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DEPARTMENT OF ENERGY

Adjusted Indemnification Amount

AGENCY: Department of Energy.

ACTION: Notice of adjusted indemnification amount.

SUMMARY: The Department of Energy (DOE) is announcing the adjusted amount of indemnification provided under subsection 170d. of the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2210d., commonly known as the Price-Anderson Act, consistent with section 607 of the Energy Policy Act of 2005, Public Law 109-58 (EPA 2005). Section 607 ("Inflation Adjustment") of EPA 2005 amended subsection 170t. of the AEA by requiring the adjustment of the indemnification amount not less than once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index (CPI) since that date. This notice announces \$11.961 billion as the inflation-adjusted amount based on the aggregate percentage change in the CPI during the initial 5-year period.

DATES: This action is effective October 14, 2009.

FOR FURTHER INFORMATION CONTACT: John S. Boulden III, Acting Director (HS-40), Office of Enforcement, Office of Health, Safety and Security, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874, (301) 903-2178; or Sophia Angelini, Attorney Advisor (GC-52), Office of the General Counsel, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-6975.

SUPPLEMENTARY INFORMATION:

The Price-Anderson Act, section 170 of the AEA (42 U.S.C. 2210), establishes a system of financial protection for persons who may be liable for and persons who may be injured by a "nuclear incident," as defined at section 11q. of the AEA (42 U.S.C. 2014q.). The Price-Anderson Act is administered by DOE with respect to the nuclear activities of DOE contractors acting on its behalf. Subsection 170d. provides that the Secretary of Energy shall enter into agreements of indemnification with any person who may conduct activities under a contract with DOE that involve the risk of public liability and that are not subject to the financial protection requirements of the Nuclear Regulatory Commission. DOE's Price-Anderson Act indemnification contract provisions are

codified in the Department of Energy Acquisition Regulation (DEAR), which sets forth a standard nuclear indemnification clause, the Nuclear Hazard Indemnity Agreement at 48 CFR 952.250-70, that is incorporated into all DOE contracts and subcontracts involving source, special nuclear, or by-product material.

The Price-Anderson Amendments Act of 2005 (PAAA 2005), enacted as part of EPA 2005, sections 601 through 610, altered the indemnity provisions in several ways. Specifically, the PAAA 2005 altered the amount of the indemnification by: (1) Specifying \$10 billion as the amount of the indemnification for nuclear incidents within the United States resulting from contractual activities on behalf of DOE (section 604); (2) directing the adjustment of this indemnification amount not less than once during each five-year period in accordance with the aggregate percentage change in the CPI (section 607); and (3) increasing the indemnification amount for nuclear incidents outside the United States from \$100 million to \$500 million (section 605).

With regard to the inflation adjustment for indemnification, the AEA subsection 170t. was amended by adding a new provision requiring the adjustment of "the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index since—(A) that date, in the case of the first adjustment under this paragraph; or (B) the previous adjustment under this paragraph." Under the AEA subsection 170t.(3), the term "Consumer Price Index" is defined to mean the CPI for all urban consumers published by the Secretary of Labor. The CPI in July 2003 was 183.9. In July 2008, the CPI was 219.964. This represents an increase of approximately 19.61%. Application of this increase to the initial \$10 billion DOE indemnification amount results in an inflation-adjusted indemnification amount of \$11.961 billion.

The inflation adjustment under AEA subsection 170t. applies only to a nuclear incident within the United States. Accordingly, the indemnification amount for a nuclear incident outside the United States continues to be \$500 million.

The next inflation adjustment will be based on the incremental change in the CPI between July 1, 2008 and the date of the adjustment, which will be no later than July 1, 2013.

This notice of indemnification inflation adjustment is a "rule" as defined in the Administrative Procedure Act (APA) (5 U.S.C. 551(4)). However, the APA (5 USC 553(b)(B)) does not require an agency to use the public notice and comment process "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." In this instance, DOE has concluded that solicitation of public comment is unnecessary. Congress has required DOE to adjust the amount of indemnification provided under an agreement of indemnification under section 170d. to reflect inflation in the initial and each subsequent 5-year period following July 1, 2003, and provided no discretion regarding the substance of the adjustment process. DOE is required only to perform a ministerial computation to determine the relevant inflation adjustment. On the same basis, DOE finds good cause, pursuant to 5 USC 553(d)(3) to waive the requirement for a 30-day delay in the effective date for this rule. As such, this rule is effective October 14, 2009.

DOE has determined that this notice of indemnification inflation adjustment is the type of action that does not individually or cumulatively have a significant impact on the human environment as set forth in DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule is covered under the categorical exclusion in paragraph A6 of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

Dated: Issued in Washington, DC, on September 22, 2009.

Steven Chu,

Secretary of Energy.

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DEPARTMENT OF ENERGY

Guidance on Energy-Efficiency Enforcement Regulations

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice.

SUMMARY: This notice sets forth the Department of Energy's (DOE's) interpretation of its energy efficiency