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$$\sum_1^n \left[\frac{R_1}{AR_1} + \frac{R_2}{AR_2} + \frac{R_n}{AR_n} \right] \geq 1$$

[70 FR 37993, July 1, 2005, as amended at 71 FR 20339, Apr. 20, 2006; 82 FR 52826, Nov. 15, 2017]

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

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AUTHORITY: Atomic Energy Act of 1954, secs. 161, 170, 223, 234 (42 U.S.C. 2201, 2210, 2273, 2282); Energy Reorganization Act of

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1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

SOURCE: 25 FR 2944, Apr. 7, 1960, unless otherwise noted.

Subpart A—General Provisions

§ 140.1 Purpose.

The regulations in this part are issued to provide appropriate procedures and requirements for determining:

(a) The financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to section 170 of the Atomic Energy Act of 1954, as amended; and

(b) The liability insurance required of uranium enrichment facility licensees pursuant to section 193 of the Atomic Energy Act of 1954, as amended.

[57 FR 18394, Apr. 30, 1992]

§ 140.2 Scope.

(a) The regulations in this part apply:

(1) To each person who is an applicant for or holder of a license issued under 10 CFR parts 50, 52, or 54 to operate a nuclear reactor; and

(2) With respect to an extraordinary nuclear occurrence, to each person who is an applicant for or holder of a license to operate a production facility or a utilization facility (including an operating license issued under part 50 of this chapter and a combined license under part 52 of this chapter), and to other persons indemnified with respect to the involved facilities.

(3) To each person licensed pursuant to part 70 of this chapter to possess and use plutonium in a plutonium processing and fuel fabrication plant.

(4) To each person licensed pursuant to parts 40 and 70 of this chapter to construct and operate a uranium enrichment facility.

(b)(1) Subpart B of this part does not apply to any person subject to subparts C or D of this part. Subpart C of this part applies only to persons found by the Commission to be Federal agencies. Subpart D of this part applies only to persons found by the Commission to be nonprofit educational institutions with

respect to licenses and applications for licenses for the conduct of educational activities.

(2) Any applicant or licensee subject to this part may apply for a finding that such applicant or licensee is subject to the provisions of subparts C or D of this part. The application should state the grounds for the requested finding. Any application for a finding pursuant to this paragraph may be included in an application for license.

(c) Subpart E of this part sets forth the procedures the Commission will follow and the criteria the Commission will apply in making a determination as to whether or not there has been an extraordinary nuclear occurrence. The form of nuclear energy liability policy for facilities (appendix A) and the forms of indemnity agreements with licensees (appendices B, C, D, and E) include provisions requiring the waiver of certain defenses with respect to an extraordinary nuclear occurrence. These provisions and subpart E are incorporated in this part pursuant to Pub. L. 89-645 (80 Stat. 891). They provide additional assurance of prompt compensation under available indemnity and underlying financial protection for injury or damage resulting from the hazardous properties of radioactive materials or radiation, and they in no way detract from the protection to the public otherwise provided under this part.

[25 FR 2944, Apr. 7, 1960, as amended at 33 FR 15998, Oct. 31, 1968; 42 FR 48, Jan. 3, 1977; 56 FR 64980, Dec. 13, 1991; 57 FR 18394, Apr. 30, 1992; 72 FR 49564, Aug. 28, 2007]

§ 140.3 Definitions.

As used in this part,

(a) *Act* means the Atomic Energy Act of 1954 (68 Stat. 919) including any amendments thereto.

(b) *Commission* means the Nuclear Regulatory Commission or its duly authorized representatives.

(c) *Federal agency* means a Government agency such that any liability in tort based on the activities of such agency would be satisfied by funds appropriated by the Congress and paid out of the United States Treasury.

(d) *Financial protection* means the ability to respond in damages for public liability and to meet the cost of investigating and defending claims and settling suits for such damages.

(e) *Government agency* means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

(f) *Nuclear reactor* means any apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction.

(g) *Person* means: (1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission or the Department, except that the Department shall be considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

(h) *Plutonium processing and fuel fabrication plant* means a plant in which the following operations or activities are conducted:

(1) Operations for manufacture of reactor fuel containing plutonium, where the license or licenses authorize the possession of either five or more kilograms of plutonium, excluding that contained in sealed sources and welded or otherwise sealed unirradiated or irradiated fuel rods, at the site of the plant or authorize the processing of one or more kilograms of plutonium, excluding that contained in sealed sources and welded or otherwise sealed unirradiated or irradiated fuel rods, at the plant, including any of the fol-

lowing processes: (i) Preparation of fuel material; (ii) formation of fuel material into desired shapes; (iii) application of protective cladding; (iv) recovery of scrap material; and (v) storage associated with such operations; or

(2) Research and development activities involving any of the operations described in paragraph (h)(1) of this section, except for research and development activities where the operator is licensed to possess or use plutonium in amounts less than those specified in paragraph (h)(1).

(i) *Source material* means source material as defined in the regulations contained in part 40 of this chapter.

(j) *Special nuclear material* means: (1) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(k) *Testing reactor* means a nuclear reactor which is of a type described in § 50.21(c) of this chapter and for which an application has been filed for a license authorizing operation at:

(1) A thermal power level in excess of 10 megawatts; or

(2) A thermal power level in excess of 1 megawatt, if the reactor is to contain:

(i) A circulating loop through the core in which the applicant proposes to conduct fuel experiments; or

(ii) A liquid fuel loading; or

(iii) An experimental facility in the core in excess of 16 square inches in cross-section.

(l) *Department* means the Department of Energy established by the Department of Energy Organization Act (Pub. L. 95–91, 91 Stat. 565, 42 U.S.C. 7101 *et seq.*), to the extent that the Department, or its duly authorized representatives, exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104 (b), (c) and (d) of the Energy

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Reorganization Act of 1974 (Pub. L. 93-438, 88 Stat. 1233 at 1237, 42 U.S.C. 5814) and retransferred to the Secretary of Energy pursuant to section 301(a) of the Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565 at 577-578, 42 U.S.C. 7151).

(m) *Uranium enrichment facility* means:

(1) Any facility used for separating the isotopes of uranium or enriching uranium in the isotope 235, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

(2) Any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

[25 FR 2944, Apr. 7, 1960, as amended at 40 FR 8793, Mar. 3, 1975; 42 FR 48, Jan. 3, 1977; 45 FR 14201, Mar. 5, 1980; 57 FR 18394, Apr. 30, 1992]

§ 140.4 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretations of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 140.5 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be sent by mail addressed to: ATTN: Document Control Desk, Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD-ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic

submissions can be obtained by visiting the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>; by e-mail to MSHD.Resource@nrc.gov; or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of non-public information.

[73 FR 5726, Jan. 31, 2008, as amended at 74 FR 62686, Dec. 1, 2009; 79 FR 75742, Dec. 19, 2014; 80 FR 74982, Dec. 1, 2015]

§ 140.6 Reports.

(a) In the event of bodily injury or property damage arising out of or in connection with the possession or use of the radioactive material at the location or in the course of transportation, or in the event any claim is made therefor, written notice containing particulars sufficient to identify the licensee and reasonably obtainable information with respect to the time, place, and circumstances thereof, or to the nature of the claim, shall be furnished by or for the licensee to the Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, using an appropriate method listed in § 140.5, but in any case as promptly as practicable. The terms the radioactive material, the location, and in the course of transportation as used in this section shall have the meanings defined in the applicable indemnity agreement between the licensee and the Commission.

(b) The Commission may require any person subject to this part to keep such records and furnish such reports to the Commission as the Commission deems necessary for the administration of the regulations in this part.

[25 FR 2944, Apr. 7, 1960, as amended at 41 FR 16447, Apr. 19, 1976; 42 FR 49, Jan. 3, 1977; 68 FR 58824, Oct. 10, 2003; 73 FR 5726, Jan. 31, 2008; 79 FR 75742, Dec. 19, 2014]

§ 140.7 Fees.

(a)(1) Each reactor licensee shall pay a fee to the Commission based on the following schedule:

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(i) For indemnification from \$500 million to \$400 million inclusive, a fee of \$30 per year per thousand kilowatts of thermal capacity authorized in the license;

(ii) For indemnification from \$399 million to \$300 million inclusive, a fee of \$24 per year per thousand kilowatts of thermal capacity authorized in the license;

(iii) For indemnification from \$299 million to \$200 million inclusive, a fee of \$18 per year per thousand kilowatts of thermal capacity authorized in the license;

(iv) For indemnification from \$199 million to \$100 million inclusive, a fee of \$12 per year per thousand kilowatts of thermal capacity authorized in the license; and

(v) For indemnification from \$99 million to \$1 million inclusive, a fee of \$6 per year per thousand kilowatts of thermal capacity authorized in the license.

(2) No fee will be less than \$100 per annum for any nuclear reactor. This fee is for the period beginning with the date on which the applicable indemnity agreement is effective. The various levels of indemnity fees are set forth in the schedule in this paragraph. The amount of indemnification for determining indemnity fees will be computed by subtracting from the statutory limit of liability the amount of financial protection required of the licensee. In the case of licensees subject to the provision of §140.11(a)(4), this total amount will be the amount, as determined by the Commission, of the financial protection available to licensees at the close of the calendar year preceding the one in which the fee becomes due. For those instances in which a certified financial statement is provided as a guarantee of payment of deferred premiums in accordance with §140.21(e), a fee of \$1,000 or the indemnity fee, whichever is greater, is required.

(b) Where a licensee manufactures a number of nuclear reactors each having a power level not exceeding 3½ megawatts, for sale to others and operates them at the licensee's location temporarily prior to delivery, the licensee shall report to the Commission the maximum number of such reactors

to be operated at that location at any one time. In such cases, the fee shall equal \$100 multiplied by the number of reactors reported by the licensee. In the event the number of reactors operated at any one time exceed the estimate so reported, the licensee shall report the additional number of reactors to the Commission and additional charges will be made. If experience shows that less than the estimated number of reactors have been operated, appropriate adjustment in subsequent bills will be made by the Commission.

(c) Each person licensed to possess and use plutonium in a plutonium processing and fuel fabrication plant shall pay to the Commission a fee of \$5,000 per year for indemnification. This fee is for the period beginning with the date on which the applicable indemnity agreement is effective.

(d) Indemnity fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by check, draft, money order, credit card, or electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange). Federal agencies may also make payments by the On-Line Payment and Collections System (OPAC's). Where specific payment instructions are provided on the invoices, payment should be made accordingly, e.g. invoices of \$5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments.

[25 FR 2944, Apr. 7, 1960, as amended at 42 FR 49, Jan. 3, 1977; 63 FR 31851, June 10, 1998]

§ 140.8 Specific exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and are otherwise in the public interest.

[34 FR 19546, Dec. 11, 1969]

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§ 140.9 Modification of indemnity agreements.

The Commission will publish in the FEDERAL REGISTER a notice of its intent to enter into an indemnity agreement, or agreement amending an indemnity agreement, which contains provisions different from the form of the applicable indemnity agreement set forth in the appendices to this part, as such appendices may be amended from time to time.

[48 FR 1030, Jan. 10, 1983]

§ 140.9a Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150-0039.

(b) The approved information collection requirements contained in this part appear in §§ 140.6, 140.7, 140.13, 140.13a, 140.13b, 140.15, 140.17, 140.20, and 140.21.

[62 FR 52190, Oct. 6, 1997]

Subpart B—Provisions Applicable Only to Applicants and Licensees Other Than Federal Agencies and Nonprofit Educational Institutions

§ 140.10 Scope.

This subpart applies to each person who is an applicant for or holder of a license issued under 10 CFR parts 50 or 54 to operate a nuclear reactor, or is the applicant for or holder of a combined license issued under parts 52 or 54 of this chapter, except licenses held by persons found by the Commission to be Federal agencies or nonprofit educational institutions licensed to conduct educational activities. This subpart also applies to persons licensed to

possess and use plutonium in a plutonium processing and fuel fabrication plant.

[72 FR 49564, Aug. 28, 2007]

§ 140.11 Amounts of financial protection for certain reactors.

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

(1) In the amount of \$1,000,000 for each nuclear reactor he is authorized to operate at a thermal power level not exceeding ten kilowatts;

(2) In the amount of \$1,500,000 for each nuclear reactor he is authorized to operate at a thermal power level in excess of ten kilowatts but not in excess of one megawatt;

(3) In the amount of \$2,500,000 for each nuclear reactor other than a testing reactor or a reactor licensed under section 104b of the Act which he is authorized to operate at a thermal power level exceeding one megawatt but not in excess of ten megawatts; and

(4) In an amount equal to the sum of \$450,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the pro rata share of the aggregate public liability claims and costs, excluding costs payment of which is not authorized by section 170o.(1)(D) of the Act, in excess of that covered by primary financial protection) for each nuclear reactor which is licensed to operate and which is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more: Provided, however, that under such a plan for deferred premium charges for each nuclear reactor that is licensed to operate, no more than \$121,255,000 with respect to any nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) and no more than \$18,963,000 per incident within one calendar year shall be charged. *Except that*, where a person is authorized to operate a combination of 2 or more nuclear reactors located at a single site, each of which has a rated capacity of 100,000 or more electrical kilowatts but not more than 300,000 electrical kilowatts with a combined rated capacity of not more than

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1,300,000 electrical kilowatts, each such combination of reactors shall be considered to be a single nuclear reactor for the sole purpose of assessing the applicable financial protection required under this section.

(b) In any case where a person is authorized under parts 50, 52, or 54 of this chapter to operate two or more nuclear reactors at the same location, the total primary financial protection required of the licensee for all such reactors is the highest amount which would otherwise be required for any one of those reactors; provided, that such primary financial protection covers all reactors at the location.

[25 FR 2944, Apr. 7, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §140.11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 140.12 Amount of financial protection required for other reactors.

(a) Each licensee is required to have and maintain financial protection for each nuclear reactor for which the amount of financial protection is not determined in §140.11, in an amount determined pursuant to the formula and other provisions of this section: *Provided*, That in no event shall the amount of financial protection required for any nuclear reactor under this section be less than \$4,500,000 or more than \$74,000,000.

(b)(1) The formula is:

$x = B \text{ times } P$

(2) In the formula:

x = Amount of financial protection in dollars.

B = Base amount of financial protection.

P = Population factor.

(3) The base amount of financial protection is equal to \$185 times the maximum power level, expressed in thermal kilowatts, as authorized by the applicable license.

(4) The population factor (P) shall be determined as follows:

(i) *Step 1*. The area to be considered includes all minor civil divisions (as shown in the 1950 Census of Population, Bureau of the Census, or later data available from the Bureau) which are wholly or partly within a circle with

the facility at its center and having a radius in miles equal to the square root of the maximum authorized power level in thermal megawatts.

(ii) *Step 2*. Identify all minor civil divisions according to the same census which are in whole or in part within the circle determined in Step 1. Determine the population of each such minor civil division (according to the same census or later data available from the Bureau of the Census). For each minor civil division, divide its population by the square of the estimated distance to the nearest mile from the reactor to the geographic center of the minor civil division: *Provided*, That no such distance shall be deemed to be less than one mile. If the sum of the quotients thus obtained for all minor civil divisions wholly or partly within the circle is 1,000 or less, the population factor is 1. If the sum of these quotients is more than 1,000 but not more than 3,000, the population factor is 1.2. If the sum of these quotients is more than 3,000 but not more than 5,000, the population factor is 1.4. If the sum of these quotients is more than 5,000 but not more than 7,000, the population factor is 1.6. If the sum of these quotients is more than 7,000 but not more than 9,000, the population factor is 1.8. If the sum of these quotients is more than 9,000 the population factor is 2.0.

