bodily injury to any employee of the insured arising out of or in the course of employment by the insured; but this exclusion (2) does not apply to liability assumed by the insured under an insured contract;

(3) To liability assumed by the insured under contract, other than an insured contract;

(4) To bodily injury to a new worker due to the manufacturing, handling or use at the location designated in Item 3 of the Declarations of any Certificate, in time of peace or war, of any nuclear weapon or other instrument of war utilizing special nuclear material or byproduct material;

(5) To bodily injury to a new worker due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;

(6) To bodily injury to a new worker arising in whole or in part out of an extraordinary nuclear occurrence.

### VI—Policy Period; Discovery Period; Application of Policy

#### A. Policy Period

The policy period of this policy begins at 12:01 a.m. on January 1, 1988 and ends at the close of December 31, 1992, Eastern Standard Time, or when all Certificates issued to form a part hereof have been cancelled, whichever first occurs.

#### B. Discovery Period

The discovery period for claims made under this policy begins at 12:01 a.m. on January 1, 1988 and ends at the close of December 31, 1997, Eastern Standard Time.

#### C. Application of Policy

This policy applies only to bodily injury to a new worker (1) which is caused during the

policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is first made against the insured within the discovery period.

### VII—Other Insurance

A. This insurance is primary insurance under any insurance afforded by a Master Policy-Nuclear Energy Liability Insurance (Secondary Financial Protection) issued by NELIA or MAELU.

B. If an insured has other valid and collectible insurance, except under a MAELU Policy, for loss or expense covered by this policy, this shall be excess insurance over such other insurance. If the insured has insurance under a MAELU Policy, whether the insurance is collectible or not, the companies shall then be liable under this policy only for such proportion of loss or expense as the amount stated as the Policy Aggregate Limit in Section VIII of this policy bears to the sum of such amount and the corresponding amount stated in the MAELU Policy.

### VIII—Amount of Insurance Available

#### A. Policy Aggregate Limit

1. The Policy Aggregate Limit is \$124 million. This limit is not cumulative from year to year. The limit applies to all new worker's claims that qualify for coverage under this policy (herein called *qualified claims*).

2. The Policy Aggregate Limit applies collectively to all new worker's claims. Such claims may be paid by NELIA on behalf of the companies as the claims, in NELIA's discretion, become ready for disposition, and claims costs may be paid as they become due, all without regard to the order in which such claims were made and without any obligation to maintain, reserve or use any portion of the Policy Aggregate Limit for claims reported under any particular Certificate.

#### B. Limitation of the Companies' Liability

1. Regardless of the number of (a) Certificates issued to form a part of this policy, (b) persons and organizations who are insureds under such Certificates, (c) qualified claims, or (d) years this policy or any such Certificates shall continue in force, the Policy Aggregate Limit is the total liability of the companies for all of their obligations under this policy, including the defense of suits and the payment of damages and claims costs.

2. This policy provides for certain automatic reinstatements of the Policy Aggregate Limit. Regardless of such provision, if, during the policy period or thereafter, the total payments of the companies for

(a) Non-ratable incurred losses, and

(b) Those ratable incurred losses for which the companies have not been reimbursed

## § 140.91

under the Industry Retrospective Rating Plan Premium Endorsement described in Attachment 1 to this policy,

equal \$124 million, the Policy Aggregate Limit shall be deemed to be exhausted, and shall not be further reinstated except by an endorsement issued to form a part of this policy for additional premium as determined by the companies.

### C. Reduction and Reinstatement of the Policy Aggregate Limit

1. Each payment made by the companies in discharge of their obligations under this policy shall reduce the Policy Aggregate Limit by the amount of such payment.

2. The companies shall, however, automatically reinstate the policy aggregate limit until the total amount of such reinstatements equals \$124 million, but in no event shall there be any automatic reinstatements after the Policy Aggregate Limit is exhausted pursuant to the provisions of subsection B.2. above. Thereafter, there shall be no further reinstatement of the Policy Aggregate Limit except by an endorsement issued to form a part of this policy for additional premium as determined by the companies.

3. It is a condition of this insurance that the companies shall have the right to reimburse themselves, as a matter of first priority, from funds held by NELIA in the Special Reserve Account described in Attachment 1 to this policy or from retrospective premiums received by NELIA for this insurance. The amount of reimbursement shall be equal to 95% of each payment made by the companies with respect to their obligations under this policy.

