for the 1988–89 marketing year. Carry-in on June 1, 1988, was 33,881 pounds of Scotch oil, higher than the Committee had estimated.

Currently, the Midwest is experiencing a drought and estimates indicate that a maximum of 50 percent of a normal crop will be harvested there this year. The Committee expects the demand for Far West Scotch oil to increase as buyers of Midwest Scotch oil will substitute Far West oil for Midwest oil. This year, although it is early in the marketing year, a considerable amount of contracting of the 1988–89 crop has occurred. In order to meet the anticipated increase in trade demand, a higher salable quantity and allotment percentage for Scotch oil are required. The Committee recommended increasing the salable percentage by 7 percent, from 39 to 46 percent, thus making an additional 116,624 pounds available to the market. The basis for this recommendation was that when these additional pounds are added to the total supply available of 683,644 pounds, the resulting 800,268 pounds is between the five-year average sales of 758,682 pounds and the highest year of sales of 868,242 pounds. The Committee decided that this figure could meet immediate needs while assuring growers that a burdensome supply would not be put on the market. The Committee therefore recommended that the 1988–89 Scotch salable percentage be increased from 39 to 46 percent resulting in an increase in the salable quantity from 649,763 to 766,387 pounds. This figure added to the June 1, 1988, carry-in of 33,881 results in a total available supply of 800,268 pounds. The following table summarizes the computations used in arriving at the Committee's recommendations.

| | Original recommendation, Aug. 12, 1987 | Revised recommendation, July 6, 1988 |
|---|---|---|
| | Pounds | |
| (1) Carry-in | 15,703 | 33,881 |
| (2) Trade demand | 761,063 | 900,268 |
| (3) Desirable carryout | | |
| (4) Salable quantity [1] | 645,360 | 766,387 |
| (5) Total allotment bases for Scotch oil | 1,667,002 | 1,666,059 |
| (6) Allotment percentage ((4 – 5) × 100) | 39 | 46 |

[1] Salable quantity equals trade demand minus carry-in and 100,000 pounds of Scotch oil expected to be available from outside the production area.

Thus, the Department has determined an allotment percentage of 46 percent should be established for the 1988–89 marketing year. This percentage will make available 766,387 pounds of Far West Scotch spearmint oil to handlers of Far West spearmint oil.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the final rule published in the March 1, 1988, issue of the **Federal Register** (53 FR 6129), in connection with the initial establishment of the salable quantity and allotment percentage for Scotch oil, the Committee's recommendation and other information, it is found that to amend § 985.208 (53 FR 6129) so as to change the salable quantity and allotment percentage for Scotch spearmint oil, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This final action relieves restrictions on handlers by increasing the quantity of Scotch oil that may be freely marketed immediately; and (2) it should be effective as soon as possible to enable handlers to satisfy current market needs for Scotch oil.

**List of Subjects in 7 CFR Part 985**

Far West, Marketing agreements and orders, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

**PART 985—[AMENDED]**

1. The authority citation for 7 CFR Part 985 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 985.208 is amended by revising paragraph (a) to read as follows:

**Note.**—The following provisions will not be published in the Code of Federal Regulations.

**§ 985.208 Salable quantities and allotment percentages—1988–89 marketing year.**

(a) Class "I" Oil—a salable quantity of 766,387 pounds and an allotment percentage of 46 percent.

* * * * *

August 15, 1988.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 88-18719 Filed 8-17-88; 8:45 am]

BILLING CODE 3410-02-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 140

### Facility Form Nuclear Liability Insurance Policy; Miscellaneous Amendments

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission is amending its regulations to make several minor changes in the Facility Form nuclear liability insurance policy furnished as evidence of financial protection. The two nuclear insurance pools have submitted endorsements to the Facility Form policy that make available a single insurance policy to cover onsite worker claims. This new Master Worker Policy reflects different rating and underwriting treatment than is utilized in the Facility Form policy. The supplementary insurance provided by the new policy enhances protection to the public since payments under its provisions for routine claims by onsite nuclear workers will not reduce the financial protection for the public under the primary and secondary nuclear liability insurance policies provided as evidence of financial protection under the Price-Anderson Act.

**EFFECTIVE DATE:** September 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ira Dinitz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–1289.

**SUPPLEMENTARY INFORMATION:** On April 27, 1988, the Commission published a proposed rule in the **Federal Register** (53 FR 15049) requesting comments on endorsements to the Facility Form nuclear liability insurance policy and a new Facility Form Policy submitted to the Commission by two nuclear insurance pools, Nuclear Energy Liability Insurance Association (NELIA) and Mutual Atomic Energy Liability

Underwriters (MAELU). The Facility Form of insurance policy along with endorsements to these policies has been accepted by the Commission as evidence of the financial protection required under section 170 of the Atomic Energy Act of 1954, as amended. The evidence of financial protection accepted by the Commission assures the availability of funds to compensate the public for the financial consequences of a catastrophic nuclear accident.

Effective January 1, 1988, the Pools modified the manner in which coverage was made available to operators of nuclear reactors and others. The change is confined to tort claims by onsite nuclear workers that arise from circumstances unrelated to an extraordinary nuclear occurrence. Financial protection must continue to include coverage for such claims by onsite workers and the revised program the Pools are making available does so by means of a new supplementary insurance policy for tort claims from onsite nuclear workers. The new Nuclear Energy Liability Policy (Facility Worker Form) was effective as of January 1, 1988 and is a part of the Facility Form policy. The new Facility Worker Form covers only the claims of onsite workers first employed in the nuclear industry on or after January 1, 1988 ("new workers"). Claims of all other workers ("old workers") will continue to be covered under present Facility Forms for ten more years, until December 31, 1997, at which time coverage for claims from old workers could be added to the new Facility Worker Form, or be otherwise insured.

