PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Trifluralin

A petition (PP 8F0731) was filed with the Food and Drug Administration by Elanco Products Co., a division of Eli Lilly & Co., Indianapolis, Ind. 46206, proposing the establishment of a tolerance of 0.05 part per million for negligible residues of the herbicide trifluralin (α,α,α-trifluoro-2.6-dinitro-*N,N*-dipropyl-*p*-toluidine) in or on the raw agricultural commodity group citrus fruits.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which the tolerance is being established.

Data in the petition and elsewhere available show that the use of feed items from treated citrus fruits in compliance with the tolerance proposed will not result in residues of trifluralin in meat or milk. The usage is classified in the category specified in § 120.6(a)(3) and no tolerance for meat or milk is required.

Based on consideration given the data submitted in the petition, and other relevant material, the Commissioner of Food and Drugs concludes that the tolerance established by this order will protect the public health. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and under authority delegated to the Commissioner (21 CFR 2.120), § 120.207 is amended to establish the subject tolerance by revising the paragraph "0.05 part per million * * *" to read as follows:

§ 120.207 Trifluralin; tolerances for residues.

* * * * *

0.05 part per million (negligible residue) in or on alfalfa (fresh), citrus fruits, cottonseed, cucurbits, forage legumes, fruiting vegetables, leafy vegetables, nuts, peanuts, potatoes, safflower seed, seed and pod vegetables, stone fruits, sugar beets, sugarcane, sunflower seed.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: October 23, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-13234; Filed, Oct. 30, 1968; 8:50 a.m.]

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in the Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

FAMPHUR

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by American Cyanamid Co., Agricultural Division, Post Office Box 400, Princeton, N.J. 08540, and other relevant material, concludes that the food additive regulations should be amended to provide for the safe use of famphur (*O,O*-dimethyl *O-p*-(dimethylsulfamoyl)phenyl phosphorothioate) in cattle feed for the control of cattle grubs and aid in the control of sucking lice. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 121 is amended by adding to Subpart C the following new section:

§ 121.323 Famphur (*O,O*-dimethyl *O-p*-(dimethylsulfamoyl)phenyl phosphorothioate).

The food additive famphur may be safely used in accordance with the following prescribed conditions:

(a) The additive is the chemical *O,O*-dimethyl *O-p*-(dimethylsulfamoyl) phenyl phosphorothioate ($C_{10}H_{16}NO_5S_2P$). It has a melting point range of 52.5° C.

(b) The additive is used or intended for use as the sole medication as prescribed in the following table:

FAMPHUR (*O,O*-DIMETHYL *O-p*-(DIMETHYLSULFAMOYL)PHENYL PHOSPHOROTHIOATE) IN CATTLE FEED

	Amount	Limitations	Indications for use
1. Famphur	1.1 mg. per pound body weight per day.	For beef cattle and nonlactating dairy cows; feed for 30 days; withdraw from dry dairy cows and heifers 21 days prior to freshening; withdraw 4 days prior to slaughter.	Control of grubs and aid in control of sucking lice.
2. Famphur	2.3 mg. per pound body weight per day.	For beef cattle and nonlactating dairy cows; feed for 10 days; withdraw from dry dairy cows and heifers 21 days prior to freshening; withdraw 4 days prior to slaughter.	Control of grubs.

(c) To assure safe use, the label and labeling of the additive, any feed additive supplement, feed additive concentrate, feed additive premix, or complete feed or other dosage form prepared therefrom, shall bear in addition to the other information required by the act the following:

(1) The name of the additive.

(2) A statement of the quantity of the additive contained therein.

(3) Adequate directions and warnings for use which shall include a statement that famphur is a cholinesterase inhibitor and that animals being treated with famphur should not be exposed during or within a few days before or after treatment to any other cholinesterase-inhibiting chemicals.

(d) Tolerance limitations for residues of famphur in edible products from treated animals are established in § 120.233 of this chapter under the chemical name.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: October 23, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-13233; Filed, Oct. 30, 1968; 8:50 a.m.]

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter VI—Business and Defense Services Administration, Department of Commerce

[BDSA Order M-17—Revocation]

M-17—ELECTRONIC COMPONENTS OR PARTS

Revocation

BDSA Order M-17 (24 F.R. 7377) is hereby revoked. This revocation does not relieve any person of any obligation or liability incurred under M-17, nor deprive any person of any rights received or accrued under said order prior to the effective date of this revocation.

