



## **RULEMAKING ISSUE**

(NEGATIVE CONSENT)

July 8, 2003

SECY-03-0114

**FOR:** The Commissioners  
**FROM:** William D. Travers  
Executive Director for Operations  
**SUBJECT:** FINAL RULE, 10 CFR PART 140, "FINANCIAL PROTECTION  
REQUIREMENTS AND INDEMNITY AGREEMENTS"

*Approved, subject to  
attached comments/edits.*

*Ed J. Jeffrey*  
*7/10/03*

**PURPOSE:**

To inform the Commission that the Executive Director for Operations (EDO) intends to publish a final rule within 10 working days of the date of this paper, unless otherwise directed by the Commission, that will increase licensees' retrospective deferred premium based on the rate of inflation. This action is required by the Price-Anderson Amendments Act of 1988, for liability insurance coverage in the event of nuclear incidents at licensed, operating, commercial nuclear power plants with a rated capacity of 100,000 kW or more and also reflects the increase in primary nuclear liability insurance to \$300 million, which became effective on January 1, 2003.

**DISCUSSION:**

Part 140, "Financial Protection Requirements and Indemnity Agreements," provides requirements and procedures for implementing the financial protection requirements for certain licensees and other persons pursuant to Section 170 of the Atomic Energy Act (AEA) of 1954, as amended. Section 140.11(a)(4) specifies the amount of financial protection required of a licensee for a nuclear reactor that is licensed to operate, is designed for the production of electrical energy, and has a rated capacity of 100,000 kW or more. This amount is presently set at the sum of \$300 million and the amount available as secondary financial protection in the form of private liability insurance under an industry retrospective rating plan. These limits are currently \$83.9 million per reactor per incident (plus any surcharge assessed under

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

**Commissioner McGaffigan's Comments on SECY-03-0114**

I approve publication of the Federal Register notice subject to the attached edits, as explained below:

The last adjustment of the retrospective deferred premium was effective on August 20, 1998, however, it was based on the increase in the CPI from September 1993 through December 1997. The 1998 Federal Register announced that the next inflation adjustment would be made "not later than August 20, 2003, and will be based on the incremental change in the CPI since December 1997." 63 Fed. Reg. 39015 (July 21, 1998). Therefore, the attached edits (provided to me by staff) correct the calculation to update for the full incremental difference in the CPI since the last adjustment.

*Edz*

**NUCLEAR REGULATORY COMMISSION**

**10 CFR PART 140**

**RIN 3150-AH23**

**Adjustment of the Maximum Retrospective Deferred Premium**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final Rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to increase the maximum secondary retrospective deferred premium for liability insurance coverage in the event of nuclear incidents at licensed, operating, commercial nuclear power plants with a rated capacity of 100,000 kW or more. Currently established at \$83.9 million per reactor per incident (but not to exceed \$10 million in any 1 year), the maximum secondary retrospective deferred premium is being increased to ~~\$94.5~~<sup>95.8</sup> million per reactor per incident (but not to exceed \$10 million in any 1 year). The change is based on the aggregate percentage change of ~~12.59~~<sup>14.2</sup> percent in the Consumer Price Index (CPI) from ~~September 1998~~<sup>December 1997</sup> through March 2003. The Price-Anderson Amendments Act of 1988 requires that this inflation adjustment be made at least once each 5 years. The increase in the primary nuclear liability insurance layer, which was increased on January 1, 2003, to \$300 million, is also reflected in this rule.

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

**FOR FURTHER INFORMATION CONTACT:** Ira Dinitz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, telephone 301-415-1289, e-mail [ipd1@nrc.gov](mailto:ipd1@nrc.gov).