Coverage for old workers will be changed by an endorsement to Facility Forms. One such endorsement (Form NE–64) was attached to all Facility Forms issued before January 1, 1988, and Form NE–66 was attached to all Facility Forms issued on and after that date. Both forms allow coverage under the Facility Forms to which they are attached to continue for claims made by old workers on or before December 31, 1997.

The Facility Worker Form is a Master Policy that provides a single aggregate limit of liability shared by insured entities under all Certificates of Insurance issued to provide insurance under the Master Policy. The Master Worker Policy that was issued by the Pools provides a single aggregate liability limit and has been designed as a prototype for a longer term, perhaps continuous, replacement program based on experience. Because the new Master Worker Policy was designed as a prototype, a 5-year term was selected on the basis of negotiations between the Pools and their insureds. It is anticipated that before the Master Worker Policy expires, a renewal or replacement policy will be developed taking into account the additional recommendations of insureds and others. A Certificate of Insurance was issued under each policy to every facility operator desiring to purchase the coverage. The Master Worker Policy issued by NELIA has a Policy Aggregate Limit of $124 million; the MAELU Policy Aggregate Limit is $36 million.

To minimize the need for Certificate holders to apply for reinstatement of the Policy Aggregate Limit as is required by the Commission, the Pools will automatically reinstate up to the limit of $160 million. The policies can be further reinstated by agreement of the parties.

The supplementary insurance provided by the Facility Worker Form enhances protection for the public since payments under its provisions for routine claims by onsite nuclear workers will not reduce the financial protection for the public under the primary and secondary nuclear liability insurance policies provided as evidence of financial protection under the Price-Anderson Act. Conversely, payments under primary and secondary policies will not operate to reduce the coverage under the Facility Worker Form for routine claims by onsite workers.

It is important to note that the rating procedure applicable to reactors to reflect the risk of a catastrophic accident that presumably would result in a large number of offsite claims is not appropriate to the lesser, routine claims from onsite workers. The premium for the Facility Worker Form will be regulated by the "Industry Retrospective Rating Plan Premium Endorsement" (Form NE–W–1) which reflects the different kind of risk covered by the new policy.

The change in the insurance available from the Pools effective as of January 1, 1988 keeps intact the coverage that has been available to licensees with respect to claims from the public. By providing separate coverage for routine claims from new workers, and eventually from old workers as well, the protection provided to the public, to onsite workers, and to persons who may be liable is enhanced. The Facility Form has been accepted by the Commission as evidence of financial protection from licensees. The Facility Form, as modified by Forms NE–64 and NE–66, and the Facility Worker Form, with its accompanying Certificate of Insurance and premium endorsements, are acceptable to the Commission as evidence of financial protection required by the Price-Anderson Act.

Only one respondent, American Nuclear Insurers, submitted comments prior to the May 27, 1988 comment expiration date. The comments were editorial corrections to the proposed rule and have been incorporated in the effective rule.

**Environmental Impact: Categorial Exclusion**

The Commission has determined that this rule is the type of action described as a categorial exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

**Paperwork Reduction Act Statement**

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) Existing requirements were approved by the Office of Management and Budget approval number 3150–0039.

**Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) the Commission hereby certifies that this rule will not have a significant economic effect on a substantial number of small entities. This rule applies only to nuclear power plant licensees which are electric utility companies dominant in their service areas. These licensees are not "small entities" as set forth in the Regulatory Flexibility Act and do not meet the standards set forth for small businesses in Small Business Administration regulations in 13 CFR Part 121.

**Backfit Analysis**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, that a backfit analysis is not required for this rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

**List of Subjects in 10 CFR Part 140**

Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and 5 U.S.C. 553, the NRC is

adopting the following amendments to 10 CFR Part 140.

## PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

1. The authority citation for Part 140 is revised to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 140.11(a), 140.12(a), 140.13 and 140.13a are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and § 140.6 is issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 140.91, Appendix A, is amended by adding the following endorsements immediately after the existing text to read as follows:

**Amendment of Coverage Endorsement for Workers Claims**

(Facility Form)

NE–64(1/1/88)

*Preamble*

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

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

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

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

1. Definitions

When used in reference to this endorsement:

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

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

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

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

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

2. Application of This Endorsement

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

3. Exclusion of New Workers Claims

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

4. Application of Policy To Workers Claims Not Excluded

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

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

5. Availability of Supplemental Insurance

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

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

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

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

Executed for the companies

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 the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured not later that 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;

"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 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;

"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 of 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 Aggregrate 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, unemployment compensation or disability benefits law, or under any similar law;

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

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

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

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

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

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

A. Policy Period

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

B. Discovery Period

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

C. Application of Policy

This policy applies only to bodily injury to a new worker (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is first made against the insured within the discovery period.

*VII—Other Insurance*

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

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

*VIII—Amount of Insurance Available*

A. Policy Aggregate Limit

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

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

B. Limitation of the Companies' Liability

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

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

(a) Non-ratable incurred losses, and

(b) Those ratable incurred losses for which the companies have not been reimbursed 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 Nuclear Insurers affording the insured nuclear energy liability or property insurance.

*XII—Cancellation of Certificates*

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

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

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

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

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

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

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

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

*XIII—General Conditions*

A. Premium

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

B. Modifications, Waiver

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

C. Assignment

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

D. Suit

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

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

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

E. Authorization of The First Named Insured

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

F. Insured Representation

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

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

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

G. Changes in Subscribing Companies and Their Proportionate Liability

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

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

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

H. Declarations

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

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

For the Subscribing Companies:
Date of Issue: _____ 19____

_____

Countersigned by: (Authorized Representative)

**NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION**

**Nuclear Energy Liability Policy**

(Facility Worker Form) herein called the Master Worker Policy

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

Certificate No. _____

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

"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 endorsement for return to the Named Insureds under Certificates;

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

*2. Payment of Advance and Standard Premiums*

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

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

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

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

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

NELIA shall maintain on behalf of its members a Special Reserve Account for 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 premiums charges applies to all claims covered by the Master Worker Policy and continues until all such claims are closed, whether or not such claims were before the inception of the Certificate or after its termination.