(Sec. 704, 64 Stat. 816, as amended, 50 U.S.C. App. 2154; Sec. 1, Public Law 90-370, 82 Stat. 279)

This revocation shall take effect October 30, 1968.

BUSINESS AND DEFENSE SERVICES ADMINISTRATION,
RODNEY L. BORUM,
Administrator.

[F.R. Doc. 68-13199; Filed, Oct. 30, 1968; 8:47 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER E—ALCOHOL, TOBACCO, AND OTHER EXCISE TAXES

[T.D. 6977]

PART 212—FORMULAS FOR DENATURED ALCOHOL AND RUM

Wood Alcohol

Correction

In F.R. Doc. 68-12979 appearing at page 15708 in the issue of Thursday, October 24, 1968, the entry for § 212.96 should be corrected to read:

* * * * *

Specific gravity 15.56°/15.56° C. 0.8072 minimum.

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 17—MEDICAL

Hospital and Nursing Home Care in Nonveterans Administration Facilities in Alaska and Hawaii

1. In § 17.50, paragraph (j) is amended to read as follows (former subparagraphs (1) and (2) are incorporated in § 17.51 and 17.51a):

§ 17.50 Utilization of facilities other than those under direct and exclusive jurisdiction of the Veterans Administration.

* * * * *

(j) A veteran receiving community nursing home care at Veterans Administration expense and who requires immediate hospitalization for treatment of an emergent condition may be authorized such emergency care at Veterans Administration expense, provided: (1) Prior authorization for such care is obtained from the Veterans Administration, (2) admission to a Veterans Administration or other Federal hospital is not feasible, and (3) the authorization is limited to that period of care required to meet the emergent need, until the veteran can be safely moved to a Veterans Administration or other Federal hospital. (For purposes of subparagraph (1) of this paragraph, prior authorization will be conceded when the request for authorization is received by the Veterans Administration within 72 hours of the time of admission of the veteran to the non-Federal hospital.)

* * * * *

2. Section 17.50a is reserved and §§ 17.50b, 17.51, 17.51a, and 17.51b are added to read as follows:

§ 17.50a [Reserved]

§ 17.50b Use of public or private hospitals for veterans in Alaska and Hawaii.

The Director of the Clinic in Hawaii and the medical officer in charge of the medical program in Alaska may, when it is in the best interests of the Veterans Administration and Veterans Administration patients, contract for the use of public or private hospitals in Alaska and Hawaii for the care of veterans. When demand is only for infrequent use, individual authorizations may be used. Such facilities will be used when a Federal facility to which a patient would otherwise be eligible for admission as a Veterans Administration beneficiary is not feasibly available. Admissions to public or private facilities whether under a contract or as an individual authorization will be authorized if:

(a) The veteran is eligible for hospital care in public or private facilities at Veterans Administration expense under any provision of § 17.50, or

(b) The veteran is a veteran of a war whose public or private hospital admission can be accommodated within an average daily patient load per thousand veteran population at Veterans Administration expense in Federal, public or private hospital facilities in Alaska or Hawaii not exceeding the average daily patient load per thousand veteran population hospitalized by the Veterans Administration within the 48 contiguous States. (The authority under this paragraph expires December 31, 1978.)

§ 17.51 Transfers to community nursing homes from Veterans Administration facilities.

Nursing home care in a contract public or private nursing home care facility may be authorized for as much as 6 months in the aggregate in connection with any one transfer for any veteran eligible for hospital care under § 17.47 (a), (b), (c), or (d), who has attained the maximum hospital benefit and for whom a protracted period of nursing home care will be required, provided:

(a) Transfer to the nursing home care facility will be from a hospital under the direct and exclusive jurisdiction of the Veterans Administration (except in Alaska and Hawaii, as provided for in § 17.51b), and

(b) The nursing home care facility is determined to meet the physical and professional standards prescribed by the Chief Medical Director, and

(c) The cost of the nursing home care does not exceed 40 percent of the cost of care furnished by the Veterans Administration in a general medical and surgical hospital as determined from time to time.