(c) In any case where a person is authorized under parts 50, 52, or 54 of this chapter to operate two or more nuclear reactors at the same location, the total financial protection required of the licensee for all such reactors is the highest amount which would otherwise be required for any one of those reactors; provided, that such financial protection covers all reactors at the location.

(d) Except in cases where the amount of financial protection calculated under this section is a multiple of \$100,000, amounts determined pursuant to this section shall be adjusted to the next highest multiple of \$100,000.

[25 FR 2944, Apr. 7, 1960, as amended at 26 FR 1397, Feb. 17, 1961; 32 FR 8125, June 7, 1967; 72 FR 49565, Aug. 28, 2007]

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§ 140.13 Amount of financial protection required of certain holders of construction permits and combined licenses under 10 CFR part 52.

Each holder of a part 50 construction permit, or a holder of a combined license under part 52 of this chapter before the date that the Commission had made the finding under 10 CFR 52.103(g), who also holds a license under part 70 of this chapter authorizing ownership, possession and storage only of special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of either an operating license under 10 CFR part 50 or combined license under 10 CFR part 52, shall, during the period before issuance of a license authorizing operation under 10 CFR part 50, or the period before the Commission makes the finding under § 52.103(g) of this chapter, as applicable, have and maintain financial protection in the amount of \$1,000,000. Proof of financial protection shall be filed with the Commission in the manner specified in § 140.15 of this chapter before issuance of the license under part 70 of this chapter.

[72 FR 49565, Aug. 28, 2007]

§ 140.13a Amount of financial protection required for plutonium processing and fuel fabrication plants.

(a) Each holder of a license issued pursuant to part 70 of this chapter to possess and use plutonium at a plutonium processing and fuel fabrication plant is required to have and maintain financial protection in the form specified in § 140.14 in the amount of \$200,000,000. Proof of financial protection shall be filed with the Commission in the manner in § 140.15 prior to issuance of the license under part 70 of this chapter.

(b) In any case, when a person is authorized pursuant to part 70 of this chapter to possess and use plutonium at two or more plutonium processing and fuel fabrication plants at the same location, the total financial protection required of the licensee for all such plants is the highest amount which would otherwise be required for any one of those plants: *Provided, however,*

That such financial protection covers all such plants at the location.

[42 FR 49, Jan. 3, 1977, as amended at 42 FR 20140, Apr. 18, 1977; 44 FR 20632, Apr. 6, 1979; 54 FR 24158, June 6, 1989]

§ 140.13b Amount of liability insurance required for uranium enrichment facilities.

Each holder of a license issued under Parts 40 or 70 of this chapter for a uranium enrichment facility that involves the use of source material or special nuclear material is required to have and maintain liability insurance. The liability insurance must be the type and in the amounts the Commission considers appropriate to cover liability claims arising out of any occurrence within the United States that causes, within or outside the United States, bodily injury, sickness, disease, death, loss of or damage to property, or loss of use of property arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of chemical compounds containing source material or special nuclear material. Proof of liability insurance must be filed with the Commission as required by § 140.15 before issuance of a license for a uranium enrichment facility under parts 40 and 70 of this chapter.

[57 FR 18394, Apr. 30, 1992]

§ 140.14 Types of financial protection.

(a) The amounts of financial protection required under this part may be furnished and maintained in the form of:

(1) An effective policy of liability insurance from private sources; or

(2) Adequate resources to provide the financial protection required by §§ 140.11, 140.12; 140.13 or § 140.13a; or

(3) Such other type of financial protection as the Commission may approve; or

(4) Any combination of the foregoing.

(b) In any case where the Commission has approved proof of financial protection filed by a licensee the licensee shall not substitute one type of financial protection for another type without first obtaining the written approval of the Commission.

[25 FR 2944, Apr. 7, 1960, as amended at 42 FR 49, Jan. 3, 1977]

§ 140.15 Proof of financial protection.

(a)(1) Licensees who maintain financial protection in whole or in part in the form of liability insurance shall provide proof of financial protection that consists of a copy of the liability policy (or policies) together with a certificate by the insurers issuing the policy stating that the copy is a true copy of the currently effective policy issued to the licensee. The licensee may furnish proof of financial protection in the form of the nuclear energy liability insurance policy set forth in §140.91 or in any other form acceptable to the Commission.

(2) Such proof may alternatively, consist of a copy of the declarations page of a nuclear energy liability policy in the form set forth in §140.91 and issued to the licensee: *Provided*, That such policy form has been filed by the insurers with the Commission. The declarations page shall be accompanied by a certificate by the insurers stating that said copy is a true copy of the declarations page of a currently effective policy and identifying the policy (including endorsements) by reference to the policy form which has been filed by them with the Commission.

(3) The Commission will accept any other form of nuclear energy liability insurance as proof of financial protection if it determines that the provisions of such insurance provide financial protection under the requirements of the Commission's regulations and the Act.

(b) Proof of financial protection in the case of licensees who maintain financial protection in whole or in part in the form specified in §140.14(a)(2) shall consist of a showing that the licensee clearly has adequate resources to provide the financial protection required under this part. For this purpose the applicant or licensee shall file with the Commission:

(1) Annual financial statements for the three complete calendar or fiscal years preceding the date of filing, together with an opinion thereon by a certified public accountant. The financial statements shall include balance sheets, operating statements and such supporting schedules as may be needed for interpretation of the balance sheets and operating statements.

(2) If the most recent statements required under paragraph (b)(1) of this section have been prepared as of a date more than 90 days prior to the date of filing, similar financial statements, prepared as of a date not more than 90 days prior to the date of filing, should be included. These statements need not be reviewed by a certified public accountant.

(c) The Commission may require any licensee to file with the Commission such additional proof of financial protection or other financial information as the Commission determines to be appropriate for the purpose of determining whether the licensee is maintaining financial protection as required under this part.

(d) Proof of financial protection shall be subject to the approval of the Commission.

(e) The licensee shall promptly notify the Commission of any material change in proof of financial protection or in other financial information filed with the Commission under this part.

[25 FR 2944, Apr. 7, 1960, as amended at 33 FR 15999, Oct. 31, 1968; 49 FR 11148, Mar. 26, 1984]

§ 140.16 Commission review of proof of financial protection.

The Commission will review proof of financial protection filed by any licensee or applicant for license. If the Commission finds that the licensee or applicant for license is maintaining financial protection in accordance with the requirements of this part, approval of the financial protection will be evidenced by incorporation of appropriate provision in the license.

§ 140.17 Special provisions applicable to licensees furnishing financial protection in whole or in part in the form of liability insurance.

In any case where a licensee undertakes to maintain financial protection in the form of liability insurance for all or part of the financial protection required by this part,

(a) The Commission may require proof that the organization or organizations which have issued such policies are legally authorized to issue them and do business in the United States and have clear ability to meet their obligations; and

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(b) At least 30 days prior to the termination of any such policy, the licensee shall notify the Commission of the renewal of such policy or shall file other proof of financial protection.

§ 140.18 Special provisions applicable to licensees furnishing financial protection in whole or in part in the form of adequate resources.

In any case where a licensee undertakes to maintain financial protection in the form specified in § 140.14(a)(2) for all or part of the financial protection required by this part, the Commission may require such licensee to file with the Commission such financial information as the Commission determines to be appropriate for the purpose of determining whether the licensee is maintaining financial protection as required by this part.

[42 FR 43385, Aug. 29, 1977]

§ 140.19 Failure by licensees to maintain financial protection.

In any case where the Commission finds that the financial protection maintained by a licensee is not adequate to meet the requirements of this part, the Commission may suspend or revoke the license or may issue such order with respect to licensed activities as the Commission determines to be appropriate or necessary in order to carry out the provisions of this part and of section 170 of the Act.

§ 140.20 Indemnity agreements and liens.

(a) The Commission will execute and issue agreements of indemnity pursuant to the regulations in this part or such other regulations as may be issued by the Commission. Such agreements, as to any licensee, shall be effective on:

(1)(i) The effective date of the license (issued pursuant to part 50 of this chapter) authorizing the licensee to operate the nuclear reactor involved; or

(ii) The date that the Commission makes the finding under § 52.103(g) of this chapter; or

(iii) The effective date of the license (issued under part 70 of this chapter) authorizing the licensee to possess and store special nuclear material at the site of the nuclear reactor for use as

fuel in operation of the nuclear reactor after issuance of an operating license for the reactor, whichever is earlier. No such agreement, however, shall be effective prior to September 26, 1957; or

(2) August 1, 1977 or the effective date of the license (issued pursuant to part 70 of this chapter) authorizing the licensee to possess and use plutonium at the site of the plutonium processing and fuel fabrication plant for processing in that plant, whichever date is later.

(b) If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

(c) The Commission shall require the immediate submission of financial statements by those licensees who indicate, after an assessment of the retrospective premium by the insurance pools, that they will not pay the assessment. Such financial statements shall include, as a minimum, exhibits indicating internally generated funds from operations and accumulated retained earnings. Subsequent submission of financial statements by such licensees may be requested by the Commission, as required.

(d) If premiums are paid by the Commission as provided in paragraph (b) of this section, payment by the Commission shall create a lien in the amount paid in favor of the United States upon all property and rights to property, whether real or personal, belonging to such licensee. The lien shall arise at the time payment is made by the Commission and shall continue until the liability for the amount (or a judgment against the licensee arising out of such liability) is satisfied or becomes unenforceable. The Commission will issue a certificate of release of any such lien if it finds that the liability for the amount has been fully satisfied or has become legally unenforceable.

(e) If the Commission determines that the licensee is financially able to reimburse the Commission for a deferred premium payment made in its behalf, and the licensee, after notice of such determination by the Commission fails to make such reimbursement within 120 days, the Commission will

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take appropriate steps to suspend the license for 30 days. The Commission may take such further action as is necessary if reimbursement is not made within the 30-day suspension period including but not limited to termination of the operating license.

(f)(1)(i) The general form of indemnity agreement to be entered into by the Commission with reactor licensees who furnish financial protection in the form of the nuclear energy liability insurance policy set forth in appendix A is contained in § 140.92, appendix B. The general form of indemnity agreement to be entered into by the Commission with reactor licensees who furnish financial protection in the form specified in § 140.14(a)(2) is set forth in § 140.93, appendix C.

(ii) The general form of indemnity agreement to be entered into by the Commission with persons licensed to possess and use plutonium in a plutonium processing and fuel fabrication plant and who furnish financial protection in the form of the nuclear energy liability insurance policy set forth in appendix A² is contained in § 140.107, appendix G. The general form of indemnity agreement to be entered into by the Commission with such licensees who furnish financial protection in the form specified in § 140.14(a)(2) is set forth in § 140.108, appendix H.

(2) The form of indemnity agreement to be entered into by the Commission with any particular licensee under this subpart shall contain such modifications of the applicable form in §§ 140.92, 140.93, 140.107 and 140.108, appendices A, B, C, G and H, as are provided for in applicable licenses, regulations or orders of the Commission.

(3) Each licensee who has executed an indemnity agreement under this subpart shall enter into such agreements amending such indemnity agreement as are required by applicable licenses, regulations, or orders of the Commission.

[42 FR 49, Jan. 3, 1977, as amended at 72 FR 49565, Aug. 28, 2007]

²The form of the nuclear energy liability insurance policy for these licensees will be the subject of pertinent endorsements after discussion with the insurance pools.

§ 140.21 Licensee guarantees of payment of deferred premiums.

Each licensee required to have and maintain financial protection for each nuclear reactor as determined in § 140.11(a)(4) shall at the issuance of the license and annually, on the anniversary of the date on which the indemnity agreement is effective, provide evidence to the Commission that it maintains one of the following types of guarantee of payment of deferred premium in the amount specified in § 140.11(a)(4) for each reactor it is licensed to operate:

- (a) Surety bond,
- (b) Letter of credit,
- (c) Revolving credit/term loan arrangement,
- (d) Maintenance of escrow deposits of government securities,
- (e) Annual certified financial statement showing either that a cash flow (*i.e.*, cash available to a company after all operating expenses, taxes, interest charges, and dividends have been paid) can be generated and would be available for payment of retrospective premiums within three (3) months after submission of the statement, or a cash reserve or a combination of cash flow and cash reserve, or
- (f) Such other type of guarantee as may be approved by the Commission.

[42 FR 50, Jan. 3, 1977, as amended at 71 FR 15012, Mar. 27, 2006; 74 FR 62686, Dec. 1, 2009; 79 FR 38769, July 9, 2014]

§ 140.22 Commission guarantee and reimbursement agreements.

Each licensee required to have and maintain financial protection for each nuclear reactor as determined in § 140.11(a)(4) shall execute an indemnity agreement with the Commission that provides for the payment by the Commission of deferred premiums not paid by the licensee and reimbursement of the Commission by the licensee. The general forms of agreement to be entered into by the Committee and licensees are set forth in § 140.92, appendix B and § 140.93, appendix C.

[42 FR 50, Jan. 3, 1977]

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Subpart C—Provisions Applicable Only to Federal Agencies

Subpart D—Provisions Applicable Only to Nonprofit Educational Institutions

§ 140.51 Scope.

This subpart applies only to persons found by the Commission to be Federal agencies, which have applied for or are holders of licenses issued pursuant to part 50 of this chapter authorizing operation of nuclear reactors.

NOTE: Federal agencies are not required to furnish financial protection.

§ 140.52 Indemnity agreements.

(a) The Commission will execute and issue agreements of indemnity with each Federal agency subject to this subpart pursuant to the regulations in this part or such other regulations as may be issued by the Commission. Such agreements, as to any licensee, shall be effective on:

(1) The effective date of the license (issued pursuant to part 50 of this chapter) authorizing the licensee to operate the nuclear reactor involved; or

(2) The effective date of the license (issued pursuant to part 70 of this chapter) authorizing the licensee to possess and store special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of an operating license for the reactor, whichever is earlier. No such agreement, however, shall be effective prior to September 26, 1957.

(b)(1) The general form of indemnity agreement to be entered into with licensees subject to this subpart is contained in §140.94 appendix D.

(2) The form of indemnity agreement to be entered into by the Commission with any particular licensee under this subpart shall contain such modifications of the form in §140.94, as are provided for in applicable licenses, regulations or orders of the Commission.

(3) Each licensee who has executed an indemnity agreement under this subpart shall enter into such agreements amending such indemnity agreement as are required by applicable licenses, regulations or orders of the Commission.

[27 FR 2885, Mar. 29, 1962, as amended at 33 FR 15999, Oct. 31, 1968]

§ 140.71 Scope.

This subpart applies only to applicants for and holders of licenses issued for the conduct of educational activities to persons found by the Commission to be nonprofit educational institutions, except that this subpart does not apply to Federal agencies.

NOTE: Financial protection is not required with respect to licenses issued for the conduct of educational activities to persons found by the Commission to be non-profit educational institutions.

§ 140.72 Indemnity agreements.

(a) The Commission will execute and issue agreements of indemnity with each non-profit educational institution subject to this subpart pursuant to the regulations in this part or such other regulations as may be issued by the Commission. Such agreements, as to any licensee, shall be effective on:

(1) The effective date of the license (issued pursuant to part 50 of this chapter) authorizing the licensee to operate the nuclear reactor involved; or

(2) The effective date of the license (issued pursuant to part 70 of this chapter) authorizing the licensee to possess and store special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of an operating license for the reactor, whichever is earlier. No such agreement, however, shall be effective prior to September 26, 1957.