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

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

*7. Reserve Premium Refund Agreement*

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

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

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

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

**NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION**

**Nuclear Energy Liability Insurance**

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

*Calendar Year 1988*

1. Advance Premium

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

2. Standard Premium and Reserve Premium

In the absence of a change in the Advance Premium indicated above, it is agreed that, subject to the previsions 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–5 (1/1/88)

1. Industry Reserve Premium Charge

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

2. Retrospective Adjustment Ratio

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

3. Reserve Premium Charge

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

*Explanation of Use of this Endorsement:* This endorsement will be issued by the companies under the Master Worker Policy after an industry reserve premium charge has been determined because there is a negative balance in the reserve for refunds. It states the reserve premium charge applicable to the Certificate to which the endorsement is attached.
Effective Date of this Endorsement
12:01 a.m. Standard Time
To form a part of Policy No.
Issued to
Date of Issue
For the subscribing companies
By
General Manager
Endorsement No.
Countersigned by 2

Dated at Rockville, Maryland, this 8th day of August, 1988.

For the Nuclear Regulatory Commission.

**Victor Stello, Jr.,**

*Executive Director for Operations.*

[FR Doc. 88–18743 Filed 8–17–88; 8:45 am]
BILLING CODE 7590–01–M

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 229

**[Docket No. R–0643]**

### Regulation CC; Availability of Funds and Collection of Checks

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Board is amending Regulation CC to conform the definition of "paying bank" to the Expedited Funds Availability Act as interpreted by a recent court decision. Other conforming amendments are also being made. The Board has adopted these changes on an interim basis to ensure they are in place when the Act takes effect on September 1, 1988. The Board is requesting comments on the interim rule pending adoption of a final rule.

**DATES:** The interim rule takes effect on September 1, 1988.

Comments must be received no later than September 12, 1988.

**ADDRESS:** Comments, which should refer to Docket No. R–0643, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B–2223 between 8:45 a.m. and 5:00 p.m. All comments received will be made available to the public, and may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m.

Comments on the changes to the information collection requirements should be sent to Mr. Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Joseph R. Alexander, Senior Attorney, Legal Division (202/452–2489); Louise L. Roseman, Assistant Director, Division of Federal Reserve Bank Operations (202/452–3874); Gerald P. Hurst, Senior Counsel, Division of Consumer and Community Affairs (202/452–3667). For the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

Federal Reserve Board Clearance Officer, Nancy Steele, Division of Research and Statistics (202/452–3822).

OMB Desk Officer, Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget (202/395–7340).

**SUPPLEMENTARY INFORMATION:** On May 13, 1988, the Board issued its Regulation CC—Availability of Funds and Collection of Checks (12 CFR Part 229) to implement the Expedited Funds Availability Act (the "Act") (Title VI of Pub. L. 100–86). 53 FR 19373 (May 27, 1988). In keeping with the Board's view that the Act established a clear link between the time it normally takes a check to be cleared and returned, and the time within which the depositary bank [1] must make the funds available to the depositor, the regulations provided that where a check is payable by one bank but "payable through" [2] another and sent to the payable through bank for payment or collection, the location of the payable through bank would determine whether a check is local or nonlocal vis-a-vis the depositary bank for the purposes of the funds availability schedules in the regulation.

Shortly after the Board issued Regulation CC, a trade association of credit unions and one credit union whose checks are payable through a nonlocal bank filed suit against the Board seeking to overturn the definition of paying bank to the extent that the definition included a payable through bank where the check was drawn on a credit union. Recently, the court granted the plaintiffs' motion for summary judgment and invalidated Regulation CC's definition of paying bank to the extent that it includes a payable through bank where the check is drawn on a credit union. *Credit Union National Association* v. *Board of Governors*, No. 88–1295 OG (D.D.C. July 28, 1988). The court found that the Board's regulation was inconsistent with the Act to the extent that it defined the payable through bank as the paying bank for purposes of the Act's funds availability requirements.

The Expedited Funds Availability Act takes effect on September 1, 1988. Regulation CC also takes effect on that date, except for those portions of it invalidated by the Court's order. The Board has not determined whether to appeal the court's decision. Nevertheless, in order to clarify the duties of banks and others with respect to checks in light of the court's order, temporary conforming amendments are being made to the definitions and to the disclosure rules. These amendments primarily affect the classification of checks payable by a depository institution but payable through another institution as local on nonlocal. They do not affect payable through drafts payable by nonbank payors. Further, as the payable through share draft will carry the routing number of the payable through bank, not the credit union, provisions in the regulation that allow a depositary bank to rely on the routing number to determine whether a check is local or nonlocal are also being amended.

The interim rule permits depository institutions whose initial disclosures are affected by the court's decision to send simple clarifying notices in regularly scheduled mailings to existing account customers. Institutions will be deemed to be in compliance with the disclosure requirements of the regulation as long as the disclosures are revised by December 31, 1988. Finally, depository institutions may have operational difficulties in identifying credit union payable through share drafts for availability purposes. The Commentary to § 229.21(c) concerning bona fide errors is being amended to clarify that it may be a bona fide error if a depository institution fails to identify for availability purposes a local check that is a payable through draft provided that it has procedures for identifying such drafts. If the Board decides not to appeal the court's decision or if any appeal is unsuccessful, the Board, after consideration of any comments received with regard to the interim rule, may adopt the interim rule as a final amendment to Regulation CC. In addition, the Board may also consider additional rulemaking to address operational or disclosure problems that might result because depositary banks and bank customers cannot rely on the routing number printed on a payable through draft to determine whether the check is local or nonlocal for funds availability purposes.