§ 17.51a Extensions of community nursing home care beyond 6 months.

The Chief Medical Director, his Deputy or the Regional Medical Director may authorize an extension of nursing care in a public or private nursing home care facility at Veterans Administration expense beyond 6 months for circumstances of a most unusual nature such as when additional time is needed to complete imminent arrangements for other care.

§ 17.51b Transfers from facilities for nursing home care in Alaska and Hawaii.

Transfer of any veteran hospitalized in a non-Veterans Administration hospital facility at Veterans Administration expense to a community nursing home facility in Alaska or Hawaii may be authorized subject to the provisions of § 17.51, except paragraph (a).

(72 Stat. 1114; 38 U.S.C. 210)

These VA regulations are effective October 21, 1968.

Approved: October 25, 1968.

By direction of the Administrator.

[SEAL] A. W. STRATTON,
Deputy Administrator.

[F.R. Doc. 68-13218; Filed, Oct. 30, 1968; 8:49 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER N—TRANSPORTATION

PART 171—POLICY GOVERNING TRANSPORTATION AND ACCOMMODATIONS OF MILITARY PERSONNEL AND THEIR DEPENDENTS, CIVILIAN EMPLOYEES AND THEIR DEPENDENTS WHEN TRAVELING VIA COMMERCIAL, GOVERNMENT OR PRIVATE TRANSPORTATION

Discontinuance of Part

Codification of Part 171 is discontinued.

MAURICE W. ROCHE,
Director, Correspondence and Directives Division, OASD (Administration).

OCTOBER 25, 1968.

[F.R. Doc. 68-13237; Filed, Oct. 30, 1968; 8:51 a.m.]

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

Criteria for Determination of an Extraordinary Nuclear Occurrence

On May 9, 1968, the Commission published for comment in the FEDERAL REGISTER (33 F.R. 6978) proposed amendments to its regulation, "Financial Protection Requirements and Indemnity Agreements," 10 CFR Part 140, which would effectuate the amendments to the Price-Anderson Act of 1966 (Public Law 89-645) providing for waivers of certain defenses in the event of an extraordinary nuclear occurrence.

The principal purpose of the amendments is to assure that the public will receive prompt financial compensation under the available indemnity and underlying financial protection for damage resulting from the hazardous properties of radioactive material or radiation. All interested persons were invited to submit written comments or suggestions for consideration in connection with the proposed amendments to 10 CFR Part 140 within 60 days after publication of the notice of proposed rule making in the FEDERAL REGISTER. The notice also announced that an industry conference would be held on June 11, 1968, at the Commission's offices at 1717 H Street NW., Washington, D.C., to discuss the provisions of the proposed amendments to 10 CFR Part 140.

After careful consideration of the comments received, the views presented at the industry conference, and other factors, the Commission has adopted the amendments set forth below. In most essential respects, the amendments are the same as those set forth in the notice of proposed rule making. However, there are some changes from the proposed rule. As will be indicated, the Commission is providing an opportunity for comment on these changes, but the amendments will be effective 30 days after publication. The principal changes are described below.

New § 140.82 *Procedures*, provides that, if the Commission is unable to make a determination, within 7 days after it has received notification of an alleged event, that there has been an extraordinary nuclear occurrence, it will publish a notice in the FEDERAL REGISTER of the initiation of a procedure for the making of a determination. Such notice will request persons having knowledge of the alleged occurrence to submit their information to the Commission.

New § 140.83 *Determination of extraordinary nuclear occurrence*, provides that the 90-day period for the making of a determination runs from the time of publication of a notice in the FEDERAL REGISTER that the Commission is considering the making of a determination, and also makes clear that the Commission may extend the 90-day time period.