(b)(1) The general form of indemnity agreement to be entered into with licensees subject to this subpart is contained in §140.95 appendix E.

(2) The form of indemnity agreement to be entered into by the Commission with any particular licensee under this subpart shall contain such modifications of the form in §140.95 appendix E, as are provided for in applicable licenses, regulations or orders of the Commission.

(3) Each licensee who has executed an indemnity agreement under this subpart shall enter into such agreements amending such indemnity agreement as are required by applicable licenses,

regulations or orders of the Commission.

[27 FR 2885, Mar. 29, 1962, as amended at 33 FR 15999, Oct. 31, 1968]

Subpart E—Extraordinary Nuclear Occurrences

§ 140.81 Scope and purpose.

(a) *Scope.* This subpart applies to applicants for and holders of licenses authorizing operation of production facilities and utilization facilities, including combined licenses under part 52 of this chapter, and to other persons indemnified with respect to such facilities.

(b) *Purpose.* One purpose of this subpart is to set forth the criteria which the Commission proposes to follow in order to determine whether there has been an “extraordinary nuclear occurrence.” The other purpose is to establish the conditions of the waivers of defenses proposed for incorporation in indemnity agreements and insurance policies or contracts furnished as proof of financial protection.

(1) The system is to come into effect only where the discharge or dispersal constitutes a substantial amount of source, special nuclear or byproduct material, or has caused substantial radiation levels offsite. The various limits in present NRC regulations are not appropriate for direct application in the determination of an “extraordinary nuclear occurrence,” for they were arrived at with other purposes in mind, and those limits have been set at a level which is conservatively arrived at by incorporating a significant safety factor. Thus, a discharge or dispersal which exceeds the limits in NRC regulations, or in license conditions, although possible cause for concern, is not one which would be expected to cause substantial injury or damage unless it exceeds by some significant multiple the appropriate regulatory limit. Accordingly, in arriving at the values in the criteria to be deemed “substantial” it is more appropriate to adopt values separate from NRC health and safety regulations, and, of course, the selection of these values will not in any way affect such regulations. A substantial discharge, for purposes of the

criteria, represents a perturbation of the environment which is clearly above that which could be anticipated from the conduct of normal activities. The criteria are intended solely for the purposes of administration of the Commission’s statutory responsibilities under Pub. L. 89–645, and are not intended to indicate a level of discharge or dispersal at which damage to persons or property necessarily will occur, or a level at which damage is likely to occur, or even a level at which some type of protective action is indicated. It should be clearly understood that the criteria in no way establish or indicate that there is a specific threshold of exposure at which biological damage from radiation will take place. It cannot be emphasized too frequently that the levels set to be used as criteria for the first part of the determination, that is, the criteria for amounts offsite or radiation levels offsite which are substantial, are not meant to indicate that, because such amounts or levels are determined to be substantial for purposes of administration, they are “substantial” in terms of their propensity for causing injury or damage.

(2) It is the purpose of the second part of the determination that the Commission decide whether there have in fact been or will probably be substantial damages to persons offsite or property offsite. The criteria for substantial damages were formulated, and the numerical values selected, on a wholly different basis from that on which the criteria used for the first part of the determination with respect to substantial discharge were derived. The only interrelation between the values selected for the discharge criteria and the damage criteria is that the discharge values are set so low that it is extremely unlikely the damage criteria could be satisfied unless the discharge values have been exceeded.

(3) The first part of the test is designed so that the Commission can assure itself that something exceptional has occurred; that something untoward and unexpected has in fact taken place and that this event is of sufficient significance to raise the possibility that some damage to persons or property offsite has resulted or may result. If there appears to be no damage, the

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waivers will not apply because the Commission will be unable, under the second part of the test, to make a determination that “substantial damages” have resulted or will probably result. If damages have resulted or will probably result, they could vary from de minimis to serious, and the waivers will not apply until the damages, both actual and probable, are determined to be “substantial” within the second part of the test.

(4) The presence or absence of an extraordinary nuclear occurrence determination does not concomitantly determine whether or not a particular claimant will recover on his claim. In effect, it is intended primarily to determine whether certain potential obstacles to recovery are to be removed from the route the claimant would ordinarily follow to seek compensation for his injury or damage. If there has not been an extraordinary nuclear occurrence determination, the claimant must proceed (in the absence of settlement) with a tort action subject to whatever issues must be met, and whatever defenses are available to the defendant, under the law applicable in the relevant jurisdiction. If there has been an extraordinary nuclear occurrence determination, the claimant must still proceed (in the absence of settlement) with a tort action, but the claimant's burden is substantially eased by the elimination of certain issues which may be involved and certain defenses which may be available to the defendant. In either case the defendant may defend with respect to such of the following matters as are in issue in any given claim: The nature of the claimant's alleged damages, the causal relationship between the event and the alleged damages, and the amount of the alleged damages.

[33 FR 15999, Oct. 31, 1968, as amended at 40 FR 8793, Mar. 3, 1975; 72 FR 49565, Aug. 28, 2007]

§ 140.82 Procedures.

(a) The Commission may initiate, on its own motion, the making of a determination as to whether or not there has been an extraordinary nuclear occurrence. In the event the Commission does not so initiate the making of a determination, any affected person, or

any licensee or person with whom an indemnity agreement is executed or a person providing financial protection may petition the Commission for a determination of whether or not there has been an extraordinary nuclear occurrence. If the Commission does not have, or does not expect to have, within 7 days after it has received notification of an alleged event, enough information available to make a determination that there has been an extraordinary nuclear occurrence, the Commission will publish a notice in the FEDERAL REGISTER setting forth the date and place of the alleged event and requesting any persons having knowledge thereof to submit their information to the Commission.

(b) When a procedure is initiated under paragraph (a) of this section, the Commission will designate members of the principal staff to begin immediately to assemble the relevant information and prepare a report on which the Commission can make its determination.

[33 FR 15999, Oct. 31, 1968, as amended at 40 FR 8794, Mar. 3, 1975]

§ 140.83 Determination of extraordinary nuclear occurrence.

If the Commission determines that both of the criteria set forth in §§ 140.84 and 140.85 have been met, it will make the determination that there has been an extraordinary nuclear occurrence. If the Commission publishes a notice in the FEDERAL REGISTER in accordance with § 140.82(a) and does not make a determination within 90 days thereafter that there has been an extraordinary nuclear occurrence, the alleged event will be deemed not to be an extraordinary nuclear occurrence. The time for the making of a determination may be extended by the Commission by notice published in the FEDERAL REGISTER.

[33 FR 15999, Oct. 31, 1968]

§ 140.84 Criterion I—Substantial discharge of radioactive material or substantial radiation levels offsite.

The Commission will determine that there has been a substantial discharge or dispersal of radioactive material offsite, or that there have been substantial levels of radiation offsite, when, as

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a result of an event comprised of one or more related happenings, radioactive material is released from its intended place of confinement or radiation levels occur offsite and either of the following findings are also made:

(a) The Commission finds that one or more persons offsite were, could have been, or might be exposed to radiation or to radioactive material, resulting in a dose or in a projected dose in excess of one of the levels in the following table:

TOTAL PROJECTED RADIATION DOSES

Critical organ	Dose (rems)
Thyroid	30
Whole body	20
Bone marrow	20
Skin	60
Other organs or tissues	30

Exposures from the following types of sources of radiation shall be included:

(1) Radiation from sources external to the body;

(2) Radioactive material that may be taken into the body from its occurrence in air or water; and

(3) Radioactive material that may be taken into the body from its occurrence in food or on terrestrial surfaces.

(b) The Commission finds that:

(1) Surface contamination of at least a total of any 100 square meters of offsite property has occurred as the result of a release of radioactive material from a production or utilization facility and such contamination is characterized by levels of radiation in excess of one of the values listed in Column 1 or Column 2 of the following table, or

(2) Surface contamination of any offsite property has occurred as the result of a release of radioactive material in the course of transportation and such contamination is characterized by levels of radiation in excess of one of the values listed in column 2 of the following table:

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TOTAL SURFACE CONTAMINATION LEVELS¹

Type of emitter	Column 1 Offsite property, contiguous to site, owned or leased by person with whom an indemnity agreement is executed	Column 2 Other offsite property
Alpha emission from transuranic isotopes.	3.5 microcuries per square meter.	0.35 microcuries per square meter.
Alpha emission from isotopes other than transuranic isotopes.	35 microcuries per square meter.	3.5 microcuries per square meter.
Beta or gamma mission.	40 millirads/hour @ 1 cm. ² .	4 millirads/hour @ 1 cm. ²

¹The maximum levels (above background), observed or projected, 8 or more hours after initial deposition.

²Measured through not more than 7 milligrams per square centimeter of total absorber.

[33 FR 15999, Oct. 31, 1968, as amended at 40 FR 8794, Mar. 3, 1975]

§ 140.85 Criterion II—Substantial damages to persons offsite or property offsite.

(a) After the Commission has determined that an event has satisfied Criterion I, the Commission will determine that the event has resulted or will probably result in substantial damages to persons offsite or property offsite if any of the following findings are made:

(1) The Commission finds that such event has resulted in the death or hospitalization, within 30 days of the event, of five or more people located offsite showing objective clinical evidence of physical injury from exposure to the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material; or

(2) The Commission finds that \$2,500,000 or more of damage offsite has been or will probably be sustained by any one person, or \$5 million or more of such damage in the aggregate has been or will probably be sustained, as the result of such event; or

(3) The Commission finds that \$5,000 or more of damage offsite has been or will probably be sustained by each of 50 or more persons, provided that \$1 million or more of such damage in the aggregate has been or will probably be sustained, as the result of such event.

(b) As used in paragraphs (a) (2) and (3) of this section, “damage” shall be that arising out of or resulting from

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the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material, and shall be based upon estimates of one or more of the following:

(1) Total cost necessary to put affected property back into use,

(2) Loss of use of affected property,

(3) Value of affected property where not practical to restore to use,

(4) Financial loss resulting from protective actions appropriate to reduce or avoid exposure to radiation or to radioactive materials.

[33 FR 15999, Oct. 31, 1968]

Subpart F—Violations

§ 140.87 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil 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 licensee 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 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 (Facility 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,

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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 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 Endorse-

ment 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

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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 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 \$ _____;¹ (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

¹For 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."

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.

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.

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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 cancellation 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

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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 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 state-

ments 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

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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 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 \$ _____;¹ (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 collectible insurance (other than such concurrent insurance or any other nuclear energy liability insurance 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.

¹For 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."

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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 _____
 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. _____

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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

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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

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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

(c) The limit of liability provisions of Subsection 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.

10 CFR Ch. I (1-1-18 Edition)

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:

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(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

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 *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 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.

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

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(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 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 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 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 En-

ergy 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.

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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 Retropective 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

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(1/1/88)

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

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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 _____

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;

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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;

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.

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, unem-

ployment 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

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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 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.

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 afford 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 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 Nu-

clear 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 may 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.

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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 of this policy 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.

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(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 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.

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:

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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)

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. 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;

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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:

- (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 endorse-

ment 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 holding 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.

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 premium 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 _____

Nuclear Regulatory Commission

\$ 140.91

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 _____

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

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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 at www.fdsys.gov.

§ 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 specifically provided, *amount of financial protection* means the amount specified in Item 2a. and b. of the Attachment annexed hereto, as modified by paragraph 8, Article II, with respect to common occurrences, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan for deferred retrospective premium charges).

(b) For all other facilities, and except where otherwise specifically provided, *amount of financial protection* means the amount specified in Item 2a. and b., of the Attachment annexed hereto, as modified by paragraph 8, Article II, with respect to common occurrences.

3. (a) *Nuclear incident* means any occurrence including an extraordinary nuclear oc-

currence or series of occurrences at the location or in the course of transportation causing bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of the radioactive material.

(b) Any occurrence including an extraordinary nuclear occurrence or series of occurrences causing bodily injury, sickness, disease or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive or other hazardous properties of

i. The radioactive material discharged or dispersed from the location over a period of days, weeks, months or longer and also arising out of such properties of other material defined as *the radioactive material* in any other agreement or agreements entered into by the Commission under subsection 170 c or k of the Act and so discharged or dispersed from *the location* as defined in any such other agreement, or

ii. The radioactive material in the course of transportation and also arising out of such properties of other material defined in any other agreement entered into by the Commission pursuant to subsection 170 c or k of the Act as *the radioactive material* and which is in the course of transportation, shall be deemed to be a common occurrence. A common occurrence shall be deemed to constitute a single nuclear incident.

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

5. *In the course of transportation* means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, and moving from one person licensed by the Commission to another person licensed by the Commission, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:

(a) With respect to transportation of the radioactive material to the location, such transportation is not by pre-determination to be interrupted by the removal of the material from the transporting conveyance for any purpose other than the continuation of such transportation to the location or temporary storage incidental thereto;

(b) The transportation of the radioactive material from the location shall be deemed to end when the radioactive material is removed from the transporting conveyance for any purpose other than the continuation of transportation or temporary storage incidental thereto;

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(c) *In the course of transportation* as used in this agreement shall not include transportation of the radioactive material to the location if the material is also *in the course of transportation* from any other location as defined in any other agreement entered into by the Commission pursuant to subsection 170 c or k of the Act.

6. *Person indemnified* means the licensee and any other person who may be liable for public liability.

7. *Public liability* means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

8. *The location* means the location described in Item 4 of the Attachment hereto.

9. *The radioactive material* means source, special nuclear, and byproduct material which (1) is used or to be used in, or is irradiated or to be irradiated by, the nuclear reactor or reactors subject to the license or licenses designated in the Attachment hereto, or (2) which is produced as the result of operation of said reactor(s).

10. *United States* when used in a geographical sense includes Puerto Rico and all territories and possessions of the United States.

ARTICLE II

1. At all times during the term of the license or licenses designated in Item 3 of the Attachment hereto, the licensee will maintain financial protection in the amount specified in Item 2 of the Attachment and in the form of the nuclear energy liability insurance policy designated in the Attachment. If more than one license is designated in Item 3 of the Attachment, the licensee agrees to maintain such financial protection until the end of the term of that license which will be the last to expire. The licensee shall, notwithstanding the expiration, termination, modification, amendment, suspension or rev-

ocation of any license or licenses designated in Item 3 of the Attachment, maintain such financial protection in effect until all the radioactive material has been removed from the location and transportation of the radioactive material from the location has ended as defined in paragraph 5(b), Article I of this section, or until the Commission authorizes the termination or the modification of such financial protection. The Commission will not unreasonably withhold such authorization.

2. In the event of any payment by the insurer or insurers under a policy or policies specified in Item 5 of the Attachment hereto which reduces the aggregate limit of such policy or policies below the amount of financial protection, the licensee will promptly apply to his insurers for reinstatement of the amount specified in Item 2a of the Attachment (without reference to paragraph b of Item 2) and will make all reasonable efforts to obtain such reinstatement. In the event that the licensee has not obtained reinstatement of such amount within ninety days after the date of such reduction, and in the absence of good cause shown to the contrary, the Commission may issue an order requiring the licensee to furnish financial protection for such amount in another form.

3. Any obligations of the licensee under subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability, together with any public liability satisfied by the insurers under the policy or policies designated in the Attachment hereto, shall not in the aggregate exceed the amount of financial protection with respect to any nuclear incident, including the reasonable costs of investigating and settling claims and defending suits for damage.