### *IX—Insured's Duties in Case of Claims or Suits*

#### A. Notice of Claims or Suits

In the event of any claim or suit involving bodily injury to which a Certificate issued to form a part of this policy applies, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof shall be given by or for the insured to the companies as soon as practicable. The insured shall immediately forward to the companies every demand, notice, summons or other process received relating to claims or suits against the insured.

#### B. Assistance and Cooperation

The insured shall cooperate with the companies and, upon their request, shall:

- (1) Attend hearings and trials; and
- (2) Assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of any legal proceedings in connection with the subject matter of this insurance.

## 10 CFR Ch. I (1–1–10 Edition)

The insured shall not, except at the insured's own cost, make any payment, assume any obligation or incur any expense.

### *X—Subrogation*

In the event of any payment through a Certificate to form a part of this policy, the companies shall be subrogated to all the insured's rights of recovery therefor against any person or organization, and the insured shall execute and deliver instruments and papers, and so whatever else is necessary to secure such rights. Prior to knowledge of bodily injury caused by the nuclear energy hazard the insured may waive in writing any or all right of recovery against any person or organization, but after such knowledge the insured shall not waive or otherwise prejudice any such right of recovery.

The companies hereby waive any right of subrogation against (1) any other insured of (2) the United States of America or any of its agencies acquired by reason of any payment under this policy.

It is a condition of this policy that if an insured makes a recovery on account of any such injury, the insured shall repay to the companies the amount to which the companies would have been entitled had the foregoing provisions, or any of them, not been included in the policy.

### *XI—Inspection and Suspension*

The companies shall be permitted, but not obligated, to inspect at any time the facility as described in any Certificate and all books, records and operation relating thereto, both with respect to this insurance, and any other nuclear energy liability insurance and property insurance also afforded with respect thereto by members of NELIA, American Nuclear Insurers, MAELU or MAERP Reinsurance Association.

If a representative of the companies discovers a condition which he or she believes to be unduly dangerous with respect to the risks insured under the Certificate, a representative of the companies may request such condition to be corrected without delay. In the event of noncompliance with the request, an officer of NELIA may, by written notice mailed or delivered to the first Named Insured, with similar notice to the United States Nuclear Regulatory Commission, suspend the insurance afforded by a Certificate issued by NELIA effective 12:00 midnight of the next business day of such Commission following the date that such Commission receives such notice. The period of such suspension shall terminate as of the time stated in a written notice from NELIA to the first Named Insured that such condition has been corrected.

Neither the right to make such inspections or suspensions nor the making thereof nor any advice or report resulting therefrom

## Nuclear Regulatory Commission

## § 140.91

shall constitute an undertaking, on behalf of or for the benefit of the Named Insureds or others to determine or warrant that the facility or operations relating thereto are safe or healthful, or are in compliance with any law, rule or regulation.

In consideration of the issuance or continuation of a Certificate, the Named Insureds agree that neither the companies nor any persons or organizations making such inspections on their behalf shall be liable for damage to the facility or any consequential damage or cost resulting therefrom, including but not limited to any such damage or cost relating to interruption of business or manufacture, arising out of the making of or failure to make any such inspection of the facility, any report thereon, or any such suspension of insurance, but this provision does not limit the companies' contractual obligations under a Certificate issued by NELIA or any policy issued by NELIA or American Nuclear Insurers affording the insured nuclear energy liability or property insurance.

### *XII—Cancellation of Certificates*

The first Named Insured designated in a Certificate issued to from a part of this policy any cancel such Certificate by mailing to the companies and the United States Nuclear Regulatory Commission written notice stating when, not less than 30 days thereafter, such cancellation shall be effective.

The companies may cancel any such Certificate by mailing to the first Named Insured designated therein at the address shown in such Certificate and to the United States Nuclear Regulatory Commission written notice, stating when, not less than 90 days thereafter, such cancellation shall be effective; provided in the event of non-payment of premium, or if the operator of the facility, as designated in the Declarations of the Certificate, is replaced by another person or organization, such Certificate may be cancelled by the companies by mailing to the first Named Insured at the address shown therein and to the United States Nuclear Regulatory Commission written notice, stating when, not less than 30 days thereafter, such cancellation shall be effective.