New § 140.84 *Criterion I—substantial discharge of radioactive material or substantial radiation levels offsite*, contains revisions from the proposed rule with respect to surface contamination. The Statement of Considerations published in connection with the proposed rule made clear the intent that Criterion I would not be met by a release of radioactive material within or not greatly in excess of the limits set forth in the Commission's regulations and in license conditions. It has come to the Commission's attention that with respect to some facilities the description of the location (site) for purposes of the Price-Anderson indemnity agreement is so narrowly defined geographically that it is possible under normal operating conditions for levels of contamination in restricted or controlled areas which are offsite to exceed the levels proposed in the table of total surface contamination levels. The table has been revised by applying a factor of 10 to the proposed levels where the contaminated offsite property is contiguous to the site and is owned or leased by the licensee, who is thus able to control access to the area. As was explained in the Statement of Considerations, the levels originally proposed were intended to represent only an administrative index for determing that something unexpected and out of the ordinary has taken place. The higher levels set by the application of a factor of 10 for contamination of property where the public is generally excluded are consonant with this concept and in keeping with the Price-Anderson Act's purpose of protecting the public. The levels originally proposed are applicable to all other offsite property. It should be noted that this revision involves no change in Criterion II.

New § 140.85 *Criterion II—substantial damages to persons offsite or property offsite*, now makes clear that "damage" in all cases refers to damage from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material. New § 140.85 also lowers the test for substantial damages to persons offsite by changing from ten to five the number of people the Commission would have to find were killed or hospitalized by physical injury from exposure.

The amendments to the form of nuclear energy liability policy for facilities and to the forms of indemnity agreements with licensees contained in the Appendices to 10 CFR Part 140 (§§ 140.91 through 140.95) are changed from the proposed amendments in the following respects:

(1) The waiver of an issue or defense relating to unforeseeable intervening causes no longer refers to the "operation of a force of nature," since that formulation appears to be only an alternative way of stating the more commonly used term "act of God" which is covered specifically by the rule.

(2) The proposed exclusion in the waivers of defenses relating to the abnormally sensitive character of the claimant's activities or operations is not being adopted at this time. The Commission is not fully convinced of the appropriateness of the exclusion and, at any rate, there appears to be considerable dispute on the appropriate formulation of the abnormally sensitive defense.

One of the tests for meeting Criterion II (§ 140.85) refers to $2,500,000 or more of damage offsite which has been or will probably be sustained by any one person. While no change in this formulation appears to be necessary, it should be understood that the test can be met by a person sustaining the requisite amount of damage by operation of law rather than because of ownership of the damaged property, for example, a railroad, in the event of damage to lading owned by numerous persons but cumulatively totaling the requisite amount.

It has been the intention of the Commission, in connection with these amendments to Part 140, to eliminate the 2-year discovery provision in nuclear policies furnished as proof of financial protection. The Commission still intends to accomplish this change as soon as possible, but final agreement with insurers has not yet been reached.

Pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendments to 10 CFR Part 140 are published as a document subject to codification to be effective 30 days after publication in the FEDERAL REGISTER. The Commission invites all interested persons who desire to submit written comments or suggestions with respect to the changes made from the proposed rule to send them to the Secretary, U.S. Atomic Energy Commission, Washington, D.C. 20545, within 90 days after publication of this notice in the FEDERAL REGISTER. Consideration will be given such submission with the view to possible amendments to the rule.

1. Paragraph (a) of § 140.2 is amended and new paragraph (c) is added to § 140.2 to read as follows:

§ 140.2 Scope.

(a) The regulations in this part apply

(1) To each persons who is an applicant for or holder of a license issued pursuant to Part 50 of this chapter to operate a nuclear reactor, and

(2) With respect to extraordinary nuclear occurrences, to each person who is an applicant for or holder of a license to operate a production facility or a utilization facility, and to other persons indemnified with respect to such facility.

* * * * *

(c) Subpart E of this part sets forth the procedures the Commission will follow and the criteria the Commission will apply in making a determination as to whether or not there has been an extraordinary nuclear occurrence. The form of nuclear energy liability policy for facilities (Appendix A) and the forms of indemnity agreements with licensees (Appendices B, C, D, and E) include provisions requiring the waiver of certain defenses with respect to an extraordinary nuclear occurrence. These provisions and

Subpart E are incorporated in this part pursuant to Public Law 89-645 (80 Stat. 891). They provide additional assurance of prompt compensation under available indemnity and underlying financial protection for injury or damage resulting from the hazardous properties of radioactive materials or radiation, and they in no way detract from the protection to the public otherwise provided under this part.

§ 140.15 [Amended]

2. Paragraph (a)(1) and paragraph (a)(2) of § 140.15 are each amended by changing the reference to "§ 140.75" to read "§ 140.91".