4. With respect to any extraordinary nuclear occurrence to which this agreement applies, the Commission, and the licensee on behalf of itself and other persons indemnified, insofar as their interests appear, each agree to waive:

(a) Any issue or defense as to the conduct of the claimant or fault of persons indemnified, including, but not limited to:

- (1) Negligence;
- (2) Contributory negligence;
- (3) Assumption of the risk;
- (4) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God.

As used herein, *conduct of the claimant* includes conduct of persons through whom the claimant derives his cause of action;

(b) Any issue or defense as to charitable or governmental immunity;

(c) 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 injury or damage and the cause thereof.

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. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

5. The waivers set forth in paragraph 4 of this article:

(a) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(b) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(c) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place if benefits therefore are either payable or required to be provided under any workmen's compensation or occupational disease law: *Provided, however,* That 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 NRC 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;

(d) Shall not apply to 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;

(e) Shall be effective only with respect to those obligations set forth in this agreement;

(f) 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 limit of liability provisions under subsection 170(e) of the Atomic Energy Act of 1954, as amended, and (2) the terms of this agreement and the

terms of the nuclear energy liability insurance policy or policies designated in the attachment hereto.

6. The obligations of the licensee under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

7. Upon the expiration or revocation of any license designated in Item 3 of the Attachment, the Commission will enter into an appropriate amendment of this agreement with the licensee reducing the amount of financial protection required under this Article; provided, that the licensee is then entitled to a reduction in the amount of financial protection under applicable Commission regulations and orders.

8. With respect to any common occurrence,

(a) If the sum of limit of liability of any Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association exceeds \$155,000,000 the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and \$155,000,000 as the limit of liability of the Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association;

(b) If the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds \$45,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and \$45,000,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) If any of the other applicable agreements is with a person who has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the

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sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection, the obligations of the licensee shall not exceed a greater proportion of an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection, than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

(d) As used in this paragraph 8., Article II, and in Article III, *other applicable agreements* means each other agreement entered into by the Commission pursuant to subsection 170(c) of the Act in which agreement the nuclear incident is defined as a *common occurrence*. As used in this paragraph 8., Article II, *the obligations of the licensee* means the obligations of the licensee under subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability, together with any public liability satisfied by the insurers under the policy or policies designated in the Attachment, and the reasonable costs incurred by the insurers in investigating and settling claims and defending suits for damage.

9. The obligations of the licensee under this Article shall not be affected by any failure or default on the part of the Commission or the Government of the United States to fulfill any or all of its obligations under this agreement. Bankruptcy or insolvency of any person indemnified other than the licensee, or the estate of any person indemnified other than the licensee, shall not relieve the licensee of any of his obligations hereunder.

ARTICLE III

1. The Commission undertakes and agrees to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear from public liability.

2. With respect to damage caused by a nuclear incident to property of any person legally liable for the nuclear incident, the Commission agrees to pay to such person those sums which such person would have been obligated to pay if such property had belonged to another; provided, that the obligation of the Commission under this paragraph 2 does not apply with respect to:

(a) Property which is located at the location described in Item 4 of the Attachment or at the location described in Item 3 of the declarations attached to any nuclear energy liability insurance policy designated in Item 5 of the Attachment;

(b) Property damage due to the neglect of the person indemnified to use all reasonable

means to save and preserve the property after knowledge of a nuclear incident;

(c) If the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) The radioactive material.

3. [Reserved]

4. (a) The obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed the amount of financial protection.

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under this agreement and all other applicable agreements; or (2) an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection.

5. The obligations of the Commission under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

6. The obligations of the Commission under this and all other agreements and contracts to which the Commission is a party shall not with respect to any nuclear incident, in the aggregate exceed whichever of the following is the lowest: (a) \$500,000,000; (b) \$560,000,000 less the amount of financial protection required under this agreement; or (c) with respect to a common occurrence, \$560,000,000 less the sum of the amounts of financial protection established under this agreement and all other applicable agreements.

7. The obligations of the Commission under this agreement, except to the licensee for damage to property of the licensee, shall not be affected by any failure on the part of the licensee to fulfill its obligations under this agreement. Bankruptcy or insolvency of the licensee or any other person indemnified or of the estate of the licensee or any other person indemnified shall not relieve the Commission of any of its obligations hereunder.

ARTICLE IV

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim (provided that no government indemnity that would otherwise be available to pay public

liability claims is used for these purposes) and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

2. Neither this agreement nor any interest therein nor claim thereunder may be assigned or transferred without the approval of the Commission.

ARTICLE V

The parties agree that they will enter into appropriate amendments of this agreement to the extent that such amendments are required pursuant to the Atomic Energy Act of 1954, as amended, or licenses, regulations or orders of the Commission.

ARTICLE VI

The licensee agrees to pay to the Commission such fees as are established by the Commission pursuant to regulations or orders of the Commission.

ARTICLE VII

The term of this agreement shall commence as of the date and time specified in Item 6 of the Attachment and shall terminate at the time of expiration of that license specified in Item 3 of the Attachment, which is the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate until all the radioactive material has been removed from the location and transportation of the radioactive material from the location has ended as defined in paragraph 5(b), Article I of this section. Termination of the term of this agreement shall not affect any obligation of the licensee or any obligation of the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

ARTICLE VIII

The following provisions are applicable to each licensee operating a facility designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more;

1. Each licensee is required to have and maintain financial protection in an amount specified in Item 2 a and b of the Attachment annexed hereto, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges); Provided, however, That under such a plan for deferred premium charges, such charges for each nuclear reactor which is licensed to operate shall not exceed \$63,000,000 with respect to any single nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) nor exceed \$10,000,000 per incident within one calendar year. If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

2. The Commission shall require the immediate submission of financial statements by those licensees who indicate, after an assessment of the retrospective premium by the insurance pools, that they will not pay the assessment. Such financial statements shall include, as a minimum, exhibits indicating internally generated funds from operations and accumulated retained earnings. Subsequent submission of financial statements by such licensees may be requested by the Commission, as required.

3. If premiums are paid by the Commission as provided in paragraph 1, payment by the Commission shall create a lien in the amount paid in favor of the United States upon all property and rights to property, whether real or personal, belonging to such licensee. The lien shall arise at the time payment is made by the Commission and shall continue until the liability for the amount (or a judgment against the licensee arising out of such liability) is satisfied or becomes unenforceable. The Commission will issue a certificate of release of any such lien if it finds that the liability for the amount has been fully satisfied or has become legally unenforceable.

4. If the Commission determines that the licensee is financially able to reimburse the Commission for a deferred premium payment made in its behalf, and the licensee, after notice of such determination by the Commission fails to make such reimbursement within 120 days, the Commission will take appropriate steps to suspend the license for 30 days. The Commission may take any further action as necessary if reimbursement is not made within the 30-day suspension period including, but not limited to termination of the operating license.

UNITED STATES NUCLEAR REGULATORY COMMISSION

Indemnity Agreement No. _____
Item 1—Licensee _____

Nuclear Regulatory Commission

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Address _____
Item 2—a. Amount of financial protection _____

b. With respect to any nuclear incident, the amount specified in Item 2a of this Attachment shall be deemed to be (i) reduced to the extent that any payment made by the insurer or insurers under a policy or policies specified in Item 5 of this Attachment reduces the aggregate amount of such insurance policies below the amount specified in Item 2a and (ii) restored to the extent that, following such reduction, the aggregate amount of such insurance policies is reinstated.

Item 3—License number or numbers _____

Item 4—Location _____

Item 5—Insurance Policy No.(s) _____

Item 6—The indemnity agreement designated above, of which this Attachment is a part, is effective as of ____ m., on the ____ day of _____, 19____.

For the United States Nuclear Regulatory Commission.

By _____
For the _____
(Name of licensee)

By _____

Dated at Bethesda, MD, the _____ day of _____, 19____.

[26 FR 3457, Apr. 22, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 140.92, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 140.93 Appendix C—Form of indemnity agreement with licensees furnishing proof of financial protection in the form of licensee's resources.

This indemnity agreement No. _____ 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 170(c) 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 hav-

ing a rated capacity of 100,000 electrical kilowatts or more, and except where otherwise specifically provided, *amount of financial protection* means the amount specified in Item 2 of the Attachment annexed hereto, as modified by paragraph 8, Article II, with respect to common occurrences, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred retrospective premium charges).

(b) For all other facilities, and except where otherwise specifically provided, *amount of financial protection* means the amount specified in Item 2 of the Attachment annexed hereto, as modified by paragraph 8, Article II, with respect to common occurrences.

3. (a) *Nuclear incident* means any occurrence including an extraordinary nuclear occurrence or series of occurrences at the location or in the course of transportation causing bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of the radioactive material.

(b) Any occurrence including an extraordinary nuclear occurrence or series of occurrences causing bodily injury, sickness, disease or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive or other hazardous properties of—

i. The radioactive material discharged or dispersed from the location over a period of days, weeks, months or longer and also arising out of such properties of other material defined as *the radioactive material* in any other agreement or agreements entered into by the Commission under subsection 170(c) or (k) of the Act and so discharged or dispersed from *the location* as defined in any such other agreement; or

ii. The radioactive material in the course of transportation and also arising out of such properties of other material defined in any other agreement entered into by the Commission pursuant to subsection 170(c) or (k) of the Act as *the radioactive material* and which is in the course of transportation shall be deemed to be a common occurrence. A common occurrence shall be deemed to constitute a single nuclear incident.

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

5. *In the course of transportation* means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, and moving from one person licensed by the Commission to another person

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licensed by the Commission, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:

(a) With respect to transportation of the radioactive material to the location, such transportation is not by pre-determination to be interrupted by the removal of the material from the transporting conveyance for any purpose other than the continuation of such transportation to the location or temporary storage incidental thereto;

(b) The transportation of the radioactive material from the location shall be deemed to end when the radioactive material is removed from the transporting conveyance for any purpose other than the continuation of transportation or temporary storage incidental thereto;

(c) *In the course of transportation* as used in this agreement shall not include transportation of the radioactive material to the location if the material is also *in the course of transportation* from any other location as defined in any other agreement entered into by the Commission pursuant to subsection 170(c) or (k) of the Act.

6. *Person indemnified* means the licensee and any other person who may be liable for public liability.

7. *Public liability* means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material, and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use or transfer of the radioactive material, and (b), if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

8. *The location* means the location described in Item 4 of the Attachment hereto.

9. *The radioactive material* means source, special nuclear, and byproduct material which (1) is used or to be used in, or is irradiated or to be irradiated by, the nuclear reactor or reactors subject to the license or licenses designated in the Attachment hereto, or (2) which is produced as the result of operation of said reactor(s).

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10. *United States* when used in a geographical sense includes Puerto Rico and all territories and possessions of the United States.

ARTICLE II

1. The licensee undertakes and agrees to indemnify and hold harmless all persons indemnified, as their interest may appear, from public liability.

2. With respect to damage caused by a nuclear incident to property of any person legally liable for the incident, the licensee agrees to pay to such person those sums which such person would have been obligated to pay if such property had belonged to another, provided, that the obligation of the licensee under this paragraph 2 does not apply with respect to:

(a) Property which is located at the location and used in connection with the licensee's possession, use or transfer of the radioactive material;

(b) Property damage due to neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) If the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation; and

(d) The radioactive material.

3. Any obligations of the licensee under paragraphs 1 and 2 of this Article, and under subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability shall not in the aggregate exceed the amount of financial protection with respect to any nuclear incident, including the reasonable costs of investigating and settling claims and defending suits for damage.

4. With respect to any extraordinary nuclear occurrence to which this agreement applies, the Commission, and the licensee on behalf of itself and other persons indemnified, insofar as their interests appear, each agree to waive:

(a) Any issue or defense as to the conduct of the claimant or fault of persons indemnified, including, but not limited to:

(1) Negligence;

(2) Contributory negligence;

(3) Assumption of the risk;

(4) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God.

As used herein, *conduct of the claimant* includes conduct of persons through whom the claimant derives his cause of action;

(b) Any issue or defense as to charitable or governmental immunity;

(c) 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,

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of his injury or damage and the cause thereof.

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. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

5. The waivers set forth in paragraph 4, of this article:

(a) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(b) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(c) Shall not apply to injury to a 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: *Provided, however,* That 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 NRC 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;

(d) Shall not apply to 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;

(e) Shall be effective only with respect to those obligations set forth in this agreement and in contracts or other proof of financial protection;

(f) 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 limit of liability

provisions under subsection 170(e), of the Atomic Energy Act of 1954, as amended, and (2) the terms of this agreement and the terms of contracts or other proof of financial protection.

6. The obligations of the licensee under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

7. Upon the expiration or revocation of any license designated in Item 3 of the Attachment, the Commission will enter into an appropriate amendment of this agreement with the licensee reducing the amount of financial protection required under this Article; provided, that the licensee is then entitled to a reduction in the amount of financial protection under applicable Commission regulations and orders.

8. With respect to a common occurrence, if the sum of the amount of financial protection established under this agreement and the amount of financial protection established under all other applicable agreements exceeds an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection, the obligations of the licensee described in paragraph 3 of this Article shall not exceed a greater proportion of an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements. As used in this paragraph, and in Article III, *other applicable agreements* means each other agreement entered into by the Commission pursuant to subsection 170(c) or (k) of the Act in which agreement the nuclear incident is defined as a *common occurrence*.

9. The obligations of the licensee under this Article shall not be affected by any failure or default on the part of the Commission or the Government of the United States to fulfill any or all of its obligations under this agreement. Bankruptcy or insolvency of any person indemnified other than the licensee, or the estate of any person indemnified other than the licensee, shall not relieve the licensee of any of his obligations hereunder.

ARTICLE III

1. The Commission undertakes and agrees to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability.

2. With respect to damage caused by a nuclear incident to property of any person legally liable for the nuclear incident, the Commission agrees to pay to such person those sums which such person would have been obligated to pay if such property had

belonged to another; provided, that the obligation of the Commission under this paragraph 2 does not apply with respect to:

(a) Property which is located at the location and used in connection with the licensee's possession, use or transfer of the radioactive material;

(b) Property damage due to the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) If the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) The radioactive material.

3. [Reserved]

4. (a) The obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed the amount of financial protection.

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to Paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amount of financial protection established under this agreement and to all other applicable agreements; or (2) an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection.

5. The obligations of the Commission under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

6. The obligations of the Commission under this and all other agreements and contracts to which the Commission is a party shall not with respect to any nuclear incident, in the aggregate exceed whichever of the following is the lowest: (a) \$500,000,000; (b) \$560,000,000 less the amount of financial protection required under this agreement; or (c) with respect to a common occurrence, \$560,000,000 less the sum of the amounts of financial protection established under this agreement and all other applicable agreements.

7. The obligations of the Commission under this agreement, except to the licensee for damage to property of the licensee, shall not be affected by any failure on the part of the licensee to fulfill its obligations under this agreement. Bankruptcy or insolvency of the licensee or any other person indemnified shall not relieve the Commission of any of its obligations hereunder.

ARTICLE IV

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim (provided that no government indemnity that would otherwise be available to pay public liability claims is used for these purposes) and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

2. Neither this agreement nor any interest therein nor claim thereunder may be assigned or transferred without the approval of the Commission.

ARTICLE V

The parties agree that they will enter into appropriate amendments of this agreement to the extent that such amendments are required pursuant to the Atomic Energy Act of 1954, as amended, or licenses, regulations or orders of the Commission.

ARTICLE VI

The licensee agrees to pay to the Commission such fees as are established by the Commission pursuant to regulations or orders of the Commission.