The Board believes that it is important to clarify these issues with an amended regulation before September 1, so that banks and other parties affected by Regulation CC are fully aware of their responsibilities under the Act by the time it takes effect. Nonetheless, there is not sufficient time for the Board to publish proposed regulations for comment before that date. Accordingly, the Board, for good cause, finds that the notice and public comment procedure normally required is impractical and contrary to the public interest under 5 U.S.C. 553(b)(B). The Board further finds that, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to make the interim rule effective on September 1, 1988, without regard for the 30-day period provided for in 5 U.S.C. 553(d).

*Paperwork Reduction Act Notice.* The Board has previously submitted the

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[1] The Act uses the term "receiving depository institution" to mean "the branch of a depository institution or the proprietary ATM in which a check is first deposited." 12 U.S.C. 4001(20). Because the term "receiving depository institution" is unique to the Act, the Board used the term "depositary bank," which, because it is used in the Uniform Commercial Code ("U.C.C.") and the Board's Regulation J (12 CFR Part 210), is familiar to the banking industry.

[2] When a check states on its face that it is "payable through"a bank, that bank is referred to as the "payable through bank." Under the U.C.C., a payable through bank is not named as the payor, but is designated as a "collecting bank to make presentment." U.C.C. 3–120. Under the Board's Regulation J, a payable through bank is the "paying bank." 12 CFR 210.2(j).

disclosure requirements and model forms and clauses of Regulation CC to the Office of Management and Budget ("OMB") for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's Regulations for Controlling Paperwork Burdens on the Public (5 CFR Part 1320). (OMB Docket number: 7100–0234.)

The changes to Regulation CC require modifications to the disclosure requirements and two additional model forms; these are described elsewhere in this notice. These are being submitted to OMB for clearance. Additional supporting documents may be obtained from the OMB clearance officer listed above.

The Board estimates that the amended disclosure requirements will result in an increase in the one-time reporting burden of Regulation CC requirements of approximately 107,000 hours. Approximately 11,000 hours of the increase in reporting burden will be borne by state member banks and other institutions under the Board's jurisdiction.

Any comments on the collection requirements should be sent to the OMB desk officer listed above. OMB's usual practice is not to take any action on an information collection until at least 10 working days after notice in the **Federal Register,** but occasionally the public interest requires more rapid action.

**List of Subjects in 12 CFR Part 229**

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, effective September 1, 1988, Title 12, Chapter II, Part 229 of the Code of Federal Regulations is amended as follows:

## PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS

1. The authority citation for Part 229 continues to read as follows:

**Authority:** Title VI of Pub. L. 100–86, 101 Stat. 552, 635; 12 U.S.C. 4001 *et seq.*

2. In § 229.2, paragraphs (r), (s), (z), and (dd) are revised to read as follows:

**§ 229.2 Definitions.**

* * * * *

(r) "Local check" means a check payable by or at a local paying bank, or a check payable by a nonbank payor and payable through a local paying bank.

(s) "Local paying bank" means a paying bank that is located in the same check processing region as the physical location of—

(1) The branch or proprietary ATM of the depositary bank in which that check was deposited; or

(2) Both the branch of the depositary bank at which the account is held and the nonproprietary ATM at which the check is deposited.

* * * * *

(z) "Paying bank" means—

(1) The bank by which a check is payable, unless the check is payable at another bank and is sent to the other bank for payment or collection;

(2) The bank at which a check is payable and to which it is sent for payment or collection;

(3) The Federal Reserve Bank or Federal Home Loan Bank by which a check is payable;

(4) The bank through which a check is payable and to which it is sent for payment or collection, if the check is not payable by a bank;

(5) The state or unit of general local government by which a check is payable.

For purposes of Subpart C, and in connection therewith, Subpart A, "paying bank" includes the bank through which a check is payable and to which the check is sent for payment or collection, regardless of whether the check is payable by another bank, and the bank whose routing number appears on a check in fractional or magnetic form and to which the check is sent for payment or collection.

* * * * *

(dd) "Routing number" means—

(1) The number printed on the face of a check in fractional form on in nine-digit form; or

(2) The number in a bank's indorsement in fractional or nine-digit form.

* * * * *

**§ 229.16 [Amended]**

3. Section 229.16(b)(2) is amended by adding footnote 1 to the end of that paragraph, to read as follows:

[1] No later than December 31, 1988, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose that certain checks, such as some credit union share drafts that are payable by one bank but payable through another bank, will be treated as local or nonlocal checks based upon the location of the bank by which they are payable and not on the basis of the location of the bank whose routing number appears on the check. The statement concerning payable through checks must describe how the customer can determine whether these checks will be treated as local or nonlocal, or state that special rules apply to such checks and that the customer may ask about the availability of these checks. The statement may be in the form of an attachment or insert to the bank's existing specific policy disclosures. In addition, banks subject to this disclosure requirement must provide a similar notice concerning the payable through checks to existing account customers no later than December 31, 1988. (Even though a bank need not make a disclosure concerning payable through checks until December 31, 1988, the bank must characerize these checks correctly as local or nonlocal checks under amended § 229.2, and provide availability in accordance with §§ 229.11, 229.12, and 229.13, effective September 1, 1988.)

4. In § 229.30, paragraph (a)(1) is revised to read as follows:

**§ 229.30 Paying bank's responsibility for return of checks.**

(a) * * *

(1) *Two-day/four-day test.* A paying bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depositary bank not later than 4:00 p.m. (local time of the depositary bank) of—

(i) The second business day following the banking day on which the check was presented to the paying bank, if the paying bank is located in the same check processing region as the depositary bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank, if the paying bank is not located in the same check processing region as the depositary bank.

If the last business day on which the paying bank may deliver a returned check to the depositary bank is not a banking day for the depositary bank, the paying bank meets the two-day/four-day test if the returned check is received by the depositary bank on or before the depositary bank's next banking day.