§ 140.20 [Amended]

3. Paragraph (b)(1) of § 140.20 is amended by changing the reference to "§ 140.76" to read "§ 140.92" and by changing the reference to "§ 140.77" to read "§ 140.93".

4. Paragraph (b)(2) of § 140.20 is amended by changing the reference to "§§ 140.76 and 140.77" to read "§§ 140.92 and 140.93".

§ 140.52 [Amended]

5. Paragraph (b)(1) and paragraph (b)(2) of § 140.52 are each amended by changing the reference to "§ 140.78" to read "§ 140.94".

§ 140.72 [Amended]

6. Paragraph (b)(1) and paragraph (b)(2) of § 140.72 are each amended by changing the reference to "§ 140.79" to read "§ 140.95".

7. A new Subpart E is added to read as follows:

Subpart E—Extraordinary Nuclear Occurrences

AUTHORITY: The provisions of this Subpart E issued under sec. 161, 68 Stat. 948; 42 U.S.C. 2201; sec. 170, 71 Stat. 576; 42 U.S.C. 2210.

Subpart E—Extraordinary Nuclear Occurrences

§ 140.81 Scope and purpose.

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

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

(1) The system is to come into effect only where the discharge or dispersal constitutes a substantial amount of source, special nuclear or byproduct material, or has caused substantial radiation levels offsite. The various limits in present AEC regulations are not appropriate for direct application in the determination of an "extraordinary nuclear occurrence," for they were arrived at with other purposes in mind, and those limits have been set at a level which is conservatively arrived at by incorporating a significant safety factor. Thus, a discharge or dispersal which exceeds the limits in AEC regulations, or in license conditions, although possible cause for concern, is not one which would be expected to cause substantial injury or damage unless it exceeds by some significant multiple the appropriate regulatory limit. Accordingly, in arriving at the values in the criteria to be deemed "substantial" it is more appropriate to adopt values separate from AEC health and safety regulations, and, of course, the selection of these values will not in any way affect such regulations. A substantial discharge, for purposes of the criteria, represents a perturbation of the environment which is clearly above that which could be anticipated from the conduct of normal activities. The criteria are intended solely for the purposes of administration of the Commission's statutory responsibilities under Public Law 89-645, and are not intended to indicate a level of discharge or dispersal at which damage to persons or property necessarily will occur, or a level at which damage is likely to occur, or even a level at which some type of protective action is indicated. It should be clearly understood that the criteria in no way establish or indicate that there is a specific threshold of exposure at which biological damage from radiation will take place. It cannot be emphasized too frequently that the levels set to be used as criteria for the first part of the determination, that is, the criteria for amounts offsite or radiation levels offsite which are substantial, are not meant to indicate that, because such amounts or levels are determined to be substantial for purposes of administration, they are "substantial" in terms of their propensity for causing injury or damage.

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

(3) The first part of the test is designed so that the Commission can assure itself that something exceptional has occurred; that something untoward and unexpected has in fact taken place and that this event is of sufficient significance to raise the possibility that some damage to persons or property offsite has resulted or may result. If there appears to be no damage, the waivers will not apply because the Commission will be unable, under the second part of the test, to make a determination that "substantial damages" have resulted or will probably result. If damages have resulted or will probably result, they could vary from de minimis to serious, and the waivers will not apply until the damages, both actual and probable, are determined to be "substantial" within the second part of the test.

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

§ 140.82 Procedures.

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

(b) When a procedure is initiated under paragraph (a) of this section, the principal staff which will begin immediately to assemble the relevant information and prepare a report on which the Commission can make its determination will consist of the Directors or Deputies of the following Divisions or Offices: Operational Safety, Radiation Protection Standards, Compliance, Biology and Medicine, State and Licensee Relations; the General Counsel or his designee, and a representative of the program division whose facility or device[1] may be involved.

§ 140.83 Determination of extraordinary nuclear occurrence.