ARTICLE VII

The term of this agreement shall commence as of the date and time specified in Item 6 of the attachment and shall terminate at the time of expiration of that license specified in Item 3 of the attachment, which is last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate until all the radioactive material has been removed from the location and transportation of the radioactive material from the location has ended as defined in subparagraph 5(b), Article I. Termination of the term of this agreement shall not affect any obligation of the licensee or any obligation of the Commission under this agreement

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with respect to any nuclear incident occurring during the term of this agreement.

ARTICLE VIII

The following provisions are applicable to each licensee operating a facility designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more:

1. Each licensee is required to have and maintain financial protection in an amount specified in Item 2 annexed hereto, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges): Provided, however, That under such a plan for deferred premium charges, such charges for each nuclear reactor which is licensed to operate shall not exceed \$63,000,000 with respect to any single nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) nor exceed \$10,000,000 per incident within one calendar year. If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

2. The Commission shall require the immediate submission of financial statements by those licensees who indicate, after an assessment of the retrospective premium by the insurance pools, that they will not pay the assessment. Such financial statements shall include, as a minimum, exhibits indicating internally generated funds from operations and accumulated retained earnings. Subsequent submission of financial statements by such licensees may be requested by the Commission, as required.

3. If premiums are paid by the Commission as provided in paragraph 1, payment by the Commission shall create a lien in the amount paid in favor of the United States upon all property and rights to property, whether real or personal, belonging to such licensee. The lien shall arise at the time payment is made by the Commission and shall continue until the liability for the amount (or a judgment against the licensee arising out of such liability) is satisfied or becomes unenforceable. The Commission will issue a certificate of release of any such lien if it finds that the liability for the amount has been fully satisfied or has become legally unenforceable.

4. If the Commission determines that the licensee is financially able to reimburse the Commission for a deferred premium payment made in its behalf, and the licensee, after notice of such determination by the Commission fails to make such reimbursement within 120 days, the Commission will take appropriate steps to suspend the license for 30 days. The Commission may take any further action as necessary if reimbursement is not

made within the 30-day suspension period including, but not limited to, termination of the operating license or combined license.

UNITED STATES NUCLEAR REGULATORY COMMISSION

Indemnity Agreement No. _____

Attachment

Item 1—Licensee _____
Address _____
Item 2—Amount of financial protection _____
Item 3—License number or numbers _____
Item 4—Location _____

Item 5—The Indemnity Agreement designated above, of which this Attachment is a part, is effective as of _____ M., on the _____ day of _____, 19____.

For the United States Nuclear Regulatory Commission.

By _____
For the _____
(Name of licensee)

By _____
Dated at Bethesda, MD, the _____
day of _____, 19____.

[26 FR 3459, Apr. 22, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §140.93, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 140.94 Appendix D—Form of indemnity agreement with Federal agencies.

This indemnity agreement No. D _____ 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 170(c) 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) *Nuclear incident* means any occurrence including an extraordinary nuclear occurrence or series of occurrences at the location or in the course of transportation causing bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or

other hazardous properties of the radioactive material.

(b) Any occurrence including an extraordinary nuclear occurrence or series of occurrences causing bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive or other hazardous properties of

(i) The radioactive material discharged or dispersed from the location over a period of days, weeks, months or longer and also arising out of such properties of other material defined as *the radioactive material* in any other agreement or agreements entered into by the Commission under subsection 170(c) or (k) of the Act and so discharged or dispersed from *the location* as defined in any such other agreement, or

(ii) The radioactive material in the course of transportation and also arising out of such properties of other material defined in any other agreement entered into by the Commission pursuant to subsection 170(c) or (k) of the Act as *the radioactive material* and which is in the course of transportation shall be deemed to be a common occurrence. A common occurrence shall be deemed to constitute a single nuclear incident.

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

4. *In the course of transportation* means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, and moving from one person licensed by the Commission to another person licensed by the Commission, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:

(a) With respect to transportation of the radioactive material to the location, such transportation is not by predetermination to be interrupted by the removal of the material from the transporting conveyance for any purpose other than the continuation of such transportation to the location or temporary storage incidental thereto;

(b) The transportation of the radioactive material from the location shall be deemed to end when the radioactive material is removed from the transporting conveyance for any purpose other than the continuation of transportation or temporary storage incidental thereto;

(c) *In the course of transportation* as used in this agreement shall not include transportation of the radioactive material to the location if the material is also *in the course of transportation* from any other location as defined in any other agreement entered into by the Commission pursuant to subsection 170(c) or (k) of the Act.

5. *Person indemnified* means the licensee and any other person who may be liable for public liability.

6. *Public liability* means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State of Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

7. *The location* means the location described in Item 3 of the Attachment hereto.

8. *The radioactive material* means source, special nuclear, and byproduct material which (1) is used or to be used in, or is irradiated or to be irradiated by, the nuclear reactor or reactors subject to the license or licenses designated in the Attachment hereto, or (2) is produced as the result of operation of said reactor(s).

9. *United States* when used in a geographical sense includes Puerto Rico and all territories and possessions of the United States.

ARTICLE II

1. The Commission undertakes and agrees to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability.

2. With respect to damage caused by a nuclear incident to property of any person legally liable for the nuclear incident, the Commission agrees to pay to such person those sums which such person would have been obligated to pay if such property had belonged to another; provided, that the obligation of the Commission under this paragraph 2 does not apply with respect to:

(a) Property which is located at the location and used in connection with the licensee's possession, use or transfer of the radioactive material;

(b) Property damage due to the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) If the nuclear incident occurs in the course of transportation of the radioactive

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material, the transporting vehicle and containers used in such transportation;

(d) The radioactive material.

3. [Reserved]

4. With respect to any extraordinary nuclear occurrence to which this agreement applies, the Commission, and the licensee on behalf of itself and other persons indemnified, insofar as their interests appear, each agree to waive:

(a) Any issue or defense as to the conduct of the claimant or fault of persons indemnified, including, but not limited to:

(1) Negligence;

(2) Contributory negligence;

(3) Assumption of the risk;

(4) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God.

As used herein, *conduct of the claimant* includes conduct of persons through whom the claimant derives his cause of action;

(b) Any issue or defense as to charitable or governmental immunity;

(c) 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 injury or damage and the cause thereof.

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. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

5. The waivers set forth in paragraph 4 of this article:

(a) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(b) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(c) Shall not apply to injury to a 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: *Provided, however*, That 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 NRC 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;

(d) Shall not apply to 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;

(e) Shall be effective only with respect to those obligations set forth in this agreement;

(f) 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 limit of liability provisions under subsection 170(e), of the Atomic Energy Act of 1954, as amended, and (2) the terms of this agreement.

6. With respect to a common occurrence, the obligations of the Commission under this Article shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amount of financial protection established under all applicable agreements; or (2) an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection. As used in this Article *applicable agreements* means each agreement entered into by the Commission pursuant to subsection 170(c) or (k) of the Act in which agreement the nuclear incident is defined as *common occurrence*.

7. The obligations of the Commission under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

8. The obligations of the Commission under this and all other agreements and contracts to which the Commission is a party shall not with respect to any nuclear incident, in the aggregate exceed whichever of the following is the lower: (a) \$500,000,000 or (b) with respect to a common occurrence, \$560,000,000 less the sum of the amounts of financial protection established under all applicable agreements.

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9. Bankruptcy or insolvency of any person indemnified or of the estate of any person indemnified shall not relieve the Commission of any of its obligations hereunder.

ARTICLE III

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim (provided that no government indemnity that would otherwise be available to pay public liability claims is used for these purposes) and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other persons indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

2. Neither this agreement nor any interest therein nor claim thereunder may be assigned or transferred without the approval of the Commission.

ARTICLE IV

The parties agree that they will enter into appropriate amendments of this agreement to the extent that such amendments are required pursuant to the Atomic Energy Act of 1954, as amended, or licenses, regulations or orders of the Commission.

ARTICLE V

The licensee agrees to pay to the Commission such fees as are established by the Commission pursuant to regulations or orders of the Commission.

ARTICLE VI

The term of this agreement shall commence as of the date and time specified in Item 4 of the attachment and shall terminate at the time of expiration of that license specified in Item 2 of the Attachment, which is the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate until all the radioactive material has been removed from the location and transportation of the radioactive material from the

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location has ended as defined in paragraph 4(b), Article I of this section. Termination of the term of this agreement shall not affect any obligation of the licensee or any obligation of the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

UNITED STATES NUCLEAR REGULATORY COMMISSION

Indemnity Agreement No. D-_____

ATTACHMENT

Item 1—Licensee _____
Address _____
Item 2—License number or numbers _____
Item 3—Location _____

Item 4—The indemnity agreement designated above, of which this Attachment is a part, is effective as of _____ m., on the _____ day of _____, 19____.

For the United States Nuclear Regulatory Commission.

By _____
For the _____
(Name of licensee)

By _____
Dated at Bethesda, MD, the _____
day of _____, 19____.

[27 FR 2886, Mar. 29, 1962]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §140.94, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 140.95 Appendix E—Form of indemnity agreement with nonprofit educational institutions.

This indemnity agreement No. E-_____ 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 170(k) 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) *Nuclear incident* means any occurrence including an extraordinary nuclear occurrence or series of occurrences at the location or in the course of transportation causing bodily injury, sickness, disease, or death, or loss of use of property, arising out of or

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resulting from the radioactive, toxic, explosive, or other hazardous properties of the radioactive material.

(b) Any occurrence including an extraordinary nuclear occurrence or series of occurrences causing bodily injury, sickness, disease or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of

i. The radioactive material discharged or dispersed from the location over a period of days, weeks, months or longer and also arising out of such properties of other material defined as *the radioactive material* in any other agreement or agreements entered into by the Commission under subsection 170(c) or (k) of the Act and so discharged or dispersed from *the location* as defined in any such other agreement; or

ii. The radioactive material in the course of transportation and also arising out of such properties of other material defined in any other agreement entered into by the Commission pursuant to subsection 170(c) or (k) of the Act as *the radioactive material* and which is in the course of transportation shall be deemed to be a common occurrence. A common occurrence shall be deemed to constitute a single nuclear incident.

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

4. *In the course of transportation* means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, and moving from one person licensed by the Commission to another person licensed by the Commission, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:

(a) With respect to transportation of the radioactive material to the location, such transportation is not by predetermination to be interrupted by the removal of the material from the transporting conveyance for any purpose other than the continuation of such transportation to the location or temporary storage incidental thereto;

(b) The transportation of the radioactive material from the location shall be deemed to end when the radioactive material is removed from the transporting conveyance for any purpose other than the continuation of transportation or temporary storage incidental thereto;

(c) *In the course of transportation* as used in this agreement shall not include transportation of the radioactive material to the location if the material is also *in the course of transportation* from any other location as defined in any other agreement entered into by

the Commission pursuant to subsection 170(c) or (k) of the Act.

5. *Person indemnified* means the licensee and any other person who may be liable for public liability.

6. *Public liability* means are legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Act of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, or the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

7. *The location* means the location described in Item 3 of the Attachment hereto.

8. *The radioactive material* means source, special nuclear, and byproduct material which (1) is used or to be used in, or is irradiated or to be irradiated by, the nuclear reactor or reactors subject to the license or licenses designated in the Attachment hereto, or (2) which is produced as the result of operation of said reactor(s).

9. *United States* when used in a geographical sense includes Puerto Rico and all territories and possessions of the United States.

ARTICLE II

1. Any obligations of the licensee under subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability shall not in the aggregate exceed \$250,000 with respect to any nuclear incident.

2. With respect to any extraordinary nuclear occurrence to which this agreement applies, the Commission, and the licensee on behalf of itself and other persons indemnified, insofar as their interests appear, each agree to waive:

(a) Any issue or defense as to the conduct of the claimant or fault of persons indemnified, including, but not limited to

(1) Negligence;

(2) Contributory negligence;

(3) Assumption of the risk;

(4) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God.

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As used herein, *conduct of the claimant* includes conduct of persons through whom the claimant derives his cause of action;

(b) Any issue or defense as to charitable or governmental immunity;

(c) 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 injury or damage and the cause thereof.

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. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

3. The waivers set forth in paragraph 2 of this article:

(a) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(b) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(c) Shall not apply to injury to a 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: *Provided, however*, That 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 NRC 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;

(d) Shall not apply to 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;

(e) Shall be effective only with respect to those obligations set forth in this agreement;

(f) 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 limit of liability provisions under subsection 170(e) of the Atomic Energy Act of 1954, as amended, and (b) the terms of this agreement.

ARTICLE III

1. The Commission undertakes and agrees to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability.

2. With respect to damage caused by a nuclear incident to property of any person legally liable for the nuclear incident, the Commission agrees to pay to such person those sums which such person would have been obligated to pay if such property had belonged to another; provided, that the obligation of the Commission under this paragraph 2 does not apply with respect to:

(a) Property which is located at the location and used in connection with the licensee's possession, use or transfer of the radioactive material;

(b) Property damage due to the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) If the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) The radioactive material.

3. [Reserved]

4. (a) The obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed \$250,000.

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under all applicable agreements; or (2) an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection. As used in this Article *applicable agreements* means each agreement entered into by the Commission pursuant to subsection 170(c) or (k) of the Act in which

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agreement the nuclear incident is defined as a *common occurrence*.

5. The obligations of the Commission under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

6. The obligations of the Commission under this and all other agreements and contracts to which the Commission is a party shall not with respect to any nuclear incident, in the aggregate exceed which ever of the following is the lower: (a) \$500,000,000 or (b) with respect to a common occurrence, \$560,000,000 less the sum of the amounts of financial protection established under all applicable agreements.

7. If the licensee is immune from public liability because it is a state agency, the Commission shall make payments under the agreement in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a state agency.

8. The obligations of the Commission under this agreement, except to the licensee for damage to property of the licensee, shall not be affected by any failure on the part of the licensee to fulfill its obligations under this agreement. Bankruptcy or insolvency of the licensee or any other person indemnified or of the estate of the licensee or any other person indemnified shall not relieve the Commission of any of its obligations hereunder.

ARTICLE IV

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim including such legal costs of the licensee as are approved by the Commission and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

2. Neither this agreement nor any interest therein nor claim thereunder may be assigned or transferred without the approval of the Commission.

ARTICLE V

The parties agree that they will enter into appropriate amendments of this agreement to the extent that such amendments are required pursuant to the Atomic Energy Act of 1954, as amended, or licenses, regulations or orders of the Commission.

ARTICLE VI

The licensee agrees to pay to the Commission such fees as are established by the Commission pursuant to regulations or orders of the Commission.

ARTICLE VII

The term of this agreement shall commence as of the date and time specified in Item 4 of the Attachment and shall terminate at the time of expiration of that license specified in Item 2 of the Attachment, which is the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate until all the radioactive material has been removed from the location and transportation of the radioactive material from the location has ended as defined in subparagraph 4(b), Article I. Termination of the term of this agreement shall not affect any obligation of the licensee or any obligation of the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

UNITED STATES NUCLEAR REGULATORY COMMISSION

Indemnity Agreement No. E-_____

ATTACHMENT

Item 1—Licensee _____
Address _____
Item 2—License number or numbers _____
Item 3—Location _____

Item 4—The indemnity agreement designated above, of which this Attachment is a part, is effective as of _____ m., on the _____ day of _____, 19____.

For the United States Nuclear Regulatory Commission.

By _____
For the _____
By _____
(Name of licensee)

Dated at Bethesda, MD, the _____ day of _____, 19____.