The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the Certificate period. Delivery of such written notice either by the first Named Insured or the companies shall be equivalent to mailing.

Upon cancellation of a Certificate, other than as of the end of December 31 in any year, the earned standard premium for the period such Certificate has been in force since the preceding December 31 shall be computed in accordance with the following provisions:

(1) If the first Named Insured cancels, the earned standard premium for such period

shall be computed in accordance with the customary annual short rate table and procedure; provided, however, that if the first Named Insured cancels after knowledge of bodily injury caused by the nuclear energy hazard, all premiums theretofore paid or payable shall be fully earned;

(2) If the companies cancel, the earned standard premium for such period shall be computed pro rata.

Premium adjustment, if any, may be made either at the time of cancellation or as soon as practicable after cancellation becomes effective, but payment of tender of unearned premium is not a condition of cancellation.

Cancellation of a Certificate shall not affect the rights and obligations of the Named Insureds under the Insureds under the Industry Retrospective Rating Plan Premium Endorsement forming a part of the Certificate.

### *XIII—General Conditions*

#### A. Premium

The Named Insureds designated in a Certificate issued by NELIA shall pay the companies the premiums for the Certificate in accordance with the provisions of the *Industry Retrospective Rating Plan Premium Endorsement* described in Attachment 1 to this policy.

#### B. Modifications, Waiver

The provisions of this policy or a Certificate issued to form a part hereof shall not be changed or waived except by an endorsement issued by the companies to form a part of the policy or Certificate.

#### C. Assignment

Assignment of interest under a Certificate issued to form a part of this policy shall not bind the companies until their consent is endorsed thereon. If, however, a Named Insured shall die or be declared bankrupt or insolvent, the Certificate shall cover the Named Insured's legal representative, receiver or trustee as an insured, but only with respect to liability as such, and then only provided written notice of the appointment as legal representative, receiver or trustee is given to the companies within 10 days after such appointment.

#### D. Suit

No suit or action on a Certificate issued to form a part of this policy shall lie against the companies or any of them unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of the policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the companies.

Any person or organization or the legal representative thereof who has secured such judgment of written agreement shall thereafter be entitled to recover under the Certificate to the extent of the insurance afforded by this policy through the Certificate. No person or organization shall have any right under the Certificate to join the companies or any of them as parties to any action against the insured to determine the insured's liability, nor shall the companies or any of them be impleaded by the insured or the insured's legal representative.

Bankruptcy or insolvency of the insured or the insured's estate shall not relieve the companies of any of their obligations under this policy.

E. Authorization of The First Named Insured

Except with respect to compliance with the obligations imposed on the insured by the Sections of this policy entitled *Insured's Duties in Case of Claims or Suits*, Subrogation and *Suit*, the first Named Insured designated in the Declarations of a Certificate issued to form a part of this policy is authorized to act for every other insured in all matters pertaining to this insurance.

F. Insured Representation

Any notice, sworn statement or proof of Loss which may be required by the provisions of this policy may be given to any one of the companies specified in the Schedule of Subscribing Companies attached hereto. Such notice, statement or proof of Loss so given shall be valid and binding on all such companies.

In any action or suit against such companies, service of process may be made on any one of them and such service shall be valid and binding service on all such companies.

Nuclear Energy Liability Insurance Association is the agent of the companies with respect to all matters pertaining to this insurance. All notices or other communications required by this policy may be given to such agent at its office at: Nuclear Energy Liability Insurance Association, The Exchange, Suite 245, 270 Farmington Avenue, Farmington, Connecticut 06032, with the same force and effect as if given directly to the companies. Any requests, demands or agreements made by such agent shall be deemed to have been made directly by the companies.

G. Changes in Subscribing Companies and Their Proportionate Liability

By acceptance of this policy the Named Insureds agree that the members of Nuclear Energy Liability Insurance Association liable under this policy, and the proportionate liability of each such member, may change from year to year, and further agree that regardless of such changes:

(1) Each company subscribing this policy upon its issuance shall be liable only for its stated proportion of any obligation assumed or expense incurred under this policy because of bodily injury to new workers caused, during the period from the effective date of this policy to the close of December 31 next following, by the nuclear energy hazard; for each subsequent calendar year, beginning January 1 next following the effective date of this policy, any change in the subscribing companies and the proportionate liability of each such company shall be stated in an endorsement issued to form a part of this policy, duly executed and attested by the President of Nuclear Energy Liability Insurance Association on behalf of each such company, and a copy of which will be mailed or delivered to the first Named Insured of each Certificate.