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

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

The Commission will determine that there has been a substantial discharge or dispersal of radioactive material offsite, or that there have been substantial levels of radiation offsite, when, as a result of an event comprised of one or more related happenings, radioactive material is released from its intended place of confinement or radiation levels occur offsite and either of the following findings are also made:

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

TOTAL PROJECTED RADIATION DOSES

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

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

(1) Radiation from sources external to the body;

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

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

(b) The Commission finds that—

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

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

TOTAL SURFACE CONTAMINATION LEVELS[2]

Type of emitter	Column 1 Offsite property, contiguous to site, owned or leased by person with whom an indemnity agreement is executed	Column 2 Other offsite property
Alpha emission from transuranic isotopes.	3.5 microcuries per square meter.	0.35 microcuries per square meter.
Alpha emission from isotopes other than transuranic isotopes.	35 microcuries per square meter.	3.5 microcuries per square meter.
Beta or gamma emission.	40 millirads/hour @ 1 cm. (measured through not more than 7 milligrams per square centimeter of total absorber).	4 millirads/hour @ 1 cm. (measured through not more than 7 milligrams per square centimeter of total absorber).

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

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

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

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

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

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

(b) As used in subparagraphs (2) and (3) of paragraph (a) of this section, "damage" shall be that arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material, and shall be based upon estimates of one or more of the following:

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

(2) Loss of use of affected property,

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

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

§§ 140.91–140.95 [Redesignated]

8. Present §§ 140.75 through 140.79 (Appendix A through Appendix E, respectively) are renumbered §§ 140.91 through 140.95, respectively.

§ 140.91 [Amended]

9. Section 140.91 *Appendix A* is amended by adding the following at the end thereof:

NUCLEAR ENERGY LIABILITY POLICY

(FACILITY FORM)

Waiver of Defenses Endorsement

(Extraordinary Nuclear Occurrence)

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

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

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

(b) Arises out of or results from or occurs in the course of the transportation of nuclear material to or from the facility,

the insureds and the companies agree to waive

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

(i) Negligence,

(ii) Contributory negligence,

(iii) Assumption of risk, and

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

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

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

[1] Although Part 140 does not apply to devices, the reference to "device" is included here so that the complete procedures and criteria will be readily available in one place. Provisions applicable to extraordinary nuclear occurrences involving devices during the course of the contract activity will be included in amendments to 41 CFR, Chapter 9.

[1] Although Part 140 does not apply to devices, the reference to "device" is included here so that the complete procedures and criteria will be readily available in one place. Provisions applicable to extraordinary nuclear occurrences involving devices during the course of the contract activity will be included in amendments to 41 CFR, Chapter 9.

event more than 10 years after the date of the nuclear incident.

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

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

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

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

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

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

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

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

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

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

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

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

5. As used herein:

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

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

§ 140.92 [Amended]

10. Paragraph 2 of Article 1 of § 140.92 Appendix B is amended by changing the words "paragraph 6, Article II," to read "paragraph 8, Article II,".

11. Subparagraph 3(a) and subparagraph 3(b) of Article I of § 140.92 Appendix B are each amended by inserting the words ", including an extraordinary nuclear occurrence," after the word "occurrence" the first time it appears in the subparagraph.

12. Article I of § 140.92 Appendix B is amended by renumbering present paragraphs 4 through 9 as paragraphs 5 through 10, respectively, and by adding a new paragraph 4 to read as follows:

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

13. Paragraph 1 of Article II of § 140.92 Appendix B is amended by changing the words "subparagraph 4(b), Article I," to read "subparagraph 5(b), Article I,".

14. Article II of § 140.92 Appendix B is amended by renumbering present paragraphs 4 through 7 as paragraphs 6 through 9, respectively, and by adding new paragraphs 4 and 5 to read as follows:

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

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

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

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

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

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

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

5. The waivers set forth in Paragraph 4 of this article—

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

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

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

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

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

(f) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (1) the limit of liability provisions under subsection 170e of the Atomic Energy Act of 1954, as amended, and (2) the terms of this agreement and the terms of the nuclear energy liability insurance policy or policies designated in the attachment hereto.

15. Subparagraph 8(d) of Article II of § 140.92 Appendix B is amended by changing the words "paragraph 6, Article II," in both places where they appear to read, "paragraph 8, Article II,".

16. Subparagraph 4(a) and subparagraph 4(b) of Article III of § 140.92 Appendix B are each amended by changing the word "Article" the first time it appears in the subparagraph to read "agreement".