* * * * *

5. In § 229.31, paragraph (a)(1) is revised to read as follows:

**§ 229.31 Returning bank's responsibility for return of checks.**

(a) * * *

(1) *Two-day/four-day test.* A returning bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depositary bank not later than 4:00 p.m. (local time) of—

(i) The second business day following the banking day on which the check was presented to the paying bank if the paying bank is located in the same check processing region as the depositary bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank if the paying bank is not located in the same check processing region as the depositary bank.

If the last business day on which the returning bank may deliver a returned check to the depositary bank is not a banking day for the depositary bank, the returning bank meets this requirement if the returned check is received by the depositary bank on or before the depositary bank's next banking day.

* * * * *

6. The heading and the first two introductory paragraphs of Appendix A to Part 229 are revised and the third introductory paragraph is removed to read as follows:

**Appendix A—Routing Number Guide to Next-Day Availability Checks and Local Checks**

Each bank is assigned a routing number by Rank McNally & Co., as agent for the American Bankers Association. The routing number takes two forms: A fractional form and a nine-digit form. A paying bank is generally identified on the face of a check by its routing number in both the fractional form (which generally appears in the upper right-hand corner of the check) and the nine-digit form (which is printed in magnetic ink in a strip along the bottom of the check). Where a check is payable by one bank but payable through another bank, the routing number appearing on the check is that of the payable through bank, not the payor bank.

The first four digits on the nine-digit routing number and the denominator of the fractional routing number form the "Federal Reserve routing symbol," which identifies the Federal Reserve District, the Federal Reserve office, and the clearing arrangements used by the paying bank.

* * * * *

7. Appendix C to Part 229 is amended by adding Models C–19 and C–19A to the end of the appendix to read as follows:

**Appendix C—Model Forms, Clauses, and Notices**

* * * * *

*Model C–19—Payable through checks*

In some instances we will treat checks as local or nonlocal based upon the location of the bank by which the check is payable, *not* on the routing number on the bottom of the check. For example, if a credit union share draft is payable by a credit union that is located in the same check processing region as our bank, the share draft will be treated as a local check, even if the draft is payable through a bank that is located outside of our check processing region as determined by the routing number on the check. If you have any questions about a specific check, please ask your branch manager.

*Model C–19A—Payable through checks*

Checks that are payable by one bank but are payable through another bank, such as credit union share drafts that are payable through a bank, are considered local or nonlocal based upon the location of the bank by which the check is payable, not the payable through bank whose routing number appears on the check. If the bank by which the payable through check is payable (the credit union in the case of a payable through credit union share draft) is located in the same check processing region as we are, the check will be considered a local check. ((Our check processing region includes * * *.) or (A map of our check processing region is (attached) (available upon request).)) If you would like to know whether a particular check falls into this category, you may ask your branch manager for assistance.

**Appendix E—[Amended]**

8. Appendix E—Commentary to Part 229 is amended as follows:

a. The commentary on § 229.2 (o), (r), (s), and (z) is revised to read as follows:

*Section 229.2 Definitions*

* * * * *

(o) *Depositary bank.* The regulation uses the term depositary bank rather than the term "receiving depository institution." "Receiving depository institution" is a term unique to the Act, while "depositary bank" is the term used in Article 4 of the U.C.C. and Regulation J.

A depositary bank includes the bank in which the check is first deposited. If a foreign office of a U.S. or foreign bank sends checks to its U.S. correspondent bank for forward collection, the U.S. correspondent is the depositary bank since foreign offices of banks are not included in the definition of bank.

If a customer deposits a check in its account at a bank, the customer's bank is the depositary bank with respect to the check. For example, if a person deposits a check into an account at a nonproprietary ATM, the bank holding the account into which the check is deposited is the depositary bank even though another bank may service the nonproprietary ATM and send the check for collection. (Under § 229.35 the depositary bank may agree with the bank servicing the nonproprietary ATM to have the servicing bank place its own indorsement on the check as the depositary bank. For the purposes of Subpart C, the bank applying its indorsement as the depositary bank indorsement on the check is the depositary bank.)

For purposes of Subpart B, a bank may act as both the depositary bank and the paying bank with respect to a check, if the check is payable by the bank in which it was deposited, or if the check is payable by a nonbank payor and payable through or at the bank in which it was deposited. A bank is also considered a depositary bank with respect to checks it receives as payee. For example, a bank is a depositary bank with respect to checks it receives for loan repayment, even though these checks are not deposited in an account at the bank. Because these checks would not be "deposited to accounts," they would not be subject to the availability or disclosure requirements of Subpart B.

* * * * *

(r) *Local check* is defined as a check payable by or at a local paying bank, or, in the case of nonbank payors, payable through a local paying bank. A check payable by a local bank but payable through a nonlocal bank is a local check. Conversely, a check payable through a local bank but payable by a nonlocal bank is a nonlocal check. Where two banks are named on a check and neither is designated as a payable through bank, the check is considered payable by either bank and may be considered local or nonlocal depending on which bank it is sent to for payment. Generally, the depositary bank may rely on the routing number to determine whether a check is local or nonlocal. Appendix A includes a list or routing numbers arranged by Federal Reserve Bank Office to assist persons in determining whether or not such a check is local. If, however, a check is payable by one bank but payable through another bank, the routing number appearing on the check will be that of the payable through bank, not the paying bank. Many credit union share drafts and certain other checks payable by banks are payable through other banks. In such cases, the routing number cannot be relied on to determine whether the check is local or nonlocal. In a few cases, a payable through bank will be designated only by routing numbers and will not be named on the check. In such cases also, the routing number may not be relied on to determine whether the check is local or nonlocal.

(s) *Local paying bank* is defined as a paying bank located in the same check processing region as the branch or proprietary ATM of the depositary bank.

*Examples*

1. If a check that is payable by a bank that is located in the same check processing region as the depositary bank is payable through a bank located in another check processing region, the check is considered local or nonlocal depending on the location of the bank by which it is payable even if the check is sent to the nonlocal bank for collection.