(2) The liability of any subscribing company shall not be cumulative from year to year.

H. Declarations

By acceptance of this Master Worker Policy, the Named Insureds designated in a Certificate agree that the statements in such Certificate are their agreements and representations, that this Master Worker Policy and such Certificate are issued in reliance upon the truth of such representations and that this Master Worker Policy and such Certificate embody all agreements between such Named Insureds and the companies or any of their agents relating to this insurance.

*In Witness Whereof*, the companies subscribing this policy have caused the policy to be executed and attested on their behalf by the President of Nuclear Energy Liability Insurance Association and duly countersigned by an authorized representative, but this policy shall be binding on each company only to the extent of its designated proportion of any obligation assumed or expense incurred under this policy.

For the Subscribing Companies:

Date of Issue: \_\_\_\_\_ 19\_\_\_\_

Countersigned by: (Authorized Representative)

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

NUCLEAR ENERGY LIABILITY POLICY

(Facility Worker Form) herein called the Master Worker Policy

Certificate of Insurance, NMWPC-1(1/1/88)

Certificate No. \_\_\_\_\_

This is to certify that the insured named in Item 1 of the Declarations hereof, hereinafter called the *Named Insureds*, have obtained insurance under the Master Worker

**Nuclear Regulatory Commission**

**§ 140.91**

Policy issued by Nuclear Energy Liability Insurance Association on behalf of its members. The insurance is subject to all of the provisions of the *Certificate* and the Master Worker Policy.

**NUCLEAR ENERGY LIABILITY  
INSURANCE ASSOCIATION**

**NUCLEAR ENERGY LIABILITY INSURANCE**

**Industry Retrospective Rating Plan  
Premium Endorsement, NE-W-1(1/1/88)**

It is agreed that:

*1—Declarations*

*Item 1.—Named Insureds and Addresses:*

*Item 2.—Certificate Coverage Period:*

Beginning at 12:01 a.m. January 1, 1988 and ending at the close of December 31, 1992, Eastern Standard Time, or at the time and date this Certificate is cancelled or terminated, whichever first occurs.

*Item 3.—Description of the Facility:*

*Location:*

*Type:*

*Operator of the Facility:*

*Item 4.—Amount of Insurance Available:*

The amount of insurance afforded by the Master Worker Policy through this Certificate shall be determined by Section VIII of the Master Worker Policy and all of the other provisions of the policy relating thereto.

*Item 5.—Advance Premium: §*

*2—Application of Certificate*

This Certificate applies only to bodily injury to a new worker (1) which is caused, during the Certificate Coverage Period, by the nuclear energy hazard and (2) which is discovered and for which written claim is first made against an insured under the Certificate within the discovery period of the Master Worker Policy.

*3—Industry Retrospective Rating Plan*

All insurance under the Master Worker Policy is subject to the Industry Retrospective Rating Plan in use by the companies. No insurance is provided under this Certificate unless and until the first Named Insured has accepted in writing the Industry Retrospective Rating Plan Premium Endorsement and a copy of the signed endorsement has been issued by the companies to form a part of this Certificate.

*In Witness Whereof*, the companies subscribing the Master Worker Policy have caused this Certificate to be executed and attested on their behalf by the President of Nuclear Energy Liability Insurance Association and duly countersigned by an authorized representative.

For the Subscribing Companies:

Date of Issue \_\_\_\_\_ 19 \_\_\_\_\_

Countersigned by: \_\_\_\_\_  
(Authorized Representative)

*1. Definitions*

With reference to the premium for the Certificate of which this endorsement forms a part:

*Master Worker Policy* means the Master Worker Policy issued by NELIA;

*Certificate Holder* means the first Named Insured in a Certificate issued to form a part of the Master Worker Policy;

*Advance premium*, for any calendar year, is the estimated standard premium for that calendar year;

*Standard premium*, for any calendar year, is the premium for that calendar year computed in accordance with the companies' rules, rates, rating plans (other than the Industry Retrospective Rating Plan), premiums and minimum premiums applicable to this insurance. Standard premium includes elements for premium taxes, expenses, profit and contingencies, guaranteed cost insurance and estimated reserve premium. The elements of standard premium, other than for premium taxes and estimated reserve premium, are not subject to retrospective adjustment;