17. Paragraph 7 of Article III of § 140.92 Appendix B is amended by changing the word "Article" to read "agreement".

18. Article VII of § 140.92 Appendix B is amended by changing the words "subparagraph 4(b), Article I" to read "subparagraph 5(b), Article I".

§ 140.93 [Amended]

19. Subparagraph 3(a) and subparagraph 3(b) of Article I of § 140.93 Appendix C are each amended by inserting the words "including an extraordinary nuclear occurrence," after the word "occurrence" the first time it appears in the subparagraph.

20. Article I of § 140.93 Appendix C is amended by renumbering present paragraphs 4 through 9 as paragraphs 5 through 10, respectively, and by adding a new paragraph to read as follows:

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

21. Article II of § 140.93 Appendix C is amended by renumbering present paragraphs 4 through 7 as paragraphs 6 through 9, respectively, and by adding new paragraphs 4 and 5 to read as follows:

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

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

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

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

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

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than 10 years after the date of the nuclear incident.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

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

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

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

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

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

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

(f) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (1) the limit of liability provisions under subsection 170e, of the Atomic Energy Act of 1954, as amended, and (2) the terms of this agreement and the terms of contracts or other proof of financial protection.

22. Subparagraph 4(a) and subparagraph 4(b) of Article III of § 140.93 Appendix C are each amended by changing the word "Article" the first time it appears in the subparagraph to read "agreement".

23. Paragraph 7 of Article III of § 140.93 Appendix C is amended by changing the word "Article" to read "agreement".

24. Article VII of § 140.93 Appendix C is amended by changing the words "subparagraph 4b, Article I" to read, "subparagraph 5(b), Article I".

§ 140.94 [Amended]

25. Subparagraph 2(a) and subparagraph 2(b) of Article I of § 140.94 Appendix D are each amended by inserting the words ", including an extraordinary nuclear occurrence," after the word "occurrence" the first time it appears in the subparagraph.

26. Article I of § 140.94 Appendix D is amended by renumbering present paragraphs 3 through 8 as paragraphs 4 through 9, respectively, and by adding a new paragraph 3 to read as follows:

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

27. Article II of § 140.94 Appendix D is amended by renumbering present paragraphs 4 through 7 as paragraphs 6 through 9, respectively, and by adding new paragraphs 4 and 5 to read as follows:

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

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

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

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

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

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than 10 years after the date of the nuclear incident.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

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

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

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

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

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

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

(f) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (1) the limit of liability provisions under subsection 170e, of the Atomic Energy Act of 1954, as amended, and (2) the terms of this agreement.

28. Article VI of § 140.94 Appendix D is amended by changing the words "subparagraph 3(b), Article I" to read, "subparagraph 4(b), Article I".

§ 140.95 [Amended]

29. Subparagraph 2(a) and subparagraph 2(b) of Article I of § 140.95 Appendix E are each amended by inserting the words ", including an extraordinary nuclear occurrence," after the word "occurrence" the first time it appears in the subparagraph.

30. Article I of § 140.95 Appendix E is amended by renumbering present paragraphs 3 through 8 as paragraphs 4 through 9, respectively, and by adding a new paragraph 3 to read as follows:

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

31. Article II of § 140.95 Appendix E is amended by designating the present paragraph thereof as paragraph 1 and by adding new paragraphs 2 and 3 to read as follows:

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

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

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

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

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

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than 10 years after the date of the nuclear incident.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

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

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

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

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

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

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

(f) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (1) the limit of liability provisions under subsection 170e of the Atomic Energy Act of 1954, as amended, and (b) the terms of this agreement.

32. Subparagraph 4(a) and subparagraph 4(b) of Article III of § 140.95 Appendix E are each amended by changing the word "Article" the first time it appears in the subparagraph to read "agreement."

33. Paragraph 8 of Article III of § 140.95 Appendix E is amended by changing the word "Article" to read "agreement".

34. Article VII of § 140.95 Appendix E is amended by changing the words "subparagraph 3(b), Article I" to read "subparagraph 4(b), Article I".

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201; sec. 170, 71 Stat. 576; 42 U.S.C. 2210)

Dated at Washington, D.C., this 22d day of October 1968.

For the Atomic Energy Commission.

W. B. McCool,
Secretary.

[F.R. Doc. 68-13169; Filed, Oct. 30, 1968; 8:45 a.m.]