2. The location of the depositary bank is determined by the physical location of the branch or proprietary ATM at which a check is deposited. If the branch of the depositary bank located in one check processing region sends a check to the depositary bank's central facility in another check processing region, and the central facility is in the same check processing region as the paying bank, the check is still considered nonlocal. (See Commentary on definition of "paying bank".)

For deposits at nonproprietary ATMs, a paying bank is a local paying bank only if the paying bank is located in the same check processing region as the location of both the branch of the depositary bank at which the account is held and the nonproprietary ATM at which the check is deposited.

* * * * *

(z) *Paying bank.* The regulation uses this term in lieu of the Act's "originating depository institution." For purposes of

Subpart B, the term "paying bank" includes the payor bank, the payable at bank to which a check is sent, or, if the check is payable by a nonbank payor, the bank through which the check is payable and to which it is sent for payment or collection. For purposes of Subpart C, the term includes the payable through bank and the bank whose routing number appears on the check regardless of whether the check is payable by a different bank, provided that the check is sent for payment or collection to the payable through bank or the bank whose routing number appears on the check.

Under §§ 229.30 and 229.36(a), a bank designated as a "payable through bank" or "payable at bank" and to which the check is sent for payment or collection is responsible for the expedited return of checks and notice of nonpayment requirements of Subpart C. The payable through or payable at bank may contract with the payor with respect to its liability in discharging these responsibilities. The Board believes that the Act makes a clear connection between availability and the time it takes for checks to be cleared and returned. Allowing the payable through bank additional time to forward checks to the payor and await return or pay instructions from the payor would delay the return of these checks, increasing the risks to depositary banks. Subpart C places on payable through and payable at banks the requirements of expeditious return based on the time the payable through or payable at bank received the check for forward collection.

If a check is sent for forward collection based on the routing number, the bank associated with the routing number is a paying bank for the purposes of Subpart C requirements, including notice of nonpayment, even if the check is not drawn by a customer of that bank or the check is fraudulent.

The phrase "and to which [the check] is sent for payment or collection" includes sending not only the physical check, but information regarding the check under a truncation arrangement.

Federal Reserve Banks and Federal Home Loan Banks are also paying banks under all subparts of the regulation with respect to checks payable by them, even though such banks are not defined as banks for purposes of Subpart B.

b. The Commentary on § 229.11(c) is amended by adding a paragraph at the end immediately preceding (d) to read as follows:

*Section 229.11 Temporary Availability Schedule*

* * * * *

(c) * * *

A reduction in schedules may apply even in those cases where the determination that the check is nonlocal cannot be made based on the routing number on the check. For example, a nonlocal credit union payable through share draft may be subject to a reduction in schedules if the routing number of the payable through bank which appears on the draft is included in Appendix B, even though the determination that the payable through share draft is nonlocal is based on the location of the credit union and not the routing number on the draft.

* * * * *

c. The Commentary on § 229.21(c) is amended by removing the period at the end of the paragraph and adding the following language:

*Section 229.21 Civil liability*

* * * * *

(c) * * *

; or if it fails to identify whether a payable through check is a local or nonlocal check despite procedures designed to make this determination accurately.

* * * * *

d. The Commentary on § 229.30 is amended by revising the introductory paragraphs of (a) and the complete text of (a)(1) to read as follows:

*Section 229.30 Paying Bank's Responsibility for Return of Checks*

(a) *Return of checks.* This section requires a paying bank (which, for purposes of Subpart C, may include a payable through and payable at bank; see § 229.2(z)) that determines not to pay a check to return the check expeditiously. Generally, a check is returned expeditiously if the return process is as fast as the forward collection process. This paragraph provides two standards for expeditious return, the "two-day/four-day" test, and the "forward collection" test.

Under the "two-day/four-day" test, if a check is returned such that it would normally be received by the depositary bank two business days after presentment where both the paying and depositary banks are located in the same check processing region or four business days after presentment where the paying and depositary banks are not located in the same check processing region, the check is considered returned expeditiously. In certain limited cases, however, these times are shorter than the time it would normally take a forward collection check deposited in the paying bank and payable by the depositary bank to be collected. Therefore, the Board has included a "forward collection" test, whereby a check is nonetheless considered to be returned expeditiously if the paying bank uses transportation methods and banks for return comparable to those used for forward collection checks, even if the check is not received by the depositary banks within the two-day or four-day period.

(1) *Two-day/four-day test.* Under the first test, a paying bank must return the check so that the check would normally be received by the depositary bank within specified times, depending on whether or not the paying and depositary banks are located in the same check processing region.

Where both banks are located in the same check processing region, a check is returned expeditiously if it is returned to the depositary bank by 4:00 p.m. (local time of the depositary bank) of the second business day after the banking day on which the check was presented to the paying bank. For example, a check presented on Monday to a paying bank must be returned to a depositary bank located in the same check processing region by 4:00 p.m. on Wednesday. For a paying bank that is located in a different check processing region than the depositary bank, the deadline to complete return is 4:00 p.m. (local time of the depositary bank) of the fourth business day after the banking day on which the check was presented to the paying bank. For example, a check presented to such a paying bank on Monday must be returned to the depositary bank by 4:00 p.m. on Friday.

This two-day/four-day test does not necessarily require actual receipt of the check by the depositary bank within these times. Rather, the paying bank must send the check so that the check would normally be received by the depositary bank within the specified time. Thus, the paying bank is not responsibile for unforeseeable delays in the return of the check, such as transportation delays.