[27 FR 2887, Mar. 29, 1962]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 140.95, see the List of CFR Sections Affected, which appears in the

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Finding Aids section of the printed volume and at www.fdsys.gov.

§ 140.96 Appendix F—Indemnity locations.

(a) *Geographical boundaries of indemnity locations.* (1) In every indemnity agreement between the Commission and a licensee which affords indemnity protection for the preoperational storage of fuel at the site of a nuclear power reactor under construction, the geographical boundaries of the indemnity location will include the entire construction area of the nuclear power reactor, as determined by the Commission. Such area will not necessarily be coextensive with the indemnity location which will be established at the time an operating license or combined license under 10 CFR part 52 is issued for such additional nuclear power reactors.

(2) In every indemnity agreement between the Commission and a licensee which affords indemnity protection for an existing nuclear power reactor, the geographical boundaries of the indemnity location shall include the entire construction area of any additional nuclear power reactor as determined by the Commission, built as part of the same power station by the same licensee. Such area will not necessarily be coextensive with the indemnity location which will be established at the time an operating license or combined license is issued for such additional nuclear power reactors.

(3) This section is effective May 1, 1973, as to construction permits issued before March 2, 1973, and, as to construction permits and combined licenses issued on or after March 2, 1973, the provisions of this section will apply no later than such time as a construction permit or combined license is issued authorizing construction of any additional nuclear power reactor.

(b) [Reserved]

[72 FR 49565, Aug. 28, 2007]

§ 140.107 Appendix G—Form of indemnity agreement with licensees processing plutonium for use in plutonium processing and fuel fabrication plants and furnishing insurance policies as proof of financial protection.

This Indemnity Agreement No. _____ is entered into by and between _____ (hereinafter referred to as the *licensee*) and the United States Nuclear Regulatory Commission (hereinafter referred to as the *Commission*) pursuant to subsection 170(c) of the Atomic Energy Act of 1954, as amended (hereinafter referred to as *the Act*), and section 201 of the Energy Reorganization Act of 1974, as amended.

10 CFR Ch. I (1–1–18 Edition)

ARTICLE I

As used in this agreement:

1. *By product material, person, source material, special nuclear material, precautionary evacuation, and extraordinary nuclear occurrence* shall have the meaning given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

2. Except where otherwise specifically provided, *amount of financial protection* means the amount specified in Item 2a and b. of the Attachment annexed hereto as modified by paragraph 6, Article II, with respect to common occurrences.

3. (a) *Nuclear incident* means any occurrence including an extraordinary nuclear occurrence, or series of occurrences at the location or in the course of transportation causing bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of the radioactive material.

(b) Any occurrence, including an extraordinary nuclear occurrence, or series of occurrences causing bodily injury, sickness, disease or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of:

(i) The radioactive material discharged or dispersed from the location over a period of days, weeks, months or longer and also arising out of such properties of other material defined as *the radioactive material* in any other agreement or agreements entered into by the Commission under subsection 170(c) or (k) of the Act and so discharged or dispersed from *the location* as defined in any such other agreement, or

(ii) The radioactive material in the course of transportation and also arising out of such properties of other material defined in any other agreement entered into by the Commission pursuant to subsection 170(c) or (k) of the Act as *the radioactive material* and which is in the course of transportation shall be deemed to be a common occurrence. A common occurrence shall be deemed to constitute a single nuclear incident.

4. *In the course of transportation* means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, and moving from one person licensed by the Commission to another person licensed by the Commission, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:

(a) With respect to transportation of the radioactive material to the location, such transportation is not by predetermination to

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be interrupted by the removal of the material from the transporting conveyance for any purpose other than the continuation of such transportation to the location or temporary storage incidental thereto;

(b) The transportation of the radioactive material from the location shall be deemed to end when the radioactive material is removed from the transporting conveyance for any purpose other than the continuation of transportation or temporary storage incidental thereto;

(c) *In the course of transportation* as used in this agreement shall not include transportation of the radioactive material to the location if the material is also *in the course of transportation* from any other location as defined in any other agreement entered into by the Commission pursuant to subsection 170(c) or (k) of the Act.

5. *Person indemnified* means the licensee and any other person who may be liable for public liability.

6. *Public liability* means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

7. *The location* means the location described in Item 4 of the Attachment hereto.

8. *The radioactive material* means (a) any source, special nuclear, or byproduct material which (1) is both used or to be used in, or is processed or to be processed by, the licensee's plutonium processing and fuel fabrication plant or plants and is subject to the license or licenses designated in the Attachment hereto, or (2) is produced as the result of the operation of said plant or plants or (b) any source, special nuclear, or byproduct material which is waste or contamination from material described in paragraph 8(a). The words *used or to be used* and *processed or to be processed* in this paragraph cover source, special nuclear or byproduct material which is *in the course of transportation* as

used in the agreement or is received at the plant for use or processing in the plant but which is, in fact, for any reason, not so used or processed.

9. *United States* when used in a geographical sense includes Puerto Rico and all territories and possessions of the United States.

ARTICLE II

1. At all times during the term of the license or licenses designated in Item 3 of the Attachment hereto, the licensee will maintain financial protection in the amount specified in Item 2 of the Attachment and in the form of the nuclear energy liability insurance policy designated in the Attachment. If more than one license is designated in Item 3 of the Attachment, the licensee agrees to maintain such financial protection until the end of the term of that license which will be the last to expire. The licensee shall, notwithstanding the expiration, termination, modification, amendment, suspension or revocation of any license or licenses designated in Item 3 of the Attachment, maintain such financial protection in effect until all the radioactive material has been removed from the location and transportation of the radioactive material from the location has ended as defined in subparagraph 4(b), Article I, or until the Commission authorizes the termination or the modification of such financial protection. The Commission will not unreasonably withhold such authorization.

2. In the event of any payment by the insurer or insurers under a policy or policies specified in Item 5 of the Attachment hereto which reduces the aggregate limit of such policy or policies below the amount of financial protection, the licensee will promptly apply to his insurers for reinstatement of the amount specified in Item 2a of the Attachment (without reference to paragraph b of Item 2) and will make all reasonable efforts to obtain such reinstatement. In the event that the licensee has not obtained reinstatement of such amount within ninety days after the date of such reduction, and in the absence of good cause shown to the contrary, the Commission may issue an order requiring the licensee to furnish financial protection for such amount in another form.

3. Any obligations of the licensee under subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability, together with any public liability satisfied by the insurers under the policy or policies designated in the Attachment hereto, shall not in the aggregate exceed the amount of financial protection with respect to any nuclear incident, including the reasonable costs of investigating and settling claims and defending suits for damage.

4. The obligations of the licensee under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

5. Upon the expiration or revocation of any license designated in Item 3 of the Attachment, the Commission will enter into an appropriate amendment of this agreement with the licensee reducing the amount of financial protection required under this Article: provided, that the licensee is then entitled to a reduction in the amount of financial protection under applicable Commission regulations and orders.

6. With respect to any common occurrence,

(a) If the sum of the limit of liability of any Nuclear Energy Liability-Property Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability-Property Insurance Association exceeds \$155,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and \$155,000,000 as the limit of liability of the Nuclear Energy Liability-Property Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability-Property Insurance Association;

(b) If the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds \$45,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and \$45,000,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) If any of the other applicable agreements is with a person who has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability-Property Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds an amount equal to the sum of \$200,000,000 and the amount available

as secondary financial protection, the obligations of the licensee shall not exceed a greater proportion of an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

(d) As used in this paragraph 6., Article II and in Article III, *other applicable agreements* means each other agreement entered into by the Commission pursuant to subsection 170(c). of the Act in which agreement the nuclear incident is defined as a *common occurrence*. As used in this paragraph 6., Article II, *the obligations of the licensee* means the obligations of the licensee under subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability, together with any public liability satisfied by the insurers under the policy or policies designated in the Attachment, and the reasonable costs incurred by the insurers in investigating and settling claims and defending suits for damage.

7. The obligations of the licensee under this Article shall not be affected by any failure or default on the part of the Commission or the Government of the United States to fulfill any or all of its obligations under this agreement. Bankruptcy or insolvency of any person indemnified other than the licensee, or of the estate of any person indemnified other than the licensee, shall not relieve the licensee of any of its obligations hereunder.

ARTICLE III

1. The Commission undertakes and agrees to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability.

2. With respect to damage caused by a nuclear incident to property of any person legally liable for the nuclear incident, the Commission agrees to pay to such person those sums which such person would have been obligated to pay if such property had belonged to another; provided, that the obligation of the Commission under this paragraph 2 does not apply with respect to:

(a) Property which is located at the location described in Item 4 of the Attachment or at the location described in Item 3 of the declarations attached to any nuclear energy liability insurance policy designated in Item 5 of the Attachment;

(b) Property damage due to the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) If the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) The radioactive material.

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3. [Reserved]

4. (a) The obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed the amount of financial protection.

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed \$200,000,000.

5. The obligations of the Commission under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

6. The obligations of the Commission under this and all other agreements and contracts to which the Commission is a party shall not, with respect to any nuclear incident, in the aggregate exceed whichever of the following is the lowest: (a) \$500,000,000; (b) \$560,000,000 less the amount of financial protection required under this agreement; or (c) with respect to a common occurrence, \$560,000,000 less the sum of the amounts of financial protection established under this agreement and all other applicable agreements.

7. The obligations of the Commission under this agreement, except to the licensee for damage to property of the licensee, shall not be affected by any failure on the part of the licensee to fulfill its obligations under this agreement. Bankruptcy or insolvency of the licensee or any other person indemnified, or of the estate of the licensee or any other person indemnified, shall not relieve the Commission of any of its obligations hereunder.

ARTICLE IV

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim (provided that no government indemnity that would otherwise be available to pay public liability claims is used for these purposes) and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the

United States on behalf of the licensee or other person indemnified, take charge of such action and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

2. Neither this agreement nor any interest therein nor claim thereunder may be assigned or transferred without the approval of the Commission.

ARTICLE V

The parties agree that they will enter into appropriate amendments of this agreement to the extent that such amendments are required pursuant to the Atomic Energy Act of 1954, as amended, or licenses, regulations or orders of the Commission.

ARTICLE VI

The licensee agrees to pay the Commission such fees as are established by the Commission pursuant to regulations or orders of the Commission.

ARTICLE VII

The term of this agreement shall commence as of the date and time specified in Item 6 of the Attachment and shall terminate at the time of expiration of that license specified in Item 3 of the Attachment, which is the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate until all the radioactive material has been removed from the location and transportation of the radioactive material from the location has ended as defined in paragraph 4(b), Article I. Termination of the term of this agreement shall not affect any obligation of the licensee or the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

UNITED STATES NUCLEAR REGULATORY COMMISSION

ATTACHMENT

Indemnity Agreement No. _____

Item 1—Licensee. _____

Item 2—

a. Amount of financial protection _____

b. With respect to any nuclear incident, the amount specified in Item 2a of this Attachment shall be deemed to be (i) reduced to the extent that any payment made by the insurer or insurers under a policy or policies specified in Item 5 of this Attachment reduces the aggregate amount of such insurance policies below the amount specified in Item 2a and (ii) restored to the extent that, following such reduction, the aggregate

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amount of such insurance policies is reinstated.

Item 3—License number or numbers _____

Item 4—Location _____

Item 5—Insurance Policy No.(s) _____

Item 6—The indemnity agreement designated above, of which this Attachment is a part, is effective as of 12:01 a.m., on the day of _____, 19____.

For the U.S. Nuclear Regulatory Commission.

For _____
By _____

Dated at Bethesda, MD, the _____
day of _____ 19____.

[42 FR 51, Jan. 3, 1977, as amended at 42 FR 20141, Apr. 18, 1977; 44 FR 20633, Apr. 6, 1979; 44 FR 24045, Apr. 24, 1979; 45 FR 37410, June 3, 1980; 49 FR 11152, Mar. 26, 1984; 54 FR 24160, June 6, 1989]

§ 140.108 Appendix H—Form of indemnity agreement with licensees possessing plutonium for use in plutonium processing and fuel fabrication plants and furnishing proof of financial protection in the form of the licensee's resources.

This Indemnity Agreement No. _____ is entered into by and between _____ (hereinafter referred to as the *licensee*) and the United States Nuclear Regulatory Commission (hereinafter referred to as the *Commission*) pursuant to subsection 170(c) of the Atomic Energy Act of 1954, as amended (hereinafter referred to as *the Act*), and Section 201 of the Energy Reorganization Act of 1974, as amended.

ARTICLE I

As used in this agreement:

1. *Byproduct material, person, source material, special nuclear material, precautionary evacuation, and extraordinary nuclear occurrence* shall have the meaning given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

2. *Amount of financial protection* means the amount specified in Item 2 or the Attachment annexed hereto.

3. *Nuclear incident* means any occurrence including an extraordinary nuclear occurrence, or series of occurrences at the location or in the course of transportation causing bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of the radioactive material.

(b) Any occurrence, including an extraordinary nuclear occurrence of series of occurrences causing bodily injury, sickness, disease or death, or loss or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of

i. The radioactive material discharged or dispersed from the location over a period of days, weeks, months or longer and also arising out of such properties of other material defined as *the radioactive material* in any other agreement or agreements entered into by the Commission under subsection 170(c) or (k) of the Act and so discharged or dispersed from *the location* as defined in any such other agreement, or

ii. The radioactive material in the course of transportation and also arising out of such properties of other material defined in any other agreement entered into the Commission pursuant to subsection 170(c) or (k) of the Act as *the radioactive material* and which is in the course of transportation shall be deemed to be a common occurrence. A common occurrence shall be deemed to constitute a single nuclear incident.

4. *In the course of transportation* means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, and moving from one person licensed by the Commission to another person licensed by the Commission, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:

(a) With respect to transportation of the radioactive material to the location, such transportation is not be predetermination to be interrupted by the removal of the material from the transporting conveyance for any purpose other than the continuation of such transportation to the location or temporary storage incidental thereto:

(b) The transportation of the radioactive material from the location shall be deemed to end when the radioactive material is removed from the transporting conveyance for any purpose other than the continuation of transportation or temporary storage incidental thereto:

(c) *In the course of transportation* as used in this agreement shall not include transportation of the radioactive material to the location if the material is also *in the course of transportation* from any other location as defined in any other agreement entered into by the Commission pursuant to subsection 170(c) or (k) of the Act.

5. *Person indemnified* means the licensee and any other person who may be liable for public liability.

6. *Public liability* means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred

by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

7. *The location* means the location described in Item 4 of the Attachment hereto.

8. *The radioactive material* means (a) any source, special nuclear, or byproduct material which (1) is both used or to be used in, or is processed or to be processed by, the licensee's plutonium processing and fuel fabrication plant or plants and is subject to the license or licenses designated in the Attachment hereto, or (2) is produced as the result of the operation of said plant or plants or (b) any source special nuclear, or byproduct material which is waste or contamination from material described in paragraph 8(a). The words *used or to be used and processed or to be processed* in this paragraph cover source, special nuclear or byproduct material which is *in the course of transportation* as used in the agreement or is received at the plant for use or processing in the plant but which is, in fact, for any reason, not so used or processed.

9. *United States* when used in a geographical sense includes Puerto Rico and all territories and possessions of the United States.

ARTICLE II

1. The licensee undertakes and agrees to indemnify and hold harmless all persons indemnified, as their interest may appear, from public liability.