*Reserve premium* means that portion of the premium for a Certificate (including reserve premium charges paid) that is specifically allocated under the Industry Retrospective Rating Plan for ratable incurred losses;

*Industry reserve premium*, for any period, is the sum of the reserve premiums for that period for all Certificates issued to form a part of the Master Worker Policy;

*Retrospective adjustment ratio*, for any period, is the ratio of the reserve premium for this Certificate for that period to the industry reserve premium for the same period;

*Incurred losses* means the sum of all:

(1) Losses and expenses paid by NELIA, and

(2) Reserves for losses and expenses as estimated by NELIA, because of obligations assumed and expenses incurred in connection with such obligations by the members of NELIA under the Master Worker Policy;

*Ratable incurred losses* means 95% of incurred losses. Ratable incurred losses are the portion of incurred losses which are not covered by the guaranteed cost insurance element of standard premiums;

*Non-ratable incurred losses* means 5% of incurred losses. Nonratable incurred losses are the portion of incurred losses which are covered by the guaranteed cost insurance element of standard premiums;

*Reserve for refunds*, as of any date, is the algebraic difference between:

§ 140.91

10 CFR Ch. I (1-1-10 Edition)

(1) All industry reserve premium for the period from January 1, 1988 through such date, minus

(2) The total for the same period of (a) all ratable incurred losses and (b) all industry reserve premium refunds made under the Industry Retrospective Rating Plan by members of NELIA;

*Industry reserve premium charge*, for any period, means the amount determined pursuant to the provisions of Section 4 of this endorsement for payment by the Named Insureds under Certificates;

*Reserve premium charge* means the portion of an industry reserve premium charge payable by the Named Insureds under Certificates;

*Industry reserve premium refund* for any period, means the amount determined pursuant to the provisions of Section 4 of this endorsement for return to the Named Insureds under Certificates;

*Reserve premium refund* means the portion of an industry reserve premium refund returnable to the Named Insureds under this Certificate.

2. *Payment of Advance and Standard Premiums*

The Named Insureds shall pay the companies the advance premium stated in the declarations, for the period from the effective date of this Certificate through December 31 following. Thereafter, at the beginning of each calendar year while this Certificate is in force, the Named Insureds shall pay the advance premium for such year to the companies.

The advance premium for each calendar year shall be stated in the Advance and Standard Premium Endorsement for the year issued by the companies as soon as practicable prior to or after the beginning of the year.

As soon as practicable after the end of a calendar year or the Certificate Coverage Period, the standard premium for the preceding year shall be finally determined and stated in the Advance and Standard Premium Endorsement for that year. If the Standard Premium exceeds the Advance Premium paid for that year, the Named Insureds shall pay the excess to the companies; if less, the companies shall return to the Named Insureds the excess portion paid.

The Named Insureds shall maintain records of the information necessary for premium computation and shall send copies of such records to the companies as directed, at the end of each calendar year, at the end of the Certificate Coverage Period and at such other times as the companies may direct.

3. *Special Reserve Account; Use of Reserve Premiums*

NELIA shall maintain on behalf of its members a Special Reserve Account for hold-

ing collectively all reserve premiums paid for all Certificates issued to form a part of the Master Worker Policy. Such premiums, together with any undistributed net income realized thereon after taxes and investment expenses, shall be used for the following purposes only:

(1) To pay ratable incurred losses or, in the event ratable incurred losses are paid under the Master Worker Policy from funds advanced by the members of NELIA subscribing the policy, to reimburse such members as a matter of first priority for the funds advanced;

(2) To refund any amounts so held to the Named Insureds, as provided in Section 4.

No members of NELIA and no Named Insureds shall have any individual interest in or claim upon amounts held in the special Reserve Account, except to participate proportionally in any refund or reimbursement provided for above.

All reserve premiums paid or payable for this certificate may be used by NELIA to discharge the obligations of its members under the Master Worker Policy with respect to the above purposes and arising out of claims made under any Certificate issued to form a part of the Master Worker Policy.

4. *Payment of Reserve Premium Charges and Refunds*

As soon as practicable after each December 31 the companies will review the status of the reserve for refunds and report their findings to all Certificate Holders.