Often, returned checks will be delivered to the depositary bank together with forward collection checks. Where the last day on which a check could be delivered to a depositary bank under this two-day/four-day test is not a banking day for the depositary bank, a returning bank might not schedule delivery of forward collection checks to the depositary bank on that day. Further, the depositary bank may not process checks on that day. Consequently, if the last day of the time limit is not a banking day for the depositary bank, the check may be delivered to the depositary bank before the close of the depositary bank's next banking day and the return will still be considered expeditious. Ordinarily, this extension of time will allow the returned checks to be delivered with the next shipment of forward collection checks destined for the depositary bank.

The times specified in this two-day/four-day test are based on estimated forward collection times, but take into account the particular difficulties that may be encountered in handling returned checks. It is anticipated that the normal process for forward collection of a check coupled with these return requirements will frequently result in the return of checks before the proceeds of local and nonlocal checks, other than those covered by § 229.10(c), must be made available for withdrawal under the temporary schedules in § 229.11.

Under this two-day/four-day test, no particular means of returning checks is required, thus providing flexibility to paying banks in selecting means of return. The Board anticipates that paying banks will often use returning banks (see § 229.31) as their agents to return checks to depositary banks. A paying bank may rely on the availability schedule of the returning bank it uses in determining whether the returned check would "normally" be returned within the required time under this two-day/four-day test, unless the paying bank has reason to believe that these schedules do not reflect the actual time for return of a check.

* * * * *

e. The Commentary on § 229.31(a) is amended by revising the paragraphs up to the examples to read as follows:

*Section 229.31 Returning Bank's Responsibility for Return of Checks*

(a) *Return of checks.* The standards for return of checks established by this section are similar to those for paying banks in § 229.30(a). This section requires a returning bank to return a returned check expeditiously if it agrees to handle the returned check for expeditious return under this paragraph. In effect, the returning bank is an agent or subagent of the paying bank and a subagent of the depositary bank for the purposes of returning the check. A returning bank agrees to handle a returned check for expeditious return to the depositary bank if it:

(1) Publishes or distributes availability schedules for the return of returned checks and accepts the returned check for return;

(2) Handles a returned check for return that it did not handle for forward collection; or

(3) Otherwise agrees to handle a returned check for expeditious return.

As in the case of a paying bank, a returning bank's return of a returned check is expeditious if it meets either of two tests. Under the "two-day/four-day" test, the check must be returned so that it would normally be received by the depositary bank by 4:00 p.m. either two or four business days after the check was presented to the paying bank, depending on whether or not the paying bank is located in the same check processing region as the depositary bank. This is the same test as the two-day/four-day test applicable to paying banks. (See Commentary to § 229.30(a).) While a returning bank will not have first hand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, allocate with paying banks liability for late return based on the delays caused by each. In effect, the two-day/four day test protects all paying and returning banks that return checks from claims that they failed to return a check expeditiously, where the check is returned within the specified time following presentment to the paying bank, or a later time as would result from unforeseen delays.

The "forward collection" test is similar to the forward collection test for paying banks. Under this test, a returning bank must handle a returned check in the same manner that a similarly situated collecting bank would handle a check of similar size drawn on the depositary bank for forward collection. A similar situated bank is a bank (other than a Federal Reserve Bank) that is of similar asset size and check handling activity in the same community. A bank has similar check handling activity if it handles a similar volume of checks for forward collection as the forward collection volume of the returning bank.

Under the forward collection tests, a returning bank must accept returned checks, including both qualified and other returned checks ("raw returns"), at approximately the same times and process them according to the same general schedules as checks handled for forward collection. Thus, a returning bank generally must process even raw returns on an overnight basis, unless its time limit is extended by one day to convert a raw return to a qualified returned check.

A returning bank may establish earlier cut-off hours for receipt of returned checks than for receipt of forward collection checks, but the cut-off hour for returned checks may not be earlier than 2:00 p.m. The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank may allow itself more processing time for returns than for forward collection checks. All returned checks received by a cut-off hour for returned checks must be processed and dispatched by the returning bank by the time that it would dispatch forward collection checks received at a corresponding forward collection cut-off hour that provides for the same or faster availability for checks destined for the same depositary banks.

* * * * *

f. The Commentary on § 229.36 is amended by revising the complete text of (a) and (b) to read as follows:

*Section 229.36 Presentment of Checks*

(a) *Payable through and payable at checks.* For purposes of Subpart C, the regulation defines a payable through or payable at bank (which could be designated the collectible through or collectible at bank) as a paying bank. The requirements of § 229.30(a) and the notice of nonpayment requirements of § 229.33, are imposed on a payable through or payable at bank and are based on the time of receipt of the forward collection check by the payable through or payable at bank. This provision is intended to speed the return of checks that are payable through or at a bank to the depositary bank.

(b) *Receipt at bank office or processing center.* This paragraph seeks to facilitate efficient presentment of checks to promote early return or notice of nonpayment to the depositary bank, and clarifies the law as to the effect of presentment by routing number. This paragraph differs from § 229.39(b) because presentment of checks differs from delivery of returned checks.

The paragraph specifies four locations at which the paying bank must accept presentment of checks. Where the check is payable through a bank and the check is sent to that bank, the payable through bank is the paying bank for purposes of this subpart, regardless of whether the paying bank must present the check to another bank or to a nonbank payor for payment.

1. Delivery of checks may be made, and presentment is considered to occur, at a location (including a processing center) requested by the paying bank. This is the way most checks are presented by banks today. This provision adopts the common law rule of a number of legal decisions that the processing center acts as the agent of the paying bank to accept presentment and to begin the time for processing of the check. (See also U.C.C. 4-204(3).) If a bank designates different locations for the presentment of forward collection checks bearing different routing numbers, for purposes of this paragraph it only requests presentment of checks bearing a particular routing number at the location designated for receipt of forward collection checks bearing that routing number.