2. With respect to damage caused by a nuclear incident to property of any person legally liable for the incident, the licensee agrees to pay to such person those sums which such person would have been obligated to pay if such property had belonged to another; provided, that the obligation of the licensee under this paragraph 2 does not apply with respect to:

(a) Property which is located at the location and used in connection with the licensee's possession, use or transfer of the radioactive material;

(b) Property damage due to neglect of the person indemnified to use all reasonable

means to save and preserve the property after knowledge of a nuclear incident;

(c) If the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation; and

(d) The radioactive material.

3. Any obligations of the licensee under paragraphs 1 and 2 of this Article, and subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability shall not in the aggregate exceed the amount of financial protection with respect to any nuclear incident.

4. The obligations of the licensee under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

5. Upon the expiration or revocation of any license designated in Item 3 of the Attachment, the Commission will enter into an appropriate amendment of this agreement with the licensee reducing the amount of financial protection required under this Article; provided, that the licensee is then entitled to a reduction in the amount of financial protection under applicable Commission regulations and orders.

6. With respect to any common occurrence, if the sum of the amount of financial protection established under this agreement and the amount of financial protection established under all other applicable agreements exceeds an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection, the obligations of the licensee described in paragraph 3 of this Article shall not exceed a greater proportion of an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements. As used in this paragraph, and in Article III, *other applicable agreements* means each other agreement entered into by the Commission pursuant to subsection 170(c) or (k) of the Act in which agreement the nuclear incident is defined as a *common occurrence*.

7. The obligations of the licensee under this Article shall not be affected by any failure or default on the part of the Commission or the Government or the United States to fulfill any or all of its obligations under this agreement. Bankruptcy or insolvency of any person indemnified other than the licensee, or of the estate of any person indemnified other than the licensee shall not relieve the licensee of any of its obligations hereunder.

ARTICLE III

1. The Commission undertakes and agrees to indemnify and hold harmless the licensee

and other persons indemnified, as their interest may appear, from public liability.

2. With respect to damage caused by a nuclear incident to property of any person legally liable for the nuclear incident, the Commission agrees to pay to such person those sums which such person would have been obligated to pay if such property had belonged to another; provided, that the obligation of the Commission under this paragraph 2 does not apply with respect to:

(a) Property which is located at the location and used in connection with the licensee's possession, use or transfer of the radioactive material;

(b) Property damage due to the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) If the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) The radioactive material.

3. [Reserved]

4. (a) The obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed the amount of financial protection.

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed \$200,000,000.

5. The obligations of the Commission under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

6. The obligations of the Commission under this and all other agreements and contracts to which the Commission is a party shall not, with respect to any nuclear incident, in the aggregate exceed whichever of the following is the lowest; (a) \$500,000,000; (b) \$560,000,000 less the amount of financial protection required under this agreement; or (c) with respect to a common occurrence, \$560,000,000 less the sum of the amounts of financial protection established under this agreement and all other applicable agreements.

7. The obligations of the Commission under this agreement, except to the licensee for damage to property of the licensee, shall not be affected by any failure on the part of the licensee to fulfill its obligations under this agreement. Bankruptcy or insolvency of the licensee or any other person indemnified, or of the estate of the licensee or any other per-

son indemnified shall not relieve the Commission of any of its obligations hereunder.

ARTICLE IV

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim (provided that no government indemnity that would otherwise be available to pay public liability claims is used for these purposes) and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other persons indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting defense.

2. Neither this agreement nor any interest therein nor claim thereunder may be assigned or transferred without the approval of the Commission.

ARTICLE V

The parties agree that they will enter into appropriate amendments of this agreement to the extent that such amendments are required pursuant to the Atomic Energy Act of 1954, as amended, or licenses, regulations or orders of the Commission.

ARTICLE VI

The licensee agrees to pay the Commission such fees as are established by the Commission pursuant to regulations or orders of the Commission.

ARTICLE VII

The term of this agreement shall commence as of the date and time specified in Item 5 of the Attachment and shall terminate at the time of expiration of that license specified in Item 3 of the Attachment, which is the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate until all the radioactive material has been removed from the location and transportation of the radioactive material from the location has ended as defined in paragraph 4(b), Article I. Termination of the term of

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this agreement shall not affect any obligation of the licensee or the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

UNITED STATES NUCLEAR REGULATORY COMMISSION

ATTACHMENT

Indemnity Agreement No. _____

Item 1—Licensee _____

Item 2—Amount of financial protection—

Item 3—License number or numbers _____

Item 4—Location _____

Item 5—The indemnity agreement designated above, of which this Attachment is a part, is effective as of 12:01 a.m., on the _____ day of _____ 19____.

Dated at Bethesda, MD, the _____ day of _____ 19____.

For the U.S. Nuclear Regulatory Commission.

For _____

By _____

[42 FR 53, Jan. 3, 1977, as amended at 42 FR 20142, Apr. 18, 1977; 42 FR 23501, May 9, 1977; 44 FR 20633, Apr. 6, 1979; 44 FR 24045, Apr. 24, 1979; 45 FR 37410, June 3, 1980; 49 FR 11152, Mar. 26, 1984; 54 FR 24161, June 6, 1989]

§ 140.109 Appendix I.

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

MASTER POLICY NO. _____

Nuclear Energy Liability Insurance

(Secondary Financial Protection)

Named Insured: Each person or organization designated in Item 1 of a *certificate*.

Policy Period: Beginning on the first day of August, 1977, and continuing to the effective date and time of the cancellation or other termination of this policy, eastern standard time.

Limits of Liability: The amount of retrospective premium actually received by the companies plus the amount of the companies' contingent liability, if any, pursuant to Conditions 2, 3, and 4.

Date of Issue _____

Authorized Representative _____

In consideration of the payment of the annual premium, in reliance upon the statements in the *certificates* and subject to the limits of liability, conditions and other terms of this Master Policy, the undersigned members of Nuclear Energy Liability Insurance Association (hereinafter called the *companies*), each for itself, severally and not jointly, and in the respective proportions herein set forth, and the *insureds* named in the *certificates*, agree as follows:

INSURING AGREEMENTS

I. NUCLEAR ENERGY LIABILITY INSURANCE

(*Secondary Financial Protection*)

To pay on behalf of or to the *insured* or to the *insured's* workers' compensation carrier all sums payable as *excess losses* to which this Master Policy applies.

II. DEFINITIONS

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

Certificate means a Certificate of Insurance, including Declarations and Bond for Payment of Retrospective Premiums, issued to be a part of this Master Policy.

Common nuclear occurrence means any occurrence or series of occurrences causing *bodily injury* or *property damage* arising out of the radioactive, toxic, explosive, or other hazardous properties of *nuclear material*

(a) Discharged or dispersed from a nuclear reactor described in Item 3 of a *certificate* over a period of days, weeks, months, or longer, or

(b) Discharged or dispersed from a nuclear reactor described in Item 3 of a *certificate* over a period of days, weeks, months or longer and also arising out of such properties of *nuclear material* so discharged or dispersed from one or more other nuclear reactors described in Item 3 of other *certificates*, or

(c) In the course of transportation for which protection is afforded (or would be afforded but for exhaustion of its limit of liability) under the *primary financial protection* described in Item 4 of a *certificate* and also arising out of such properties of nuclear material in the course of transportation for which protection is afforded (or would be afforded but for exhaustion of its limit of liability) under the *primary financial protection* described in Item 4 of one or more other *certificates*.

Damages and claim expenses includes sums estimated by the companies to be payable under this policy and payments made by the companies under this Master Policy:

(a) In settlement of claims and in satisfaction of judgments against the *insureds* for damages because of *bodily injury* or *property damage*;

(b) For (1) costs taxed against an *insured* in any suit against the *insured* seeking damages payable under the terms of this Master Policy and interest on any judgment therein, (2) premiums on appeal bonds and bonds to release attachments in any such suit and (3) reasonable expenses, other than loss of earnings, incurred by the *insured* at the companies' request;

(c) For expenses incurred in the investigation, negotiation, settlement and defense of any claim or suit including, but not limited

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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;

(d) For expenses incurred by the companies in investigating a *nuclear incident* or in minimizing its effects;

(e) For all other expenses of the companies in fulfilling their obligations under this Master Policy, provided that such expenses are reasonable and necessary.

Excess losses means all *damages and claim expenses*

(a) Because of *bodily injury or property damage* to which a *certificate* applies, and

(b) Which are excess of all sums paid or payable as estimated by the companies under all applicable *primary financial protection*.

Extraordinary nuclear occurrence has the meaning given it in the Atomic Energy Act of 1954, or in any law amendatory thereof.

Insured means any person or organization identified in Item 1 or 2 of a *certificate*.

Nuclear incident means

(a) An *extraordinary nuclear occurrence*, or

(b) A *common nuclear occurrence*, or if neither of these,

(c) An occurrence or series of occurrences, including continuous or repeated exposure to substantially the same general conditions, causing *bodily injury or property damage* arising out of the radioactive, toxic, explosive, or other hazardous properties of *nuclear material*.

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

Primary financial protection means the insurance policies or other contracts identified in Item 4 of a *certificate* and includes any amendment thereto which is consented to by the companies pursuant to Condition 6 of this Master Policy.

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.

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.

III. APPLICATION OF POLICY

Insurance is provided by this Master Policy only through a *certificate*. No insurance is afforded with respect to *bodily injury or property damage* caused prior to August 1, 1977 by a *nuclear incident*.

10 CFR Ch. I (1-1-18 Edition)

CONDITIONS

1. ANNUAL PREMIUM

The named insureds designated in a *certificate* shall pay to the companies the annual premium for each calendar year or part thereof.

Such annual premium shall be determined by the companies and stated in a written notice mailed to the first named insured shown in Item 1 of a *certificate*, and shall be due and payable as stated in such notice.

2. RETROSPECTIVE PREMIUM

The named insureds designated in a *certificate* shall pay to the companies retrospective premium in the event of *excess losses* due to *bodily injury or property damage* caused during their *certificate* period by a *nuclear incident* arising out of or in connection with a nuclear reactor described in Item 3 of the *certificate* or in Item 3 of any other *certificate*. The amount of retrospective premium due under each *certificate* shall be determined by multiplying such *excess losses* by the ratio of the maximum retrospective premium payable with respect to the *nuclear incident* under the *certificate* to the total of the maximum retrospective premiums payable with respect to the *nuclear incident* under all such *certificates*.

If any portion of the *bodily injury or property damage* to which this Master Policy applies is caused during any portion of a *certificate* period by a *nuclear incident*, the retrospective premium the named insureds designated in such *certificate* are obligated to pay shall be determined as if all *bodily injury or property damage* to which this Master Policy applies caused by the *nuclear incident* had been caused during the *certificate* period of such *certificate*.

The maximum retrospective premium that the named insureds designated in a *certificate* shall pay to the companies for all *excess losses* arising out of any one *nuclear incident* is the amount stated in Item 7 of their *certificate*.

In the event of two more *nuclear incidents*, the maximum amount of retrospective premium that shall be due from and payable by the named insureds in one calendar year shall not exceed twice the amount stated in Item 7 of their *certificate*. Any amount in excess thereof shall be paid in subsequent calendar years as billed by the companies.

In addition, an allowance for applicable premium taxes shall be determined by the companies and paid to them by the named insureds at the time retrospective premiums are due and payable.

After a *nuclear incident* resulting in *excess losses*, the companies shall mail to the first named insured designated in Item 1 of a *certificate* written notice of the retrospective premium and allowance for premium taxes

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then due under such *certificate*. Such notice shall also constitute notice to all other named insureds designated in such *certificate*. The named insureds shall pay directly to the Nuclear Energy Liability Insurance Association the retrospective premium and allowance for premium taxes stated in the notice. The notice shall specify a date no earlier than 60 days after mailing by which time payment is to be received by the Nuclear Energy Liability Insurance Association.

The companies shall at least annually review their estimate of *excess losses* arising out of the *nuclear incident* and shall adjust the retrospective premium and allowance for premium taxes accordingly. If the amount due from the named insureds is increased, written notice shall be mailed to the first named insured in accordance with the foregoing paragraph; if deceased the companies shall return the excess to the first named insured.

The obligation of the named insureds to pay retrospective premium and the allowance for premium taxes for *excess losses* arising out of a *nuclear incident* shall continue until the named insureds have paid the maximum retrospective premium stated in Item 7 of their *certificate* plus allowance for premium taxes.

The companies shall send to the Nuclear Regulatory Commission summaries of their estimates of *excess losses* arising out of the *nuclear incident* and their computations of retrospective premium and the allowance for premium taxes due.

All retrospective premium (but not the allowance for premium taxes) received by the companies is to be held by the companies separate from the companies' other assets and is to be used by the companies only for the purpose of paying *excess losses*. Any investment income received by the companies from such retrospective premium shall accrue to the benefit of the named insureds. This paragraph shall not apply to any retrospective premium received by the companies as reimbursement for any funds expended pursuant to Condition 4.

No commission will be paid with respect to retrospective premium and allowance for premium taxes.

3. LIMIT OF LIABILITY

Regardless of the number of

(a) Persons or organizations who are *insureds* under this Master Policy, or

(b) Claims made and suits brought against any and all *insureds*, or

(c) Policies or contracts of *primary financial protection* or *certificates* which apply to the *nuclear incident*, or

(d) Years this Master Policy and any *certificate* shall continue in force,

The total liability of the companies under this Master Policy for all *excess losses* arising

out of any *nuclear incident* shall not exceed the amount of retrospective premium actually received by the companies pursuant to Condition 2 with respect to such *nuclear incident* plus the companies' contingent liability, if any, as determined by Condition 4. Reimbursement of the companies for funds expended pursuant to Condition 4 shall not operate to increase the total liability of the companies.

4. CONTINGENT LIABILITY OF THE COMPANIES

The companies have a contingent liability under this Master Policy for payment of *excess losses* but only if, and to the extent that, the retrospective premium due under one or more *certificates* is not paid. In the event of any such failure to pay retrospective premiums, the companies' obligations under this Condition 4 are limited as follows:

Regardless of the number of *nuclear incidents* which cause *bodily injury* or *property damage* to which this Master Policy applies, the number of years this Master Policy is in force, the number of *certificates* issued or in effect, or the number of annual premiums paid or payable.

(a) The total contingent liability of the companies for all *excess losses* arising out of two or more *nuclear incidents* shall not exceed \$46,500,000;

(b) Subject to the above provision (a), the total contingent liability of the companies for all *excess losses* arising out of any one *nuclear incident* shall not exceed \$23,250,000;

(c) Subject to the above provisions (a) and (b), the maximum amount to be paid by the companies in any one calendar year because of contingent liability for *excess losses* shall not exceed \$23,250,000.

If a named insured designated in a *certificate* shall become insolvent or be adjudged bankrupt, the companies' obligation under this Condition 4 shall not apply to the failure of any named insured designated in such *certificate* to pay retrospective premium with respect to *excess losses* because of *bodily injury* or *property damage* caused after the date of such insolvency or bankruptcy.

5. INVESTIGATION, DEFENSE OR SETTLEMENT OF CLAIMS OR SUITS

Subject to the provisions of any written agreement between the companies and the Nuclear Regulatory Commission, the companies shall defend any claim or suit alleging *bodily injury* or *property damage* caused by a *nuclear incident* and seeking damages which are payable under this Master Policy, and may make such investigation and settlement of any claim or suit as they deem expedient. In no event shall the companies be obligated to pay any claim or judgment or to defend any claim or suit after the companies have paid the amount of retrospective premium actually received for *excess losses* arising out

of the *nuclear incident* plus the amount of their contingent liability, if any.