If, at any time, the companies find that there is negative balance in the reserve for refunds and that such condition is likely to prevail, they shall determine an appropriate industry reserve premium charge. Similarly, if the companies find that there is a surplus positive balance, they shall determine an appropriate industry reserve premium refund.

The portion of an industry reserve premium charge or an industry reserve premium refund that is:

(1) Payable by the Named Insureds as a reserve premium charge, or

(2) Due such insureds as reserve premium refund, shall be determined by multiplying the industry reserve premium charge or the industry reserve premium refund by the retrospective adjustment ratio applicable to this Certificate.

The amount of any reserve premium charge shall be stated in a Retrospective Reserve Premium Charge Endorsement. The charge shall be paid promptly after receipt of the endorsement.

When all claims covered by the Master Worker Policy are closed the companies shall make a final review and report, and shall determine a final industry reserve premium charge or industry reserve premium refund equal to the amount of the balance.

**Nuclear Regulatory Commission**

**§ 140.91**

*5. Final Premium*

The final premium for this Certificate shall be (a) the sum of the standard premiums for each calendar year, or portion thereof, during which the Certificate remains in force plus (b) the sum of all reserve premiums, including all reserve premium charges, minus (c) the sum of all reserve premium refunds.

*6. Reserve Premium Charge Agreement*

In consideration of (a) the participation of Named Insureds in other Certificates subject to the Industry Retrospective Rating Plan, (b) the undertaking of such Named Insureds to pay their appropriate share of any industry reserve premium charge and (c) the obligations assumed by the members of NELIA under the Master Worker Policy, the Named Insureds, by acceptance of the Master Worker Policy, agree:

(1) That the insurance provided by the Master Policy applies collectively to all claims covered by the policy through any and all Certificates issued to form a part of the policy.

(2) That the right of each Named Insured under a Certificate to receive reserve premium refunds and the obligation of each such insured to pay reserve premiums charges applies to all claims covered by the Master Worker Policy and continues until all such claims are closed, whether or not such claims were before the inception of the Certificate or after its termination.

(3) To pay all reserve premium charges due promptly after receipt of the Retrospective Reserve Premium Charge Endorsement, whether or not the Certificate is terminated. Any reserve premium charge shall be overdue if not paid within 60 days of the date of the invoice for the charge.

Overdue reserve premium charges shall bear interest from the due date until paid at an annual rate equal to the sum of (a) 3% plus (b) a rate of interest equal to Moody's Average Public Utility Bond Yield described in the issue of Moody's Bond Survey current on the due date. Any reserve premium refund due to Named Insureds under a Certificate shall be used to pay any overdue reserve premium charges to such Named Insureds.

*7. Reserve Premium Refund Agreement*

Each member of NELIA subscribing the Master Worker Policy for any calendar year, or portion thereof, with respect to which an industry reserve premium refund is determined to be payable thereby agrees for itself, severally and not jointly, and in the respective proportion of its liability assumed under the Master Worker Policy for that calendar year, to return promptly to the Named Insureds that portion of such refund due such Insureds, as determined in accordance with the provisions of this endorsement.

Accepted and agreed by the first Named Insured in behalf of itself and every other Named Insured stated in the Declarations of the Certificate of which this endorsement forms a part.

\_\_\_\_\_  
(First Named Insured—Type or Print  
Date \_\_\_\_\_  
By \_\_\_\_\_  
(Signature of Authorized Officer)

\_\_\_\_\_  
(Type of Print Named and Title of Officer)  
Effective Date of this Endorsement \_\_\_\_\_  
12:01 a.m. Standard Time  
To form a part of Policy No \_\_\_\_\_  
Issued to \_\_\_\_\_  
Date of Issue \_\_\_\_\_  
For the subscribing companies:  
By \_\_\_\_\_  
General Manager  
Endorsement No: \_\_\_\_\_  
Countersigned by \_\_\_\_\_

**NUCLEAR ENERGY LIABILITY  
INSURANCE ASSOCIATION**

**NUCLEAR ENERGY LIABILITY INSURANCE**

Advance Premium and Standard Premium  
Endorsement, NE-W-2(1/1/88)

*Calendar Year 1988*

**1. Advance Premium**

It is agreed that the Advance Premium due the companies for the period designated above is:

\$ \_\_\_\_\_

**2. Standard Premium and Reserve Premium**

In the absence of a change in the Advance Premium indicated above, it is agreed that, subject to the provisions of the Industry Retrospective Rating Plan, the Standard Premium is said Advance Premium and the estimated reserve Premium element of the Standard Premium is:

\$ \_\_\_\_\_

**Explanation of Use of this Endorsement:**  
This endorsement will be used in the first year of the Master Worker Policy. It states the Advance Premium and the estimated Reserve Premium for the year for the Certificate to which the endorsement is attached.