2. Delivery may be made at an office of the bank associated with the routing number on the check. The office associated with the routing number of a bank is found in a publication of Rand McNally, *Key to Routing Numbers*, which lists a city and state address for each routing number. Checks are generally handled by collecting banks on the basis of the nine-digit routing number encoded in magnetic ink (or on the basis of the fractional form routing number if the magnetic ink characters are obliterated) on the check, rather than the printed name or address. The definition of a paying bank in § 229.2(z) includes a bank designated by routing number, whether or not there is a name on the check, and whether or not any name is consistent with the routing number. Where a check is payable by one bank, but payable through another, the routing number is that of the payable through bank, not that of the payor bank. As the payor bank has selected the payable through bank as the point through which presentment is to be made, it is proper to treat the payable through bank as the paying bank for purposes of this section.

There is no requirement in the regulation that the name and address on the check agree with the address associated with the routing number on the check. A bank may generally control the use of its routing number, just as it does the use of its name. The address associated with the routing number may be a processing center.

In some cases, a paying bank may have several offices in the city associated with the routing number. In such case, it would not be reasonable or efficient to require the presenting bank to sort the checks by more specific branch addresses that might be printed on the checks, and to deliver the checks to each branch. A collecting bank would normally deliver all checks to one location. In cases where checks are delivered to a branch other than the branch on which they may be drawn, computer and courier communication among branches should permit the paying bank to determine quickly whether to pay the check.

3. If the check specifies the name of the paying bank but no address, the bank must accept delivery at any office. Where delivery is made by a person other than a bank, or where the routing number is nor readable, delivery will be made based on the name and address of the paying bank on the check. If there is no address, delivery may be made at any office of the paying bank. This provision is consistent with U.C.C. 3-504(2), which states that presentment for payment may be made at the place specified in the instrument, or, if there is none, at the place of business of the party to pay. Thus, there is a trade-off for a paying bank between specifying a particular address on a check to limit locations of delivery, and simply stating the name of the bank to encourage wider currency for the check.

4. If the check specifies the name and address of a branch or head office, or other location (such as a processing center), the check may be delivered by delivery to that office or other location. If the address is too general to identify a particular office,

delivery may be made at any office consistent with the address. For example, if the address is "San Francisco, California," each office in San Francisco must accept presentment. The designation of an address on the check is generally in the control of the paying bank.

This paragraph may affect U.C.C. 3-504(2)(c) to the extent that the U.C.C. requires presentment to occur at a place specified in the instrument.

* * * * *

g. The Commentary on Appendix C to Part 229 is amended as follows:

(1) Add a paragraph at the end of the text titled *"Models C-1 through C-7 generally"* and before the text beginning with *"Model C-1"*.

(2) Add Commentary on Models C-19 and C-19A to the end of the appendix.

**Appendix C—Model Forms, Clauses, and Notices**

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Models C-1 through C-7 generally.* * *

In addition, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check (as set forth in model forms C-4 through C-7) must disclose that certain checks, such as credit union share drafts that are payable through a bank, will be treated as local or nonlocal based upon the location of the payor bank and not on the basis of the routing number on the check. Model C-19 or C-19A could be incorporated into model forms C-4 through C-7 to meet this requirement.

* * * * *

*Model C-19 and C-19A.* Either of these statements satisfies the requirements set forth in the footnote to § 229.16(b)(2) concerning payable through checks. The statements are both model clauses and notices in that they may be added to a bank's specific policy disclosure to describe how the bank treats payable through checks, and may be used as the notice that must be sent to existing customers no later than December 31, 1988, if the bank's specific policy disclosure given to the customers did not accurately reflect the treatment of payable through checks.

By order of the Board of Governors of the Federal Reserve System, August 12, 1988.

**William W. Wiles,**

*Secretary of the Board*

[FR Doc. 88-18702 Filed 8-17-88; 8:45 am]

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## DEPARTMENT OF TRANSPORATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 88-NM-44-AD; Amdt. 39-6005]**

### Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Clarification of final rule.

**SUMMARY:** This action clarifies an existing airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, equipped with General Electric engines, without a secondary cowl door latching system. The model identification of the affected engines was not specified in the applicability statement of the AD. This clarification is necessary to identify properly the affected airplanes.

**EFFECTIVE DATE:** September 6, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** On May 11, 1988, the FAA issued AD 88-11-10, Amendment 39-5931 (53 FR 18076; May 20, 1988), which requires a daily security check for each engine core cowl door, after it is open and subsequently closed, until a secondary latching system is installed. That action was prompted by several reported incidents where the engine core cowl doors have separated from airplanes equipped with this engine core cowl door design, due to failure of the latching device. This condition, if not corrected, could result in separation of the door, which, in turn, could cause structural damage to the airplane.

That AD was made effective to *all* Airbus Industrie Model A300 series equipped with General Electric engines without a secondary cowl door latching system. Since issuance of that AD, the FAA has received reports that, due to certain configurations of the engines, the required inspection is applicable only to airplanes equipped with General Electric CF6-50 engines. Accordingly, the FAA has determined that the applicability of the existing AD must be clarified to specify the engine model, and action is taken herein to make this clarification.

Since this action only clarifies information in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Clarification**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration clarifies § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By clarifying the applicability statement of AD 88-11-10, Amendment 39-5931 (53 FR 18076; May 20, 1988), as follows:

**Airbus Industrie:** Applies to Model A300 series airplanes, equipped with General Electric CF6-50 engines, without a secondary latching system on core cowl doors, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural damage to the airplane due to engine core cowl door separation, accomplish the following:

A. Within 10 days after the effective date of this AD, check the core cowl door latches of each engine once each day, and re-check after each core cowl door is opened and subsequently closed.

1. If the latch is open, before further flight, properly close the latch.

2. If the latch will not engage, adjust the latch, in accordance with the A300 maintenance manual.

3. If the latch cannot be properly adjusted, replace the latch prior to further flight.

B. The checks required by paragraph A., above, may be discontinued after a secondary latching system is installed, in accordance with Airbus Industrie Service Bulletin A300-71-053, Revision 2, dated January 6, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

**Note.**—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer, may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office,