6. PRIMARY FINANCIAL PROTECTION

Regardless of the number of policies or contracts of *primary financial protection* applicable to a *nuclear incident*, the limit of liability of all such policies or contracts shall be deemed to be exhausted when the sums paid under all such policies or contracts are equal to the lesser of (1) the sum of the limits of liability available under all such primary financial protection or (2) one hundred forty million dollars.

The named insured designated in a *certificate* shall maintain in full effect during the currency of such *certificate* the *primary financial protection* described therein, except for any reduction of the limit of liability of such *primary financial protection* solely as the result of sums paid thereunder. Failure of the named insureds to comply with the foregoing shall not invalidate this Master Policy, but in the event of such failure the companies shall be liable only to the extent that they would have been liable and the named insureds complied therewith.

In the event that the limit of liability of the *primary financial protection* is reduced, such names insureds shall immediately inform the companies thereof and make all reasonable efforts to reinstate such limit.

Upon the companies' request the named insureds shall provide the companies with a certified copy of any policy or other contract of *primary financial protection*. No amendment of the *primary financial protection* shall increase, extend or broaden the insurance provided by this Master Policy unless the companies agree to the amendment by an endorsement issued to form a part of this Master Policy.

7. INTEREST TO BE PAID BY NAMED INSURED ON RETROSPECTIVE PREMIUM AND ALLOWANCE FOR PREMIUM TAXES IN DEFAULT

If retrospective premium or allowance for premium taxes is not paid when due by the named insureds designated in Item 1 of a *certificate*, such named insureds shall be obligated to pay, in addition to the amount in default, interest thereon during the period of default. Such interest shall be computed at an annual rate equal to the sum of (a) three percent 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 date that the retrospective premium and allowance for premium taxes were due. The annual rate of interest shall be adjusted monthly during the period of default to reflect any revisions of Moody's Average Public Utility Bond Yield described in the issue of Moody's Bond Survey current on the first business day of each such month.

The interest so received shall be used to pay to the companies interest at the annual rate described above for any funds the companies have paid pursuant to Condition 4. Any balance remaining shall accrue to the benefit of named insureds not in default as if it were investment income on retrospective premium.

8. NOTICE OF NUCLEAR INCIDENT, CLAIM OR SUIT

In the event of *bodily injury* or *property damage* to which this Master Policy applies or of a *nuclear incident* 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 Nuclear Energy Liability Insurance Association or the companies as soon as practicable. If claim is made or suit is brought against the *insured*, the *insured* shall immediately forward to Nuclear Energy Liability Insurance Association or the companies every demand, notice, summons or other process received by or on behalf of the *insured*.

9. 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, in securing and giving evidence, in 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 the *insured's* own cost, make any payment, assume any obligation or incur any expense.

10. ACTION AGAINST COMPANIES

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 Master 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 Master Policy to the extent of the insurance afforded by this Master Policy. No person or organization shall have any right under this Master 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 the *insured's* legal representative. Except as provided in

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Condition 4, bankruptcy or insolvency of the *insured* or of the *insured's* estate shall not relieve the companies of any of their obligations hereunder.

11. SUBROGATION

In the event of any payment under this Master Policy, the companies may participate with the *insured* and any underlying insurer in the exercise of all the *insured's* rights of recovery against any person or organization liable therefor. Prior to knowledge of *bodily injury* or *property damage* to which this Master Policy applies or of a *nuclear incident* which may give rise to claims therefor, the *insured* may waive in writing any right of recovery against any person or organization. After such knowledge, the *insured* shall not waive or otherwise prejudice any such right of recovery but shall do everything necessary to secure such rights. Recoveries shall be applied first to reimburse any person or organization (including the *insured*) that may have paid any amount with respect to liability in excess of the limit of the companies' liability hereunder; then to reimburse the companies up to the amount paid hereunder; and lastly to reimburse anyone entitled to claim the residue, if any. A different apportionment maybe made by agreement signed by all parties affected.

Reasonable expenses incurred in the exercise of rights of recovery shall be apportioned in the ratio of the respective losses for which recovery is sought. The companies shall, after deducting all of their expenses in securing recovery, apply the net amount of recoveries made by the companies as a credit in determining the amount of *excess* losses.

12. OTHER INSURANCE

This insurance shall be excess insurance over *primary financial protection*.

This insurance is concurrent with insurance afforded by a Master Policy—Nuclear Energy Liability Insurance (Secondary Financial Protection) issued to the named insured by Mutual Atomic Energy Liability Underwriters, hereinafter called *concurrent insurance*. The companies shall not be liable under this Master Policy for a greater proportion of *excess losses* than the applicable limit of liability described in Condition 3 bears to the sum of (a) such limit plus (b) the applicable limit of liability of such concurrent insurance.

If the *insured* has other valid and collectible insurance (other than *primary financial protection* or concurrent insurance) applicable to *excess losses* covered by this Master Policy, the insurance afforded by this Master Policy 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 Master Policy or estop the companies from asserting any right under the terms of this Master Policy; nor shall the terms of this Master Policy be waived or changed, except by endorsement executed by Nuclear Energy Liability Insurance Association on behalf of the companies and issued to form a part of this Master Policy.

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 Master Policy shall cover such named insured's legal representative, receiver or trustee as an *insured* under this Master Policy, but only with respect to such legal representative's, receiver's or trustee's liability as such, and then only provided written notice of the legal representative's, receiver's or trustee's appointment as such is given to the companies within ten days after such appointment.

15. CUSTODIAN OF THE POLICY—NUCLEAR REGULATORY COMMISSION

The named insureds have designated the Nuclear Regulatory Commission as the custodian of this Master Policy and any endorsements thereto.

16. CANCELLATION

The first named insured designated in Item 1 of a *certificate* may cancel such *certificate* by mailing to the companies and the Nuclear Regulatory Commission written notice stating when, not less than thirty days thereafter, such cancellation shall be effective.

The companies may cancel any *certificate* by mailing to the first named insured designated in Item 1 of such *certificate* written notice stating when, not less than ninety days thereafter, such cancellation shall be effective; provided that in the event of non-payment of any annual premium, retrospective premium or allowance for premium taxes due under a *certificate*, such *certificate* may be canceled by the companies by mailing to the first named insured designated therein 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 time 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 designated in Item 1 of a *certificate* or by the companies, shall be equivalent to mailing.

A copy of the companies' cancellation notice shall be mailed to the Nuclear Regulatory Commission, but mailing such copy is not a condition of cancellation.

If a *certificate* is canceled, the earned portion of the annual premium shall be computed pro-rata. Adjustment of the annual premium, if any, may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

Cancellation or termination of any *certificate* shall not terminate the obligation of a named insured to pay retrospective premium and the allowance for premium taxes as provided in such named insured's *certificate* and Condition 2 of this Master Policy.

This Master Policy shall terminate automatically on the effective date and time of cancellation or termination of the last *certificate* in effect.

17. COMPANY REPRESENTATION

(a) Any notice, sworn statement or proof of loss which may be required by the provisions of this Master 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) 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 Master 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, demands or agreements made by such agent shall be deemed to have been made directly by the companies.

18. AUTHORIZATION OF FIRST NAMED INSURED

Except with respect to compliance with the obligations imposed on the *insured* by Conditions 8, 9, 10 and 11 of this Master Policy, the first named insured designated in Item 1 of a *certificate* is authorized to act for every other person and organization insured under such *certificate* in all matters pertaining to this insurance.

19. CHANGES IN SUBSCRIBING COMPANIES AND IN THEIR PROPORTIONATE LIABILITY

The members of Nuclear Energy Liability Insurance Association subscribing this Master Policy, and the proportionate liability of each, may change from time to time.

Each company subscribing this Master Policy upon its issuance shall be liable only for its stated proportion of any obligation assumed or expense incurred under this Master Policy because of *bodily injury* or *property damage* caused during the period from the effective date of this Master Policy to the close of December 31 next following. For each subsequent calendar year, beginning January 1 next following the effective date of this Master 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 Master Policy, duly executed by the President of Nuclear Energy Liability Insurance Association on behalf of each such company, and mailed or delivered to the Nuclear Regulatory Commission.

20. DECLARATIONS

By acceptance of this Master Policy, the named insureds designated in a *certificate* agree that the statements in such *certificate* are their agreements and representations, that this Master Policy and such *certificate* are issued in reliance upon the truth of such representations and that this Master 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 each of the subscribing companies has caused this Master Policy to be executed on its behalf by the Nuclear Energy Liability Insurance Association and duly countersigned on the first page by an authorized representative.

For the Subscribing Companies of NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

By:

Burt C. Proom,
President.

NUCLEAR ENERGY LIABILITY INSURANCE
ASSOCIATION

Certificate No. _____
Forming Part of Master Policy No. _____

CERTIFICATE OF INSURANCE DECLARATIONS AND
BOND FOR PAYMENT OF RETROSPECTIVE PREMIUMS

Certificate of Insurance

This is to certify that the persons and organizations designated in Item 1 of the Declarations are named insureds under the Master Policy—Nuclear Energy Liability Insurance (Secondary Financial Protection), herein called the *Master Policy*, issued by Nuclear Energy Liability Insurance Association.

Such insurance as is provided by the Master Policy applies, through this *certificate*, only:

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(a) to the *insureds* identified in Items 1 and 2 of the Declarations,

(b) for the *certificate* period stated in Item 6 of the Declarations,

(c) to *bodily injury* or *property damage*

(1) with respect to which the *primary financial protection* described in Item 4 of the Declarations would apply but for exhaustion of its limit of liability as described in Condition 6 of the Master Policy, and

(2) which is caused during the *certificate* period stated in Item 6 of the Declarations by a *nuclear incident* arising out of or in connection with the nuclear reactor described in Item 3 of the Declarations, and

(3) which is discovered and for which written claim is made against the *injured* not later than ten years after the end of the *certificate* period stated in Item 6 of the Declarations. However, with respect to *bodily injury* or *property damage* caused by an *extraordinary nuclear occurrence* this subparagraph (3) shall not operate to bar coverage for *bodily injury* or *property damage* which is discovered and for which written claim is made against the *insured* not later than twenty years after the date of the *extraordinary nuclear occurrence*.

DECLARATIONS

Item 1. Named insureds and addresses:

(a)

(b)

Item 2. Additional *insureds*:

Any other person or organization who would be insured under the *primary financial protection* identified in Item 4 of the Declarations but for exhaustion of the limit of liability of such *primary financial protection*.

Item 3. Description and location of nuclear reactor:

Item 4. (a) Identification of *primary financial protection* applicable to the nuclear reactor and limit(s) of liability thereof:

Nuclear Energy Liability Insurance Association's Policy NF— \$108,500,000

Mutual Atomic Energy Liability Underwriters' Policy MF— \$31,500,000

(b) The following endorsements, attached to the *primary financial protection* policies listed in Item 4(a) also apply to the insurance afforded by the Master Policy through this *certificate* as though they were attached hereto:

(1) Waiver of Defense Endorsement (Extraordinary Nuclear Occurrence) and

(2) Supplementary Endorsement—Waiver of Defenses—Reactor Construction at the Facility,

(c) The limits of liability provided under the *primary financial protection* specified in Item 4(a) above are not shared with any other reactor except as follows:

Item 5. Limits of Liability: The amount of retrospective premium actually received by the companies plus the amount of the companies' contingent liability, if any, pursuant to Conditions 2, 3, and 4 of the Master Policy.

Item 6. *Certificate* Period: Beginning at 12:01 a.m. on _____ and continuing to the effective date and time of cancellation or termination of the Master Policy or this *certificate*, whichever first occurs, eastern standard time.

Item 7. Maximum retrospective premium (exclusive of allowance for premium taxes) payable pursuant to Condition 2 of the Master Policy with respect to each *nuclear incident*: \$3,875,000.

Item 8. Premium payable pursuant to Condition 1 of the Master Policy for the period from _____ through December 31 following: \$ _____.

BOND FOR PAYMENT OF RETROSPECTIVE PREMIUMS

Know All Men By These Presents, that the undersigned do hereby acknowledge that they are named insureds under the Master Policy described in the above Certificate of Insurance and Declarations. The named insureds do hereby covenant with and are held and are firmly bound to the members of Nuclear Energy Liability Insurance Association subscribing the Master Policy (hereinafter called the *companies*) to pay the companies all retrospective premiums and allowances for premium taxes which shall become due and payable in accordance with the Master Policy, as it may be changed from time to time, with interest on such premiums and allowances for taxes to be computed at the rate provided in the Master Policy from the date payment thereof is specified to be due the companies in written notice to the first named insured as provided in Condition 2 of the Master Policy until paid;

And it is hereby expressly agreed that copies of written notices of retrospective premiums and allowances for premium taxes due and payable or other evidence of such amounts due and payable sworn to by a duly authorized representative of the companies shall be prima facie evidence of the fact and extent of the liability of the named insureds for such amounts;

And it is further expressly agreed that the named insureds will indemnify the companies against any and all liability, losses and expenses of whatsoever kind or nature (including but not limited to interest, court cost, and counsel fees) which the companies may sustain or incur (1) by reason of the failure of the named insureds to comply with the covenants and provisions of this Bond and (2) in enforcing any of the covenants or provisions of this Bond, or any provisions of the Master Policy relating to such covenants or provisions;

For the purpose of recording this agreement, a photocopy acknowledged before a Notary Public to be a true copy hereof shall be regarded as an original.

The preceding Certificate of Insurance, Declarations and Bond form a part of the

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Master Policy. Cancellation or termination of the Master Policy or the Certificate of Insurance shall not affect the named insured's obligations under the policy or the Bond to pay the retrospective premiums and allowances for premium taxes, as provided in this *Certificate* and Condition 2 of the Master Policy.

In witness whereof, the named insureds have caused the Declaration and the Bond for Payment of Retrospective Premiums to be signed and sealed by a duly authorized officer, to be effective _____ eastern standard time.

Attest or Witness

Named Insureds:

By _____

(Seal)

(Signature of Officer)

(type or print Name & Title of Officer)

Date: _____

In witness whereof, the companies subscribing the Master Policy have caused the Certificate of Insurance and the Declarations to be signed on their behalf by the President of Nuclear Energy Liability Insurance Association to be effective _____ eastern standard time, and countersigned below by a duly authorized representative.

For the Subscribing Companies of Nuclear Energy Liability Insurance Association.

By: President _____

Countersigned by _____

(Authorized Representative)

[49 FR 11153, Mar. 26, 1984]

**PART 150—EXEMPTIONS AND
CONTINUED REGULATORY AU-
THORITY IN AGREEMENT STATES
AND IN OFFSHORE WATERS
UNDER SECTION 274**

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AUTHORITY: Atomic Energy Act of 1954, secs. 11, 53, 81, 83, 84, 122, 161, 181, 223, 234, 274 (42 U.S.C. 2014, 2201, 2231, 2273, 2282, 2021); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under Atomic Energy Act secs. 11e(2), 81, 83, 84 (42 U.S.C. 2014e(2), 2111, 2113, 2114).

Section 150.14 also issued under Atomic Energy Act sec. 53 (42 U.S.C. 2073).

Section 150.15 also issued under Nuclear Waste Policy Act sec. 135 (42 U.S.C. 10155, 10161).

Section 150.17a also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152).

Section 150.30 also issued under Atomic Energy Act sec. 234 (42 U.S.C. 2282).

SOURCE: 27 FR 1352, Feb. 14, 1962, unless otherwise noted.

GENERAL PROVISIONS

§ 150.1 Purpose.

The regulations in this part provide certain exemptions to persons in Agreement States from the licensing requirements contained in chapters 6,