The inflation adjustment required by Section 170t (1)(B) of the AEA must be made at least once during the period from August 20, 1998, to August 20, 2003, and must be in accordance with the aggregate percentage change (since ~~August 1998~~ <sup>December 1997</sup>) in the CPI for all urban consumers, as published by the Secretary of Labor. The aggregate percentage increase in the CPI from ~~September 1998~~ <sup>December 1997</sup> through March 2003 is ~~12.59~~ <sup>14.2</sup> percent. This number is derived by dividing the ~~September 1998~~ <sup>December 1997</sup> CPI index by the March 2003 CPI index. When the percentage increase is applied to the current \$83.9 million maximum retrospective deferred premium, the new maximum retrospective deferred premium will increase to ~~\$94.5~~ <sup>95.8</sup> million per reactor per incident. The limit of \$10 million per reactor per incident per year will be unchanged.

X

X

X

X

To implement this inflation adjustment, the Commission is revising 10 CFR 140.11(a)(4), effective August 20, 2003, to require large nuclear power plant licensees to maintain, in addition to \$300 million in primary financial protection, a new maximum standard deferred premium of ~~\$94.5~~ <sup>95.8</sup> million per reactor per incident (but not to exceed \$10 million in any 1 year). Because this inflation adjustment by the Commission is essentially ministerial in nature, the Commission finds that there is good cause for omitting notice and public comment (in the form of a proposed rule) on this action as unnecessary, in accordance with the Administrative Procedure Act of 1946 (5 U.S.C. 553b).

X

The next inflation adjustment in the amount of the standard deferred premium will be made not later than August 20, 2008, and will be based on the incremental change in the CPI since March 2003.

### Voluntary Consensus Standards

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

(a) \* \* \*

(4) In an amount equal to the sum of \$300,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the pro rata share of the aggregate public liability claims and costs, excluding costs payment of which is not authorized by Section 170o.(1)(D), in excess of that covered by primary financial protection) for each nuclear reactor which is licensed to operate and which is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more: Provided, however, that under such a plan for deferred premium charges for each nuclear reactor which is licensed to operate, no more than <sup>\$5,800,000</sup>~~\$94,500,000~~ with respect to any nuclear incident (plus any surcharge assessed under Subsection 170o.(1)(E) of the Act) and no more than \$10,000,000 per incident within one calendar year shall be charged. ✓

\* \* \* \* \*

Dated at Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

For the Nuclear Regulatory Commission.

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

Approved for Publication

The Commission delegated to the Executive Director for Operations (10 CFR 1.32(c)) the authority to develop and promulgate rules as defined in the Administrative Procedure Act (5 U.S.C. 551 (4)), subject to the limitations specified in NRC Management Directive 9.17, "Organization and Functions," Office of the Executive Director for Operations, paragraphs 0213, 038, 039, and 0310.

*December 1997*

*\$95.8*

The enclosed final rule entitled "10 CFR Part 140, Financial Protection Requirements and Indemnity Agreements," amends the regulations in 10 CFR 140.11(a)(4) to increase the retrospective deferred premium, which is currently established at \$83.9 million per reactor per incident (but not to exceed \$10 million in any 1 year), to *\$94.5* million per reactor per incident (but not to exceed \$10 million in any 1 year) in accordance with the aggregate percentage change (since ~~August 1998~~) in the Consumer Price Index for all urban consumers published by the Secretary of Labor. The change in primary nuclear liability insurance, which was increased to \$300 million on January 1, 2003, is also reflected in this rule.

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

\_\_\_\_\_  
Date

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

OFFICE OF NUCLEAR REACTOR REGULATION

Notice of Final Rule Signed by the EDO

December 1997

\$95.8

On           [month/day]          , 2003, the Executive Director for Operations (EDO) approved a final rule that amends 10 CFR 140.11(a)(4) to increase the secondary retrospective premium from \$83.9 million per reactor per incident to \$94.5 million per reactor per incident to reflect the aggregate percentage change (since ~~August 1998~~) in the Consumer Price Index. This change is statutorily required under Section 170t of the Atomic Energy Act of 1954, as amended.

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

This final rule does not constitute a significant question of policy, nor does it amend regulations contained in 10 CFR Parts 7, 8, or 9, Subpart C, concerning matters of policy.

The final rule can be found in ADAMS at ML031630889.