Effective Date of this Endorsement \_\_\_\_\_  
12:01 a.m. Standard Time  
To form a part of Policy No \_\_\_\_\_  
Issued to \_\_\_\_\_  
Date of Issue \_\_\_\_\_  
For the subscribing companies:  
By \_\_\_\_\_  
General Manager  
Endorsement No: \_\_\_\_\_  
Countersigned by \_\_\_\_\_

§ 140.92

10 CFR Ch. I (1-1-10 Edition)

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

NUCLEAR ENERGY LIABILITY INSURANCE

Advance Premium and Standard Premium Endorsement, NE-W-3 (1/1/88)

Calendar Year \_\_\_\_\_

It is agreed that Items 1 and 2 of Endorsement No. \_\_\_\_\_ are amended to read:

1. Advance Premium

It is agreed that the Advance Premium due the companies for the period designated above is:

\$ \_\_\_\_\_

2. Standard Premium and Reserve Premium

In the absence of a change in the advance premium indicated above, it is agreed that, subject to the provisions of the Industry Retrospective Rating Plan, the Standard Premium is said Advance Premium and the estimated Reserve Premium element of the Standard Premium is:

\$ \_\_\_\_\_

Explanation of Use of this Endorsement: This endorsement will be used for calendar years of the Master Worker Policy after the 1988 calendar year. It states the Advance Premium and the estimated Reserve Premium for the year for the Certificate to which the endorsement is attached.

Effective Date of this Endorsement \_\_\_\_\_

12:01 a.m. Standard Time

To form a part of Policy No. \_\_\_\_\_

Issued to \_\_\_\_\_

Date of Issue \_\_\_\_\_

For the subscribing companies:

By \_\_\_\_\_

General Manager

Endorsement No. \_\_\_\_\_

Countersigned by \_\_\_\_\_

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

NUCLEAR ENERGY LIABILITY INSURANCE

Retrospective Reserve Premium Charge Endorsement, NE-W-dash;5 (1/1/88)

1. Industry Reserve Premium Charge

In accordance with Section 4 of the Industry Retrospective Rating Plant Premium Endorsement attached to each Certificate to this policy, the companies have reviewed the status of the reserve for refunds, found that there is a negative balance in the reserve for refunds and have determined that an industry reserve premium charge, as indicated below, is appropriate:

\$ \_\_\_\_\_

2. Retrospective Adjustment Ratio

The portion of the industry reserve premium charge payable by the Named Insureds under this Certificate is determined by multiplying such charge by this Certificate's retrospective adjustment ratio, which is:

\_\_\_\_\_

3. Reserve Premium Charge

The Named Insureds' portion of the industry reserve premium charge, as calculated above, is:

\$ \_\_\_\_\_

Explanation of Use of this Endorsement: This endorsement will be issued by the companies under the Master Worker Policy after an industry reserve premium charge has been determined because there is a negative balance in the reserve for refunds. It states the reserve premium charge applicable to the Certificate to which the endorsement is attached.

Effective Date of this Endorsement \_\_\_\_\_

12:01 a.m. Standard Time

To form a part of Policy No. \_\_\_\_\_

Issued to \_\_\_\_\_

Date of Issue \_\_\_\_\_

For the subscribing companies

By \_\_\_\_\_

General Manager

Endorsement No. \_\_\_\_\_

Countersigned by \_\_\_\_\_

[25 FR 2948, Apr. 7, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §140.91, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 140.92 Appendix B—Form of indemnity agreement with licensees furnishing insurance policies as proof of financial protection.

This indemnity agreement \_\_\_\_\_ is entered into by and between the \_\_\_\_\_ (hereinafter referred to as the licensee) and the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) pursuant to subsection 170c of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act).

ARTICLE I

As used in this agreement,

1. Nuclear reactor, byproduct material, person, source material, special nuclear material, and precautionary evacuation shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

2.(a) For facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, and except when otherwise